

1988

Wanda Marie Sackett Bagshaw v. Joseph Arthur Bagshaw : Brief of Respondent

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

50

A10

DOCKET NO.

880647

IN THE UTAH COURT OF APPEALS

WANDA MARIE SACKETT BAGSHAW,

:

Plaintiff/Respondent,

:

Case No. 880647-CA

vs.

:

Priority Classification

JOSEPH ARTHUR BAGSHAW

:

No. 14b

Defendant/Appellant.

:

BRIEF OF RESPONDENT

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
JUDGE J. DENNIS FREDERICK

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FILED

MAR 6 1989

COURT OF APPEALS

WANDA MARIE SACKETT BAGSHAW, :
Plaintiff/Respondent, : Case No. 880647-CA
vs. :
JOSEPH ARTHUR BAGSHAW : Priority Classification
Defendant/Appellant. : No. 14b

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
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Plaintiff/Respondent, : Case No. 880647-CA
vs. :
JOSEPH ARTHUR BAGSHAW : Priority Classification
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Jurisdiction

NATURE OF PROCEEDINGS

ISSUES PRESENTED ON APPEAL

-1-

Decree of Divorce in this matter pursuant to the statutory provisions of § 30-4a-1 of the Utah Code Annotated (1953), as amended, and as interpreted by this Court in Horne v. Horne, 737 P.2d 244 (Utah App. 1987)?

2. Was the Court below correct in its application of the legal precedence set forth in Brown v. Brown, 744 P.2d 333 (Utah App. 1987) to the facts in this matter?

3. Should the Court award costs and attorney's fees to Respondent incurred in the response to this appeal?

DETERMINATIVE CONSTITUTIONAL AND STATUTORY PROVISIONS

The statutes relevant to the determination of this case include § 25-5-4 and § 30-4a-1, Utah Code Annotated (1953), as amended.

STATEMENT OF THE CASE

1. Nature of the Case. This is an action that was commenced by Respondent to recover alimony arrearages that were due and owing pursuant to a divorce decree entered in this matter on January 10, 1973.

2. Course of Proceedings. Upon Respondent's order to show cause, The Court below awarded \$19,400 to Respondent in September 1988, ruling inter alia that there was no reason to terminate alimony by reasons of the actions of Respondent and that the alimony awarded to Respondent remained in full force and effect

from the time of its entry to the present, and has not been terminated by the Appellant by prior order of the Court. Appellant consequently brought this appeal.

3. Disposition at Trial Court. After finding that Respondent had done nothing that would justify termination of alimony pursuant to the decree; that there was no enforceable agreement between the parties modifying the Decree to eliminate alimony; and there being no finding of the Court for good cause to make a nunc pro tunc order to modify such decree, Respondent was awarded judgment in the amount of \$19,400. Each party was ordered to pay their own costs and attorney's fees.

RELEVANT FACTS

The parties to this action were married June 7, 1958 and had 2 children born of issue to the marriage (Record, Page 129). The Appellant had what he described as a 9th grade education (Id.) and during the course of his relationship with the Respondent before and during the marriage, he corresponded with her by letter while in the military, he maintained a subscription to Outdoor Life, he read proclamations, and he signed papers when items were purchased (Wanda Bagshaw Testimony, Page 21 - Addendum Exhibit "B").

On April 7, 1972 Respondent filed a Divorce Complaint (Record, Page 2), and on December 3, 1972, Appellant made his entry of appearance and waived his time to plead or otherwise answer, signing such appearance and waiver above his printed name (Record,

Page 7 - Addendum Exhibit "C") and where no marks were apparent that would indicate someone had marked it or told him where to sign, as Appellant testified at trial (Record, Page 115 - Addendum Exhibit "D"). On January 10, 1973 the Decree of Divorce was entered in this matter, granting Respondent inter alia \$100 per month per child for child support, and \$200 per month as alimony (Record, Page 12), as had been prayed for in the Complaint filed in April 1972 (Record, Page 2-3) which was delivered to Appellant on December 3, 1972 (Record, Page 7).

