

2001

# Dawna Eastman v. Glenn W. Eastman : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

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J. Reuben Clark Law School

IN THE SUPREME COURT OF THE STATE OF UTAH

DAWNA EASTMAN,

Plaintiff-Respondent,

-vs-

GLENN W. EASTMAN,

Defendant-Appellant.

CASE NO. 14394

BRIEF OF RESPONDENT

Appeal from a Judgment of the District Court  
of Salt Lake County

Honorable Stewart M. Hanson, Sr., Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

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DAWNA EASTMAN,

Plaintiff-Respondent,

vs.

CASE NO. 14394

GLENN W. EASTMAN,

Defendant-Appellant.

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BRIEF OF RESPONDENT

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NATURE OF THE CASE

On July 7, 1972, the Honorable Joseph G. Jeppson, Judge of the Third District Court of Salt Lake County, granted the Respondent a Default Divorce. Findings of Fact, Conclusions of Law and Judgment were entered on that date. Subsequently, it was agreed that the matters of alimony, attorney's fees, support money, and property could be reheard before the Honorable Judge Jeppson at his convenience. This matter was continued from time to time at the request of the appellant. Three and a half years later, the matter came before the Honorable Stewart M. Hanson, Sr. for hearing on the matters reserved to be heard before Judge Jeppson. On November 12, 1975, all parties appeared in Court. Respondent and Appellant testified and other evidence was adduced. After due consideration,

the Honorable Stewart M. Hanson, Sr. entered a Judgment awarding the duplex located at 155-157 Paxton Avenue, Salt Lake City, Utah, to the Appellant, free and clear of any claims of the Respondent.

The Court awarded the home of the parties at 3294 Breeze Drive, Magna, Utah, to the Respondent, free and clear of any claims of the Appellant. Appellant appeals that portion of the Decree which awarded the home at 3294 Breeze Drive to the Respondent. The Respondent cross appealed, contesting the contents of paragraph 4 of the Divorce Decree, and more particularly, that portion in which Respondent was only granted \$25.00 per month alimony. Respondent alleges that she is entitled to \$150.00 per month alimony. The Respondent also cross appealed contesting paragraph 3 of the Decree of Divorce and alleges that the Respondent should be awarded sufficient funds from joint bank accounts to pay the back taxes on the Magna home. Respondent alleges that the taxes should be paid out of the joint bank account before the same is divided equally between the parties or, in the alternative, Appellant should pay said taxes.

Respondent further cross appeals and requests that this Court allow her a reasonable attorney's fee of \$1,500.00 for attorney's services rendered on this Appeal.

### DISPOSITION IN THE LOWER COURT

1. The Honorable Judge Stewart M. Hanson, Sr. awarded the home at 3294 Breeze Drive, Magna, Utah, to the Plaintiff-Respondent.

2. The duplex at 155-157 Paxton Avenue, Salt Lake City, Utah was awarded to the Defendant-Appellant.

3. The savings accounts were divided equally with attorney's fees and the amount of \$350.00 being paid from the Appellant's share. Respondent was required to pay taxes on the Magna property from her share of the bank accounts. Appellant received \$2,500.00 which was in the Cyprus Credit Union (TR. 112) plus \$3,500.00 in cash.

4. The savings bonds which were in the possession of the Appellant were to be divided equally with the childrens' names thereon. The bonds were to be retained by the appellant for the benefit of the four children of the parties and were to be given to the children as the Appellant saw fit.

5. The Appellant was ordered to maintain health and accident insurance on the children, which he could do without financial burden under his Union insurance policy with Kennecott Copper Corporation.

6. The Appellant was awarded four burial lots valued at \$1,400.00.

7. The Court decreed that any and all properties, bank



accounts, bonds, or savings accounts, shall remain the sole property of the party who has possession of the bonds, passbooks, or any other evidence of title. (This awarded Appellant \$2,500.00 which was in the Cyprus Credit Union and \$3,500.00 which he took from the house in cash (TR. 109) plus the bonds.

8. The Appellant was ordered to pay support money for the minor children, to-wit: Gary Eastman, in the amount of \$100.00 per month, and Jerry Eastman, in the amount of \$75.00 per month. The Respondent was awarded \$25.00 per month alimony with the further provision that the Court realized that \$25.00 per month was not a sufficient amount to maintain the Respondent but, in the event that the Respondent is unable to work, the Court would then review the possibility of increasing the alimony.

