1979

Shirley West Chandler v. Calvin D. West : Respondent's Brief

Utah Supreme Court

IN THE SUPREME COURT

OF THE STATE OF UTAH

SHIRLEY WEST CHANDLER,

Plaintiff and Respondent,

v.

CALVIN D. WEST,

Defendant and Appellant.

Case No. 16123

RESPONDENT'S BRIEF

Appeal from the Judgment of
the Third Judicial District Court of Salt Lake County
Honorable Maurice Harding

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NATURE OF THE CASE

This is an appeal from an Order requiring defendant to make monthly payments, to be applied to mortgage payments on the home, pursuant to the terms of a Decree of Divorce. The Order arose from a hearing on plaintiff's order to show cause relating to said monthly payments.

DISPOSITION IN LOWER COURT

The Third District Court of Salt Lake County, State of Utah, Honorable Maurice Harding, ordered the defendant to continue making monthly payments to plaintiff pursuant to the terms of paragraph 2 (R. 75) of Decree of Divorce "until such time as plaintiff has received from defendant principal payments equal to the outstanding principal balance on said mortgage on the date hereof." (R. 115) The defendant was also ordered to pay unpaid installments amounting to $569.04. The court held that the monthly payments were part of a property settlement (R. 147) and were, therefore, not affected by the subsequent remarriage of plaintiff or her sale of the home

awarded to her. The court did make an equitable adjustment in the amount of the monthly payment, noting that the amount stated in paragraph 2 ($176.50) included taxes and fire insurance which defendant was not obligated to pay.

STATEMENT OF FACTS

On March 28, 1976 plaintiff filed a Complaint for Divorce. (R. 2-4) On April 9, 1976 defendant answered, asking that the Complaint be dismissed and denying certain allegations made in the Complaint. Pursuant to plaintiff's Order to Show Cause, a hearing was heard on May 19, 1976, which resulted in issuance of an Order granting plaintiff the use of the home and requiring defendant to pay all bills, including the mortgage payment, during the pendency of the action. (R. 52-53)

On January 5, 1977 the parties entered into an agreement entitled Stipulation, Waiver and Property Settlement for Divorce. (R. 64-67) Pursuant to the terms of the Stipulation, defendant was to be awarded certain real property in Florida purchased in January, 1972 for $3,500. (R. 33) Defendant indicated that the present value of the property was unknown (R. 33), while plaintiff estimated the value at approximately $7,500. Defendant was also to be awarded the parties 1973 Volkswagon van, purchased for approximately $6,400 (R. 17), and certain items of furniture pursuant to the agreement between the parties. (R. 65)

Defendant was also to be awarded another major item of property (R. 69), which was his interest in a retirement plan sponsored by Prudential Insurance Company through his place of

employment at the Department of Employment Security of the State of Utah. (R. 66) Attached to the Stipulation was a document entitled Summary of Retirement Plan Features (R. 90-99), which provided a summary of the benefits available pursuant to the plan.[1/]

The Stipulation provided that plaintiff should be awarded the home in Utah, estimated by plaintiff to be worth $46,000 with a mortgage indebtedness of $13,653.46. (R. 16) The agreement stated, in paragraph 2, that defendant "shall make all mortgage payments on said property and shall pay off and satisfy any and all liens presently in existence on the property." (R.64) Plaintiff was also to receive the 1975 Mustang car, certain household furniture, fixtures and appliances already in her possession and alimony in the amount of $300 per month. (R. 65)

1/ Plaintiff calculates the present value of defendant's retirement plan interest as of the date of the original Decree of Divorce at approximately $174,583.94. The amount was computed as follows: (1) the defendant contributed $2,060.24 to the retirement plan in 1976 (R. 32), and $2,121.84 in 1977. (R. 90) Since retirement contributions are 7% of base pay (R. 90), defendant's base pay was $29,432 in 1976 and $30,312 in 1977. (2) According to Sections 4 and 5 of the Summary of Retirement Plan Features, defendant's non-forfeitable retirement plan benefit at the time of the Decree was approximately $16,336 per year, which is computed by multiplying base earnings ($29,000) by 2% times all years of credited service. The resultant figure was then reduced by 6% pursuant to the requirement of Section 5(c) of the Summary because defendant was 52 years old at the time of issuance of the Decree. (R. 31) (3) The defendant, had he retired in 1977, would have had the right to receive approximately $16,356 per year for his life expectancy. Assuming a 25-year life expectancy, the total benefit would be $408,900. The present value of the right to receive said benefits, assuming an 8% interest rate, is $174,583.94.