On May 17, 1973, Appellant brought an Order to Show Cause based on his allegation that he could not read, and that Respondent had misrepresented to him that no alimony would in the decree (Record, Page 14). The Order to Show Cause was noticed for July 27, 1973 (Record, Page 17) and then stricken on the date of the hearing with Appellant's counsel present in Court (Record, Page 18). In the meantime, Respondent brought her own Order to Show Cause to enforce the payments under the decree, which was signed June 20, 1973, but not filed until November 2, 1973 (Record, Page 19-20). Appellant re-noticed his Order to Show Cause, and the matter came before the Court on November 28, 1973.

On the day prior to the November 28, 1973 hearing, Appellant called the Respondent on the telephone and made threats against her life (Record, Pages 105-107). The Respondent appeared at the Courthouse the following day but refused to take part in the proceedings because of the death threats (Record, Page 106 and Wanda Bagshaw Testimony, Page 16 - Addendum Exhibit "E"). Although

no evidentiary hearing was conducted, counsel for both parties, together with Appellant and his second wife, retired to conference room at the Courthouse to discuss the matter (Record, Page 108).

What happened in the meeting at the Courthouse on November 28, 1973 constitutes the basis of Appellant's position in this appeal, and is the crux of most issues now before this Court.

According to the Appellant, he, his wife, and his attorney met with counsel for the Respondent (Record, Page 108 & 119); and an agreement was worked out where Respondent would agree to terminate alimony if the Appellant dropped his charges against Respondent for allegedly stealing his jeep and a federal income tax return (Record, Page 109 & 119). Appellant further alleges that Respondent agreed to the stipulation in a phone conversation that was placed to her by her attorney from the conference room (Record, Page 109 & 120).

It is undisputed that Respondent was not at the Courthouse meeting on November 28, 1973. Respondent further alleges that she did not receive a call from her attorney while he was at the Courthouse (Exhibit "E"), and further, that she never authorized her attorney to enter into an agreement waiving her right to alimony (Wanda Bagshaw Testimony, Page 21 - Addendum Exhibit "B").

Neither attorney who participated in the Courthouse meeting on November 28, 1973 has any recollection of the meeting, or any stipulation between the parties (Record Pages 106-115). Further, the minute entry for November 28, 1973 does not reflect any stipulation having been entered on the record, it does not reflect any testimony

from either party. When viewed together with the testimony of Appellant's wife (Record, Page 108), it appears that after suggesting that counsel meet and attempt to work out the differences between the parties, an entry was made that continued the Order to Show Cause hearing in anticipation of a stipulation and order that might be forthcoming (Record, Page 23). There is no testimony, nor does the minute entry of November 28, 1973 reflect, that counsel went before the Court after the meeting and announced a stipulation had been reached.

From the date of the meeting until an Order to Show Cause was brought to collect alimony arrearages in February 1988, Appellant asserts that he thought the issue of alimony had been resolved, even though papers were never drawn, signed or delivered to him reflecting the stipulation as he understood it to be (Record, Page 120-121).

SUMMARY OF ARGUMENTS

The Court below was correct in determining that good cause did not exist for the Court to make a nunc pro tunc order modifying the divorce decree to eliminate alimony because an enforceable agreement to modify the decree had not been arrived at between the parties.

ARGUMENT

POINT NO. I: GOOD CAUSE DOES NOT EXIST THAT WOULD JUSTIFY A NUNC PRO TUNC ORDER MODIFYING THE DIVORCE DECREE TO ELIMINATE ALIMONY EITHER BASED UPON THE ALLEGED STIPULATION OF NOVEMBER 28, 1973; OR ANY OTHER EVENT SINCE THAT TIME.

If this Court were to accept Appellant's statement of facts

as undisputed, there would still be no basis for any Court to issue a nunc pro tunc order terminating alimony under the statutory provisions of § 30-4a-1 of the Utah Code Annotated (1953) as amended or under the ruling of Horne v. Horne, 737 P.2d 244 (Utah App. 1987) which has interpreted the statute.

