

1998

Williamson v. Williamson : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JOAN WILLIAMSON,)	
Petitioner/Appellant,)	Case No. 980245-CA
vs.	)	Trial Court No. 954100207DA
STUART KIM WILLIAMSON,)	
Respondent/Appellee.	)	Priority No. 15

BRIEF OF APPELLANT

Appeal from an Order Modifying Decree of Divorce
of the First Judicial District Court
Cache County, Utah
The Honorable Clint S. Judkins Presiding

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Attorney for Respondent/Appellee

LIST OF ALL PARTIES IN THE DISTRICT COURT

The following parties and attorneys appeared in the proceeding in the trial court:

1. Joan Williamson, Petitioner/Appellant, represented by Larry E. Jones of Hillyard, Anderson & Olsen.

2. Stuart Kim Williamson, Respondent/Appellee, represented by Pete N. Vlahos.

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- B. August 29, 1996 Morton International, Inc. letter
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(Plaintiff's Exhibit No. 4)
- C. Transcript of the Trial Court's Oral Decision
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- D. March 25, 1998 Findings of Fact
and Conclusions of Law
- E. March 25, 1998 Order Modifying Decree of Divorce.

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STUART KIM WILLIAMSON,)	
Respondent/Appellee.)	Priority No. 15

BRIEF OF APPELLANT

JURISDICTION

The Utah Court of Appeals has jurisdiction over this matter pursuant to the Constitution of Utah, Article VIII, Section 1 et seq., Utah Code Ann. § 78-2a-3(2)(h), and Rules 3 and 4 of the Utah R. App. P.

ISSUES PRESENTED FOR REVIEW

1. Did the trial court commit error in failing to make findings on nearly all material issues, including:

A. Whether Stuart Williamson's \$3,550.00 per month income at the time of his involuntary termination from Morton International, Inc. due to unsatisfactory job performance should be imputed to Stuart Williamson for purposes of child support and alimony.

B. Whether Stuart Williamson is voluntarily underemployed at \$11.00 per hour when there is employment available to him at \$13.00 to \$15.00 per hour.

C. The effect of a new spouse's contributions to Stuart Williamson's household on Stuart Williamson's needs and ability to pay alimony.

D. The parties' needs and respective ability to meet those needs relative to alimony, and equalization of the parties' respective standards of living.

E. The reasonableness of Joan Williamson's attorney fees and costs and the relative ability of the parties to pay attorney fees and costs.

Applicable Standard of Review. As stated in Whitehouse v. Whitehouse, 790 P.2d 57,71 (Utah App. 1990): ". . . the trial court must make findings on all material issues, and its failure to delineate what circumstances have changed and why these changes support the modification made in the prior divorce decree constitutes reversible error unless the facts in the record are clear, uncontroverted and only support the judgment." In addition, "findings should be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached." Acton v. Delirian, 737 P.2d 996, 999 (Utah 1987).

Citation to Record Showing Issue was Reserved in Trial Court. Petition to Modify, R. at 116-20, Answer to Petition to Modify, R. at 121-22, Amended Petition to Modify, R. at 141-46, Amended Answer to Petition to Modify, R. at 147-48, and Transcript throughout.

2. Did the trial court commit error in failing to award Joan Williamson continued alimony even based upon the trial court findings of \$2,090.00 monthly income to Stuart Williamson and \$1,692.00 monthly income to Joan Williamson which is a \$400.00 per month income disparity.

Applicable Standard of Review. As stated in Ruhsam v. Ruhsam, 742 P.2d 123, 124, (Utah App. 1987):

It is well established that in divorces trial courts are given considerable discretion in adjusting the parties' financial and property interests, and their actions are entitled to a presumption of validity. Burnham v. Burnham, 716 P.2d 781, 782 (Utah 1986); Savage v. Savage, 658 P.2d 1201, 1203 (Utah 1983). To overcome the presumption, the appealing party must demonstrate that "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." Pope v. Pope, 589 P.2d 752, 753 (Utah 1978); see also Eames v. Eames, 735 P.2d 395, 397 (Utah Ct. App. 1978); Boyle v. Boyle, 735 P.2d 669, 670-71 (Utah Ct. App. 1987).

Citation to Record Showing Issue was Reserved in Trial Court. Petition to Modify, R. at 116-20, Answer to Petition to Modify, R. at 121-22, Amended Petition to Modify, R. at 141-46, Amended Answer to Petition to Modify, R. at 147-48, and Transcript throughout.

3. Did the trial court commit error in failing to award Joan Williamson her attorney fees and costs.

Applicable Standard of Review. As stated in Wilde v. Wilde, _____ P.2d _____, 357 U.A.R. 29, 31 (Utah App. 1998):

Both the decision to award attorney fees and the amount of such fees are within the trial court's sound discretion. See Crouse v. Crouse, 817 P.2d 836, 839

(Utah Ct. App. 1991). However, "the award [or denial of such fees] must be based on evidence of the financial need of the receiving spouse, the ability of the other spouse to pay, and the reasonableness of the requested fees." Bell v. Bell, 810 P.2d 489, 493 (Utah Ct. App. 1991). Failure to consider these factors is grounds for reversal on the fee issue. See Marshall v. Marshall, 915 P.2d 508, 517 (Utah Ct. App. 1996).

Citation to Record Showing Issue was Reserved in Trial Court. Petition to Modify, R. at 116-20, Answer to Petition to Modify, R. at 121-22, Amended Petition to Modify, R. at 141-46, Amended Answer to Petition to Modify, R. at 147-48, and Transcript pages 145, lines 15-23, page 161, lines 9-16.

4. Whether Joan Williamson should be awarded her attorney fees and costs on appeal.

Applicable Standard of Review. As stated in Lynqle v. Lynqle, 831 P.2d 1027 (Utah App. 1992):

Generally, when the trial court awards fees in a domestic action to the party who then substantially prevails on appeal, fees will also be awarded to that party on appeal. See Crouse v. Crouse, 817 P.2d 836, 840 (Utah App, 1991).

APPLICABLE STATUTES

Utah Code Ann. § 78-45-7.6(6) and (7):

(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.

Utah Code Ann. § 30-3-5(7)(a), (d), and (g):

(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.

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

(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.

Utah Code Ann. § 30-3-3 (1):

(1) In any action filed under Title 30, Chapter 3, 4, or 6, and in any action to establish an order of custody, visitation, child support, alimony, or division of property in a domestic case, the court may order a party to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action. The order may include provision for costs of the action.

STATEMENT OF THE CASE

A. Nature of the Case. This is a case involving modification of the child support provision and termination of the alimony provision of a Decree of Divorce.

B. Course of Proceedings.

1. The parties were divorced by Decree of Divorce entered May 2, 1996.

2. On or about September 27, 1996, Stuart Williamson filed a Petition to Modify the child support provisions of the Decree of Divorce. On or about October 3, 1997, Stuart Williamson filed an Amended Petition to Modify seeking termination of the alimony provided in the Decree of Divorce.

3. Trial was held on Stuart Williamson's petition on February 11, 1998.

4. Findings of Fact and Conclusions of Law and Order Modifying Decree of Divorce were entered March 25, 1998.

5. Joan Williamson filed her Notice of Appeal on April 22, 1998.

C. Disposition in the Trial Court: Finding that the incomes were different than at the time of the Decree of Divorce, the trial court found a "substantial change in circumstances", reduced child support, terminated alimony, and ordered each party to pay her/his own attorney fees and costs.

