

1997

Mary J. Rehn v. Charles C. Rehn : Brief of Appellant

Utah Court of Appeals

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COURT OF APPEALS

TABLE OF CONTENTS

STATEMENT OF JURISDICTION	1
STATEMENT OF ISSUES PRESENTED FOR REVIEW	1
CONSTITUTIONAL AND STATUTORY PROVISIONS	3
STATEMENT OF THE CASE	3
Nature of the Case	3
Course of the Proceedings and Disposition	4
Statement of the Facts	4
SUMMARY OF ARGUMENT	9
ARGUMENT	10
Point I	
The trial court failed to make the necessary findings for the amount and length of its alimony award; for its deviation from the child support guidelines; for its debt allocation; and for its award of attorneys fees.	
.....	10
Amount of Alimony.	10
Factors in <i>Jones v. Jones</i> , 700 P.2d 1072 (Utah 1985)	10
Permanent Alimony	17
Child Support	17
Debt Allocation	19
Attorneys Fees	21
Point 2	
The trial court erred in excluding Charles's witness regarding Ms. Rehn's underemployment and income potential.	23
.....	25
CONCLUSION	25
ADDENDUM A - Findings of Fact and Conclusions of Law	
ADDENDUM B - Decree of Divorce	
ADDENDUM C - Utah Code Ann. § 30-3-5, §§ 70 - 45 - 2, 7.2, 7.5	
ADDENDUM D - Scheduling Order and Trial Notice	

ADDENDUM E - Defendant's Exhibit J

ADDENDUM F - Defendant's Exhibit L

TABLE OF AUTHORITIES

<u>Statutes</u>	<u>Page</u>
Utah Code Ann. § 30-3-5	3, 14, 17
Utah Code Ann. § 78-2a-3(2)(h)(1996)	1
Utah Code Ann. § 78-45-2(13)	3, 18
Utah Code Ann. § 78-45-7.2	3, 18, 19
Utah Code Ann. § 78-45-7.5	3, 24
Utah Code Ann. §30-3-5(7)(h)	17
<u>Cases</u>	
<i>Adelman v. Adelman</i> , 815 P.2d 741 (Utah 1991)	22
<i>Bell v. Bell</i> , 810 P.2d at 489 (Utah App. 1991)	16, 21, 22
<i>Berrett v. Denver and Rio Grande Western R. Co., Inc.</i> , 830 P.2d 291 (Utah App. 1992)	23-25
<i>Dugan v. Jones</i> , 615 P.2d 1239 (Utah 1980)	3
<i>Estate of Knickerbocker</i> , 912 P.2d 969 (Utah 1996)	19
<i>Finlayson v. Finlayson</i> , 874 P.2d 843 (Utah App. 1994)	20, 21
<i>Hall v. Hall</i> 858 P.2d 1018 (Utah App. 1993)	2
<i>Haumont v. Haumont</i> , 793 P.2d 421 (Utah App. 1990)	20
<i>Jones v. Jones</i> , 700 P.2d 1072 (Utah 1985)	10, 24
<i>Olson v. Olson</i> , 704 P.2d 564 (Utah 1985)	14
<i>Paffel v. Paffel</i> , 732 P.2d 96 (Utah 1986)	10

<i>Rasband v. Rasband</i> , 752 P.2d 1331 (Utah App. 1988)	1, 10
<i>Rudman v. Rudman</i> , 812 P.2d 73 (Utah App. 1991)	22
<i>Selvage v. J.J. Johnson & Assoc.</i> 910 P.2d 1252 (Utah App. 1996)	2
<i>State v. Pena</i> , 869 P.2d 932 (Utah 1994)	1, 19
<i>Udy v. Udy</i> , 893 P.2d 1097 (Utah App. 1995)	10, 18, 19
<i>Utah Sign, Inc. v. Utah Dept. of Transp.</i> , 896 P.2d 632 (Utah 1995)	2
<i>Walters v. Walters</i> , 812 P.2d 64 (Utah App. 1991)	22
<i>Westenskow v. Westenskow</i> 562 P.2d 1256 (Utah 1977)	14
<i>Willey v. Willey</i> , 914 P.2d 1149 (Utah App. 1996)	11, 21
<i>Woodward v. Woodward</i> , 709 P.2d 393 (Utah 1985)	1

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

MARY J. REHN,

PLAINTIFF/APPELLEE,

VS.

CHARLES C. REHN,

DEFENDANT/APPELLANT

APPELLANT'S BRIEF

Case No. 970700-CA

Priority (15)

STATEMENT OF JURISDICTION

Defendant appeals from a final decree of divorce within this Court's jurisdiction under *Utah Code Ann.* § 78-2a-3(2)(h)(1996).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Issue 1: The trial court failed to make the necessary findings for the amount and length of its alimony award; for its deviation from the child support guidelines; and for its award of attorneys fees.

Standard of Review: Trial judges are given "some discretion" in determining mixed questions of fact and law. *State v. Pena*, 869 P.2d 932, 936-40 (Utah 1994). Trial Courts have considerable discretion in determining alimony in divorce cases, and will be upheld on appeal unless a clear and prejudicial abuse of discretion is demonstrated. *Rasband v. Rasband*, 752 P.2d 1331, 1333 (Utah App. 1988). In reviewing child . . . support proceedings, . . . [we] will not disturb the district court's actions unless the court exceeded . . . its . . . discretion. *Woodward v. Woodward*, 709

P.2d 393, 394 (Utah 1985); We review . . . for correctness to the extent it involves questions of statutory interpretation. *Utah Sign, Inc. v. Utah Dep't of Transp.*, 896 P.2d 632, 633 (Utah 1995); Even though the trial court has considerable latitude to adjust financial and property interests, an appellate court will reverse for abuse of discretion. *Hall v. Hall* 858 P.2d 1018, 1021 (Utah App. 1993); "Whether the trial court's findings of fact in support . . . of attorney fees are sufficient is . . . a question of law, reviewed for correctness. *Selvage v. J.J. Johnson & Assoc.* 910 P.2d 1252, 1257 (Utah App. 1996).

Grounds for Review: The amount of alimony issue is preserved on the record at Tr. 112-113 and Ex. J.¹ The length of alimony issue is preserved on the record at Tr. 10. The child support issue is preserved on the record at Tr. 3, Tr. 94, Tr. 96-97, Ex. J.² The division of debts issue is preserved on the record at Tr. 114.³ The attorneys fees issue is preserved at Tr. 8.

¹ At Tr. 112-114, Charles' attorney argues that Mary is free to seek a full time position commensurate with her rate of pay in 1992 of over \$13.00/hour and that some of her expenses are inflated. Ex. J is a list of Charles' living expenses.

² At Tr. 3, Mary's attorney states the stipulation of the parties: "Visitation would be awarded to Defendant in a minimum of the standard and reasonable visitation by Utah Code Annotated 30-3-35. The parties have also cooperated well together in sharing the time with the children, and when one party is working, the other party caring for the children. I think that should continue. They both agree." At Tr. 96-97, Charles testifies that over the eighteen month separation the amount of time he has had the children is 45% of the days and nights and Charles' attorney states on the record that the parties agree that is the amount.

³ At Tr. 114, Charles' attorney argues for equal division of debts.

Issue 2: The trial court erred in excluding Charles's witness regarding Mary's underemployment and income potential.

Standard of Review: "We will not interfere with a trial court's case management unless its actions amount to an abuse of discretion." *See Dugan v. Jones*, 615 P.2d 1239, 1244 (Utah 1980).

Grounds for Review: The witness exclusion issue is preserved at Tr. 79-89 and Tr. 111.⁴

CONSTITUTIONAL AND STATUTORY PROVISIONS

The following constitutional and statutory provisions are set forth in full in Addendum C attached to the Brief:

Utah Code Ann. §30-3-5; *Utah Code Ann.* §78-45-2(13); *Utah Code Ann.* § 78-45-7.2; *Utah Code Ann.* § 78-45-7.5.

STATEMENT OF THE CASE

Nature of the Case

Appellant Charles Rehn appeals that portion of the divorce decree awarding excessive alimony to Mary Rehn and excessive child support, and ordering Charles to pay

⁴ At Tr. 79-89, the parties argue the issue of witness exclusion, the court rules and Charles' attorney proffers the testimony. At Tr. 111, Charles' attorney moves for a continuance of the trial in order to permit vocational experts to testify.

80% of a \$19,000 I.R.S. obligation and \$6,884.80 of Mary's attorney's fees. Charles also appeals the trial court's exclusion of his witness, Jim White, from testifying at trial. The Decree and Findings of Fact, entered September 26, 1997 are attached as Addenda A and B, respectively.

Course of the Proceedings and Disposition

The plaintiff's complaint for divorce and Charles's Counterclaim were tried August 14, 1997 before the Hon. Pat B. Brian in Summit County, Utah. The Trial Court entered the Findings and Decree on September 26, 1997, granting a divorce, dividing debts and awarding child support, alimony and attorney's fees (our pp. 119-130, Addendum A and B).

The formal divorce decree entered September 26, 1997 awarded to Mary \$1,045.00 of monthly child support; and \$1,200.00 per month permanent alimony based on her claimed 1996 net income of \$1,072.00 from various part time jobs. The Court also ordered Charles to pay \$6,884.80 of Mary's attorney's fees and 80% of the parties' approximate \$19,000.00 IRS obligation.

Defendant, Charles Rehn, filed a timely appeal.

Statement of the Facts

Charles and Mary Rehn were married in Story County, Iowa, on August 27, 1977. Two boys, ages six (6) and nine (9), are issue of the marriage. (Tr. 12-13.) Both boys attend public school in the Park City School District full time. (Tr. 43-44.) The parties

separated in February 1996. Since the parties' separation, Charles has had and continues to have the children forty-five percent (45%) of the days and nights in the year. The parties stipulated that they each would have joint legal care, custody and control of the children. (Tr. 3).

At trial the parties stipulated that Charles had the children forty-five percent (45%) of the days and nights. (Tr. 96-97) The attorneys read into the record the stipulation of the parties that their pattern of sharing the children should continue. (Tr.3). Charles paid for all of the family health insurance over and above the court ordered support and also provided housing, utilities and food for the boys when they were with him. (Tr. 89-94, Ex. J.).

Following their separation, Charles voluntarily paid total family support to Mary in the amount of \$1,400.00 per month. This amount was agreed upon by the parties and was paid in weekly increments. (Tr. 35.) On May 21, 1996, the trial court entered a temporary order raising family support to \$1,789.93 per month; \$750.00 of which was designated as temporary alimony. (Tr. 94.)

Mary earned her M.B.A. degree with an emphasis in marketing in 1985. She also has bachelors degrees in food and nutrition and dietetics. (Tr. 19-20, 86.) She has worked throughout the parties' marriage in the food service industry. In 1992, Mary voluntarily quit her position as the Food Service Director of the Park City School District at over \$13.00/hr. (Tr. 10-14.) Since 1992, she has worked several part-time jobs. (Tr.

15, 16.) Presently, she chooses to work part time as a waitress at a Park City restaurant, a ticket taker at a Park City ski resort and in the Dan's Foods catering department. Her income now is \$1,429.00 per month gross which is \$6.87 an hour. (Ex. 3 and 5.) In seeking employment, Mary has limited her job applications to Park City businesses and to positions requiring work only during public school hours. (Tr. 38-40).

Charles is employed as the managing engineer of Harding Lawson Associates' Salt Lake Office. (Tr. 74.) He has the highest position in this company in Salt Lake City. (Tr. 77.) Four weeks prior to trial, Charles received an annual pay raise of \$2,000.00 making his gross monthly income \$6,833.33 per month. (Tr. 74-75.)

In a pre-trial telephone conference the day before trial, Charles's counsel requested a witness who had been identified to opposing counsel in writing immediately after Mr. White was retained two days prior to trial. (Tr. 79-82). He would testify as to employment opportunities in the Salt Lake City and Park City areas for Appellee with two bachelor degrees and a M.B.A. (Tr. 80.) The judge said trial could be put off two to three months and alimony could be raised to assure there would be no financial prejudice to Appellee by delaying the trial date. (Tr. 80.) This would allow Appellee to have time to find an expert vocational witness. Appellee's counsel later left a telephone message with Charles's counsel stating that his client had agreed to the continuance. (P. 80, 85.) After Mary's attorney agreed to the continuance, Charles' attorney set a trial date and called Mary's attorney to inform him. At that time, Mary's attorney said no, "I am going

to trial [tomorrow].” (p. 80.) At trial, there was no motion in limine to exclude the witness. There was no objection to the witness by Appellee until Mr. White was put called to the stand at the end of the trial. (Tr. 79.) The judge then excluded the witness and denied Charles’s motion to continue the trial for purposes of receiving testimony from expert vocational witness based on the lateness of the designation and the inability of Mary to consult another expert prior to trial. (Tr. 84.)