On January 25, 1977, the matter came before the court for hearing, with plaintiff appearing in person and with counsel and defendant waiving appearance. Based on said hearing, a Decree of Divorce was executed on February 9, 1977, incorporating the basic items of the Stipulation, Waiver and Property Settlement. (R. 74-75)

Beginning in August, 1977, defendant stopped paying the monthly property settlement payments; and plaintiff filed an Order to Show Cause on November 14, 1977, requesting that defendant be directed to pay the unpaid mortgage payments and to pay all future mortgage payments as they accrued. (R. 104) Defendant filed an Affidavit on December 20, 1977 alleging that he intended the monthly obligations to be in the nature of support which should terminate on plaintiff's remarriage. (R. 107-108) Defendant also argues in his brief that he filed a Motion to Set Aside and/or Modify Decree, although this clearly did not take place prior to the hearing on plaintiff's petition because the filing date is February 9, 1979. (R. 164-166)

A detailed hearing was held on these matters on January 26, 1978. The court ruled that the mortgage payments were part of a property settlement and not in the nature of support, noting in making the determination, that the alimony was separately stated in the Decree. (R. 22) The court's Order (R. 115-116), directs the defendant to pay the unpaid installments of the mortgage payments and to continue to make such payments until principal payments equal to the outstanding principal balance on the home have been paid to plaintiff.

However, the court did exercise its equitable powers to modify the property settlement to a $122.06 monthly amount because the original $176.50 monthly amount included taxes and fire insurance which the court determined were not intended in the original Decree.

Defendant has now appealed to this court. (R.117)

INTRODUCTION

The trial court properly issued its Order filed September 28, 1978 (R. 115-116), for the following three reasons:

1. The monthly mortgage payments required of defendant constituted part of the property settlement between the parties;

2. Plaintiff has not proven a change in circumstances of the magnitude necessary to warrant any additional modification of the property settlement; and

3. Although the original Decree of Divorce was based on a Stipulation of the parties, the Decree was the product of the trial court in exercising its equity jurisdiction and the subsequent Order issued on review of the Decree does not fail due to a mistake and misunderstanding of the parties.

In its brief, plaintiff urges this court to reverse or modify the Order on these grounds:

(1) That the monthly payments, to be applied toward the mortgage, were in the nature of support and terminated upon plaintiff's remarriage and sale of the property;

(2) That if the court finds the monthly payments to be part of a property settlement, it should exercise its equitable jurisdiction to modify the agreement due to a material change of circumstances; and

(3) That, in the alternative, the court find that the provisions of the Decree are founded upon a stipulation containing a material mistake requiring a remand for litigation regarding the mortgage payment issue.

In this brief, plaintiff, Shirley West Chandler, demonstrates that defendant's arguments are unsupported by authority and that the trial court's Order was correct and should be affirmed.

POINT I

THE MONTHLY PAYMENTS MADE BY PLAINTIFF, TO BE APPLIED TO THE MORTGAGE PAYMENTS, WERE PART OF A PROPERTY SETTLEMENT.

Defendant's principal challenge to the Order of the trial court relates to paragraph 2 of the Decree of Divorce:

> 2. That the Plaintiff be and she hereby is awarded the parties' home located at 2646 Dolphin Way, Salt Lake City, Utah, as her sole and separate property, free and clear of any claim or interest of the Defendant. Defendant be and he hereby is ordered to make all mortgage payments on said property and to pay off and satisfy any and all liens on the property, if any exist. The Defendant be and he hereby is additionally ordered to pay the Plaintiff the sum of One Hundred Seventy Six Dollars and Fifty Cents ($176.50) each month, commencing immediately, to be applied to the mortgage payments on said home.