D. Statement of Facts Relevant to the Issues Presented for Review:

1. Joan Williamson and Stuart Williamson were married 23 plus years. The parties have two children, one of whom, Julie, was born September 23, 1985, is still a minor and is in the custody of Joan Williamson. R. 48,66,67, and 82. T. page 130, lines 2-4.

2. Joan Williamson and Stuart Williamson were divorced by Decree of Divorce entered May 24, 1996. R. 82-96. A copy of the Decree of Divorce is included in the Addendum. The Decree of Divorce was based upon a Stipulation of the parties. R. 47-65.

3. The Decree of Divorce provided for child support and alimony as follows:

4. [Stuart Williamson] shall pay to [Joan Williamson] the sum of \$368.00 per month as child support until such time as the payments are no longer due, which shall be when the child turns 18 or would graduate from high school with her normal high school class, whichever occurs later. . . .

6. [Stuart Williamson] shall maintain health, medical and dental insurance on the minor child of the parties. . . .

8. [Stuart Williamson] is required to pay [Joan Williamson] alimony in the sum of \$425.00 per month until [Joan Williamson] remarries or cohabits as defined in Utah Code § 30-3-5, or either party dies. Alimony shall commence July 1, 1995.

R. 83-85.

4. At the time of the divorce, Stuart Williamson was employed at Morton International, Inc. where he earned approximately \$3,550.00 per month. Joan Williamson was employed at Bourns where she earned approximately \$1,442.00 per month. R. 61,77, and 92. T. page 12, lines 13-24.

5. On or about September 27, 1996, Stuart Williamson filed a Petition to Modify the child support provisions of the Decree of Divorce. R. 116-20. On or about October 3, 1997, Stuart Williamson filed an Amended Petition to Modify which added

a request to modify the alimony provision of the Decree of Divorce. R. 141-467.

6. Stuart Williamson was "involuntarily terminated" from his employment at Morton International, Inc. by a letter dated August 29, 1996 which stated the reason for termination to be "violation of Company Policy; specifically unsatisfactory performance of job responsibilities." The letter also stated that Stuart Williamson could request review of his termination: "If you are dissatisfied with any aspect of your termination, you may review the Morton Automotive Safety Products Employee Handbook as it pertains to the Employee Grievance Process." Plaintiff's Exhibit No. 4 (also attached to Addendum); T. page 12, line 25; page 13, lines 1-3; page 16, lines 2-6; page 16, lines 19-25; page 17; page 18, lines 1-5; page 23, lines 13-25; pages 24-32; page 33, lines 1-9; page 95, lines 18-25; page 96; page 97, lines 1-3.

7. Previous to his termination, Stuart Williamson received a "Notice of Caution" in October, 1995 involving an incident where he used "offensive language [and] inappropriate conduct" toward a co-worker. Stuart Williamson was told that "Further violation will result in disciplinary action up to [and] including termination." T. page 22 lines 12-25; page 23, lines 1-12; page 33, lines 10-25; page 34; page 35, lines 1-5. Defendant's Exhibit No. 3; Plaintiff's Exhibit No. 3.

8. Stuart Williamson testified that he did not

slur his co-workers in August, 1996 and that he felt there was no justification for Morton International, Inc. to terminate his employment. T. page 30, lines 3-25; pages 31-34; Three co-workers testified that they did not personally hear Stuart Williamson slur his co-workers in August, 1996. T. page 97, lines 18-25; pages 98-119; page 120, lines 1-21.

9. Stuart Williamson testified that he did not seek review of his termination nor seek legal redress because he didn't think it would do any good. T. page 77, lines 21-25; page 78, lines 1-17. Joan Williamson testified that Stuart Williamson's not seeking review or legal redress was unlike the Stuart Williamson she was married to for 24 years, who testified was "a fighter", "not a quitter", and she could not "see him if he was wrongly dismissed just to walk away from it." T. page 135, lines 12-25; page 136, lines 1-6.

10. Not only did Stuart Williamson lose his \$3,550.00 per month income, he also lost the health, medical and dental insurance that he had on the parties' minor child. T. page 79, lines 18-25; page 80, lines 1-10.

11. Stuart Williamson obtained new employment with his brother's drywall company where he is paid \$11.00 per hour. T. page 36, lines 1-5.

12. Stuart Williamson, and his brother Kirk Williamson for whom Stuart Williamson works, testified that because of age and health concerns, Stuart Williamson was not as productive as he once was. T. page 14, lines 16-25; page 15, lines 1-20; page

55, lines 9-25, pages 56-57; page 58, lines 1-6; page 122, lines 1-22; page 124, lines 24-25; page 125; page 126, lines 1-11.

13. Kim Pitcher, a drywall contractor who employs some 40 drywall workers, testified that someone of Stuart Williamson's experience and given Stuart Williamson's age and health concerns, which he testified were similar to his own, Stuart Williamson could earn \$13.00 to \$15.00 per hour:

Mr. Jones. Okay. And a good, good drywaller, good taper would have to be pretty banged up not to be able to at least meet a, an expected performance level?

A. Well, I don't know what [Stuart Williamson] does. If he's a taper-- I, I tape too and I'm not as fast as I used to be. I'm 45. And, I, I just don't make as much if I'm out here working. But I can still produce.

Q. Okay.

A. And I've kind of got the same symptoms he's got so. . .

Q. How much could you make as a taper do you think paying yourself?

A. Well, I think I'm still around \$13 an hour, \$13 to \$15.

Q. And on a piece rate?

A. I think about that.

Q. Pardon me?

A. About that, yes.

Q. About \$13 to \$15 an hour?

A. About \$13 to \$15.

T. page 68, lines 16-25; page 69, lines 1-14.

Stuart Williamson himself testified that he "could make probably \$12.25" per hour. T. page 40, lines 1-2.

14. Stuart Williamson did drywall work on the side while employed at Morton International, Inc. and while employed by his brother. T. page 146, lines 11-25; page 147, lines 1-7; page 162, lines 15-25; page 163, lines 1-6.

15. Joan Williamson's income at Bourns increased from \$8.32 per hour at the time of the divorce (May, 1996) to \$9.23 per hour at the time of the modification trial (February, 1998). T. page 132, lines 12-25; page 133, line 1. Joan Williamson had some overtime at Bourns in 1997. T. page 156, lines 7-14. Joan Williamson took an additional part-time job at King's, a department store, in September, 1997 to supplement her income when Stuart Williamson stopped paying her alimony. T. page 141, lines 8-19; page 154 lines 10-25; page 155, lines 1-19.

16. The trial court made no findings on the parties' monthly needs at the time of trial or at the time of the parties' divorce. R. 196-201.

17. At trial, Joan Williamson presented a monthly budget of \$2,288.35 for herself and the parties' daughter. Plaintiff's Exhibit No. 9; T. page 142, lines 16-25; pages 143-

144. Joan Williamson testified that her budget was tight, which is why she had the second job to help ends meet, and that the budget put her "somewhat" equal to the standard of living that she enjoyed while married to Stuart Williamson. T. page 144, lines 12-25.