The nunc pro tunc statute is significant, primarily because it changes the old common law rule that a nunc pro tunc order could only be entered when errors could be corrected or omissions supplied where a complete and signed agreement had been reached, or a signed order completely made. [See Preece v. Preece, 682 P.2d 298, 299 (Utah 1984)] The focus of the common law rule was to prevent nunc pro tunc orders where substantive issues remained to be resolved and were not resolved, at the time a particular order was sought to be entered. At common law, the presence of a signed agreement or order was viewed as a evidence of finality where a Court would not be required to go back and attempt to determine the intent of the parties.

When the Utah State Legislature passed the provisions of § 30-4a-1 in 1984, it substituted "good cause" as a standard that could overcome the common law rule that a signed agreement or order was required to make the record speak the truth. While the statute did, indeed, give broader discretion to Courts in the use of nunc pro tunc orders in matters related to marriage, it did not alter the focus of a nunc pro tunc order to enter now, what previously had been made. This Court in Horne pointed out that "Statutes are not to be construed as effecting any change in the

common law **beyond which is clearly indicated** [Horne at 248, emphasis added]. In this instance, the common law requirement of a signed order or stipulation was replaced with the standard of good cause, which would allow a Court to enter an order where an agreement or order had not been signed, but the where intent of the parties was obvious and a nunc pro tunc order was justified to avoid manifest injustice. No other aspect of the old common law rule was changed.

Under both the common law rule and the statutory rule there is no room for a court to substitute its substantive opinion of the intent of parties where there is no factual basis to support such findings. The substance of an agreement must be undisputable. The focus of a court under the statutory rule, as under the common law rule, remains procedural; to correct obvious errors and omissions to avoid obvious injustice. In Horne, this Court gave substantial deference to the legislative intent that preceded the statute, citing several examples made by Rep. Lorin Pace during the 3rd reading of House Bill 218 which ultimately became § 30-4a-1. In each example cited by Rep. Pace, the instance of injustice focused on procedural errors and omissions [Horne at 248].

In the facts at bar, the required good cause does not exist that would have justified the Court below in issuing a nunc pro tunc order as prayed by Defendant. There is no question that the Court would have been required to make substantive presumptions if it had attempted to enter a nunc pro tunc order as prayed for by Appellant. Not only was there no signed agreement as required

by the old rule, there was not even a draft of a proposed agreement or order. All the court had to rely on, knowing that Respondent was not at the meeting the day the alleged agreement took place, was the self-serving testimony of Appellant, which on its face does not appear to be anything other than a subjective cry of foul from a man who has only had to pay child support and alimony when forced to by the State of Utah.

Appellant states that he agreed to drop charges of theft of his jeep and a federal income tax return as consideration for the agreement to drop alimony. While the assertion may have some remote resemblance to reasonableness on its face, when viewed under the totality of circumstances, it is, in fact, illusory. The Title to the jeep was in Respondent's name which allowed her to sell it; the income tax return was also made out in her name, along with her ex-husband. While nothing justifies her violation of the decree which awards the jeep to her husband, and nothing justified her signing his name to the check, the failure of Appellant to meet any of his obligations under the decree prior to the alleged agreement on November 28, 1973 had given rise to substantial claims in favor of Respondent that would have more than offset his claims against her had the issues been tried. What benefit was she receiving in turn for her agreement to drop alimony? If anything, she was forfeiting more than she could possibly have lost at trial, just for the privilege of giving up alimony and avoiding the threats made over the jeep and federal check. These facts as purported by Appellant, at close scrutiny,

lack any logical basis to support his conclusions.

In adopting a new standard of "good cause" as the statutory basis for nunc pro tunc, the legislature eliminated the old rule that prevented such an order where no signed order or agreement existed, even in the face of obvious injustice where no substantive dispute existed between parties and their intent was indisputable.