(R. 75)

The basis of the Order dated September 28, 1978 is the trial court's determination, made after a detailed hearing with the parties and counsel, that the above paragraph requires

defendant to make payments of principal to plaintiff in an amount equal to the outstanding mortgage on the home, whether or not the home is sold. This Court has consistently held that the trial court in a divorce action has considerable latitude of discretion in adjusting financial and property interests and that his findings and judgment should not be upset unless the evidence clearly proponderates against them or unless the decree or order works such an injustice that equity and conscience demand that it be revised. (Christensen v. Christensen, 21 Utah 2nd 263, 444 P.2d 54 (1968); English v. English, 565 P.2d 409 (Utah, 1977); Hanson v. Hanson, 537 P.2d 491 (Utah, 1975)) Slaughter v. Slaughter, 18 Utah 2d 274, 421 P.2d 503 (1966). In short, the party appealing from such an order has the burden to prove there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error; or the evidence clearly preponderated against the findings; or such a serious inequity has resulted as to manifest a clear abuse of discretion. Defendant has proven none of the above.

It is not necessary, however, to rely on the fact that the trial court did not make any of the serious errors set forth by this Court as grounds for setting aside a trial court's order or decree in a divorce matter. Evidence in the record supports the trial court's determination that the paragraph 2 language constitutes a property settlement obligation of the defendant. Defendant was ordered to "pay all mortgage payments on said property and to pay off and satisfy

any and all liens on such property, if any exist." (Emphasis added) Can the trial court be accused of misinterpreting paragraph 2 when it concluded that "all" meant the entire outstanding mortgage amount?

Defendant in his brief gives emphasis to the phrase "if any exist" at the end of the second sentence of paragraph 2. (Brief for Appellant at 5) Reference to paragraph 6 of the Findings of Fact (R. 69) and to paragraph 2 of the Stipulation indicates that defendant is drawing undue inferences from such phrase, which was not included in either of the above-named paragraphs. The interpretation of the sentence is simple and clear: the defendant is to pay all mortgage payments and he is to pay any existing liens.

Defendant's principal contention is that plaintiff's remarriage and the sale of the home somehow relieve defendent of his obligation. Remarriage is not a basis for relief from a property settlement obligation. In addition, the record provides no indication that the payments should terminate with the sale of the home. In fact, paragraph 2 requires the defendant to make "all" mortgage payments. The mortgage must be "paid" whether or not the home is sold.

But, argues defendant, treating the monthly payments as support results in a more rational result. (Brief for Appellant at 6) Assuming for the sake of argument that an ambiguity existed in the original Decree, defendant's own argument, based on Smith v. Smith, 351 P.2d 142 (Wash., 1960), that this Court should interpret the provision so as to lead to

a rational result proves fatal to his case. When the value of defendant's retirement plan interest is added into the property distribution totals, defendant, even after paying off the mortgage, receives a net property settlement of approximately $169,500, whereas the plaintiff will receive approximately $60,000. The defendant surely cannot expect this Court of equity to adopt its tortured interpretation of paragraph 2 then, in addition, terminate defendant's payment obligation which would result in a property settlement disparity of $136,500 ($182,500 for defendant and $46,000 for plaintiff). The rational interpretation is that the trial court awarded to plaintiff the entire value of the home; the monthly payment were provided to avoid burdening defendant with a large lump-sum payment requirement.

After making the rationality argument, supra, which plaintiff has demonstrated to be fallacious, defendant observed that he may have another hurdle to cross even if this Court finds the monthly payments to be in the nature of support. That is, as summarized in defendant's brief, the general rule in the majority of jurisdictions, in cases where the parties make one agreement which settles support and property rights, is that where the agreement's provisions for support are an integral and inseparable part of the property settlement, as where the payments are in consideration for a transfer of property, a decree based on that agreement cannot be modified with respect to support. (Brief for Appellant at 7; see, also, 61 ALR § 19(a) p.590 which cites Callister v. Callister, 1 Utah

2nd 34, 261 P.2d 944 (1953) as holding or recognizing the rule) In his brief defendant has cited a number of cases from foreign jurisdictions which set forth the test for determining whether support provisions are "separable" or "inseparable." (Brief for Appellant at 8-10) Defendant concludes that:

> The critical element in determining whether such payments were part of an integrated property settlement, and therefore non-modifiable in the majority of jurisdictions, is whether the agreement to make such payments was made in return for a relinquishment of property rights of similar value by the other party.

(Brief for Appellant at 10)

Applying the rule to the present case, defendant concludes that:

> the greatly disportionate share of the property received by plaintiff is a strong indication the monthly payments of $176.50 were in the nature of support, . . ., and were not part of an integrated property settlement.