18. At trial, Stuart Williamson presented a monthly budget of \$1,811.00 which included in it the \$252.06 in monthly child support he figured he owed to Joan Williamson, a \$989.00 monthly mortgage payment on a mortgage which he took out at the time of divorce in order that Stuart Williamson be able to pay to Joan Williamson \$65,000.00 for her equity interest in the parties' home which Stuart Williamson was awarded in the divorce, and a VISA bill which was incurred so that he could "pay support" to Joan Williamson. Defendant's Exhibit No. 1; T. page 45, lines 2-25; pages 46-49; page 50, lines 1-22.

19. The trial court found Stuart Williamson's income at Williamson Drywall, Inc. to be \$2,090.00 per month. R. 197 (Findings of Fact numbered paragraph 7); T. page 180, lines 16-18.

20. The trial court found Joan Williamson's income, including some overtime at Bourns, and Joan Williamson's second job where she earned \$75.00 per month, to be a total of \$1,692.00 per month at the time of trial. R. 197 (Findings of Fact, numbered paragraph 9); T. page 181, lines 17-21. The trial court found Joan Williamson's 1997 income was \$1,832.66 per month. R.

at 197 (Findings of Fact numbered paragraph 8); T. page 181, lines 15-17.

21. After making its findings on the income of the parties, the trial court ruled: "I'm going to terminate alimony. Now to make this effective, and the Court paints this in broad strokes, I've often said that in the past and I'll reemphasize that here today." T. page 181, lines 22-25. Joan Williamson's counsel pressed the Court on the alimony issue, pointing out the \$400.00 per month income disparity even on the Court's finding of the parties' income, to which the trial court said that it was "close enough" and that in so concluding the trial court was deducting Stuart Williamson's child support payment from Stuart Williamson's income and adding Stuart Williamson's child support to Joan Williamson's income:

THE JUDGE: I appreciate that, Counsel, but when you take into account the child support that he would pay and that she would receive and their actual incomes, etcetera, the Court finds that's close enough.

MR. JONES: Well but even if you do that, Your Honor, you take \$200 off of hers you'd end up with \$1,443. Take \$250 off of his you end up at \$1,840.

THE JUDGE: They're within \$100.

MR. JONES: You're still \$400.

THE JUDGE: No you're not, Counsel.
Your figures are different than mine.

MR. JONES: Well, I'm, I'm looking at the
child support worksheet, Your Honor. What Your
Honor said was, and I-- Please just hear me out.

THE JUDGE: Sure.

MR. JONES: I'm not trying to argue
with the Court.

THE JUDGE: Go ahead.

MR. JONES: But I have a real concern
here because I think that the Court's ruling
is clearly contrary to the case law--

THE JUDGE: All right.

MR. JONES: -- in a long-term
marriage.

THE JUDGE: All right. He's
basically making \$2,100.00 gross.

MR. JONES: \$2,100.

THE JUDGE: She's basically making \$1,700
gross.

MR. JONES: Oh, well now you're
rounding out.

THE JUDGE: Yes.

MR. JONES: But say it's the \$400,
\$2,100 and \$1,700. You take \$200 off of hers
for child support that makes it 15. You take

\$200, it would be \$270 or something off of his, that makes it 18. \$300. 21 minus 3 is 18. 17 minus 2 is 15. So there's \$300 even on your, your numbers that you're essentially spinning up. There's still an income disparity of \$300 bending over backwards to his numbers.

THE JUDGE: Well I appreciate your manipulation. But he's making \$2,100, she's making \$1,700. He gives her \$250, she gets \$250. And he's \$100 in the hole. That 's the way the Court looks at it.

MR. JONES: Well but Your Honor, but that doesn't--

THE JUDGE: End of story, Mr. Jones. Court will be in recess.

T. page 184, lines 2-25, page 185; page 186, lines 1-2.

22. The trial court accepted both parties' proffer of \$1,500 attorney fees. T. page 145, lines 15-23; page 161, lines 9-16. Without making any findings, the trial court ordered each party to pay her/his own attorney fees and costs. R. 196-203; T. page 183, lines 1-2.

SUMMARY OF ARGUMENTS

I

The trial court's findings are not sufficiently detailed to disclose the evidentiary basis for the trial court's decision to

lower child support, terminate alimony, and require each party to pay her/his own attorney fees and costs in this case. With regard to child support, the trial court made no finding as to whether Stuart Williamson's involuntary termination from Morton International, Inc. due to unsatisfactory job performance, and Stuart Williamson's taking a job with his brother for \$11.00 per hour instead of the \$13.00 to \$15.00 he was capable of earning, rendered Stuart Williamson voluntarily underemployed pursuant to Utah Code Ann. § 78-45-7.6(6) and (7).

As to alimony, in addition to the voluntary underemployment argument above, the trial court made no finding as to the financial condition of Joan Williamson, Stuart Williamson's ability to pay alimony, and the length of the marriage as required by Utah Code Ann. § 30-3-5 7(a). The trial court found only that Stuart Williamson was terminated from Morton International, Inc., has obtained employment at \$11.00 per hour, which with some overtime computed to \$2,090.00 per month in earnings, and that Joan Williamson's income was \$1,692.00 per month which included some overtime and income from a part-time job. Based on the findings of "earnings", the trial court found a substantial change of circumstances and reduced child support and terminated alimony.

Where the trial court made no findings on the parties' needs or ability to pay for purposes of alimony, it is not known whether Joan Williamson's alimony was terminated by the trial court due to Stuart Williamson's child support obligation to Joan

Williamson, a mortgage taken to pay Joan Williamson's equity interest in the parties' home, and Stuart Williamson's VISA bill incurred to pay Stuart Williamson's support obligations to Joan Williamson. It is also not known whether Stuart Williamson's new spouse's contribution to Stuart Williamson's household were considered as allowed by Utah Code Ann. § 30-3-5(7)(g)(iii)(A).

As to attorney fees and costs, the trial court made no findings as to the parties' need or ability to pay attorney fees and costs.

This case should be sent back to the trial court to make findings which address the issues raised at trial in sufficient detail to disclose how the trial court reached its ultimate conclusions in this case.

II

Even accepting the trial court's finding placing Stuart Williamson's monthly income at \$2,090.00 and Joan Williamson's monthly income \$1,692.00, there is still a \$400.00 per month income disparity. Also, the parties' monthly needs presented to the trial court established Joan Williamson's greater need and Stuart Williamson's ability to meet his own needs and still pay alimony. Joan Williamson's need was \$2,288.35 per month and Stuart Williamson's need was \$1,811.00 per month which included his child support payment to Joan Williamson, Stuart Williamson's mortgage taken out to pay Joan Williamson her \$65,000.00 property settlement payment in the divorce, and Stuart Williamson's VISA

bill to pay for money borrowed to pay his support obligations to Joan Williamson.

This case involves a marriage of 23 years and two children, one of whom is still a minor. The trial court's subtracting child support from Stuart Williamson's income and adding it to Joan Williamson's income without recognizing that Joan Williamson also has a child support obligation makes no sense. The trial court's termination of alimony leaves Joan Williamson to support two people on the same income as Stuart Williamson has to support only himself, and his household expenses are being shared by a new spouse.

Also, Where the parties' child is now 13 years old, child support will only be owed for 5 more years. The parties were married for 23 years and the Decree of Divorce in this case provided that alimony continue until Joan Williamson's remarriage or cohabitation of either parties' death.

The trial court's termination of alimony, even on its limited finding of monthly income, was an abuse of discretion and should be reversed and the alimony payment to Joan Williamson reinstated back to the date the trial court terminated the alimony and the alimony should be in an amount of at least \$200.00 per month so that the parties' respective standards of living may be more equalized.