When a nunc pro tunc order was prevented under the old common law rule, where good cause existed, the intent of parties was clear and the injustice was blatant, simply because an order or agreement was not signed through procedural error, the lament of great legal minds has been shrill. Indeed, this Court in Horne cited to one of the more famous quotes of Justice Oliver Wendell Holmes paraphrased by Justice Crockett in his dissent to Daly v. Daly, 533 P.2d 884, 887 (Utah, 1975) as follows:

There is nothing more revolting to one's sense of justice than to have it asserted that something must be done that way because it was so laid down in the reign of Henry IV; and it is even more so, if whatever reason for doing it that way has long since vanished.

Obviously, under the old rule, the requirement of a signature to an order or agreement insured that a nunc pro tunc order did not involve substantive revisions or impositions by a court in making such an order. Though the old rule was effective in preventing a court from substituting its own judgment for that of the parties, it still prevented courts from making equitable changes where the intent of parties was absolutely clear but no signed order or agreement was present. By adopting the standard of "good cause", the legislature provided the needed statutory

relief that gave courts wider discretion to prevent "obvious injustices" [Horne at 248, emphasis added]. In Horne, after clearly enunciating the contrast between the common law rule and statutory requirements for nunc pro tunc orders, This Court reversed the trial Court's entry of a nunc pro tunc order because the nunc pro tunc order did not conform to the expressed language of the parties as had been read into the record, and eliminated any references to the tax consequences of property distribution under the divorce decree. This Court set aside the nunc pro tunc order, stating:

. . . the court either misunderstood the how critical the tax language was to the parties' agreement or substituted its own judgment for that of the parties, and it misused its nunc pro tunc powers to accomplish that aim. [Horne, at 249]

Accordingly, though courts now have wider discretionary powers to enter nunc pro tunc orders, such discretion does not include substantive changes that require a court to substitute its judgment for that of the parties. The new standard of "good cause" still requires that its meaning be determined on a case by case basis, in light of all the surrounding circumstances, as equity and justice require [Id. at 248]. The intent of the parties must be clear, and the order must be used to correct obvious injustice.

In the case at bar, Appellant cries injustice at having to pay 8 years of arrearages under the decree, which is all that the Respondent was legally able to pursue. In this instance, Appellant has confused injustice with inconvenience.

Injustice is having a valid decree where a party has refused

to obey a lawful court order with impunity, knowing that his ex-wife does not have the resources to chase him through court to enforce the order. Injustice is asserting detrimental reliance on purported agreement where nothing was given up in order to claim a substantial financial windfall. Injustice is playing dumb under the pretext of illiteracy when ample resources and time were, and are, available to insure that individuals are represented, and rights are protected. Injustice is relying on years of ignorant bliss as a basis for asserting a self-serving version of a purported agreement should replace a valid and enforceable decree, especially where a person has had ample time and resources to seek proper redress from an unjust decree, if in fact it is unjust.

Clearly, the Court below was correct in its inability to find good cause that would justify a nunc pro tunc order in this matter.

POINT NO. 2: THE COURT'S RULING IN LIGHT OF BROWN V. BROWN IS CORRECT, AND NOT INCONSISTENT WITH THE PROVISIONS OF § 30-4A-1 OF THE UTAH CODE ANNOTATED (1953) AS AMENDED.

In the Minute Entry of August 4, 1988 (Record, Page 89) and the subsequent Findings of Fact and Conclusions of Law entered by the Trial Court (Record, Page 135), substantial emphasis is placed on the ruling in Brown v. Brown, 744 P.2d 333 (Utah App. 1987) as the basis of its decision in favor of Respondent.

Brown was handed down by this Court on October 21, 1987, approximately 5 months after its decision in Horne. The rule of

law established in Brown is best stated in the Court's citation to 73 Am.Jur.2d Stipulations § 2 (1974) wherein it states:

. . . unless it is clear from the record that the parties assented, there is no stipulation, and it is provided in many jurisdictions, by rule of court or by statute, that a private agreement or consent between the parties or their attorneys, in respect to the proceedings in a cause, will not be enforced by the court unless it is evidenced by a writing subscribed by a party against whom it is alleged or made, and filed by the clerk or entered upon the minutes of the court. Any other rule would require the court to pass upon the credibility of the attorneys.