#### RELIEF SOUGHT ON APPEAL

1. Respondent seeks affirmation of judgment awarding to the Respondent the home of the parties at 3294 Breeze Drive, Magna, Utah. Respondent seeks to modify the Decree of Divorce in the following respects:

(a). That the savings accounts at American Savings and Loan Association and at First Federal Savings and Loan Association be divided equally after the taxes on the property located at 3294 Breeze Drive, Magna, Utah, have been paid, and after the Appellant has paid attorney's fees herein or, in the alternative, that the Appellant be required to pay said property

tax and attorney's fees from his share.

(b). That the Respondent be awarded \$150.00 per month alimony.

(c). That the Appellant be required to pay a reasonable attorney's fee to the Respondent for the use and benefit of Mark S. Miner, for representing her on this Appeal.

#### FACTS

Respondent and Appellant were married, each to the other, in Evanston, Wyoming, on April 29, 1950. There have been born in the issue of said marriage, Roger Eastman, 25 years of age, Diane Eastman, 20 years of age, Jerry Eastman, 18 years of age, and Gary Eastman, 16 years of age. Roger and Diane are self-sustaining; Jerry and Gary are still at home living with the Respondent. Jerry Eastman's hand was injured in an accident and, although he is now eighteen years of age, he is unable to work by reason of his crippled hand and is, at the present time, residing in the family home. Both Jerry and Gary are in the care, custody and control of the Respondent. Appellant stipulated in open Court that he would pay \$100.00 per month for the care and maintenance of Gary Eastman, and \$75.00 per month for the care and maintenance of Jerry Eastman. He agreed to pay this support money until both boys obtain their majority (TR. 85).

**Appellant is an able-bodied man employed at Kennecott**

Copper Corporation and has a gross take-home of \$1,200.00-\$1,400.00 per month. He paid Income Tax on \$10,000.00 in 1974 (TR. 93, 94). Respondent is in poor health and works for Diamond Christensen Company. She has a monthly net pay of \$344.00 (TR. 105).

### ARGUMENT

#### Point I

#### DAWNA EASTMAN IS ENTITLED TO BE AWARDED THE HOME AT 3294 BREEZE DRIVE, MAGNA, UTAH.

1. Dawna Eastman was a good wife to Glenn Eastman for over thirty-two years. In addition, she worked for more than eleven years and put all of her earnings into the home of the parties. She estimates her contribution to exceed \$10,000.00.

2. She gave birth to four children, who she nurtured and reared to adulthood.

3. Jerry Eastman, who has a crippled hand, and Gary Eastman, who is 16 years of age, are still living at home with their mother.

4. Dawna Eastman decorated and finished the front room of the home; she paid for all of the floor coverings and rugs. She has maintained the property, made necessary repairs, including replacement of the furnace, plumbing and doors. The Lower Court determined that Dawna Eastman and the children living at home deserved and should have the family home in Magna, Utah.

5. The Court gave the Appellant the duplex at 155-157 Paxton Avenue, Salt Lake City, Utah, all of the savings bonds, one-half of the money in the savings accounts, the burial lots, the account at Cyprus Credit Union in the amount of \$2,500.00, and \$3,500.00 in cash. All of which is more than an equitable settlement of the assets herein, especially when one considers that the appellant has refused to pay taxes on the family home for more than three years.

Point II

Thirty-two years as a mother and wife warranted the granting of at least \$150.00 per month alimony to the Respondent. Plaintiff/Respondent is without fault in the termination of the marriage. Respondent further states:

1. She is in poor health.
2. Jerry Eastman and Gary Eastman, two children of the parties are still at home.
3. Appellant's income is such that \$150.00 per month alimony for the respondent is not unfair. Appellant is debt free, steadily employed and netting over \$10,000.00 per year income and it was Appellant's conduct which caused the divorce.

Point III

The Appellant should be required to pay a reasonable attorney's fee for and on behalf of Respondent's attorney for

the representation of Respondent on this appeal. See 30-3-5, U.C.A. A casual glance at the file will reveal that the Appellant has either negligently or intentionally prolonged this divorce for more than three and one-half years. With more than eight Court appearances before three Judges, the numerous delays and continuances have been such that tensions, hardships and quashed expectations caused Respondent have been almost sadistic in nature. When Respondent thought that the matter was finally settled, the appeal was filed. Such conduct warrants the awarding of reasonable attorney's fees for Respondent's counsel in the amount of at least \$1,500.00.