III

The trial court accepted both parties' proffer of \$1,500.00 attorney fees. Without making any findings, the trial court

ordered each to pay her/his own attorney fees. Where Stuart Williamson has the greater income earning ability and greater ability to pay attorney fees, Joan Williamson should be awarded her attorney fees both in the trial court and on appeal.

ARGUMENTS

I

THE TRIAL COURT'S FINDINGS OF FACT ARE LEGALLY INSUFFICIENT IN THIS CASE.

As stated in the "Issues Presented on Review", the trial court failed to make findings on nearly all issues, including

A. Whether Stuart Williamson's \$3,550.00 per month income at the time of his involuntary termination from Morton International, Inc. due to unsatisfactory job performance should be imputed to Stuart Williamson for purposes of child support and alimony.

B. Whether Stuart Williamson is voluntarily underemployed at \$11.00 per hour when there is employment available to him at \$13.00 to \$15.00 per hour.

C. The effect of a new spouse's contributions to Stuart Williamson's household on Stuart Williamson's needs and ability to pay alimony.

D. The parties' needs and respective ability to meet those needs relative to alimony, and equalization of the parties' respective standards of living.

E. The reasonableness of Joan Williamson's attorney fees and costs and the relative ability of the parties to pay attorney fees and costs.

At trial, Joan Williamson argued that because Stuart Williamson was involuntarily terminated due to unsatisfactory job performance, the full \$3,550.00 per month that he was earning at the time of trial should be imputed to him and there should be no substantial change of circumstances and therefore no reduction of child support and no termination of alimony.

The evidence showed that Stuart Williamson was underemployed in that he could earn \$13.00 to \$15.00 per hour instead of the \$11.00 per hour he was actually earning and on which the trial court found Stuart Williamson's current income. Stuart Williamson himself testified that he could \$12.25 per hour.

Utah Code Ann. § 78-45-7.6(6) and (7) allows income to be imputed for purposes of child support if "a hearing is held and a finding made that the parent is voluntarily unemployed or underemployed." In imputing income, the trial court must base the income "upon employment potential and probable earnings as derived from work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community."

As stated in Griffith v. Griffith, ____ P.2d ____, 344 U.A.R. (Utah App. 1998), "the goal of imputing income is to prevent parents from reducing their child support or alimony by purposeful unemployment or underemployment."

The trial court made no finding relative to Stuart Williamson's working a second job during and since the parties' marriage. As held in Crompton v. Crompton, 888 P.2d 686, 689 (Utah App. 1994) with regard to alimony: "A trial court must be able to consider all sources of income that were used by the parties during the marriage to meet their self-defined needs, from whatever source--overtime, second job, self employment, etc., as well as unearned income."

In this case, the trial court made no finding on whether Stuart Williamson was voluntarily underemployed despite substantial evidence relative to his involuntary termination due to unsatisfactory job performance, greater employment potential, a long work history of greater income, a long work history of second job income, and significant occupation qualifications even as a drywaller.

The trial court made no finding relative to Stuart Williamson's new spouse's contribution to Stuart Williamson's household though Utah Code Ann. § 30-3-5(7)(g)(iii)(A) authorizes the trial court to do so.

The trial court made no findings as to Joan Williamson's financial condition and needs, the ability of Stuart Williamson to provide support, and the length of the marriage as required by Utah Code Ann. § 30-3-5(7)(a)(i)-(iv). The evidence showed that Joan Williamson's monthly needs were nearly \$2,288.35 while Stuart Williamson's were only \$1,811.00 which even included his child support payment to Joan Williamson, Stuart Williamson's

mortgage payment for the \$65,000.00 borrowed to pay Joan Williamson for her equity interest in the parties' home, and Stuart Williamson's VISA payment for money borrowed to pay Joan Williamson her support.

The trial court made no findings relative to equalizing the parties' respective standards of living which the trial court may do in appropriate cases. Utah Code Ann § 30-3-5(7)(d). A marriage of 23 plus years warrants an equalization of the parties' respective standards of living.

The trial court accepted both parties' proffers of \$1,500.00 attorney fees but made no finding of reasonableness or need which the trial court may do pursuant to Utah Code Ann. § 30-3-3(1).

Rule 52(a) of the Utah Rules of Civil Procedure the trial courts in action of this kind to "find the facts specially and state separately its conclusions thereon." As stated in Hall v. Hall, 858 P.2d 1018, 1021 (Utah App. 1993) (quoting Allred v. Allred, 797 P.2d 1108, 1111 (Utah App. 1990): "Findings are adequate only if they are 'sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached.'"

The only finding of the trial court in this case is as to current monthly income.

Where the trial court's findings are limited to the only one of the many issues before the trial court, Joan Williamson should not be required to "engage in a futile marshalling exercise". Campbell v. Campbell, 896 P.2d 635, 638, (Utah App. 1995),

(citing Woodward v. Fazzio, 823 P.2d 474, 477-78 (Utah App. 1991)).

As stated in Godfrey v. Godfrey, 854 P.2d 585, 589 (Utah App. 1993):

Indeed, Utah Courts have held that "[a]n alimony award should, after a marriage . . . and to the extent possible, equalize the parties' respective standards of living and maintain them at a level as close as possible to that standard of living enjoyed during the marriage." Gardner v. Gardner, 748 P.2d 1076, 1081 (Utah 1988); see also Jones v. Jones, 700 P.2d 1072, 1075 (Utah 1985); Roberts v. Roberts, 835 P.2d 193, 198 (Utah App. 1992); Bell v. Bell, 810 P.2d 489, 491 (Utah App. 1991). In light of this goal, the trial court must consider: "(1) the financial conditions and needs of the receiving spouse; (2) the ability of the receiving spouse to produce a sufficient income; and (3) the ability of the supporting spouse to provide support." Roberts, 835 P.2d at 198; see also Jones, 700 P.2d at 1075; Chambers, 840 P.2d at 843; Schindler v. Schindler, 776 P.2d 84, 90 (Utah App. 1989).

Failure to consider these factors in fashioning an alimony award constitutes an abuse of discretion. Bell, 810 P.2d at 492. Accordingly, "the trial court must make sufficient detailed findings of fact on each factor . . . unless the record is clear and uncontroverted" and capable of supporting only a finding in favor of the trial court's award. Id.; see also Chambers, 840 P.2d at 843; Roberts, 835 P.2d at 198.

As to a finding with regard to Joan Williamson's attorney fees and costs, please see "Issues Presented on Appeal", numbered paragraph 3, above.

This case should be reversed and the \$368.00 child support and \$425.00 alimony set forth in the Decree of Divorce should be reinstated. In the alternative, this case should be remanded to

the trial court for findings relative to Stuart Williamson's voluntary underemployment by virtue of his involuntary termination due to unsatisfactory job performance, working at \$11.00 per hour when he could earn \$13.00 to \$15.00 per hour, Joan Williamson's needs and Stuart Williamson's ability to pay alimony, and the reasonableness of Joan Williamson's attorney fees and Joan Williamson's need and the parties' relative ability to pay Joan Williamson's attorney fees and costs.