This Court goes on to cite the Utah Rules of Practice in District and Circuit Court and their conformity to the Statute of Frauds as further support for the stated requirements of a stipulation.

At first blush, the ruling in Brown seems to contradict the ruling in Horne, and the elimination of a required signature in Horne may have become a red herring that the Appellant would have us chase into the rationale of Brown. A closer look, however, reveals that the two cases are consistent, if not complimentary. In Horne, the discretionary powers of a court to enter a nunc pro tunc order to correct procedural errors and omissions are widened, while in Brown, the standards for assessing the substantive agreement between parties is clarified.

Like the case at bar, Brown involves a dispute over an alleged agreement that took place at a meeting between the parties and their counsel. Unlike this case, however, both parties in Brown were present, the alleged stipulation was recorded by a court reporter, and a written stipulation was sent to counsel for signature of the parties. This Court in Brown reversed the trial

court's order modifying the decree to conform to the agreement as it appeared on the court reporter's transcript and the proposed agreement because the putative stipulation was not evidenced by a writing subscribed by the parties or made orally in open court where a judge would have been involved and likely would have made inquiry of both parties.

Could the trial court have modified the decree in Brown without such a signature under a Horne nunc pro tunc order? The answer is obviously no, in light of all the circumstances. The key to understanding the procedural discretion of Horne in light of the apparent procedural restrictions imposed in Brown lies in this Court's concern for substantive agreement.

A nunc pro tunc order cannot make a past record speak the truth unless the modification is, indeed the truth. The concern of this Court in Brown, and Horne as well, is to determine the actual intent of the parties, without the imposition of a trial court's judgment on substantive issues. In Brown, this Court addresses the issue of substantive agreement by focusing on the common law and statutory requirements of a stipulation.

Basic to a valid stipulation is a meeting of the minds of those involved. The parties must have completed their negotiations in person or through their attorneys acting within the rules of agency. The agreement then is reduced to writing, signed and filed with the clerk or read into the record before the court. [Brown at 335]

Though the ruling in Brown does not necessarily define or limit what constitutes "good cause" to modify an order nunc pro tunc, it does establish the standard by which all substantive agreements, in nunc pro tunc cases and otherwise, will be viewed

to determine the intent of the parties.

In essence, the primary issue before this Court in the case at bar is whether or not the parties entered into an enforceable stipulation that would justify a nunc pro tunc order to modify the decree. Basic to that issue is whether or not there was a meeting of the minds between the parties. The record clearly indicates there was not.

In spite of Appellant's assertions about what constitutes good cause and how his rights have been impaired by the strict imposition of procedural requirements in Brown, all of which seem to trail through Appellant's brief like a knight in search of the Holy Grail, the one issue that Appellant has not, and cannot overcome, is the fact that there was no meeting of the minds on November 28, 1973, nor has there been since that time.

In spite of Plaintiff/Appellant's representation to the contrary, (Testimony of Wanda Bagshaw, Page 21 - Addendum Exhibit "F"), Appellant would have the Court believe that there really was a meeting of the minds based upon his version of the November 28, 1973 meeting, and upon a minute entry (Record, Page 23) that purports to verify such a meeting of the minds because "the alimony was the primary contention of the parties" (Appellant's Brief, Page 14). Since the minute entry makes reference to a pending stipulation, and since Appellant would never had agreed to continue alimony, the reference to a "pending stipulation" must mean that Respondent agreed to the demands of her ex-husband, even though she testified she never agreed, nor authorized her

attorney to agree. Obviously such reasoning is wholly without merit, and is as far from "good cause" as it can get.

Whether or not Rule 4.5(b) of the Utah Rules of Practice were in effect in 1973, the Statute of Frauds provisions found at § 25-5-4 of the Utah Code Annotated (1953) as amended, had been in effect in substantially the same form for almost a century. Here, the Appellant would have us modify a decree based upon his representations of an oral agreement that purportedly took place 15 years ago! [emphasis added] This is exactly the type of situation that the Statute of Frauds has intended to avoid since its earliest inception in our common law heritage.