(Brief for Appellant at 10)

Unfortunately for defendant, when the true values of the properties are evaluated, after inclusion of the value of defendant's $175,000 retirement property right, the conclusion is reversed. That is, defendant's own test indicates that the monthly payments, if support, were part of an integrated property settlement and hence non-modifiable.

In brief summary, defendant, in effect, is asking this Court to make four determinations in order to reach the conclusion that the monthly payments should be terminated. The Court must determine:

(1) that the paragraph 2 monthly payment language requiring defendant to make all payments on the mortgage is ambiguous;

(2) that the trial court in interpreting paragraph 2 was guilty of an abuse of discretion;

(3) that the rational interpretation of the paragraph is to treat the monthly payments as support payments, which terminate with plaintiff's marriage, leaving plaintiff with $46,000 in property and defendant with $182,500 in property; and

(4) that the "support" payments were not part of an integrated property settlement despite the fact that the actual property distribution clearly indicates an integrated settlement under the test set forth by defendant.

POINT II

PLAINTIFF HAS NOT ALLEGED OR PROVEN SUBSTANTIAL CHANGE IN CIRCUMSTANCES NECESSARY FOR MODIFICATION OF PROPERTY SETTLEMENT.

Defendant argues in his brief that pursuant to power granted in Utah Code Ann. § 30-3-5 (1975), this Court (and the trial court) has the power to modify a property settlement under a decree of divorce upon a proper showing of change of circumstances. In support of his argument defendant cites two Utah cases.

Plaintiff agrees with defendant's conclusion, stated in his brief, that the general rule in the majority of jurisdictions is that the property settlement portion of decrees are unmodifiable. (Brief for Appellant at 7) Plaintiff also agrees that a Utah court has the authority, pursuant to Utah Code Ann. § 30-3-5 (1975), to modify certain property settlement provisions. The cases cited by defendant

indicate that a Utah court can modify the property settlement portion of a decree, when circumstances justify, if a property settlement agreement between the parties was not the basis of the property distribution portion of the decree.

It is far from clear that Utah courts have authority to modify the property settlement portion of a decree which is based on a property settlement agreement of the parties. Callister v. Callister, 261 P.2d 944 (Utah, 1953) is the principal Utah authority on the issue. In Callister, cited by defendant in his brief, the defendant was challenging a trial court ordered reduction in alimony payments from $400 per month to $250 per month due to changed circumstances. This Court, referring to Utah Code Ann. § 30-3-5 (1953), which is substantially similar to the current statute, held that the alimony was modifiable. However, this Court took great pains to clarify that the payments were not in settlement of property rights and quoted with approval the following language from a California case:

> This does not mean that payments under property settlement agreements may be modified even though incorporated in the decree. They may not. (citing cases). But in such situation there is not the same underlying policy. The settlement of property rights should be final in order to secure stability of titles.

Callister, supra, 261 P.2d at 948.

A consideration of the two cases cited by defendant in his brief provide no assistance in clarifying the Utah rule when a property settlement agreement between the parties is involved. Neither case involved a property settlement

agreement. In fact, each case supports plaintiff's contention that the Utah courts rarely modify property settlement provisions of decrees even when property settlement agreements are not involved. The case of Iverson v. Iverson, 526 P.2d 1126 (Utah, 1979), contains dicta to the effect that the court has the power to take property from one spouse and award it to another where the interests of justice so require. However, no cases were cited to support this claim and in fact, the Iverson case, itself, did not result in a modification of the original property settlement. In Dixon v. Dixon, 240 P.2d 1211 (Utah, 1952), this Court again considered it property redistribution powers. The original decree in Dixon awarded rental property to the plaintiff, but further provided that in the event the plaintiff failed to make the remaining payments on the mortgage, the defendant had the right to make said payments and acquire the property. When the defendant later made said payments due to an illness-related inability of the plaintiff to pay, this Court was requested to determine whether the terms of the original decree would be enforced to require plaintiff to deed the rental property to defendant. This Court referred to its power to modify property distribution provisions of decrees under the Utah Code Ann. § 40-3-5 (1943), but when specific reference was made to the property issue, the Court concluded that the property provisions of the original decree were not intended to take effect if the inability of plaintiff to pay off the indebtedness was due to her mental or physical health. In other words, no modification powers were actually exercised.