II

JOAN WILLIAMSON IS ENTITLED TO SUBSTANTIAL, LONG TERM ALIMONY AND THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO SO PROVIDE

This case involved a 23 year plus marriage. The parties had 2 children one of whom is still a minor (Julie, age 13) and is Joan Williamson's custody. The parties' Decree of Divorce, based on a Stipulation, provided for \$368.00 per month child support and \$425.00 per month alimony. Due to no fault whatever of Joan Williamson, Stuart Williamson was involuntarily terminated from his employment due to unsatisfactory job performance, lost his \$3,550.00 per month income and health, medical and dental insurance on the parties' minor child, and Stuart Williamson took a job at \$11.00 per hour with his brother when he could have obtained employment at \$13.00 to \$15.00 per hour.

However, even if the foregoing is upheld, there exists a nearly \$400.00 income disparity between Joan Williamson's and Stuart Williamson's current incomes as found by the trial court.

Though not found by the trial court, Joan Williamson testified that her monthly needs were \$2,288.35. Stuart Williamson testified that his needs were \$1,811.00 - and that included his child support payment to Joan Williamson, Stuart Williamson's mortgage payment on the \$65,000.00 borrowed to pay Joan Williamson her equity from the parties' home, and Stuart Williamson's VISA bill incurred to pay Joan Williamson her support.

As stated by the Utah Supreme Court on numerous occasions:

An alimony award should, as far as possible, equalize the parties' respective standards of living and maintain them at a level as close as possible to the standard of living enjoyed during the marriage. In determining the amount of alimony to be awarded, it was necessary for the trial court to consider the financial condition and needs of the Plaintiff, her ability to produce a sufficient income for herself, and the ability of the Defendant to provide support

Olson v. Olson, 704 P.2d 564, 556 (Utah 1985) (footnotes omitted). See also English v. English, 565 P.2d 409 (Utah 1977) and Higley v. Higley, 676 P.2d 379 (Utah 1983).

An equalization of income in this case even on the trial court's finding of current income would require an alimony award of at least \$200.00 per month.

The trial court's adding Stuart Williamson's child support payment to Joan Williamson's income is an abuse of discretion. In so doing, the trial court is essentially requiring Joan Williamson herself to pay Stuart Williamson's child support obligation.

The trial court's termination of alimony is also an abuse of discretion. In their Stipulation, which was incorporated into the Decree of Divorce, the parties agreed that alimony be paid until Joan Williamson's remarriage or cohabitation or the death of either party. The parties' minor child is only 13. When the child is 18 the parties will only have been divorced 6 or so years. Under the trial court's ruling, Joan Williamson would presumably be precluded from having her alimony reinstated after the parties' minor child reaches 18 because it may be construed as being reasonably contemplated at this time. As stated in Johnson v. Johnson, 855 P.2d 250, 253 (Utah App 1993):

. . . where a future change in circumstances is contemplated by the trial court in the divorce decree, the fulfillment of that future change will not constitute a material change of circumstances sufficient to modify the award. "A change in circumstances reasonably contemplated at the time of divorce is not legally cognizable as a substantial change in circumstances in modification proceedings." Dana v. Dana, 789 P.2d 726, 729 (Utah app. 1990); see also Durfee v. Durfee, 796 P.2d 713, 716 (Utah App. 1990) (a material change in circumstances contemplated in the divorce decree cannot be grounds for a future modification).

The trial court's termination of alimony under the circumstances of this case was contrary to the parties' Stipulation, statutory law and case law, and was a clear and prejudicial abuse of discretion. The alimony should be reinstated effective from the trial court's date of termination.

III

JOAN WILLIAMSON IS ENTITLED TO AN AWARD OF HER ATTORNEY
FEES AND COSTS IN THIS CASE AT TRIAL AND ON APPEAL

The trial court accepted both parties' proffers of \$1500.00 attorney fees and costs. Without any finding of reasonableness or need, the trial court ordered each party to pay her/his own attorney fees and costs.

Section 30-3-3 Utah Code Ann. (1994) provides that a trial court may award attorney fees and costs in a divorce action. In order to recover on her attorney fees and costs, Joan Williamson was required at trial to show that the fees and costs requested were reasonable and that Joan Williamson was financially unable to pay the fees and costs. Huck v. Huck, 734 P.2d 417, 419 (Utah 1986).

As to reasonableness, the trail court accepted the parties' proffers. As to need, Joan Williamson testified that her monthly needs were \$2,288.35 and the trial court found her monthly income to be \$1,692.00, and awarded her \$252.00 child support and terminated her alimony. Joan Williamson has little or no financial ability to pay her attorney fees and costs.

Stuart Williamson has the greater income and income earning ability and has a new spouse who shares his household expenses.

Joan Williamson, having met her burden on both reasonableness of the fees and costs incurred, her need, and Stuart Williamson's far greater ability to pay the fees and costs, should have been awarded all of her reasonable attorney

fees and costs in this matter. The trial court's failure to award her fees was an abuse of discretion and should be reversed.

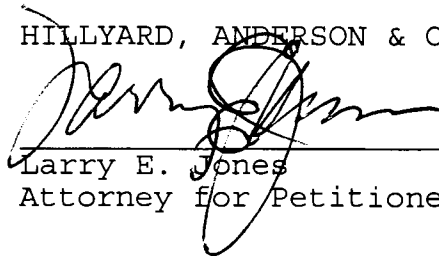
Joan Williamson respectfully submits that where she had a continuing need and Stuart Williamson's income and earning ability far exceeded her own, she should also be awarded a reasonable attorney fee and costs incurred subsequent to trial and in the bringing of this appeal.

CONCLUSION

Joan Williamson respectfully requests that this Court reverse the trial court and reinstate her \$425.00 alimony as set forth in the parties' Stipulation and as incorporated in the Decree of Divorce in this case. In the alternative, Joan Williamson respectfully requests that this case be remanded to the trial court for findings on all issues material to this case. Also, in the alternative, Joan Williamson respectfully requests that the parties' current income as found by the trial court be equalized so that the parties' respective standards of living be equalized, said alimony to be indeterminate. Finally, Joan Williamson respectfully requests that she be awarded her attorney fees and costs at the trial level and on appeal.

DATED this 14th day of December, 1998.

HILLYARD, ANDERSON & OLSEN



Larry E. Jones
Attorney for Petitioner/Appellant


original signature

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing BRIEF OF APPELLANT was mailed, postpaid, to the following this 14th day of December, 1998:

Mr. Pete N. Vlahos
Attorney at Law
2447 Kiesel Avenue
Ogden, UT 84401

HILLYARD, ANDERSON & OLSEN



Larry E. Jones
Attorney for Petitioner/Appellant

ADDENDUM

A.	May 24, 1996 Decree of Divorce	A
B.	August 29, 1996 Morton International, Inc. letter addressed to Stuart K. Williamson (Plaintiff's Exhibit No. 4)	B
C.	Transcript of the Trial Court's Oral Decision (Transcript pages 180-86)	C
D.	March 25, 1998 Findings of Fact and Conclusions of Law	D
E.	March 25, 1998 Order Modifying Decree of Divorce . .	E

Larry E. Jones #1745
HILLYARD, ANDERSON & OLSEN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
175 EAST FIRST NORTH
LOGAN, UTAH 84321
TELEPHONE (801) 752-2610

ADDENDUM A

IN THE FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY
STATE OF UTAH

JOAN WILLIAMSON,)
Plaintiff,) DECREE OF DIVORCE
vs.)
STUART KIM WILLIAMSON,) Case No. 954 207
Defendant.)