In short, the principles set forth in Brown have been applied correctly to the case at bar. There was no meeting of the minds between the parties on November 28, 1973; nor has there been since. There is no testimony in the record that can reasonably infer that a meeting of the minds took place. There is no writing or record before the Court that specifies the substantive agreement, if any, that was purportedly reached on November 28, 1973. The Court below had no choice but to rule that an enforceable stipulation had not, and has not taken place so as to justify a nunc pro tunc order modifying a valid decree in this matter.

POINT NO. 3: RESPONDENT SHOULD BE AWARDED COSTS AND ATTORNEY'S FEES INCURRED IN THIS APPEAL.

There is ample evidence in this matter that Respondent has been, and continues to be, financially unable to bear the cost of enforcing her rights under the decree. At the outset of the

divorce, Respondent was required to sign an affidavit of impecuniosity to have the complaint served (Record, Page 5); she testified at the hearing in this matter in July 1988, that she sold the jeep and took the check in 1973 because of Appellant's refusal to give her any money under the decree (Testimony of Wanda Bagshaw, Page 21-23); she testified that she was on welfare until 1981, and had to return to welfare briefly in 1984 (Id. at 17); and that she has made approximately \$4.00 per hour since going off assistance in 1985 (Id. at Page 25).

Throughout the period of time since the decree was entered in 1973, Respondent has never received child support payments or alimony payments from Appellant (Id. Page 18); and even though she has received a judgment in the amount of \$19,400 from the Court below, it still represents substantially less than what she would have received had Appellant paid alimony as required by the decree. In short, Appellant has ignored the Court order in this matter for over 15 years, knowing that Respondent's financial position, compounded by his refusal to provide any support to her at all, severely limited her ability to pursue Appellant through Court to enforce the decree.

Counsel for Respondent has testified, without objection from counsel for Appellant, that his fees are reasonable and within the prevailing rate in Salt Lake City (Id. at Pages 39-40) and pursuant to the affidavit of counsel (Addendum Exhibit "F") Respondent has at the time of filing this brief, incurred costs and fees of approximately \$4,200 based on over 40 hours of research,

drafting and preparation for this appeal which was necessary to preserve Respondent's judgment. This Court is justified in awarding attorney's fees and costs because the need for such award has been supported by the evidence in this matter, the hourly billing rate is clearly within the prevailing rate in Salt Lake City, and Respondent's need is more than reasonable in light of all the facts in this case [Newmeyer v. Newmeyer, 745 P.2d 1276 (Utah 1987); see also Huck v. Huck, 734 P.2d 417, 419 (Utah 1986); and Beals v. Beals, 682 P.2d 862 (Utah 1984)].

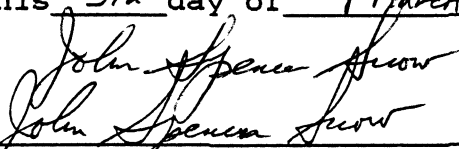
CONCLUSION

The Court below in this appeal was correct in awarding Respondent a judgment in the amount of \$19,400 for alimony due under the decree that was entered herein on January 10, 1973. Appellant has not, and cannot, show good cause for a nunc pro tunc order modifying the decree as of November 28, 1973, because there was never a meeting of the minds with regard to such meeting. The omissions and errors following the November 28, 1973, if any do exist, would go far beyond simple procedural error, and would require substantive interference by a court in order to accomplish what Appellant seeks in this appeal. Further, there is no written record, no oral record made before the court, and no signed stipulation that would make such an alleged agreement enforceable in light of the Statute of Frauds and the rule set down in Brown.

Finally, the record clearly shows all of the elements necessary to find that Respondent is entitled to, and should be awarded,

costs and attorney's fees incurred in this appeal.