If this Court finds that the Utah rule will allow modification of property distribution provisions based on property settlement agreements, then it must agree that such modifications are to be made only when a substantial change of circumstance has occurred. Kessimakis v. Kessimakis, 580 P.2d 1090 (1978); English v. English, 565 P.2d 409 (1977). The defendant has clearly not met his burden of proving such substantial change in circumstance. In fact, Point II of defendant's brief indicates simply that plaintiff has sold her interest in the home for $60,000 and defendant has been relieved of his $300 per month alimony obligation. (Brief for Appellant at 11) According to the facts set forth in defendant's own brief, the home was valued at approximately $46,000 at the time of the decree in January of 1976. So the net change of circumstances is an increase in home equity of $14,000 to plaintiff and a decrease of $300 per month in defendant's obligation. No mention is made of relevant changes in defendant's financial condition. For the information of the Court, the sale of the home in July, 1977 was by contract, meaning that plaintiff was not relieved of her obligation under the mortgage. However, in November of 1978 plaintiff was paid off on the contract, at which time she paid the remaining balance on the mortgage.

Defendant in his brief failed to include in the change of circumstance summary any facts regarding defendant's pension benefits. Plaintiff contends that such rights were worth approximately $175,000 at the time of the Decree of Divorce and

have undoubtedly increased in value as defendant nears age 55. If the $175,000 figure is added to defendant's alleged $5,500 deficit after paying the mortgage payments (Brief for Appellant at 12), defendant still is receiving net property of $169,500, while plaintiff is receiving property of $60,000; hardly an inequitable distribution for defendant. This Court, recognizing the inequity of defendant's argument, should confirm the Order of the trial court.

POINT III

A STIPULATION IN MATTERS OF DIVORCE, CUSTODY AND PROPERTY RIGHTS IS ONLY ADVISORY TO THE COURT WHICH MUST WEIGH ALL FACTS AND CIRCUMSTANCES TO FASHION A JUST AND EQUITABLE DECREE.

Defendant contends that the Decree of the trial court was founded upon a stipulation containing a material mistake and misunderstanding regarding mortgage payments. Defendant further argues that based on the traditional mistake theory in contracts, the mortgage payment portion of the Decree should be rescinded and the case remanded for reconsideration by the trial court.

Although plaintiff contends that no such mutual mistake occurred in the Stipulation, it is plaintiff's further contention that the Stipulation was only advisory to the trial court, which had the clear duty to weigh all facts and circumstances in fashioning an equitable Decree. This Court has consistently held that the trial court in a divorce proceeding is not bound by the terms of an agreement or stipulation of the parties. Naylor v. Naylor, 563 P.2d 184

(Utah, 1977); Pearson v. Pearson, 561 P.2d 1030 (Utah, 1977); Klein v. Klein, 544 P.2d 472 (Utah, 1975); Christensen v. Christensen, 18 Utah 2d 315, 422 P.2d 534 (1967); Mathie v. Mathie, 12 Utah 2d 116, 363 P.2d 779 (1961). In Klein, supra, the plaintiff challenged entry of a supplemental decree adjusting the finance and property interests of the parties. The supplemental decree was necessary to make final determinations left open by the original decree and was based on a stipulation of the parties. Plaintiff contended on appeal that he should not be bound by the stipulation because he either did not understand and/or was subject to duress in agreeing to the Stipulation, or his agreement was timely and properly withdrawn. This Court responded:

> It is the established rule that a stipulation pertaining to matters of divorce, custody and property rights therein, though advisory upon the court and would usually be followed unless the court thought it unfair or unreasonable, is not necessarily binding on the court anyway. It is only a recommendation to be adhered to if the court believes it to be fair and reasonable. In addition to all of the foregoing, there is no reason that the trial court cannot consider what was proposed by the parties as a stipulation, and what was said by them or their counsel about it, as part of the total facts and circumstances upon which to fashion what in his judgment is a just and equitable decree.

Klein, supra, at 544 P.2d 476.