#### Point IV

The taxes on the Magna property should have been paid from the joint savings account prior to dividing same into equal shares.

The Appellant purposely failed to pay the taxes on the Magna home for more than three years. This fact was not revealed until the trial. Appellant made sure that he paid the taxes on the duplex at Paxton Avenue but he refused to meet his obligation on the Magna home even though the family was residing there. This placed an unreasonable burden on the Respondent. Appellant should be required to reimburse Respondent for the amount of the taxes on the home at Magna, Utah.

With regard to Appellant's attempt to reverse the Lower Court, this Court has said:

"On the appeal in a divorce action, burden is on the Appellant to prove that evidence clearly preponderates against findings as made that there was a misunderstanding or mis-application of law resulting in substantial prejudicial error, or that serious inequity has resulted so as to manifest a clear abuse of discretion." U.C.A. 30-3-5, 1953

see also, Mitchell v. Mitchell, 527, P.2d 1359. Appellant has failed to meet this burden. In addition thereto, Appellant has used every delaying tactic available and has delayed final decision in this cause for more than five years. During this time, Roger became 25 years of age, Diane became 21 years of age, Jerry became 18 years of age, although he is seriously disabled as a result of his crippled hand, and Gary became 16 years of age. Even though Judge Jeppson awarded the Respondent \$200.00 per month child support and \$50.00 per month alimony, the Appellant saw fit to pay only \$66.00 per child per month (TR. 71). During this delay, the Magna home has deteriorated by reason of Appellant's refusal to maintain same. The plumbing in the house is rotten, a new roof is needed, the driveway must be replaced (see Exhibit 1-P), the storm doors have no glass (see Exhibit 3-P), and the garage foundation and door must be replaced. Respondent has paneled the walls, carpeted the front room, hall and bedroom, and paid

for all furniture, drapes and mirrors. Appellant has done nothing to maintain the home. He has even failed to pay the taxes for more than three years on the home (TR. 69).

#### CONCLUSION

Judge Stewart M. Hanson awarded the home at 3294 Breeze Drive, Magna, Utah, to the Respondent free and clear of any and all claims of the Appellant. Such judgment was fair and reasonable. Respondent delivered and reared four children; she worked for eleven years and contributed her earnings to the home and family; she furnished and maintained the home and it is now the residence of Appellant, Jerry Eastman and Gary Eastman. Contrary to Appellant's Statement of facts, the record shows that the house and lot were purchased for \$13,500.00 (TR. 76). All payments were made from a joint bank account (TR. 76). Respondent bought all of the childrens' clothes as well as her own clothes and paid for all improvements and repairs on the family home. Appellant's contributions to the family consisted of \$60.00 - \$75.00 every two weeks for a family of six.

#### THE APPELLANT HAS MISTATED THE RECORD IN THE FOLLOWING PARTICULARS:

On page 2 of his Brief, Appellant states that the Magna property had a value of \$27,000.00. The record shows the purchase price was \$13,500.00 (TR. 76). Even with today's inflated prices, this appraisal is hearsay (Respondent being deprived of the right to cross-examine). Timely objection being made thereto set the

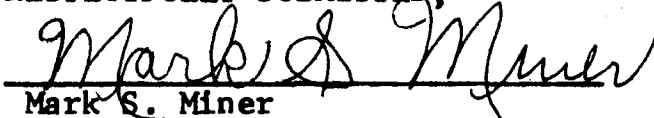
set the value at \$21,000.00. This appraisal including repairs and improvements made by the Respondent wife. Appellants' statement on pages 3-4-and 7 of his brief that he paid for all property is not supported by the record and in truth and in fact is incorrect. The property was jointly paid for and jointly accumulated by both parties. (Tr-98).

With regard to child support Appellant states" the Court ordered him to pay \$100.00 for Gary and \$75.00 for Jerry." He fails to state that in open Court he indicated his willingness to do so! He now seeks to "renege" on his agreement. ( See page 3 of memorandum Decision)

Appellant further claims "he's under the doctors care for "heart problems"- such is completely foriegn to the record. There is no testimony of any type or nature that the Appellant has had any heart problems. Appellants' bfief is completely unrelated to the record.

Respondentis entitled to the Magna home; \$175.00 support for Gary and Jerry; Appellant should pay back taxes; Respondent is entitled to \$150.00 Alimony and \$1500.00 Attorney fees.

RESPECTFULLY SUBMITTED,



Mark S. Miner

Attorney for the Respondent

219 Felt Building, Salt Lake City, Utah