At trial, the court ordered that alimony be increased from \$750.00 a month to \$1,200.00 a month. (Add. B.) The trial court ordered \$1045/month child support based on the sole support table. (Add. B.)

Mary estimated her disposable income as \$1,072/month, leaving her \$3,316 or more disposable income after receipt of support. (Ex. 3). Mary estimated Charles disposable income was \$2,880/month after payment of support. (Ex. 3, Ex. J). Charles’ unrefuted testimony was that his monthly expenses for himself and two children at home forty-five percent (45%) of the time were \$3,200 per month before any support, day care or debt service was paid. (Ex. J)

In addition to support, the court ordered Charles to pay \$15,200.00 of the I.R.S. debt. (Add. B) In addition, the court ordered Charles to pay \$6880.00 of Mary’s attorney fees, over and above his own attorneys fees of approximately the same amount. Mary desires to live and work in the Park City area and lives in subsidized housing at a

rent of \$530.00 per month. (Tr. 26, 38-39) Charles continues to reside in the parties' marital condominium at Jeremy Ranch with a rent of \$1,000.00 per month. (Ex. J.)

Two days before trial, Charles retained a vocational expert witness. The same day, Charles' attorney sent a letter to Mary's attorney notifying him of the witness. In a pre-trial telephone conference the day before trial Charles's counsel requested to put on a witness who could testify as to employability of Appellee with two bachelor degrees and a M.B.A. in the Salt Lake economy. Appellee's counsel objected because of insufficient notice. The judge said we could put off trial for two-to-three months and raise the alimony to \$900.00 per month to assure that there would be no financial prejudice to Appellee by delaying the trial date. This would allow Mary to have time to find an expert vocational witness. Appellee's counsel later left a telephone message with Charles' counsel stating that his client agreed to the continuance. After agreeing to the continuance, Charles' counsel set a new trial for April 15, 1998. When Charles' attorney called Mary's attorney back, he said, "I am going to trial [tomorrow]." At trial, there was no motion in limine to exclude Charles' vocational expert. There was no objection to the witness by Appellee until he was put on the stand at the end of the trial. The judge then excluded the witness based on the lateness of the designation of Charles's witness and denied Charles's motion to continue the trial for purpose of receiving testimony from expert vocational witnesses. (Tr. 79-89)

The court had set no deadlines for the designation of witnesses and ordered no exchange of expert witnesses before trial. (Add. D).

SUMMARY OF ARGUMENT

Although the court awarded \$1,200.00 of alimony to Mary, there were no findings that Charles on the issues of Charles' expenses and whether Charles is able to pay the ordered alimony. Charles makes \$6,833/month but after almost \$2,000/month in taxes and monthly expenses of \$3,200 for himself and the children who are with him 45% of the time, there is not enough money to cover \$2,245/month in support. (Add. E)

Further the findings of Mary's need were conclusory and did not address the factual conflicts between the testimony of Mary Rehn and her estimated expenses in Exhibit 2 attached to Addendum 1. The finding of Mary's need of Attorney's fees is also cursory and doesn't address the apparent fact that Mary with a substantial support payment on top of her income is better able to pay her fees than is Charles.

The court also finds that Mary was not underemployed. However there are no specific findings on the issue although this is a disputed issue: Mary has had significant experience in food services management from 1977 - 1992 and she has bachelors degrees in dietetics and nutrition and has an M.B.A. in marketing. Instead of working in her field where she was earning over \$13.00/hour in late 1992, Mary chooses to work various part time jobs at an average of \$6.87/hour so that she only has to work when the children are

in school or with their father. (Tr. 36.) Because the court failed to make adequate findings as to its orders this case must be reversed and remanded.

The court erroneously excluded the vocational expert witness of Charles from testifying at the trial. Therefore, this case should be remanded for a new trial.

Charles should have been ordered to pay child support based on the joint custody schedule under *Udy v. Udy*, 893 P.2d 1097, 1099-1100 (Utah App. 1995). The parties have agreed that they will continue to share the children as they have done. Charles has had the children forty five percent (45%) of the time. Yet the court used the sole custody worksheet without making findings for its deviation from the statute.

ARGUMENT

Point I

The trial court failed to make the necessary findings for the amount and length of its alimony award; for its deviation from the child support guidelines; for its debt allocation; and for its award of attorneys fees.

A. Amount of Alimony.

1. Factors in *Jones v. Jones*, 700 P.2d 1072 (Utah 1985).

Although trial Courts have considerable discretion in determining alimony in divorce cases, and will be upheld on appeal unless a clear and prejudicial abuse of discretion is demonstrated, *Rasband v. Rasband*, 752 P.2d 1331, 1333 (Utah App. 1988), failure to consider the *Jones* factors constitutes an abuse of discretion. *Paffel v. Paffel*, 732 P.2d 96, 101 (Utah 1986). The *Jones* factors are:

- a. The financial conditions and needs of the [spouse seeking support];
 - b. The ability of the [spouse seeking support] to produce a sufficient income for [himself or] herself; and
 - c. The ability of the [payor spouse] to provide support.
- Willey v. Willey*, 914 P.2d 1149, 1155 (Utah App. 1996).

These factors are discussed in detail, as follows:

a. The Financial Conditions and Needs of Mary.

The court made the following findings as to Mary's need: "the plaintiff clearly has the need for support." (*Findings* paragraph 37). "\$3,300 is not an unreasonable monthly expense for a mother and two children." (*Findings* paragraph 7). "The plaintiff's needs are well established at \$3317." (*Findings* paragraph 40, Ex. 2). "Those needs are reasonable, and are real." (*Findings* paragraph 33).

However, the court made no findings to explain the undisputed evidence that the following expenses listed in Exhibit 2 are not actual expenses of Mary:

Mary estimates a monthly expense of \$125.00 for counselor and attorney's fees, although the court ordered Charles to pay \$6850.00 in Mary's attorney's fees. The court made no finding as to evidence that

Mary needed \$125/month. in alimony to cover what the court had ordered Charles to pay. (Ex.2, Add. B)

Mary estimated \$136.00 of child care expense, although it was undisputed that Mary is choosing part time work so that she can be at home with the children after school and during their school breaks. (Tr. 43)

Mary estimated she spent \$150.00/month. for schooling for herself and the children, although it was undisputed that she was not currently enrolled in school and the children are in public school. (Tr. 21,43)

Mary projected her entertainment expense will be \$345.00, although it is undisputed that when the Rehn's lived together they averaged \$217/month. on entertainment from February to September, 1995. (Ex. M; Add. F)

The court makes no finding as to how it calculated Mary's taxes at the same rate to determine net income of \$1078 when it is undisputed that Charles had a much higher taxable income and she is awarded both children as tax exemptions and credits. (Ex. 2, Add. A) There was no evidence that Mary was not able to meet her expenses with support at \$1,400.00/month. or \$1,789.00/month. before the court raised it to \$2,245.00/month. There was no finding that Mary's needs changed from when the parties agreed at separation that the needs of the Petitioner over and above her income was \$1,400.00 a month total support although this issue was disputed. (Tr. 35).

Without a finding by the court as to which expenses it has used to determine Mary's monthly needs in light of the undisputed evidence against the need for several of Mary's claimed expenses listed in Ex. 2, it is impossible to determine how the court reached its final determination of Mary's need. Without adequate findings of need, the court abused its discretion in making an alimony award.

b. The Ability of Mary to Produce a Sufficient Income for Herself.

Although the court finds no issue of underemployment, the court has not heard all of the evidence because Charles' witness was improperly excluded. In addition, the findings made by the court do not show how the court determined that Mary does not need to work in her field at the pay level she has achieved historically.

The court made the following findings as to the earning capacity of Mary: "The record is unchallenged that for months on end she has worked weekends and holidays. She has scrounged for multiple jobs, some of them perhaps less dignified and less rewarding financially and otherwise than she would like to have, but, nevertheless, she has bent her back and gone to work. And the court finds there is just simply no issue of unemployment or underemployment, based on the historical roles the plaintiff and Charles have assumed in this marriage." (*Findings* paragraph 13). "The ability to earn income definitely favors Charles. The ratio is about 80 percent to the defendant, 20 percent to the plaintiff." (*Findings* paragraphs 8-9).

However, the trial court made no finding to explain the un rebutted evidence that when Mary took a full time position in 1992 she earned over \$13.00/hr. while her current part time jobs pay her an average rate of only \$6.87 per hour.

The court may use historical earnings to evaluate a spouse's earning capacity. In 1977, the court also decided *Westenskow v. Westenskow* 562 P.2d 1256 (Utah 1977). In that case, the plaintiff/husband was earning a salary of \$18,000.00 when he terminated his employment and organized his own company. Finding the trial court's award of alimony and child support in increasing increments was not inequitable, the court stated:

It would be reasonable for the court to infer that either plaintiff's income from his business would increase or he would seek other employment with adequate remuneration, reflecting his historical earning ability. *Id.*

More recently, the Utah Supreme Court again addressed the issue of historical earnings in *Olson v. Olson*, 704 P.2d 564 (Utah 1985). The husband's income fluctuated depending on current business contracts. At the time of the trial, he had no current income, but was negotiating a contract. The lower court correctly considered the husband's historical earnings:

We have held that where the husband has experienced a temporary decrease in income, his historical earnings must be taken into account in determining the amount of alimony to be paid.

Id. At 566.

Facts about Mary's underemployment were disputed. Mary voluntarily cut down to part time work to care for the small children. (Tr. 14). However, now the children are in school full time. She is qualified for the work force with many years of work experience in food and nutrition, from at least 1977-1992. As recently as 1992 she was earning over \$13.00/hour. (Tr. 13). Mary has two bachelor's degrees in the food service area and an M.B.A. in marketing. Yet Mary chooses to work in jobs that allow her to be with her children when they are not in school and to stay in Park City for work. (Tr.39).

This undisputed evidence suggests that Mary has education and work experience to qualify her for higher paying jobs. Yet there is no finding to explain how the court reached its decision that Mary was not underemployed. Because the court made inadequate specific findings in support of its determination of the issue of underemployment, the court abused its discretion.

c. The Ability of Charles to Provide Support.

Charles is making a good salary. However, the court made no findings whatsoever as to what his expenses and disposable income are. From the court's findings we do not know whether he can afford the amount of court ordered support after he meets his expenses for himself and the children when they are with him.

The court made the following findings on this issue: "The ability to earn income definitely favors Charles. The ratio is about 80 percent to the defendant, 20 percent to the plaintiff." (*Findings* paragraphs 8-9). The court also found that "the defendant clearly

has the ability to pay.” (*Findings* paragraph 37). “Regarding the monthly expenses of the parties, the court finds that, in nearly every case that comes before the court, the parties are simply going to have to tighten up their belts and make do with less, and that is certainly no exception in this particular case.” (*Findings* paragraph 20).

In *Bell v. Bell*, 810 P.2d at 489 (Utah App. 1991), the court stated: “The trial court must make sufficiently detailed findings of fact on each factor to enable a reviewing court to ensure that the trial court’s discretionary determination was rationally based upon these three factors.” *Id.*

However, the court made no findings in this case either as to the amount of Charles’ available income or as to Charles’ reasonable expenses.

It was undisputed that Mary’s net income with support will be at least \$3,316/month. (Plaintiff’s Exh. 2). Charles’ net monthly income after paying the court ordered support will be no more than \$2,880 per month, which is at least \$436/month. less than Mary’s net income. (Plaintiff’s Exh. 2).

It was undisputed that Charles’ monthly expenses for himself and two children at home forty-five percent (45%) of the time were \$3,200 per month before any support, day care or debt service was paid. (Ex. J, Add. E). His housing expense is \$500.00/month. more than Mary’s as he is not in subsidized housing. He has higher transportation costs because he commutes to work from Jeremy Ranch to Salt Lake City

while Mary works locally and he has a \$200/month higher auto payment on the 1995 Honda Accord.

The court abused its discretion by failing to make specific findings as to the ability of Charles to pay alimony.

2. Permanent Alimony

Although the court awarded permanent alimony, it made no findings as to the basis for this award. (*Findings* paragraphs 30, 36).

Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time. *See Utah Code Ann.* §30-3-5(7)(h). The parties' marriage was twenty years. Twenty years should be the longest alimony continues without specific findings to the contrary.

Because the court did not make the findings required in § 30-3-5(7)(h) of extenuating circumstances in support of a permanent alimony award and because there were no extenuating circumstances in evidence from which the court could make findings supporting a permanent alimony award, this order of the court must be reversed.

B. Child Support

The court read the following finding regarding child support. "The child support in this case has been stipulated to, pursuant to the guidelines." (*Findings* paragraph 18). The court then ordered child support based on a sole custody schedule. The parties did

not stipulate to use the sole custody schedule. The court made no findings on how it reached the determination to use the sole custody schedule instead of the joint custody schedule.