The above-entitled matter came on regularly for hearing on July 6, 1995. The Honorable Commissioner Daniel W. Garner presided. Plaintiff appeared in person and by and through her attorney, Larry E. Jones of Hillyard, Anderson & Olsen. The Court reviewed the written Stipulation of the parties previously filed. The Court heard evidence from Plaintiff. The Court now having before it the Stipulation of the parties, the evidence, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. Plaintiff be and is hereby awarded a Decree of Divorce against Defendant, said decree to become final upon signing and filing by the Court.

2. Plaintiff and Defendant are the parents of two (2) children as issue of this marriage, one of whom is still a minor, namely: Julie Williamson, born September 23, 1985.

3. Plaintiff is awarded the care, custody and control of the parties' minor child, subject to Defendant having

MICROFILMED

DATE

6-4-96

ROLL NUMBER:

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Case No.

954-207
#16

MAY 24 1996

By

Jan

reasonable visitation. Reasonable visitation shall be as set forth on the summary of statutory visitation attached hereto as Exhibit "A" and by this reference incorporated herein. Defendant shall have no visitation with the parties' daughter when Defendant has been or is drinking. Further, in the event either party decides to move from the State of Utah or 150 miles or more from the Logan, Utah area, Plaintiff and Defendant may agree to who will bear the expense for transportation for visitation purposes. If Plaintiff and Defendant are not able to agree, Plaintiff and Defendant shall submit the matter to the Court for consideration by the Court, the Court to factor in the reason for relocation, the additional costs or difficulty to Plaintiff and Defendant in exercising visitation, the economic resources of both parents, and any other factors the Court may deem necessary and relevant.

4. Defendant shall pay to Plaintiff the sum of \$368.00 per month as child support until such time as the payments are no longer due, which shall be when the child turns 18 or would graduate from high school with her normal high school class, whichever occurs later. Said child support was computed in accordance with the Uniform Civil Liability for Support Act, Utah Code Ann. § 78-45-1 et seq. A copy of the Child Support Obligation Worksheets which were averaged to come up with the child support in this case is attached hereto as Exhibits "B" and "C" and by this reference

incorporated herein. Child support shall commence July 1, 1995.

5. In addition to the child support, Defendant shall pay to Plaintiff one-half the work or training-related child care expense for the child of the parties. Plaintiff shall provide written verification of the cost and identity of a child care provider upon initial engagement of a provider and thereafter on the request of Defendant. Plaintiff shall notify Defendant of any change of child care provider or the monthly expense of child care within 30 calendar days of the date of the change. Reimbursement to Plaintiff for Defendant's one-half of the child care expense shall be paid to Plaintiff by Defendant within ten days from receipt of written verification of payment by Plaintiff. So long as not unduly disruptive to the child care arrangement, Defendant shall be entitled to provide child care for the minor child, subject to Defendant having not been drinking or drinking when he provides the child care.

6. Defendant shall maintain health, medical and dental insurance on the minor child of the parties. Plaintiff shall also maintain health, medical and dental insurance on the minor child of the parties when available to her at her place of employment at reasonable cost. Any uninsured expense for the minor child of the parties, including deductibles and copayments, shall be shared equally by the parties. Health, medical and dental expense is expressly

understood by the parties to include reasonable orthodontic, eye care, and eyeglass expenses. A parent who incurs uninsured health, medical or dental expenses shall provide written verification of the cost and payment of the uninsured health, medical or dental expenses to the other parent within 30 days of payment. Reimbursement for one-half the uninsured health, medical or dental expenses shall be paid to the incurring parent by the other parent within ten days from the receipt of the written verification.

7. The parties shall alternate the tax dependency exemption on the parties' minor child, Defendant to have the exemption in odd years beginning with 1995, and Plaintiff to have the exemption in even years beginning with 1996.

8. Defendant is required to pay Plaintiff alimony in the sum of \$425.00 per month until Plaintiff remarries or cohabits as defined in Utah Code Ann. § 30-3-5, or either party dies. Alimony shall commence July 1, 1995.

9. Defendant shall instruct his employer to withhold from Defendant's paycheck the child support and alimony provided for herein, said child support and alimony to be sent by the employer to a checking account belonging to Plaintiff. If for any reason Defendant fails to so instruct his employer, or Defendant's employer declines to abide by said instruction, or Defendant falls into arrears in his payment of child support and alimony, Defendant consents to Plaintiff's collection of child support and alimony through

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statutory income withholding as provided by Utah Code Ann. § 62A-11-401 et seq. (1994).

10. Defendant is awarded the real property of the parties, which property is located at 2740 West 5700 South, Wellsville, Utah 84339, and which is more particularly described on Exhibit "D" which is attached hereto and by this reference incorporated herein. Plaintiff shall provide to Defendant a quit-claim deed conveying any and all of her interest in the property to Defendant. Defendant shall be obligated to pay the mortgage to First Security Bank, as well as any and all taxes, insurance, or expenses or payments of any kind associated with the property, and to indemnify and hold Plaintiff harmless therefrom.

11. Plaintiff is awarded all personal property set forth on Exhibit "E" attached hereto and by this reference incorporated herein, her personal items and effects, as well as the personal property, items and effects of and for the minor child of the parties.

12. Defendant is awarded all personal property set forth on Exhibit "F" attached hereto and by this reference incorporated herein, as well as his personal items and effects.

13. Plaintiff and Defendant shall each be awarded a one-half interest in any and all retirement benefits which the other may have through their places of employment. Said interest shall be divided in accordance with the so-called

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Woodward formula as set forth in the case of Woodward v. Woodward, 656 P.2d 431 (Utah 1982). Each shall be awarded a survivor benefit at least equivalent in amount to their retirement interest awarded herein, said benefit to be at the survivor's expense. Each shall prepare and submit to the other's employer an appropriate Qualified Domestic Relation Order to accomplish and effect the distribution and severance of said retirement interest. Each shall execute any and all documents necessary for the other to obtain a transfer of interest in said retirement. Plaintiff and Defendant may each continue to name or may in the future rename the other as a beneficiary on any of the foregoing retirement interests, the named party to have all rights as a beneficiary.

14. The proceeds of the life insurance policies which the parties have cashed shall be used to pay the VISA obligation, in the approximate sum of \$4,000.00, with the remainder of the insurance proceeds to be divided equally between the parties.

15. Plaintiff shall pay the following debts and obligations:

<u>Creditor</u>	<u>Amount</u>
-----------------	---------------

Any and all debts which Plaintiff has incurred in her own name since June 1, 1995.

em

Plaintiff shall indemnify and hold Defendant harmless from the foregoing debts.

16. Defendant shall pay the following debts and obligations:

<u>Creditor</u>	<u>Amount</u>
First Security Bank	\$100,000.00

As well as any and all debts which Defendant has incurred in his own name since June 1, 1995.

Defendant shall indemnify and hold Plaintiff harmless from the foregoing debts.

17. To pay Plaintiff for her equity interest in the parties' home, Defendant shall pay to Plaintiff the sum of \$65,000.00, said payment to be made on or before the entry of the Decree of Divorce in this matter.

18. Plaintiff and Defendant shall divide equally any itemizable 1995 tax deductions which have accrued up to the date of the parties' divorce.