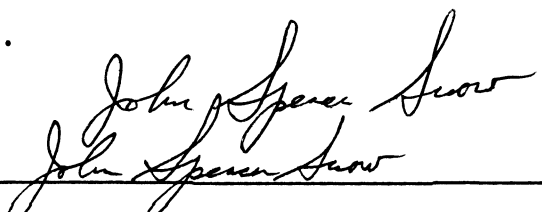
RESPECTFULLY SUBMITTED this 3rd day of March, 1989.



JOHN SPENCER SNOW
Attorney for Plaintiff/Respondent

Certificate of Delivery

I hereby certify that I caused to be delivered 4 true and correct copies of the foregoing Brief of Respondent to Randall Gaither, Esq., Attorney for Defendant/Appellant, at 321 South 600 East, Salt Lake City, Utah 84102, this 6th day of March, 1989.



ADDENDUM

The text of § 25-5-4 of the Utah Code Annotated (1953) as amended, is as follows:

25-5-4. Certain agreements void unless written and subscribed.

In the following cases every agreement shall be void unless such agreement, or some note or memorandum thereof, is in writing subscribed by the party to be charged therewith:

- (1) Every agreement that by its terms is not to be performed within one year from the making thereof.
- (2) Every promise to answer for the debt, default or miscarriage of another.
- (3) Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry.
- (4) Every special promise made by an executor or administrator to answer in damages for the liabilities, or to pay the debts, of the testator or intestate out of his own estate.
- (5) Every agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation.

The text of § 30-4a-1 of the Utah Code Annotated (1953) as amended, is as follows:

30-4a-1. Authority of court. A court having jurisdiction may, upon its finding of good cause and giving of such notice as may be ordered, enter an order nunc pro tunc in a matter relating to marriage, divorce, legal separation or annulment of marriage.

1 decree of divorce by the Court?

2 (A) No.

3 (Q) Okay. Now, with regard to Mr. Bagshaw, what is
4 your own personal knowledge about his ability to read
5 and write?

6 (A) Well, he's always signed papers when we've bought
7 things. He used to have a subscription to the Outdoor Life
8 that he read. He used to read all the proclamations and
9 he used to write to me when he was in the service.

10 Q In regard to your divorce decree, it also provides he
11 is to pay medical and dental expenses, that is, if there
12 are any. Did he pay anything at all that was not covered
13 by insurance?

14 A No.

15 (Q) Have you ever verbally agreed either with your
16 attorney, Mr. Bagshaw, or anyone, to waive that alimony
17 provision?

18 (A) No.

19 (Q) Did you ever authorize Mr. Haycock to enter into
20 negotiations to terminate alimony for you?

21 (A) No.

22 (Q) In regard to your subsequent -- to your divorce
23 decree and after it was entered by the Court, did you make
24 any appearances in court on the decree, other than the one
25 time you mentioned in November of 1973?

SPENCER L. HAYCOCK
Attorney for Plaintiff
731 East South Temple
Salt Lake City, Utah 84102
Telephone: 322-3551

JAN 10 1973

W. Charles Lewis, Clerk and Dist. Court
D. J. *Edgar*
Notary Public

IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

WANDA MARIE SACKETT BAGSHAW,)
Plaintiff,) APPEARANCE AND WAIVER
-vs-)
JOSEPH ARTHUR BAGSHAW,) Civil No. *C 1775*
Defendant.)

COMES NOW Joseph Arthur Bagshaw, Defendant in the above
entitled case, and acknowledges the receipt of a copy of the
Plaintiff's Complaint on file herein, and waives time in which to
plead or otherwise answer said Complaint and agrees that the
Plaintiff may apply to the Court for a default at any time without
further notice.

DATED this 11 day of November, 1972.

Joseph Arthur Bagshaw
JOSEPH ARTHUR BAGSHAW, Defendant

STATE OF UTAH)
: ss.
County of Salt Lake)

On this 4th day of ~~November~~ *December*, 1972, personally appeared
before me JOSEPH ARTHUR BAGSHAW, the signer of the foregoing instru-
ment, who duly acknowledged to me that he executed the same.