U.C.A. §78-45-2(13) provides that there is joint physical custody if “the child stays with each parent overnight for more than 25% of the year, and both parents contribute to the expenses of the child in addition to paying child support.” U.C.A. §§ 78-45-7.2 requires the court to use the joint custody worksheet when the children are with both parents more than twenty five percent (25%) of the nights and pay more than the court ordered child support to care for the children unless the court makes specific findings supporting deviation from the guidelines. In *Udy v. Udy*, 893 P.2d 1097, 1099-1100 (Utah App. 1995), the court found that “the trial court awarded Mr. Udy visitation that exceeded the threshold for joint physical custody under section 78-45-2(10) [predecessor statute to U.C.A. §78-45-2(13)]” *Id.* Therefore, in *Udy*, the court found an abuse of discretion by the court below because the court made no findings as to its deviation from the joint custody guidelines. See *Id.*

It is undisputed that Charles has had the children for weeks at a time and has provided their food, housing, utilities and all of their medical insurance over and above the court ordered support. (Tr. 94 Ex. I, J). Both parties stipulated that in the eighteen (18) months of separation, Charles had the children an average of forty five percent (45%) of the days and nights. Further, the parties agreed on the record to continue their

pattern of cooperating in sharing time with the children. (Tr.3). This part of the stipulation of the parties on the record did not make it onto the Findings prepared by Mary's attorney.

"If the court does not follow Utah's child support guidelines to order a joint custody child support worksheet, it must make findings of fact justifying its deviation." *Udy* at p. 1100. The court made no specific findings justifying its deviation from the guidelines here. Because there were no specific findings as to the court's deviation from an award of child support under the joint custody guidelines as required by U.C.A. § 78-45-7.2(3), the court abused its discretion.

C. Debt Allocation.

The court found that the distribution of debt should be 80% the responsibility of Charles. However, the bases for this determination is not explained in any finding. After the court has redrawn the lines of who has what income via its support orders, why the court requires debt payment in proportion to incomes prior to support payments cannot be determined absent findings.

Trial judges are given "some discretion" in determining mixed questions of fact and law. *State v. Pena*, 869 P.2d 932, 936-40 (Utah 1994). In re *Estate of Knickerbocker*, 912 P.2d 969, 977 (Utah 1996) the court commented: "In a divorce action, the trial court must be able to make such orders concerning the . . . debts . . . as will be fair and reasonable to all concerned." *Id.* However, it appears that the trial court awarding a

larger portion of the debt to the party who has higher monthly expenses and less disposable

To permit appellate review of a property and debt distribution, the distribution must be based upon adequate factual findings and must be in accordance with the standards set by this states's appellate courts. *Finlayson v. Finlayson*, 874 P.2d 843 (Utah App. 1994). Failure to make findings on all material facts is reversible error unless the facts in the record are clear, uncontroverted and capable of supporting only a finding in favor of the judgment. *Haumont v. Haumont*, 793 P.2d 421, 425 (Utah App. 1990).

Not only does Mary have at least \$3,316 disposable income compared to Charles \$2,880 or less of disposable income, but also Charles has been required to pay \$6,880 of Mary's attorney's fee as well. (Ex. 3, Add. B). While at the same time, Charles has not only a \$500/month. higher rent than Mary and a \$200/month. higher car payment than she does, but he also has the children almost as often as well. This debt service adds several hundred dollars per month to Charles's monthly expenses. With more disposable income, a fair result would be for Mary to bear the larger portion of the marital debt.

There are no findings as to what facts the court relied on when it ordered Charles to pay 80% of the income tax debt. This issue should be remanded with the other issues above for the court to enter findings in support of its order.

D. Attorneys Fees.

The court ordered Charles to pay \$6,880 of Mary's attorney fee bill. (*Findings* paragraph 28). The court finds generally that "Plaintiff has the need for assistance with her attorney fees and Defendant has the ability to pay." (*Findings* paragraph 26). However, the court does not make any detailed findings applying the facts of this. The ratio of Charles' share of Mary's bill is the same as the ratio applied by the court in dividing the marital. However, this similarity is not explained by the court. There is no finding to explain this ratio other than that the gross income of Charles in 1996 was 80% of the household income. (Ex.3). This fraction seems especially insignificant after the court has cause Mary to actually have more disposable income than Charles has with the court's award of alimony and child support. (Ex. 3, Add. B).

"An award of fees must be based upon findings of the financial need of the receiving spouse, the ability of the other spouse to pay, and the reasonableness of the requested fees." *Willey v. Willey*, 914 P.2d 1149, 1155 (Utah App. 1996). Where the award is based on need, the trial court must support the award with adequate findings detailing the reasonableness of the amount awarded and the need of the receiving party. *Finlayson v. Finlayson* 874 P.2d 843 (Utah App. 1994); *Bell v. Bell*, 810 P.2d 489, 494 (Utah App. 1991).

**

In *Rudman v. Rudman*, 812 P.2d 73, 77 (Utah App. 1991), the record contained “substantial evidence” of the parties’ financial situation and the reasonableness of the fee. And, “one very general finding addressed financial need.” This court reversed the award and remanded for redetermination because the findings failed to evaluate the relevant factors in concluding there was no need to award any fee. *I d.*; see also *Adelman v. Adelman*, 815 P.2d 741, 746 (Utah 1991) (the award of attorneys fees in enforcement proceeding must be based on finding of need); *Rudman*, 812 P.2d at 79-80, (Orme, J., concurring, cautions against starting with the award and then working backwards to attempt to support it.)

When there are no findings to support a claim of a reasonable fee award or of need to an award, the fee award must be reversed. *Walters v. Walters*, 812 P.2d 64, 67 (Utah App. 1991) (no finding or evidence of wife’s need for fees); *Bell*, 810 P.2d 489, 494.

There was also no evidence as to Mary’s inability to pay her fees. Mary built into her expense affidavit, referred to in the findings as the basis for her alimony award, a monthly counselor’s/attorney’s fee payment of \$125.00 presumably this will enable her to pay her attorney’s fee bill. Further, the undisputed evidence is that Charles has at least \$426/month. less disposable income than Mary after his support payments, while having the children 45% of the time. (Tr. 3, 96-97). In addition, Charles has his own unpaid attorneys fee and \$15,200.00 of marital debt to pay.

Mary's attorney fee award is unsupported by any factual finding of need or of Charles' There was no testimony by Mary that she could not afford to pay her attorney's fees. ability to pay. Considering the lack of factual findings, the award of attorney fee should be reversed.

Point 2

The trial court erred in excluding Charles's witness regarding Ms. Rehn's underemployment and income potential.

Defendant informed plaintiff's attorney by written fax two days before trial that he intended to call an vocational expert witness which had been retained that day. The witness was disclosed as soon as Charles attorney located and retained the witness. (Tr. 81). The day before trial the court suggested to counsel that the matter be continued for the very purpose of allowing plaintiff to obtain an expert on the issue of plaintiff's employability. The telephone conference entered with an agreement between the court and counsel in a request to plaintiff's counsel that he be allowed to contact his client regarding the court's suggestion. Plaintiff's counsel later left a message that his client had agreed to the continuance. (Tr. 80,82) It was only after defendant's attorney had received the message from Mary's attorney that he called the court and set a new trial date for January 15, 1998. Upon relaying that message to Mr. Cathcart, Mr. Cathcart said he was not going to wait until January, he was going to trial the next day.

In *Berrett v. Denver and Rio Grande Western R. Co., Inc.*, 830 P.2d 291, 294 (Utah App. 1992), the court stated:

The court's power to sanction a party for failure to cooperate in discovery comes from Rule 37(b)(2) of the Utah Rules of Civil Procedure, which provides that if a party fails to obey an order, entered under Rule 26(f), the court may prohibit the offending party from introducing designated matters into evidence.

At the trial, Mary's attorney did not make a motion in limine to exclude the witness who he now knew would be testifying for the defense. At the end of the trial, when Mr. White was called to testify, plaintiff's attorney objected that this testimony was prejudicial to his client because she needed finality to the divorce. The court did not cite any rule or authority at law under which it was excluding the witness. The basis of the court's exclusion of the witness was that the witness' identity was disclosed at the eleventh hour which did not give Mary a chance to retain her own expert witness. (Tr. 84).

The expert vocational witness would testify as to the issues addressed by *Utah Code Ann.* § 78-45-7.5 (7)(b): "employment potential and probable earnings as derived from work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community." *Id.* This crucial testimony to establishing Mary's ability to earn at a higher wage level with her experience and credentials may have persuaded the judge to have taken a different outlook on the alimony factors in *Jones*. If Charles established through this witness that Mary is very employable at a higher wage, then he would also likely show that she had the ability to provide for more or all of her own needs.

In *Berrett v. Denver and Rio Grande Western R. Co., Inc.*, 830 P.2d 291, 296

(Utah App. 1992), the court went on to state:

We hold that absent an order creating a judicially imposed deadline, a trial court may not sanction a party by excluding its witnesses under rule 37(b)(2). See *Inner City Wrecking Co. v. Bilsky*, 51 Ohio App.2d 220, 367 N.E.2d 1214, 1218 (1977) (without an order compelling compliance with court rules, the sanction imposed by trial court was beyond its authority)s in .

In this case, none of the four scheduling orders produced by the court required that witnesses be disclosed by a certain deadline. (Addendum D). Charles' attorney was not in violation of any court order by designating an expert witness two days before trial.


In *Berrett*, the court reversed for a new trial. As in *Berrett*, the trial court here abused its discretion. The court should reverse the trial court decision and remand for a new trial.

CONCLUSION

The trial court's award to Mary of child support on the sole custody guidelines the award of \$1200.00/month of alimony, the allocation of debt and the award of fees should be reversed and remanded for the court to enter sufficient findings. Because substantial rights of Charles were prejudiced by the erroneous exclusion of Charles' vocational expert, this case should be remanded for a new trial of this case.

Respectfully submitted this 7th day of May 1998.

HENRIOD, NIELSEN & CHRISTENSEN




Steve S. Christensen

Attorneys for Defendant/Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPELLANT'S BRIEF** was
mailed first class, postage prepaid on the 7th day of May 1998 to:

Terry L. Cathcart
Attorneys for Plaintiff/Appellee
380 North 200 West, #103
Bountiful, Utah 84010



TERRY L. CATHCART, #4809
Attorney for Plaintiff
380 North 200 West, #103
Bountiful, Utah 84010
Telephone: (801) 295-2391

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

MARY J. REHN,

Plaintiff,

vs.

CHARLES C. REHN,

Defendant.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Case No. 964300048

Judge Pat B. Brian

Plaintiff's Complaint for Divorce and Defendant's Counter-Claim for Divorce were heard before the court in trial on August 14, 1997, the Honorable Pat B. Brian, District Judge presiding. Plaintiff was present and represented by her counsel, Terry L. Cathcart; Defendant was present and represented by his counsel, Steve S. Christensen.

The court having reviewed all of the exhibits admitted by both Plaintiff and Defendant, having reviewed the law applicable to this matter and having heard argument for both counsel, now enters its:

FINDINGS OF FACT

1. The court rules on this matter in a fair, even-handed manner, to inspire fairness by Plaintiff to Defendant and Defendant to Plaintiff.



only pgs. 8-10
S. Christensen
etc
9-11-97

only S. Christensen
etc
8-29-97
etc
9-14-97

2. There was a time in the parties' relationship when they loved each other dearly. They entered into a marriage relationship and for nearly 20 years lived together as a family unit.

3. Plaintiff was a bona fide resident of Summit County, Utah, and has been for a period in excess of three (3) months immediately preceding the commencement of this action.

4. Plaintiff and Defendant are wife and husband, having been married in Story City, Iowa, (Story County), on August 27, 1977.

5. During the course of the marriage the parties have become unable to resolve or reconcile their differences; these irreconcilable differences have led to the complete breakdown of the marital relationship.

6. After looking carefully at all of the exhibits entered with the court, the court now focuses on the two or three exhibits that become the heart and soul of the court's ruling.

7. Plaintiff's monthly expenses, as listed in Plaintiff's Exhibit #2, appear to be reasonable for three (3) people. The court finds that \$3300 is not an unreasonable monthly expense for a mother and two (2) children, when the two (2) children are going to become more expensive with the passing of every month in their lives.

8. Historically, and as far as the court can see into the future, the ability to earn income definitely favors Defendant.

9. The ratio of earned income is approximately 80 percent of the total family income attributable to Defendant's wages and 20 percent attributable to Plaintiff's wages.

10. There has been no basis to contend or evidence entered that Plaintiff has been unwilling to try or has been lacking in her effort to pull her share.

11. The record is unchallenged that for months on end, Plaintiff has worked on weekends and holidays to provide for her family.

12. She has scrounged for multiple jobs, some of them perhaps less dignified and less rewarding financially and otherwise than she would have liked to have, but nevertheless, she has bent her back and gone to work.

13. There is no issue of unemployment or underemployment based on the historical roles Plaintiff and Defendant have assumed in this marriage.