19. Plaintiff shall maintain life insurance on her life in the sum of \$18,000.00 so long as reasonably available from her employer, and Defendant shall maintain life insurance on his life in the sum of \$45,000.00 so long as reasonably available from his employer. Plaintiff and Defendant shall each name the parties' minor child as the beneficiary on said insurance, each to be entitled to name a trustee if desired. Plaintiff and Defendant shall provide each other with documentation of the insurance both as to amount and beneficiary designation within 30 days of the

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date this Decree of Divorce is entered in this case, and on January 1 of each calendar year commencing January 1, 1996.

20. Plaintiff and Defendant shall each pay their own attorney fees and costs incurred in this matter.

21. Each party shall act in good faith in signing and delivering to the other party any additional documents, instruments, and writings, including deeds, releases, and securities, which may be necessary to enforce or carry out the terms of the Stipulation and this document.

22. Any party discovering any property not disclosed in the Stipulation or this document shall be entitled to petition the Court for an equitable decision of such property.

23. In the event either party to this agreement defaults on his or her obligations hereunder, the party in default shall be liable to the prevailing party for all reasonable expenses, including attorney fees and court costs incurred in the enforcement of the obligations created by the Stipulation and the Court Decree.

Dated this 24 day of May, 1996.

BY THE COURT:

Recommended by:

[Signature] 5/23/96

[Signature]
District Court Judge

Approved as to form:

[Signature]
Pete N. Vlahos
Attorney for Defendant

I CERTIFY THAT THE FOREGOING
IS A TRUE AND CORRECT COPY
AND WAS FILED IN FIRST
JUDICIAL DISTRICT COURTS.
DATE 11-14-96
[Signature]
DEPUTY CLERK

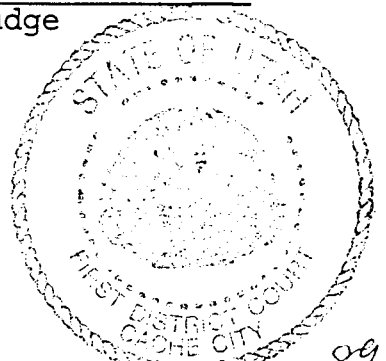


EXHIBIT "A"

U.C.A. SEC. 30-3-35 MINIMUM SCHEDULE FOR VISITATION
(SUMMARIZED)
Effective May 3, 1993

Reasonable Visitation should be defined as the parents may agree. If they are not able to agree, the definition for school-age children (beginning kindergarten) will be as follows:

Midweek: One weekday evening specified from 5:30 - 8:30 p.m.

Alternate Weekends: Friday 6:00 p.m. to Sunday 7:00 p.m.

HOLIDAYS TAKE PRECEDENCE OVER THE WEEKEND VISITATION AND THE ALTERNATING WEEKEND SCHEDULE DOES NOT CHANGE.

Holiday Visitation: (6:00 p.m. day before the holiday to 7:00 p.m. of the holiday unless specified otherwise)

ODD NUMBERED YEARS

Human Rights Day
Easter from Fri 6:00 p.m. to
Sun 7:00 p.m.
Memorial Day Fri 6:00 p.m. to
Mon 7:00 p.m.
July 24th to 11:00 p.m.
Veteran's Day
Day before or after child's birthday
3:00 p.m. to 9:00 p.m.
First half Christmas Vacation, including
Christmas Eve and Christmas Day
to 1:00 p.m.

EVEN NUMBERED YEARS

New Year's Day
President's Day
July 4th to 11:00 p.m.
Labor Day from Fri 6:00 to
Mon. 7:00 p.m.
Columbus Day
UEA weekend from Wed 6:00 p.m.
to Sun 7:00 p.m.
Child's actual Birthday to 9:00 p.m.
Thanksgiving from Wed 7:00 pm.
to Sun 7:00 p.m.
Second Half Christmas Vacation
beginning 1:00 p.m. Christmas Day

Father's Day: With Father 9:00 a.m. to 7:00 p.m.

Mother's Day: With Mother 9:00 a.m. to 7:00 p.m.

Summer: 4 weeks during summer or, if year round, 1/2 school breaks, custodial parent allowed two weeks uninterrupted. Notification of summer visitation or vacation weeks with children should be provided in writing to the other parent at least 30 days in advance.

Telephone: Contact at reasonable hours

UNIFORM VISITATION GUIDELINES

1993

Further Clarifications:

FAMILY FUNCTIONS: Special consideration shall be given each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the visitation schedule;

PICKUP/RETURN: The noncustodial parent shall pick up the child at the times specified and return the child at the time specified, and the child's regular school hours shall not be interrupted;

RECORDS/REPORTS: The custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports and community functions in which the child is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully;

CHANGE OF ADDRESS: Each parent shall provide the other with his current address and telephone number within 24 hours of any change;

CHILD CARE: Parental care shall be presumed to be better care for the child than surrogate care and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able, to provide child care;

RELIGIOUS HOLIDAYS: Each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

EXHIBIT "B"

IN THE FIRST DISTRICT COURT

CACHE COUNTY, STATE OF UTAH

JOAN WILLIAMSON,

vs.

STUART KIM WILLIAMSON

CHILD SUPPORT OBLIGATION WORKSHEET
(SOLE CUSTODY AND PATERNITY)

Civil No. 954 207

	MOTHER	FATHER	COMBINED
1. Enter the # of natural and adopted children of this mother and father for whom support is to be awarded.	////////// //////////	////////// //////////	1
2a. Enter the father's and mother's gross monthly income. Refer to Instructions for definition of income.	\$ 1442	\$ 3550	////////// ////////// //////////
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.	\$ 1442	\$ 3500	\$ 4942
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.	////////// ////////// //////////	////////// ////////// //////////	\$ 534
5. Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	29.18 ¢	70.82 ¢	////////// //////////
6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$ 155.82	\$ 378.18	////////// //////////

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.	\$ 378.18
------------------------------------------------------------------------------------------------------------------------------------	-----------

8. Which parent is the obligor? () Mother () Father
9. Is the support award ordered different from the guideline amount in Line 7? () Yes () No. If YES, enter the amount ordered: \$ _____
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. _____ () Electronic filing () Manual filing

EXHIBIT "D"

WHEN RECORDED RETURN TO:

SEND TAX NOTICES TO

QUIT-CLAIM DEED

JOAN WILLIAMSON, Grantor, of Cache County, State of Utah, hereby quit-claims to STUART KIM WILLIAMSON, Grantee, for the sum of Ten Dollars (\$10.00) and ot2her good and valuable consideration, the following described tract of land in Cache County, State of Utah:

SEE ATTACHED FOR THE LEGAL DESCRIPTION,
WHICH BY THIS REFERENCE IS MADE A PART HEREOF.

WITNESS, the hand of said Grantor, this ____ day of _____, 1995.

JOAN WILLIAMSON

STATE OF UTAH)
): ss.
County of Cache)

On the ____ day of May, _____, personally appeared before me JOAN WILLIAMSON, the signer of the within instrument, who duly acknowledged to me that he executed the same.