Sylvia G. West
NOTARY PUBLIC
Residing in ~~Salt Lake County~~, Utah
St. George

My Commission Expires:

10-20-75

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/ /

1 THE COURT: Mr. Bagshaw, I'm going to ask you, please,
2 to scoot up close to the mike. Speak right into it so we can
3 hear you.

4 THE WITNESS: Yes. I was in St. George at the time
5 and we talked on the phone and at that time she had said
6 all she wanted was a quick divorce and child support and that
7 was it and the furniture in our trailer house that we had
8 down in St. George, and I says, "Yes, you can have it all,"
9 and I says, "You'll have to mark on it or tell me where to
10 sign," and so she did and that's what I did. I signed where
11 she told me to sign on the paper.

12 Q And after the signing, did you deliver that paper to
13 her?

14 A No, it was sent back to her, but with a mailing, you
15 know, an envelope that she had filled out and I just sent it
16 to her, you know, by putting stamps on it.

17 Q What was your understanding at the time concerning
18 the Divorce decree and alimony, if any?

19 A There was nothing said about alimony in any way or
20 form.

21 Q Did there come to your attention sometime in the
22 future information that maybe the divorce decree provided
23 for alimony?

24 A Yes. My brother had read it to me. It was after the
25 divorce. He had said, "Hey, do you know that you are paying

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/ /

1 A Yes.

2 Q And when did you go to court?

3 A On November 28th of '73.

4 Q You were present in court on that day?

5 A I met with the lawyers in the hall and then I was
6 dismissed.

7 Q Did you receive a later phone call that day?

8 A Yes.

9 Q And Mr. Haycock called you up from the court?

10 A Well, I don't know if he was at court. I think he
11 was home because I called him.

12 Q I'm going to show you what's been marked as
13 Defendant's Exhibit Number 1 and ask if you can identify
14 the signature on this document, which we'll call for
15 purposes of the record the assignment of collection of
16 support payments.

17 A That's my signature.

18 Q Did you sign it about the time it's dated, January
19 the 10th, 1972?

20 A Uh-huh (affirmative).

21 Q Did you leave the original of this document with the
22 Office of Recovery Services?

23 A Yes.

24 MR. GAITHER: At this time I would offer Defendant's
25 Exhibit Number 1.

IN THE UTAH COURT OF APPEALS

WANDA MARIE SACKETT BAGSHAW, :
Plaintiff/Respondent, : AFFIDAVIT OF COUNSEL
 : Case No. 880647-CA
vs. :
 : Priority Classification
JOSEPH ARTHUR BAGSHAW : No. 14b
Defendant/Appellant. :

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

JOHN SPENCER SNOW, first duly sworn upon his oath, deposes
and states as follows:

1. That he is counsel for Respondent in the above-captioned
matter;

2. That the matters testified to herein are based upon his
own personal knowledge;

3. That it was necessary to expend approximately 42 hours
to research issues, draft arguments and prepare the Respondent's
Brief in this appeal as of the time of filing Respondent's brief;

4. That since the trial in this matter, the affiant has
raised his legal fees to \$100 per hour, which rates are commensurate
with rates normally found for such legal services in Salt Lake
City, Utah;

5. That Respondent has incurred approximately \$4,200 in
fees in responding to this Appeal;


6. That in the legal opinion of the Affiant, Respondent's
incurring of such fees was necessary to preserve her judgment

7. That the Respondent is not capable of paying all of her fees without incurring substantial financial hardship on herself;

8. That Respondent is in need of an order from this Court awarding costs and attorney's fees incurred as of the date of the decision in this appeal.

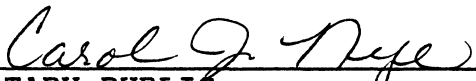
9. Further, the affiant sayeth naught.

DATED this 3rd day of March, 1989



JOHN SPENCER SNOW
Attorney for Respondent

SUBSCRIBED AND SWORN TO before me this 3rd day of
March, 1989.



NOTARY PUBLIC
Residing at: Davis County, Utah
My Commission Expires: 6/17/89

Seal