14. Plaintiff has been the primary care taker of the children.

15. The children have been young; the youngest is just barely entering into the first grade.

16. The emphasis of the parties has been properly placed in making sure that the children have been cared for properly by their mother.

17. Therefore, in deciding the issues of money, the court finds that the ratio of 80 percent attributable to Defendant and 20 percent attributable to Plaintiff is appropriate in light of the evidence.

18. Child support in this case has been stipulated to, pursuant to the guidelines, and should be awarded in accordance with those guidelines. (See Child Support Schedule entered as Plaintiff's Exhibit #5).

19. Child support should be ordered to be paid by Defendant to Plaintiff in the amount of \$1045 per month, one-half (½) of that amount to be paid on the fifth (5th) and one-half (½) of the twentieth (20th) of each month beginning immediately. (See Plaintiff's Exhibit 5).

20. Regarding the monthly expenses of the parties, the court finds that in nearly every case that comes before the court, the parties are simply going to have to tighten up their belts and make do with less, and that is certainly no exception in this case.

21. The debt that can and should be attributable as marital debt is the debt to the IRS in the approximate amount of \$19,000.

22. The court finds that the IRS debt is a marital debt and the debt should be ordered to be paid 80 percent by Defendant and 20 percent by Plaintiff.

23. That debt may possibly be reduced by further negotiations with the IRS, but whatever the ultimate, final debt is, it should be ordered to be paid on that basis.

24. There are no other marital debts that need be addressed by the court or paid by the parties.

25. There have been approximately \$8600 incurred by Plaintiff in legal fees and costs.

26. The court finds that Plaintiff has the need for assistance with her attorney's fees and Defendant has the ability to pay.

27. Further, the fees were necessarily incurred by Plaintiff in this matter; the work accomplished was reasonable given the scope and time of the case, and the charge per hour by Plaintiff's counsel was appropriate for his experience, the nature of the work accomplished and

the rates normally charged by attorneys of his experience and expertise.

28. Defendant should be ordered to pay 80 percent of those fees and costs, or a sum of \$6880 to be paid by Defendant for Plaintiff's attorney's fees.

29. The court has considered a number of principles, both equitable and legal in nature to determine the appropriate award of alimony.

30. This is a 20-year marriage where alimony is appropriate. Alimony should be awarded permanently for at least 20 years, until, if and when, there is a legal event that would terminate the payment or the receipt of alimony.

31. The desire of the court is, as far as possible, to fairly and evenly establish a living standard for the parties which may be virtually impossible to achieve with exactness, but nevertheless, the court believes that there are principles that will accomplish that for the most part.

32. Plaintiff's needs are set at approximately \$3300 per month for her and two (2) children. (See Plaintiff's Exhibit 2).

33. Those needs are reasonable and are real.

34. Plaintiff's established spendable income, working as industriously as possible, has historically resulted in \$1072 per month in income from her various jobs. (See Plaintiff's Exhibits 1 and 3).

35. Child support has been ordered to be paid in the amount of \$1045 per month.

36. The court finds that alimony should be ordered to be paid by Defendant to Plaintiff in the amount of \$1200 per month permanently, one-half ($\frac{1}{2}$) of that amount to be paid on the fifth

(5th) and one-half (½) on the twentieth (20th) of each month until terminated by law.

37. Defendant clearly has the ability to pay and Plaintiff clearly has the need for support.

38. Alimony has been carefully considered factoring in the length of the marriage, disparity in the abilities of the parties to earn income, the historical roles of both parties have played in this family during the 20-year marriage, the age of the little children who are the primary responsibility of the Plaintiff, and all other pertinent factors.

39. Adding Plaintiff's historical gross monthly income of \$1072, monthly child support as awarded by the court of \$1045 and \$1200 in alimony, Plaintiff will receive approximately \$3317.

40. Her needs are well established at \$3317 and the award of alimony is as fair and even as the court is capable of ruling.

41. The court will not set a review in this matter. If either party believes the question of family support should be reviewed, they may request that review and the court will determine whether or not the requirements set forth within the statute regarding change of circumstances have been met.

42. Furthermore, the court finds that the parties have agreed and stipulated to certain items as follows:

A. CUSTODY: Each party should be awarded the joint legal care, custody and control of the minor children, to wit:

Kyle McKensie, d.o.b. 3/11/88; and

Shawn Clinton, d.o.b. 3/12/91.

Furthermore, Plaintiff should be designated as the primary physical custodian and Defendant the secondary physical custodian.

B. VISITATION: Defendant should be awarded the standard and reasonable visitation in accordance with Utah Code Annotated § 30-3-35. Furthermore, Defendant should be prohibited from using alcohol immediately before or during visitation.

C. REAL PROPERTY: There is no real property owned by the parties and thus no allocation is necessary.

D. PERSONAL PROPERTY: Personal property should be awarded on the following basis:

(1) Plaintiff:

(a) all items of her personal clothing, jewelry and other personal effects;

(b) one-half ($\frac{1}{2}$) of Defendant's retirement and retirement accounts which were accrued during the marriage;

(c) 1996 Impreza Outback automobile; and

(d) one-half ($\frac{1}{2}$) of any of Defendant's stock and investment holdings.

(2) Defendant:

(a) all items of his personal clothing, jewelry and other personal effects;

(b) the remainder of his retirement benefits, after the portion awarded to Plaintiff, which were accrued during the marriage, and all such benefits which were accrued before the marriage;

(c) 1995 Honda Accord automobile; and

(d) one-half (1/2) of any of Defendant's stock and investment holdings.

E. CHILD CARE EXPENSES: Each party should be ordered to pay one-half (1/2) of any work- or education-related child care expenses incurred by either party.

F. INCOME TAX RETURN: Each party should be ordered to file jointly for tax year 1996 and divide any refund received from that filing. If there is any liability from that filing, Plaintiff should be ordered to pay 20 percent of that liability and Defendant 80 percent of that liability.

G. INCOME TAX DEDUCTIONS: Plaintiff should be awarded the income tax deductions and exemptions for the minor children. If Defendant is current in all child support and child care payments for the year in question as of December 31 of that tax year, Defendant may take the exemptions and deductions for the minor children by reimbursing Plaintiff the amount she pays in taxes over and above the amount she would pay had she kept the exemptions and deductions. Defendant should be ordered to pay that reimbursement to Plaintiff on or before

April 10, five (5) days prior to the filing deadline.

H. HEALTH AND ACCIDENT INSURANCE: Defendant should be ordered to provide health and accident insurance for the minor children with each party paying one-half (½) of any out-of-pocket expenses. Furthermore, Defendant should be ordered to help coordinate and insure Plaintiff is provided access to COBRA coverage under his insurance so long as allowable by law. Plaintiff should be ordered to pay for any coverage for herself under the COBRA plan.

I. LIFE INSURANCE: Defendant should be ordered to maintain the current policies of life insurance in the amount of \$80,000 and \$50,000 each, naming the children and Plaintiff as beneficiaries so long as child support and alimony are payable to the children and Plaintiff. Should alimony terminate, Defendant should be ordered to name the children as sole beneficiaries of those policies.

J. ORDER TO WITHHOLD AND DELIVER: An order to withhold and deliver is authorized although not implemented so long as Defendant maintains an automatic bank transfer of all of his support payments from his checking account directly to Plaintiff's in the appropriate amounts and times as ordered in the Decree. If implemented, Defendant should be ordered to pay any administrative cost of the withholding.

K. DIVORCE EDUCATION CLASS: Each party has completed the Divorce Education Class.

L. SIGN ALL PAPERS: Each party should be ordered to sign all papers, documents, titles, deeds, etc., necessary to effectuate the transfer of personal property by and between the parties as set forth.

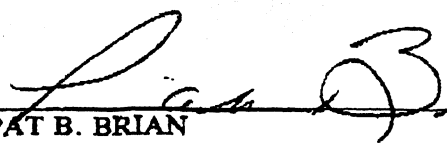
The court having entered its Findings of Fact, now enters its:

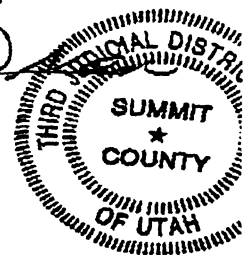
CONCLUSIONS OF LAW

Each party should be awarded a Decree of Divorce from the other to become final upon entry on the records of the court.


All other issues between the parties should be ordered in accordance with the Findings above.

DATED September 26, 1997.


PAT B. BRIAN
District Judge



APPROVED AS TO FORM:


STEVE S. CHRISTENSEN
Attorney for Defendant

PLAINTIFF'S 1996 W-2 INCOME

Dan's Foods	\$ 11,103.84
Premier Resorts	2,535.31
Closet Space	714.41
University of Utah	<u>2,800.00</u>
TOTAL:	\$ 17,153.56

TRIAL EXHIBIT 1

850

W-2 Wage and Tax Statement **1996**

a Employer's name, address, and ZIP code

DAN'S FOODS, INC.
4527 SOUTH 2300 EAST
SALT LAKE CITY, UTAH 84117

b Employer's name, address, and ZIP code

REHN, MARY JO
P.O. BOX 682643
PARK CITY, UT 84068

7 Social security tax	1 Wages, tips, other compensation	2 Federal income tax withheld
8 Allocated tax	3 Social security wages	4 Social security tax withheld
9 Advance EC payment	5 Medicare wages and tips	6 Medicare tax withheld
10 Dependent care benefits	11 Nonqualified plans	12 Benefits included in Box 1
	13 See instructions for Box 13	14 Other
b Employer's identification number	Total Earnings	
d Employer's social security number	11,187.00	
15 State income tax	16 State wages, tips, etc.	17 State income tax
18 State income tax	19 Name of locality	20 Local wages, tips, etc.
19 Name of locality	20 Local wages, tips, etc.	21 Local income tax

Copy B To Be Filed With employee's FEDERAL tax return This information is being furnished to the Internal Revenue Service.

Dept. of the Treasury - IRS

850

W-2 Wage and Tax Statement **1996**

a Employer's name, address, and ZIP code

DAN'S FOODS, INC.
4527 SOUTH 2300 EAST
SALT LAKE CITY, UTAH 84117

b Employer's name, address, and ZIP code

REHN, MARY JO
P.O. BOX 682643
PARK CITY, UT 84068

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d Employer's social security number	11,187.00	
15 State income tax	16 State wages, tips, etc.	17 State income tax
18 State income tax	19 Name of locality	20 Local wages, tips, etc.
19 Name of locality	20 Local wages, tips, etc.	21 Local income tax

Copy C For EMPLOYEE'S RECORDS (See Notice on back.)

Dept. of the Treasury - IRS

850

W-2 Wage and Tax Statement **1996**

a Employer's name, address, and ZIP code

DAN'S FOODS, INC.
4527 SOUTH 2300 EAST
SALT LAKE CITY, UTAH 84117

b Employer's name, address, and ZIP code

REHN, MARY JO
P.O. BOX 682643
PARK CITY, UT 84068

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15 State income tax	16 State wages, tips, etc.	17 State income tax
18 State income tax	19 Name of locality	20 Local wages, tips, etc.
19 Name of locality	20 Local wages, tips, etc.	21 Local income tax

Copy 2 To Be Filed With Employee's State, City, or Local Income Tax Return

Dept. of the Treasury - IRS

CERIDIAN

CERIDIAN EMPLOYER SERVICES

W-2 AND WAGE SUMMARY

U.S. GOVERNMENT PRINTING OFFICE: 1995-12-15

A. EMPLOYER'S NAME 3329030225		OMB NO. 1545-0048		1. WAGES, TIPS, OTHER COMPENSATION 2535.31		3. FEDERAL INCOME TAX WITHHELD	
B. EMPLOYEE'S IDENTIFICATION NUMBER 87-0525865				2. SOCIAL SECURITY WAGES 2535.31		4. SOCIAL SECURITY TAX WITHHELD	
C. EMPLOYEE'S NAME, ADDRESS, AND ZIP CODE PREMIER RESORTS OF UTAH 1375 DEER VALLEY DR. S. P.O. BOX 3000 PARK CITY UT 84060				5. MEDICARE WAGES AND TIPS 2535.31		6. MEDICARE TAX WITHHELD	
D. EMPLOYEE'S SOCIAL SECURITY NUMBER 481-70-4507				7. SOCIAL SECURITY TAX		8. MEDICARE TAX	
E. EMPLOYEE'S NAME, ADDRESS, AND ZIP CODE MARY JOANNE REHN PO BOX 882643 PARK CITY UT 84068				9. ADVANCE EIC PAYMENT		10. RETIREMENT PLAN	
				11. ROTH/401K PLAN		12. BENEFITS DEFERRED IN BOX 1	
				13. OTHER		14. OTHER	
				15. <input type="checkbox"/> STATUTORY EMPLOYEE <input type="checkbox"/> RELEASED <input type="checkbox"/> FOREIGN PLAN <input type="checkbox"/> DEFERRED COMPENSATION			
16. STATE EMPLOYEE'S STATE ID NO. UT Y86630		17. STATE WAGES, TIPS, ETC. 2535.31		18. STATE INCOME TAX		19. LOCAL WAGES, TIPS, ETC.	
				20. LOCAL INCOME TAX		21. LOCAL INCOME TAX	