Later, in Naylor v. Naylor, 563 P.2d 184 (Utah, 1977), this Court again emphasized the latitude and discretion granted to a trial court in disposition of property. By the terms of the decree of divorce in Naylor, the parties were each awarded an undivided one-half interest in all of the real property. Later, by agreement, the parties adjusted the ownership on

certain of the properties between themselves. A subsequent sale of the properties resulted in one party receiving the bulk of the sale proceeds. This Court upheld an order of the trial court awarding the proceeds of the sale of the real property on the basis of one-half each pursuant to the prior terms of the decree of divorce, noting that:

> It is the court's prerogative to make whatever disposition of property as it deems fair, equitable and necessary for the protection and welfare of the parties, and the court need not necessarily abide by the terms of an agreement of the parties.

Naylor, supra, at 563 P.2d 185.

The distinction between the normal rule of contracts and the rule which governs contracts presented to a divorce court, which defendant fails to understand, is admirably stated in a case from a neighboring jurisdiction. In Anthony v. Anthony, 94 C.A.2d 507, 211 P.2d 331 (1949), the court was requested to modify a property settlement agreement which was never made part of a divorce decree. The court, in reaching its holding that the settlement agreement must be construed according to the ordinary rules of contracts, stated:

> It is fundamental that the jurisdiction of a court to modify a property settlement, even assuming that it could decide that what purported to be a property settlement agreement was meant and intended to be alimony, would be derived from its original jurisdiction in the divorce action. Here, the property settlement agreement was never made part of a divorce decree.

Anthony, supra, at 211 P.2d 334. The court then observed:

> There is a marked distinction between the rule which governs in an action, other than divorce, on a contract executed under authority of sections 158 and 159 of the Civil Code and the rule which governs such contracts when presented to a divorce court. In the former instance,

> they are judged by the same rules as any other ordinary contract between individuals occupying fiduciary relations, and, if found to be valid, are binding on the parties and are recognized and enforced by courts; while in the latter instance, because of the unlimited power vested in the divorce court to make disposition of community property and to award support, such contracts, when pleaded and relied upon, are not binding or conclusive on the divorce court until subjected to examination of the court in the divorce action and approved.

Anthony, supra, at 211 P.2d 334.

The trial court reviewed and found reasonable the terms of the Stipulation of the parties before incorporating said terms in the Decree of Divorce. Subsequently, that court again reviewed the mortgage payment provision, determining the provision to be part of the property settlement between the parties and ordering continued payments. That determination, based on the court's review of all the facts and circumstances, including defendant's mistake argument, should be affirmed unless this Court finds that the determination works a manifest injustice or inequity as to indicate a clear abuse of discretion. English v. English, 565 P.2d 409 (Utah, 1977); Naylor v. Naylor, 563 P.2d 184 (Utah, 1977); Hanson v. Hanson, 537 P.2d 491 (Utah, 1975).

CONCLUSION

Defendant has failed to meet its burden of showing the trial court's Order erroneous.

First, defendant has failed to prove any misapplication of law or abuse of discretion by the trial court in its interpretation of paragraph 2 or in its subsequent Order to the defendant to continue payment of the monthly mortgage obligation.

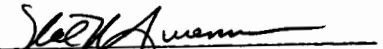
Second, the defendant has failed to prove authority for his contention that this Court has jurisdiction to modify property settlements which are based upon agreement between the parties. Assuming this Court finds such property settlements modifidable, the defendant has not proven a substantial change of circumstance necessary for modification. In fact, plaintiff has demonstrated that an equitable resolution requires affirmation of the trial court's Order.

Third, the defendant is incorrect in asserting that a decree, founded upon a stipulation containing a material mistake and misunderstanding, fails in the same manner as a contract. Plaintiff has convincingly demonstrated that this is not the law in Utah. The Decree of Divorce was the product of the trial court. It has subsequently been interpreted by the trial court. The Order of the trial court should not be modified except upon a finding of abuse of discretion or gross inequity.

IT IS THEREFORE RESPECTFULLY SUBMITTED that the Third Judicial District Court for Salt Lake County committed no error, and that its Order against defendant Calvin D. West in favor of Shirley West Chandler be affirmed.

Respectfully Submitted,

FABIAN & CLENDENIN

By 

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HAND DELIVERY CERTIFICATE

I do hereby certify that a true and correct copy of the foregoing Respondent's Brief was hand delivered to JoAnn Blackburn, Mooney, Jorgensen & Nakamura, 352 South 300 East, Suite 3, Salt Lake City, Utah 84111, on this 17th day of May, 1979.

Tony Hellstrom