Copy B. To be filed with Employer's FEDERAL tax return
Form W-2 Wage and Tax Statement 1996

Dept. of the Treasury - Internal Revenue Service

A. EMPLOYER'S NAME 3329030225		OMB NO. 1545-0048		1. WAGES, TIPS, OTHER COMPENSATION 2535.31		3. FEDERAL INCOME TAX WITHHELD	
B. EMPLOYEE'S IDENTIFICATION NUMBER 87-0525865				2. SOCIAL SECURITY WAGES 2535.31		4. SOCIAL SECURITY TAX WITHHELD 197.19	
C. EMPLOYEE'S NAME, ADDRESS, AND ZIP CODE PREMIER RESORTS OF UTAH 1375 DEER VALLEY DR. S. P.O. BOX 3000 PARK CITY UT 84060				5. MEDICARE WAGES AND TIPS 2535.31		6. MEDICARE TAX WITHHELD 36.76	
D. EMPLOYEE'S SOCIAL SECURITY NUMBER 481-70-4507				7. SOCIAL SECURITY TAX		8. MEDICARE TAX	
E. EMPLOYEE'S NAME, ADDRESS, AND ZIP CODE MARY JOANNE REHN PO BOX 882643 PARK CITY UT 84068				9. ADVANCE EIC PAYMENT		10. RETIREMENT PLAN	
				11. ROTH/401K PLAN		12. BENEFITS DEFERRED IN BOX 1	
				13. OTHER		14. OTHER	
				15. <input type="checkbox"/> STATUTORY EMPLOYEE <input type="checkbox"/> RELEASED <input type="checkbox"/> FOREIGN PLAN <input type="checkbox"/> DEFERRED COMPENSATION			
16. STATE EMPLOYEE'S STATE ID NO. UT Y86630		17. STATE WAGES, TIPS, ETC. 2535.31		18. STATE INCOME TAX		19. LOCAL WAGES, TIPS, ETC.	
				20. LOCAL INCOME TAX		21. LOCAL INCOME TAX	

Copy C. To be filed with Employer's STATE, CITY or LOCAL tax return
Form W-2 Wage and Tax Statement 1996

Dept. of the Treasury - Internal Revenue Service
Employee's and employer's copy compared

A. EMPLOYER'S NAME 3329030225		OMB NO. 1545-0048		1. WAGES, TIPS, OTHER COMPENSATION 2535.31		3. FEDERAL INCOME TAX WITHHELD	
B. EMPLOYEE'S IDENTIFICATION NUMBER 87-0525865				2. SOCIAL SECURITY WAGES 2535.31		4. SOCIAL SECURITY TAX WITHHELD	

a Control number REHM		OMB No. 1545-0008					
b Employer's identification number 87-0558442			1 Wages, tips, other compensation 714.41		2 Federal income tax withheld 8.42		
c Employer's name, address, and ZIP code Closet Space L.L.C. P.O. Box 16087 1998 North Redwood Road Salt Lake City, UT 84116-0087			3 Social security wages 714.31		4 Social security tax withheld 44.36		
			5 Medicare wages and tips 714.31		6 Medicare tax withheld 10.48		
			7 Social security tips		8 Allocated tips		
			9 Advance EIC payment		10 Dependent care benefits		
d Employee's social security number 481-10-4507			11 Nonqualified plans		12 Benefits included in box 1		
e Employee's name, address, and ZIP code MARY JOANNE RHEN 1776 KEARNS BLVD. #5D P.O. BOX 682643 PARK CITY, UT 84068			13		14 Other		
			15 Statutory employee <input type="checkbox"/> Decedent <input type="checkbox"/> Pension plan <input type="checkbox"/> Legal fee <input type="checkbox"/> Hand. emp. <input type="checkbox"/> Subtotal <input type="checkbox"/> Deemed compensation <input type="checkbox"/>				
16 State	Employer's state I.D. No.	17 State wages, tips, etc.	18 State income tax	19 Locality name	20 Local wages, tips, etc.	21 Local income tax	
UT	Z03375	714.41	6.60				

Department of the Treasury—Internal Revenue Service

W-2 Wage and Tax Statement 1996

Copy 1 For State, City, or Local Tax Department

OMB No. 1545-0046

1 Wages, tips, other compensation 2000.00	2 Federal income tax withheld 207.95
3 Social security wages 2000.00	4 Social security tax withheld 123.60
5 Medicare wages and tips 2000.00	6 Medicare tax withheld 40.60

Employer's name, address, and ZIP code

RECEIVED STATEMENT

UNIVERSITY OF UTAH
145 PARK BUILDING
SALT LAKE CITY, UTAH 84112

7 Social security tips	8 Allocated tips	9 Advance EIC payment
------------------------	------------------	-----------------------

10 Dependent care benefits	11 Nonqualified plans	12 Benefits included in Box 1
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13 Employer's identification number 076000022W	14 Employee's social security number 001-70-4507
---	---

15 See instructions for Box 13	16 Other
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Employee's name, address, and ZIP code

MARY JOANNE REED
1774 KEARNS BLVD 400
SALT LAKE CITY UT 84060

18 Military employer	19 State	20 State income tax	21 Local income tax
1996	UT	17 State wages, tips, etc. 2000.00	18 State income tax 130.43
FW-2 Wages and Tax Statement Copy for EMPLOYER State, City, or Local Income Tax Return		20 Local wages, tips, etc.	21 Local income tax

Department of the Treasury-Internal Revenue Service

OMB No. 1545-0046

1 Wages, tips, other compensation 2000.00	2 Federal income tax withheld 207.95
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This information is being furnished to the Internal Revenue Service

Employer's name, address, and ZIP code

RECEIVED STATEMENT

UNIVERSITY OF UTAH
145 PARK BUILDING
SALT LAKE CITY, UTAH 84112

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SALT LAKE CITY UT 84060

18 Military employer	19 State	20 State income tax	21 Local income tax
1996	UT	17 State wages, tips, etc. 2000.00	18 State income tax 130.43
FW-2 Wages and Tax Statement Copy B to the Filer with Employer's RECORD, Tax Return		20 Local wages, tips, etc.	21 Local income tax

Department of the Treasury-Internal Revenue Service

OMB No. 1545-0046

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Department of the Treasury-Internal Revenue Service

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(See Instructions for Box 13)

Employer's name, address, and ZIP code

RECEIVED STATEMENT

UNIVERSITY OF UTAH
145 PARK BUILDING
SALT LAKE CITY, UTAH 84112

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15 See instructions for Box 13	16 Other
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Employee's name, address, and ZIP code

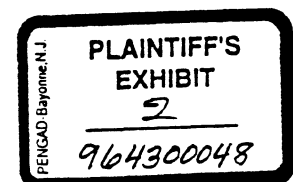
MARY JOANNE REED
1774 KEARNS BLVD 400
SALT LAKE CITY UT 84060

18 Military employer	19 State	20 State income tax	21 Local income tax
1996	UT	17 State wages, tips, etc. 2000.00	18 State income tax 130.43
FW-2 Wages and Tax Statement Copy C for EMPLOYER RECORD		20 Local wages, tips, etc.	21 Local income tax

Department of the Treasury-Internal Revenue Service

PLAINTIFF'S MONTHLY EXPENSES

Rent	\$ 520
Renter's Insurance	13
Maintenance (residence)(appliance maintenance/replacement)	50
Food and household supplies	500
Utilities (electricity and heat)	50
Telephone	50
Laundry and cleaning	50
Clothing	150
Medical (asthma prescriptions/allergy medications/podiatrist/optometrist)	125
Dental (Orthodontist, Kyle's retainer/braces(?))	50
Medical/Dental Insurance	185
Child care	136
School (children and myself)	150
Entertainment (memberships, travel, recreation, camps, sports)	345
Incidentals (grooming, alcohol, gifts and donations)	200
Auto expense (gas, oil, repair, insurance)	226
Auto payments	341
Installment payment(s) (counselor and attorney's fees)	125
Other expenses (taxes)	<u>50</u>
TOTAL:	\$ 3316



ALIMONY COMPUTATIONS

Plaintiff:

\$ 1428 per month gross
x .75 net after taxes
\$ 1072 net
[214] [child support]
\$ 858
1611 alimony
\$2469

Defendant:

\$ 6833 per month gross
x .75 net after taxes
\$ 5125 net
[1045] [child support]
\$ 4080
1611 [alimony]
\$ 2469

Therefore, Defendant should be ordered to pay Plaintiff alimony of \$1,611 for the length of the marriage (20 years) or until earlier terminated by law.

TRIAL EXHIBIT 3

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND/OR SUMMIT COUNTY, STATE OF UTAH

MARY J. REHN,

vs.

CHARLES C. REHN,

CHILD SUPPORT OBLIGATION WORKSHEET
(SOLE CUSTODY AND PATERNITY)

Civil No. 964300048 DA

	MOTHER	FATHER	COMBINED
1. Enter the # of natural and adopted children of this mother and father for whom support is to be awarded.	///////// /////////	///////// /////////	2
2a. Enter the father's and mother's gross monthly income. Refer to Instructions for definition of income.	\$ 1,429	\$ 6,833	///////// /////////
2b. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case)			///////// /////////
2c. Enter previously ordered child support. (Do not enter obligations ordered for the children in Line 1).			///////// /////////
2d. OPTIONAL: Enter the amount from Line 12 of the Children in Present Home Worksheet for either parent.			///////// /////////
3. Subtract Lines 2b, 2c, and 2d from 2a. This is the Adjusted Gross Income for child support purposes.	\$ 1,429	\$ 6,833	\$ 8,262
4. Take the COMBINED figure in Line 3 and the number of children in Line 1 to the Support Table. Find the Base Combined Support Obligation. Enter it here.	///////// ///////// /////////	///////// ///////// /////////	\$ 1,259
5. Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	0.17	0.83	///////// /////////
6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$ 214	\$ 1,045	///////// /////////

7. BASE CHILD SUPPORT AWARD: Bring down the amount in Line 6 for the Obligor Parent or enter the amount from the Low Income Table.	\$ 1,045
--	----------

8. Which parent is the obligor? () Mother (x) Father

9. Is the support award the same as the guideline amount in Line 7? (x) Yes () No
If NO, enter the amount ordered: \$ _____, and answer number 10.

10. What were the reasons stated by the court for the deviation?

- () property settlement
() excessive debts of the marriage
() absence of need of the custodial parent
() other: _____

Attorney Bar No. 4809 () Electronic Filing (x) Manual Filing

TRIAL EXHIBIT 5

TERRY L. CATHCART, #4809
Attorney for Plaintiff
380 North 200 West, #103
Bountiful, Utah 84010
Telephone: (801) 295-2391

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

MARY J. REHN, Plaintiff, vs. CHARLES C. REHN, Defendant.	DECREE OF DIVORCE Case No. 964300048 Judge Pat B. Brian
--	--

Plaintiff's Complaint for Divorce and Defendant's Counter-Claim for Divorce were heard before the court in trial on August 14, 1997, the Honorable Pat B. Brian, District Judge presiding. Plaintiff was present and represented by her counsel, Terry L. Cathcart; Defendant was present and represented by his counsel, Steve S. Christensen.

The court having reviewed all of the exhibits admitted by both Plaintiff and Defendant, having reviewed the law applicable to this matter, having heard argument for both counsel, and having previously entered its Findings of Fact and Conclusions of Law, now enters its:

DECREE OF DIVORCE

1. **DECREE:** Each party is awarded a Decree of Divorce from the other to become final upon entry on the records of the court.

orig. pgs 3-5
S. S. Christensen
etc
7-11-97

orig S. Christensen
etc
8-27-97

etc
7-17-97



2. **CUSTODY**: Each party is awarded the joint legal care, custody and control of the minor children, to wit:

Kyle McKensie, d.o.b. 3/11/88; and

Shawn Clinton, d.o.b. 3/12/91.

Furthermore, Plaintiff is designated as the primary physical custodian and Defendant the secondary physical custodian.

3. **VISITATION**: Defendant is awarded the standard and reasonable visitation in accordance with Utah Code Annotated § 30-3-35. Furthermore, Defendant is prohibited from using alcohol immediately before or during visitation.

4. **PERSONAL PROPERTY**: Personal property is awarded on the following basis:

A. Plaintiff:

- (1) all items of her personal clothing, jewelry and other personal effects;
- (2) one-half (1/2) of Defendant's retirement and retirement accounts

which were accrued during the marriage;

- (3) 1996 Impreza Outback automobile; and
- (4) one-half (1/2) of any of Defendant's stock and investment holdings.

B. Defendant:

- (1) all items of his personal clothing, jewelry and other personal effects;
- (2) the remainder of his retirement benefits, after the portion awarded

to Plaintiff, which were accrued during the marriage, and all such benefits which were accrued

before the marriage;

(3) 1995 Honda Accord automobile; and

(4) one-half (1/2) of any of Defendant's stock and investment holdings.

5. CHILD SUPPORT: Child support is ordered to be paid by Defendant to Plaintiff in the amount of \$1045 per month, one-half (1/2) of that amount to be paid on the fifth (5th) and one-half (1/2) of the twentieth (20th) of each month beginning immediately. (See Plaintiff's Trial Exhibit 5).

6. CHILD CARE EXPENSES: Each party is ordered to pay one-half (1/2) of any work- or education-related child care expenses incurred by either party.

7. ALIMONY : Defendant is ordered to pay to Plaintiff alimony in the amount of \$1200 per month permanently, one-half (1/2) of that amount to be paid on the fifth (5th) and one-half (1/2) on the twentieth (20th) of each month until terminated by law.

8. DEBTS AND OBLIGATIONS: Each party is ordered to pay their own separate debts. The only marital debt to be paid is the debt to the IRS in the approximate amount of \$19,000, or as may be negotiated later by the parties. Defendant is ordered to pay 80 percent of the final amount of that debt and Plaintiff 20 percent of the final amount.

9. INCOME TAX RETURN: Each party is ordered to file jointly for tax year 1996 and divide any refund received from that filing. If there is any liability from that filing, Plaintiff is ordered to pay 20 percent of that liability and Defendant 80 percent of that liability.

10. INCOME TAX DEDUCTIONS: Plaintiff is awarded the income tax deductions and exemptions for the minor children. If Defendant is current in all child support and child care payments for the year in question as of December 31 of that tax year, Defendant may take the exemptions and deductions for the minor children by reimbursing Plaintiff the amount she pays in taxes over and above the amount she would pay had she kept the exemptions and deductions. Defendant is ordered to pay that reimbursement to Plaintiff on or before April 10, five (5) days prior to the filing deadline.

11. HEALTH AND ACCIDENT INSURANCE: Defendant is ordered to provide health and accident insurance for the minor children with each party paying one-half (1/2) of any out-of-pocket expenses. Furthermore, Defendant is ordered to help coordinate and insure Plaintiff is provided access to COBRA coverage under his insurance so long as allowable by law. Plaintiff is ordered to pay for any coverage for herself under the COBRA plan.

12. LIFE INSURANCE: Defendant is ordered to maintain the current policies of life insurance in the amount of \$80,000 and \$50,000 each, naming the children and Plaintiff as beneficiaries so long as child support and alimony are payable to the children and Plaintiff. Should alimony terminate, Defendant is ordered to name the children as sole beneficiaries of those policies.

13. ORDER TO WITHHOLD AND DELIVER: An order to withhold and deliver is authorized although not implemented so long as Defendant maintains an automatic bank transfer of all of his support payments from his checking account directly to Plaintiff's in the appropriate

amounts and times as ordered in the Decree. If implemented, Defendant is ordered to pay any administrative cost of the withholding.

14. COSTS AND ATTORNEY'S FEES: Defendant is ordered to pay to Plaintiff for her attorney's fees and costs in this matter the amount of \$6880. Plaintiff is awarded a judgment for that amount.

15. SIGN ALL PAPERS: Each party is ordered to sign all papers, documents, titles, deeds, etc., necessary to effectuate the transfer of personal property by and between the parties as set forth.

DATED September 26th, 1997.

51

PAT B. BRIAN
District Judge

APPROVED AS TO FORM:

Steve S. Christensen

STEVE S. CHRISTENSEN
Attorney for Defendant

Decree of Divorce

Page 5

***** CONFIRMATION COPY *****

etc
9-30-

MARY J. REHN,

CHILD SUPPORT OBLIGATION WORKSHEET
(SOLE CUSTODY AND PATERNITY)

vs.

Civil No. 964300048 DA

CHARLES C. REHN,

	MOTHER	FATHER	COMBINED
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- () property settlement
() excessive debts of the marriage
() absence of need of the custodial parent
() other: _____

Attorney Bar No. 4809 () Electronic Filing (x) Manual Filing

TRIAL EXHIBIT 5

(d) All hearings and trials for divorce shall be held before the court or the court commissioner as provided by Section 78-3-31 and rules of the Judicial Council. The court or the commissioner in all divorce cases shall enter the decree upon the evidence or, in the case of a decree after default of the respondent, upon the petitioner's affidavit.

(2) The file, except the decree of divorce, may be sealed by order of the court upon the motion of either party. The sealed portion of the file is available to the public only upon an order of the court. The concerned parties, the attorneys of record or attorney filing a notice of appearance in the action, the Office of Recovery Services if a party to the proceedings has applied for or is receiving public assistance, or the court have full access to the entire record. This sealing does not apply to subsequent filings to enforce or amend the decree.

History: R.S. 1898 & C.L. 1907, § 1211; L. 1909, ch. 60, § 1; C.L. 1917, § 2999; R.S. 1933 & C. 1943, 40-3-4; L. 1957, ch. 55, § 1; 1961, ch. 59, § 1; 1969, ch. 72, § 2; 1983, ch. 116, § 1; 1985, ch. 151, § 1; 1989, ch. 104, § 1; 1990, ch. 230, § 1; 1991, ch. 5, § 35; 1992, ch. 98, § 1; 1992, ch. 290, § 3; 1995, ch. 62, § 1; 1997, ch. 47, § 2; 1997, ch. 157, § 1.

Amendment Notes. — The 1995 amendment, effective July 1, 1995, added the second sentence of Subsection (1)(b) and in the second sentence of Subsection (1)(d) substituted "shall enter the decree" for "shall make and file findings and decree" and added the language beginning "or, in the case of" at the end.

The 1997 amendment by ch. 47, effective July 1, 1997, substituted "petitioner" for "plaintiff" and "respondent" for "defendant" throughout the section.

The 1997 amendment by ch. 157, effective May 5, 1997, in Subsection (1)(c) deleted "and the plaintiff has filed an action in the judicial district as defined in Section 78-1-2.1 where the pilot program shall be administered" after "child or children" in the first sentence and made stylistic changes.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

30-3-5. Disposition of property — Maintenance and health care of parties and children — Division of debts — Court to have continuing jurisdiction — Custody and visitation — Determination of alimony — Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children;

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders; and

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Recovery Services.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses

incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide child care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.

(4) (a) In determining visitation rights of parents, grandparents, and other members of the immediate family, the court shall consider the best interest of the child.

(b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include in an order establishing a visitation schedule a provision, among other things, authorizing any peace officer to enforce a court ordered visitation schedule entered under this chapter.

(5) If a petition for modification of child custody or visitation provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(6) If a petition alleges substantial noncompliance with a visitation order by a parent, a grandparent, or other member of the immediate family pursuant to Section 78-32-12.2 where a visitation right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation.

(7) (a) The court shall consider at least the following factors in determining alimony:

- (i) the financial condition and needs of the recipient spouse;
- (ii) the recipient's earning capacity or ability to produce income;
- (iii) the ability of the payor spouse to provide support; and
- (iv) the length of the marriage.

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

(c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

(d) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

(e) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

(f) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.

(g) (i) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

(ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

(iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this subsection.

(A) The court may consider the subsequent spouse's financial ability to share living expenses.

(B) The court may consider the income of a subsequent spouse if the court finds that the payor's improper conduct justifies that consideration.

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

(8) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

(9) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.

History: R.S. 1898 & C.L. 1907, § 1212; L. 1909, ch. 109, § 4; C.L. 1917, § 3000; R.S. 1933 & C. 1943, 40-3-5; L. 1969, ch. 72, § 3; 1975, ch. 81, § 1; 1979, ch. 110, § 1; 1984, ch. 13, § 1; 1985, ch. 72, § 1; 1985, ch. 100, § 1; 1991, ch. 257, § 4; 1993, ch. 152, § 1; 1993, ch. 261, § 1; 1994, ch. 284, § 1; 1995, ch. 330, § 1; 1997, ch. 232, § 4.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, deleted a provision from Subsection (3) for support and maintenance orders; deleted former Subsections (5) and (6), providing that alimony terminates upon remarriage, or cohabitation with a member of the opposite sex, by the payee; added

Subsections (7) to (9); renumbered former Subsections (7) and (8) as (5) and (6); and made stylistic changes.

The 1997 amendment, effective July 1, 1997, substituted "Recovery Services" for "Parts 4 and 5" in Subsection (1)(d) and deleted Subsection (1)(e) which provided for an assessment against the obligor for a check handling fee.

Compiler's Notes. — Laws 1995, ch. 330, which amended this section, provides in § 2 that the Legislature does not intend that termination of alimony based on cohabitation, in accordance with Subsection (9), "be interpreted in any way to condone such a relationship for any purpose."

NOTES TO DECISIONS

Compiler's Notes. — In 1997, the Utah legislature changed the designation of parties in domestic relations cases from "plaintiff" and "defendant" to "petitioner" and "respondent." Annotations from decisions before the amendments will not reflect these changes in terminology.

ANALYSIS

Alimony and support.

— Amount.

— Imputed income.

— Cohabitation by payee.

Attorney fees.

Child custody.

— Factors considered.

Child support.

— Estoppel.

Health insurance.

Property division.

— Preliminary orders.

— Retirement funds.

— Unilateral transfer.

Stipulations and agreements of parties.

Alimony and support.

— Amount.

— Imputed income.

Trial court, relying on evidence sufficiently detailed in its findings of fact, did not abuse its discretion in imputing income to defendant spouse for purposes of determining her alimony award. *Wiley v. Wiley*, 914 P.2d 1149 (Utah Ct. App. 1996).

— Cohabitation by payee.

Findings by trial court that former spouse and person of the opposite sex had a sexual relationship, shared living expenses, had open access to each other's condominiums, ate together and shared food expenses, kept clothing in the same condominium, used the same furniture and otherwise lived as though they were husband and wife supported the finding of cohabitation. *Sigg v. Sigg*, 905 P.2d 908 (Utah Ct. App. 1995).

Evidence that former wife's current lover had a key to her house, spent four or five nights a week there even if she was away, and kept clothing and other personal effects at her home supported conclusion that the couple were in fact residing together, and this, combined with sexual relationship, was enough to terminate the former husband's obligation to pay alimony under the divorce decree. *Pendleton v. Pendleton*, 918 P.2d 159 (Utah Ct. App. 1996).

Attorney fees.

Because wife did not comply with visitation order contained in her decree, there was no abuse of discretion by court in awarding attorney fees to husband, the prevailing party. *Sigg*

v. Sigg, 905 P.2d 908 (Utah Ct. App. 1995).

Child custody.

— Factors considered.

In a child custody suit, the maternal grandparents failed to prove that no strong mutual bond existed between the child and the natural father, that the natural father was unwilling to sacrifice his own interest and welfare for his child's, and that the father lacked the sympathy for and understanding of the child that is generally characteristic of parents; consequently, the maternal grandparents failed to rebut the parental presumption, which favored the child's natural father. *Duncan v. Howard*, 918 P.2d 888 (Utah Ct. App. 1996).

Child support.

— Estoppel.

Former wife's delay in claiming former husband was making insufficient payments was not enough to estop her from seeking reimbursement for payments former husband was legally obligated to make to his children. *Ball v. Peterson*, 912 P.2d 1006 (Utah Ct. App. 1996).

Health insurance.

The trial court has broad discretion under this section to credit one or both parents, as the court deems equitable, for the coverage provided by a third party; thus, trial court could credit wife for current husband's insurance coverage of wife's and her former husband's children. *Ball v. Peterson*, 912 P.2d 1006 (Utah Ct. App. 1996).

Property division.

— Preliminary orders.

Decedent's unilateral self-conveyance severing joint tenancy and her conveyance of her interest in the residence to the trustees of a revocable trust did not violate the trial court's order that she and her husband, parties to a divorce action, neither sell, encumber, nor mortgage their assets pending the proceedings, because it did not result in the removal of property from the court's jurisdiction. *Knickerbocker v. Cannon*, 912 P.2d 969 (Utah 1996).

— Retirement funds.

Retirement funds accumulated in a 401(a) plan during marriage are marital assets and were appropriately considered by the trial court. *Jefferies v. Jefferies*, 895 P.2d 835 (Utah Ct. App. 1995).

— Unilateral transfer.

In a divorce proceeding, the trial court was without jurisdiction to reach funds transferred by the husband to the children pursuant to the Uniform Transfers to Minors Act; however, in making equitable division between the spouses,

the court may take into consideration transfers made by the husband at the expense of the wife and hold him accountable for dissipation of marital assets. *Jefferies v. Jefferies*, 895 P.2d 835 (Utah Ct. App. 1995).

adjustments to parties' stipulated expenses without any evidence upon which to base such factual findings, other than the trial court's apparent pursuit of round numbers. *Willey v. Willey*, 914 P.2d 1149 (Utah Ct. App. 1996).

Stipulations and agreements of parties.

Court of Appeals would not accept downward

COLLATERAL REFERENCES

A.L.R. — Child custody:

— age of parent as factor in awarding custody, 34 A.L.R.5th 57.

Child support:

— loss of income due to incarceration as affecting child support obligation, 27 A.L.R.5th 540.

— right to credit on child support payments for social security or other government dependency payments made for benefit of child, 34 A.L.R.5th 447.

Property settlement:

— workers' compensation benefits as marital property subject to distribution, 30 A.L.R.5th 139.

Miscellaneous:

— treatment of depreciation expenses claimed for tax or accounting purposes in determining ability to pay child or spousal support, 28 A.L.R.5th 46.

30-3-5.1. Provision for income withholding in child support order.

Whenever a court enters an order for child support, it shall include in the order a provision for withholding income as a means of collecting child support as provided in Title 62A, Chapter 11, Recovery Services.

History: C. 1953, 30-3-5.1, enacted by L. 1985, ch. 11, § 1; 1993, ch. 4, § 70; 1996, ch. 244, § 1; 1997, ch. 232, § 5.

Amendment Notes. — The 1996 amendment, effective April 29, 1996, added "Income Withholding."

The 1997 amendment, effective July 1, 1997, substituted "Recovery Services" for "Part 4, Income Withholding."

30-3-5.2. Allegations of child abuse or child sexual abuse — Investigation.

When, in any divorce proceeding or upon a request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court shall order that an investigation be conducted by the Division of Child and Family Services within the Department of Human Services in accordance with Title 62A, Chapter 4a. A final award of custody or visitation may not be rendered until a report on that investigation is received by the court. That investigation shall be conducted by the Division of Child and Family Services within 30 days of the court's notice and request for an investigation. In reviewing this report, the court shall comply with Section 78-7-9.

History: C. 1953, 30-3-5.2, enacted by L. 1988, ch. 90, § 1; 1990, ch. 183, § 14; 1992, ch. 213, § 1; 1996, ch. 79, § 48; 1996, ch. 318, § 2.

Amendment Notes. — The 1996 amendment by ch. 79, effective April 29, 1996, corrected the reference to Chapter 4a.

The 1996 amendment by ch. 318, effective April 29, 1996, inserted "Child and" in two places and substituted "Chapter 4a" for "Chapter 4, Part 5" at the end of the first sentence.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

78-45-2. Definitions.

As used in this chapter:

(1) "Adjusted gross income" means income calculated under Subsection 78-45-7.6(1).

(2) "Administrative agency" means the Office of Recovery Services or the Department of Human Services.

(3) "Administrative order" means an order that has been issued by the Office of Recovery Services, the Department of Human Services, or an administrative agency of another state or other comparable jurisdiction with similar authority to that of the office.

(4) "Base child support award" means the award that may be ordered and is calculated using the guidelines before additions for medical expenses and work-related child care costs.

(5) "Base combined child support obligation table," "child support table," "base child support obligation table," "low income table," or "table" means the appropriate table in Section 78-45-7.14.

(6) "Child" means:

(a) a son or daughter under the age of 18 years who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;

(b) a son or daughter over the age of 18 years, while enrolled in high school during the normal and expected year of graduation and not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) a son or daughter of any age who is incapacitated from earning a living and is without sufficient means.

(7) "Child support" is defined in Section 62A-11-401.

(8) "Child support order" or "support order" is defined in Section 62A-11-401.

(9) "Court" means the district court or juvenile court.

(10) "Guidelines" means the child support guidelines in Sections 78-45-7.2 through 78-45-7.21.

(11) "Income" is defined in Section 62A-11-303.

(12) "IV-D" means Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq.

(13) "Joint physical custody" means the child stays with each parent overnight for more than 25% of the year, and both parents contribute to the expenses of the child in addition to paying child support.

(14) "Medical expenses" means health and dental expenses and related insurance costs.

(15) "Obligee" is defined in Section 62A-11-103.

(16) "Obligor" means any person owing a duty of support.

(17) "Office" means the Office of Recovery Services within the Department of Human Services.

(18) "Parent" includes a natural parent, or an adoptive parent, or a stepparent.

(19) "Split custody" means that each parent has physical custody of at least one of the children.

(20) "State" includes any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(21) "Stepchild" means any child having a stepparent.

(22) "Stepparent" means a person ceremonially married to a child's natural or adoptive custodial parent who is not the child's natural or

(4) When no prior court order exists, the court shall determine and assess all arrearages based upon the Uniform Child Support Guidelines described in this chapter.

History: L. 1957, ch. 110, § 7; 1977, ch. 145, § 10; 1984, ch. 13, § 2; 1989, ch. 214, § 3; 1990, ch. 100, § 2; 1994, ch. 118, § 2; 1994, ch. 140, § 14; 1997, ch. 232, § 71.

Amendment Notes. — The 1997 amendment, effective July 1, 1997, substituted "substantial change" for "material change" in Sub-

sections (1)(a) and (2), added "or adjustment under Subsection 78-45-7.2(6) has been made" to the end of Subsection (1)(a), and in Subsection (2) inserted "or a petition to modify an order under Subsection 78-45-7.2(6) has been filed."

78-45-7.2. Application of guidelines — Rebuttal.

(1) The guidelines apply to any judicial or administrative order establishing or modifying an award of child support entered on or after July 1, 1989.

(2) (a) The child support guidelines shall be applied as a rebuttable presumption in establishing or modifying the amount of temporary or permanent child support.

(b) The rebuttable presumption means the provisions and considerations required by the guidelines, the award amounts resulting from the application of the guidelines, and the use of worksheets consistent with these guidelines are presumed to be correct, unless rebutted under the provisions of this section.

(3) A written finding or specific finding on the record supporting the conclusion that complying with a provision of the guidelines or ordering an award amount resulting from use of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a particular case is sufficient to rebut the presumption in that case.

(4) (a) Natural or adoptive children of either parent who live in the home of that parent and are not children in common to both parties may at the option of either party be taken into account under the guidelines in setting or modifying a child support award, as provided in Subsection (5).

(b) Additional worksheets shall be prepared that compute the obligations of the respective parents for the additional children. The obligations shall then be subtracted from the appropriate parent's income before determining the award in the instant case.

(5) In a proceeding to modify an existing award, consideration of natural or adoptive children other than those in common to both parties may be applied to mitigate an increase in the award but may not be applied to justify a decrease in the award.

(6) (a) If a child support order has not been issued or modified within the previous three years, a parent, legal guardian, or the office may petition the court to adjust the amount of a child support order.

(b) Upon receiving a petition under Subsection (6)(a), the court shall, taking into account the best interests of the child, determine whether there is a difference between the amount ordered and the amount that would be required under the guidelines. If there is a difference of 10% or more and the difference is not of a temporary nature, the court shall adjust the amount to that which is provided for in the guidelines.

(c) A showing of a substantial change in circumstances is not necessary for an adjustment under Subsection (6)(b).

(7) (a) A parent, legal guardian, or the office may at any time petition the court to adjust the amount of a child support order if there has been a substantial change in circumstances.

(b) For purposes of Subsection (7)(a), a substantial change in circumstances may include:

- (i) material changes in custody;
- (ii) material changes in the relative wealth or assets of the parties;
- (iii) material changes of 30% or more in the income of a parent;
- (iv) material changes in the ability of a parent to earn;
- (v) material changes in the medical needs of the child; and
- (vi) material changes in the legal responsibilities of either parent for the support of others.

(c) Upon receiving a petition under Subsection (7)(a), the court shall, taking into account the best interests of the child, determine whether a substantial change has occurred. If it has, the court shall then determine whether the change results in a difference of 15% or more between the amount of child support ordered and the amount that would be required under the guidelines. If there is such a difference and the difference is not of a temporary nature, the court shall adjust the amount of child support ordered to that which is provided for in the guidelines.

(8) Notice of the opportunity to adjust a support order under Subsections (6) and (7) shall be included in each child support order issued or modified after July 1, 1997.

History: C. 1953, 78-45-7.2, enacted by L. 1989, ch. 214, § 4; 1990, ch. 100, § 3; 1990, ch. 275, § 2; 1994, ch. 118, § 4; 1997, ch. 232, § 72.

Amendment Notes. — The 1997 amendment, effective July 1, 1997 rewrote Subsection (6) and added Subsections (7) and (8).

78-45-7.5. Determination of gross income — Imputed income.

(1) As used in the guidelines, “gross income” includes:

(a) prospective income from any source, including nonearned sources, except under Subsection (3); and

(b) income from salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, social security benefits, workers’ compensation benefits, unemployment compensation, disability insurance benefits, and payments from “nonmeans-tested” government programs.

(2) Income from earned income sources is limited to the equivalent of one full-time 40-hour job. However, if and only if during the time prior to the original support order, the parent normally and consistently worked more than 40 hours at his job, the court may consider this extra time as a pattern in calculating the parent’s ability to provide child support.

(3) Specifically excluded from gross income are:

(a) cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment Program;

(b) benefits received under a housing subsidy program, the Job Training Partnership Act, Supplemental Security Income, Social Security Disability Insurance, Medicaid, Food Stamps, or General Assistance; and

(c) other similar means-tested welfare benefits received by a parent.

(4) (a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-employment or operation of a business shall be reviewed to

determine an appropriate level of gross income available to the parent to satisfy a child support award. Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts.

(b) Gross income determined under this subsection may differ from the amount of business income determined for tax purposes.

- (5) (a) When possible, gross income should first be computed on an annual basis and then recalculated to determine the average gross monthly income.

(b) Each parent shall provide verification of current income. Each parent shall provide year-to-date pay stubs or employer statements and complete copies of tax returns from at least the most recent year unless the court finds the verification is not reasonably available. Verification of income from records maintained by the Department of Workforce Services may be substituted for pay stubs, employer statements, and income tax returns.

(c) Historical and current earnings shall be used to determine whether an underemployment or overemployment situation exists.

- (6) Gross income includes income imputed to the parent under Subsection (7).

- (7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed or a hearing is held and a finding made that the parent is voluntarily unemployed or underemployed.

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community.

(c) If a parent has no recent work history, income shall be imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

(d) Income may not be imputed if any of the following conditions exist:

- (i) the reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn;
 - (ii) a parent is physically or mentally disabled to the extent he cannot earn minimum wage;
 - (iii) a parent is engaged in career or occupational training to establish basic job skills; or
 - (iv) unusual emotional or physical needs of a child require the custodial parent's presence in the home.
- (8) (a) Gross income may not include the earnings of a child who is the subject of a child support award nor benefits to a child in the child's own right such as Supplemental Security Income.
- (b) Social Security benefits received by a child due to the earnings of a parent shall be credited as child support to the parent upon whose earning record it is based, by crediting the amount against the potential obligation of that parent. Other unearned income of a child may be considered as income to a parent depending upon the circumstances of each case.

tuted "shall" for "may" in Subsection (8)(b).

The 1997 amendment by ch. 174, effective July 1, 1997, rewrote Subsection (3)(a) which read "Aid to Families with Dependent Children (AFDC)" and substituted "Supplemental Security Income, Social Security Disability Insurance" for "S.S.I." in Subsection (3)(b).

The 1997 amendment by ch. 375, effective July 1, 1997, substituted "Department of Workforce Services" for "Office of Employment Security" in Subsection (5)(b).

This section has been set out as reconciled by the Office of Legislative Research and General Counsel.

78-45-7.11. Reduction for extended visitation.

(1) The child support order shall provide that the base child support award be reduced by 50% for each child for time periods during which the child is with the noncustodial parent by order of the court or by written agreement of the parties for at least 25 of any 30 consecutive days. If the dependent child is a client of cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment Program, any agreement by the parties for reduction of child support during extended visitation shall be approved by the administrative agency. However, normal visitation and holiday visits to the custodial parent shall not be considered an interruption of the consecutive day requirement.

(2) For purposes of this section the per child amount to which the abatement applies shall be calculated by dividing the base child support award by the number of children included in the award.

History: C. 1953, 78-45-7.11, enacted by L. 1989, ch. 214, § 13; 1990, ch. 100, § 9; 1994, ch. 118, § 12; 1997, ch. 174, § 69.

Amendment Notes. — The 1997 amendment, effective July 1, 1997, substituted "client

of cash assistance provided under Title 35A, Chapter 8, Part 3, Family Employment Program" for "recipient of Aid to Families with Dependent Children" in the second sentence of Subsection (1).

78-45-7.13. Advisory committee — Membership and functions.

(1) On or before March 1, 1995, the governor shall appoint an advisory committee consisting of:

- (a) one representative recommended by the Office of Recovery Services;
- (b) one representative recommended by the Judicial Council;
- (c) two representatives recommended by the Utah State Bar Association;

- (d) two representatives of noncustodial parents, one male and one female, appointed by the governor;

- (e) two representatives of custodial parents, one male and one female, appointed by the governor; and

- (f) an uneven number of additional persons, not to exceed three, who represent diverse interests related to child support issues, as the governor may consider appropriate. However, none of the individuals appointed under this subsection may be members of the Utah State Bar Association.

(2) (a) Except as required by Subsection (b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.

- (b) Notwithstanding the requirements of Subsection (a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

RECEIVED JUL 30 1996

IN THE THIRD JUDICIAL DISTRICT COURT
SUMMIT COUNTY, STATE OF UTAH

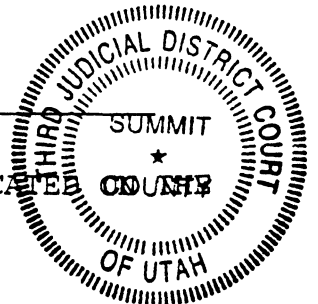
REHN, MARY J. :
PLAINTIFF, :
-VS- : SCHEDULING ORDER AND
REHN, CHARLES C. : TRIAL NOTICE
DEFENDANT. : CASE NO. 964300048 DA
HONORABLE PAT B BRIAN

PURSUANT TO THE SCHEDULING CONFERENCE HELD ON 7-26-96
THE FOLLOWING DATES WERE SET AND MATTERS DISCUSSED:

1. THIS CASE IS SET FOR TRIAL ON SEPTEMBER 24, 1996 AT 9:00 A.M.
2. ANTICIPATED TRIAL TIME IS 01 DAYS.
3. THE CASE IS SET FOR NON JURY TRIAL
4. ALL DISCOVERY INCLUDING RESPONSES MUST BE CONCLUDED BY
AS PER RULES
5. ALL DISPOSITIVE MOTIONS ARE TO BE HEARD BY AS PER RULES
6. EXHIBIT AND WITNESS LISTS ARE TO BE EXCHANGED BY
AS PER RULES
7. A FINAL PRETRIAL SETTLEMENT CONFERENCE WILL BE HELD ON
AUGUST 26, 1996 AT 2:00 P.M. TRIAL COUNSEL AND CLIENTS, OR
AN INDIVIDUAL WITH AUTHORITY TO SETTLE THIS CASE ARE TO BE
PRESENT. OUT OF STATE PARTIES MUST BE AVAILABLE BY PHONE AT THE
TIME OF THE PRETRIAL SETTLEMENT CONFERENCE.
8. FAILURE TO APPEAR AT THE PRETRIAL SETTLEMENT CONFERENCE
MAY RESULT IN A DEFAULT.
9. THE FOREGOING DATES SHOULD BE CONSIDERED FIRM SETTINGS
AND WILL NOT BE MODIFIED WITHOUT COURT ORDER, AND THEN ONLY
UPON A SHOWING OF MANIFEST INJUSTICE. COUNSEL ARE INSTRUCTED TO
STAY IN CONTACT WITH THE CLERK OF THIS COURT AS THE TRIAL DATE
APPROACHES REGARDING THE TRIAL SETTING.
10. IF PLAINTIFF'S COUNSEL ANTICIPATES THAT EVIDENCE AT TRIAL
WILL SHOW DAMAGES OF LESS THAN \$20,000, COUNSEL SHOULD PREPARE AN
ORDER TRANSFERRING THE CASE TO THE CIRCUIT COURT.
DATED THIS 26TH DAY OF JULY, 1996.

Pat B. Brian
DISTRICT COURT JUDGE

COPIES MAILED TO PARTIES AT THE ADDRESSES INDICATED
ATTACHED MAILING CERTIFICATE.



IN THE THIRD JUDICIAL DISTRICT COURT
SUMMIT COUNTY, STATE OF UTAH

REHN, MARY J.

PLAINTIFF,

-VS-

REHN, CHARLES C.

DEFENDANT.

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SCHEDULING ORDER AND
TRIAL NOTICE

CASE NO. 964300048 DA

HONORABLE JUDGE W. BOHLING

PURSUANT TO THE SCHEDULING CONFERENCE HELD ON 2/6/97
THE FOLLOWING DATES WERE SET AND MATTERS DISCUSSED:

1. THIS CASE IS SET FOR TRIAL ON JUNE 13, 1997 AT 9:00 A.M.
2. ANTICIPATED TRIAL TIME IS 01 DAYS.
3. THE CASE IS SET FOR NON JURY TRIAL
4. ALL DISCOVERY INCLUDING RESPONSES MUST BE CONCLUDED BY
5. ALL DISPOSITIVE MOTIONS ARE TO BE HEARD BY
6. EXHIBIT AND WITNESS LISTS ARE TO BE EXCHANGED BY

7. A FINAL PRETRIAL SETTLEMENT CONFERENCE WILL BE HELD ON
JUNE 9, 1997 AT 2:00 P.M. TRIAL COUNSEL AND CLIENTS, OR
AN INDIVIDUAL WITH AUTHORITY TO SETTLE THIS CASE ARE TO BE
PRESENT. OUT OF STATE PARTIES MUST BE AVAILABLE BY PHONE AT THE
TIME OF THE PRETRIAL SETTLEMENT CONFERENCE.

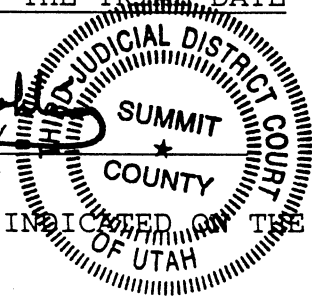
8. FAILURE TO APPEAR AT THE PRETRIAL SETTLEMENT CONFERENCE
MAY RESULT IN A DEFAULT.

9. THE FOREGOING DATES SHOULD BE CONSIDERED FIRM SETTINGS
AND WILL NOT BE MODIFIED WITHOUT COURT ORDER, AND THEN ONLY
UPON A SHOWING OF MANIFEST INJUSTICE. COUNSEL ARE INSTRUCTED TO
STAY IN CONTACT WITH THE CLERK OF THIS COURT AS THE TRIAL DATE
APPROACHES REGARDING THE TRIAL SETTING.

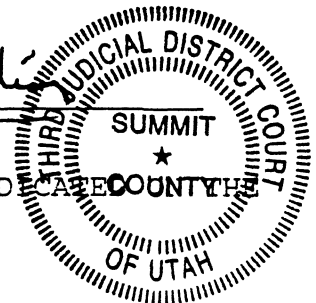
DATED THIS 6TH DAY OF FEBRUARY, 1997

DISTRICT COURT JUDGE

COPIES MAILED TO PARTIES AT THE ADDRESSES INDICATED ON THE
ATTACHED MAILING CERTIFICATE.



cc: Clint 2/13/97



IN THE THIRD JUDICIAL DISTRICT COURT
SUMMIT COUNTY, STATE OF UTAH

REHN, MARY J.

PLAINTIFF,

-VS-

REHN, CHARLES C.

DEFENDANT.

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:

SCHEDULING ORDER AND
TRIAL NOTICE

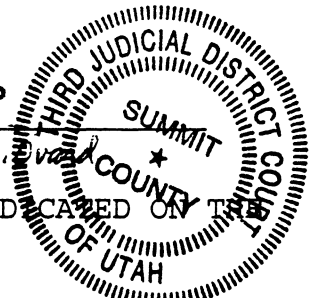
CASE NO. 964300048 DA

HONORABLE PAT B BRIAN

PURSUANT TO THE SCHEDULING CONFERENCE HELD ON (SEE PRIOR NOTICE)
THE FOLLOWING DATES WERE SET AND MATTERS DISCUSSED:

1. THIS CASE IS SET FOR TRIAL ON AUGUST 14, 1997 AT 9:00 A.M.
2. ANTICIPATED TRIAL TIME IS 01 DAYS.
3. THE CASE IS SET FOR NON JURY TRIAL
4. ALL DISCOVERY INCLUDING RESPONSES MUST BE CONCLUDED BY
(SEE PRIOR NOTICE)
5. ALL DISPOSITIVE MOTIONS ARE TO BE HEARD BY (SEE PRIOR NOTICE)
6. EXHIBIT AND WITNESS LISTS ARE TO BE EXCHANGED BY
(SEE PRIOR NOTICE)
7. A FINAL PRETRIAL SETTLEMENT CONFERENCE WILL BE HELD ON
AUGUST 11, 1997 AT 2:00 P.M. TRIAL COUNSEL AND CLIENTS, OR
AN INDIVIDUAL WITH AUTHORITY TO SETTLE THIS CASE ARE TO BE
PRESENT. OUT OF STATE PARTIES MUST BE AVAILABLE BY PHONE AT THE
TIME OF THE PRETRIAL SETTLEMENT CONFERENCE.
8. FAILURE TO APPEAR AT THE PRETRIAL SETTLEMENT CONFERENCE
MAY RESULT IN A DEFAULT.
9. THE FOREGOING DATES SHOULD BE CONSIDERED FIRM SETTINGS
AND WILL NOT BE MODIFIED WITHOUT COURT ORDER, AND THEN ONLY
UPON A SHOWING OF MANIFEST INJUSTICE. COUNSEL ARE INSTRUCTED TO
STAY IN CONTACT WITH THE CLERK OF THIS COURT AS THE TRIAL DATE
APPROACHES REGARDING THE TRIAL SETTING.
11. OTHER MATTERS: (PRE-TRIAL IS SET AT JUDGE BRIAN'S RE-
QUEST) (TRIAL IS SET FOR 1/2 TO 1 DAY)
DATED THIS 16TH DAY OF JULY, 1997.

DISTRICT COURT JUDGE



COPIES MAILED TO PARTIES AT THE ADDRESSES INDICATED ON THE
ATTACHED MAILING CERTIFICATE.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this proceeding should call Third District/Circuit Court (801)336-4451 ext 205. Individuals with hearing disability may communicate with this Court through the Utah Relay Service 1-800-346-4128.

Question 2

Current Expenses

Rent - \$1050/month - Exhibit A
Car payment - \$575/mo - Exhibit B
Water - \$38/month - Exhibit C
Sewer - \$28/mo - Exhibit D
Phone - \$63/month - Exhibit E
Gas (Mountain Fuels) - \$58/mo - Exhibit F
Auto Gas/oil/repair - \$100/mo - Exhibit G
Car insurance - \$142/mo - Exhibit H
Renters insurance - \$16/mo - Exhibit I
Life Insurance - \$52/mo - Exhibit J
Medical/Vision/Dental - \$214/mo - Exhibit K
Food - \$400/mo - Exhibit L
Laundry and Dry Cleaning - \$50/mo - Exhibit M
Entertainment (clubs, social obligations, travel, recreation) - \$150/mo
Daycare - \$136/mo - Exhibit O
Legal - \$200/mo -- deferred
Motor Vehicle Registration - \$20/mo - Exhibit Q
Maintenance (household) - \$50/mo -- deferred
Clothing - \$100/mo -- deferred
Incidentals - \$150/mo -- deferred
Electric Bill - \$46/mo - Exhibit X

Subtotal - \$3,638

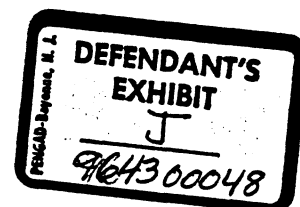
Current child support - \$1055/mo

Current temporary alimony - \$750/mo

Total monthly expenditures - \$5443/mo

Monthly take home pay - \$4838/mo

Current deficit - \$604/mo



Mary and Charles Rehn Joint Checking Account - 1995											
Expenses	January	February	March	April	May	June	July	August	September	Ave. mo.	Expenses
Food		635	974	905	1000	1090	972	931	1240	865	Food
Utilities/phone		240	240	185	150	122	380	127	125	192	Utilities/phone
Gas-car		50	87	50	95	110	105			62	Gas-car
Car ins.		190		280	98	192		90	94	118	Car ins.
Med/dental		643	643	380	50	98		20		174	Med/dental
Child care			175	160	343	290		175		143	Child care
Clothes		126	89	181	330	95	260	135	300	190	Clothes
Incidentals											Incidentals
church		60	20	10		20	50			20	church
haircuts		16	35		5	70		28		19	haircuts
misc.		112	25		39				23	25	misc.
school/books		90	37	42	62	25				44	school/books
Total Incidental		282	117	52	106	115	50	28	23	108	Total Incidental
Entertainment											Entertainment
health club		107	103	108	112	100	108		117	94	health club
misc. ent.		31	246	100	80	78	90	90	125	123	misc. ent.
Total Entertainment		138	349	208	192	178	198	90	242	217	Total Entertainment
rent+car		1575	1575	1575	1575	1575	1575	1575	1575	1575	rent+car
Total Expenses		4061	3852	4164	3952	4647	3876	3391	3725	3959	Total Expenses