NOTARY PUBLIC

Legal Description for parcel 10-013-0008

W 5700 S: 2740 WELLSVILLE - Tax Rate :0.012027:

REG SW COR OF THE SE/4 SEC 1 T 10N R 1W N 323 FT TH ELY ALG S BNK OF CANAL
268 FT S 800 FT W 268 FT TO REG TOG WITH R/W 5.08 AC

EXHIBIT "E"

PERSONAL PROPERTY ITEMS TO BE
AWARDED TO JOAN WILLIAMSON

1990 Chevrolet Blazer

All personal property agreed upon

All personal items and effects

All personal property items and effects of and for Julie

lej\williamson.exd

EXHIBIT "F"

PERSONAL PROPERTY ITEMS TO BE
AWARDED TO STUART WILLIAMSON

1982 GMC 4x4 Truck

Snowplow

Horse Trailer

Camping Trailer

1982 Chevrolet Capri automobile

All personal property agreed upon

All personal items and effects

lej\williamson.exe



August 29, 1996

Stuart K. Williamson
2740 West 5700 South
Wellsville, UT 84339

Dear Kim:

This letter is to inform you of your involuntary termination of employment with Morton Automotive Safety Products effective today, August 29, 1996. This action was taken as a violation of Company Policy; specifically unsatisfactory performance of job responsibilities.

As a severance package you will receive the following:

- 2 weeks of pay in lieu of notice
- 6 weeks of pay (one week for each year of service)
- 8 Total

Information regarding your medical insurance and the Employee Savings and Investment Plan (if applicable) will be mailed to you separately.

We regret that your actions have brought us to this conclusion. If you are dissatisfied with any aspect of your termination, you may review the Morton Automotive Safety Products Employee Handbook as it pertains to the Employee Grievance Process.

Sincerely,

Judith A. Mueller, Manager
Employee Relations

Morton Automotive Safety Products

Morton International, Inc., 3350 Airport Road, Ogden, UT 84405 SOI 625-4800 FAX 801 625-7000

PLAINTIFF'S EXHIBIT	
EXHIBIT NO.	4
CASE NO.	9541-207
DATE REC'D IN EVIDENCE	2-11-98
CLERK	Jan

ADDENDUM C

1 THE JUDGE: You offered EXHIBIT #2 and
2 EXHIBIT #3 but you just didn't EXHIBIT #1.

3 MR. VLAHOS: I don't see where EXHIBIT #1
4 went but I offered all three of them.

5 THE JUDGE: Wherever it may be let's make
6 certain that that's introduced, given to the Court
7 before you leave.

8 MR. VLAHOS: I gave the Court a copy and
9 I--

10 COURT'S RULING

11 THE JUDGE: Now in ruling on this let me
12 indicate, Mr. Vlahos, I'll direct that you prepare
13 the findings and conclusions.

14 Court does find that there has been a
15 change of circumstances and I will adjust the child
16 support as follows: For purposes of child support
17 the income of mother should be \$1,643, for the
18 father it should be \$2,090. That's per month.
19 And quite frankly I'm not quite sure where we came
20 up with \$1,643. All of the calculations I make
21 show that she makes in excess of that.

22 MR. VLAHOS: I apologize. I made an
23 error. I apologize.

24 THE JUDGE: But Mr. Vlahos prepared it
25 and I think he's, I'm going to stick him with his

1 figure.

2 For the purposes of alimony I've
3 calculated, and I'd like this shown in the findings
4 and conclusions, Mr. Vlahos, that her actual income
5 last year was \$1,832.66 per month. But from her
6 testimony that she is now making \$1,692.56 per
7 month. But that is the \$75 from King's on a
8 monthly basis and \$70 per month as overtime at her
9 regular employment. The Court is--

10 MR. VLAHOS: That figure is what? Comes
11 up to a total of what, Your Honor?

12 THE JUDGE: There's three figures that
13 should be reflected. Number one is that the
14 Court's going to accept \$1,643 which is the figure
15 you proposed for her income. I note that the
16 actual income shown from the W-2s last year show
17 that her income was \$1,832.66. From her testimony
18 her income this year would be \$1,692.56. And I've
19 calculated that at \$70 from the, per month for
20 overtime and \$75 per month from King's. That's
21 what she testified to.

22 I'm going to terminate alimony. Now to
23 make this effective, and the Court paints this in
24 broad strokes, I've often said that in the past and
25 I'll reemphasize that here today. Mr. Vlahos, I'm

1 show not sure, has your client paid the child
2 support for February?

3 MR. VLAHOS: He's paid--

4 MR. KIM WILLIAMSON: For February I paid
5 child support and alimony, Your Honor.

6 THE JUDGE: For February?

7 MR. VLAHOS: He testified that he sold his
8 truck and paid it.

9 THE JUDGE: All right. The child support
10 will be effective as of March 1st, the reduction in
11 child support. The alimony I want you to
12 calculate that out and whatever he's paid that is
13 when, up to, that is when I'm going to terminate
14 alimony. In other words, he doesn't pay any more
15 alimony but she doesn't owe him any rebates in
16 what's been paid up to this point in time.

17 MR. VLAHOS: So alimony will terminate
18 and offset retroactively to what owes her?

19 THE JUDGE: To whatever he owes. I'm
20 just going to say that whatever he's paid in the
21 past she may keep, she doesn't owe him anything.
22 But I can't ascertain from what you've told me what
23 date that would be effective as of so calculate
24 that. And in other words, she keeps what she's got
25 and he doesn't have to pay any more.

1 Each party to pay their own costs of court
2 and attorney's fees. Mr. Vlahos, will you prepare
3 the--

4 MR. JONES: Your Honor, I have a couple
5 of questions if I may.

6 THE JUDGE: Go ahead.

7 MR. JONES: First we have the health,
8 medical and dental on the child. That should be
9 included with the child support?

10 THE JUDGE: It should be.

11 MR. VLAHOS: If his wife can get it, Your
12 Honor, can we allow that to happen?

13 THE JUDGE: Certainly.

14 MR. VLAHOS: Okay. She's applied for
15 it. They've only been married a month so...

16 THE JUDGE: Hopefully that will come
17 about.

18 MR. KIM WILLIAMSON: I'll have her apply
19 and put her name on it.

20 THE JUDGE: Yes. Hopefully that will
21 come about.

22 MR. JONES: Your Honor and I, and I'm
23 going to question the Court on this one. If Your
24 Honor finds the \$1,692.56 on hers and the \$2,090 on
25 his, that's still a \$400 income disparity. This

1 was a 24 year marriage.

2 THE JUDGE: I appreciate that, Counsel,
3 but when you take into account the child support
4 that he would pay and that she would receive and
5 their actual incomes, etcetera, the Court finds
6 that's close enough.

7 MR. JONES: Well but even if you do that,
8 Your Honor, you take \$200 off of hers you'd end up
9 with \$1,443. Take \$250 off of his you end up at
10 \$1,840.

11 THE JUDGE: They're within \$100.

12 MR. JONES: You're still \$400.

13 THE JUDGE: No you're not, Counsel.
14 Your figures are different than mine.

15 MR. JONES: Well I'm, I'm looking at the
16 child support worksheet, Your Honor. What Your
17 Honor said was, and I-- Please just hear me out.

18 THE JUDGE: Sure.

19 MR. JONES: I'm not trying to argue with
20 the Court.

21 THE JUDGE: Go ahead.

22 MR. JONES: But I have a real concern
23 here because I think that the Court's ruling is
24 clearly contrary to the case law--

25 THE JUDGE: All right.

1 MR. JONES: -- in a long-term marriage.

2 THE JUDGE: All right. He's basically
3 making \$2,100 gross.

4 MR. JONES: \$2,100.

5 THE JUDGE: She's basically making \$1,700
6 gross.

7 MR. JONES: Oh, well now you're rounding
8 out.

9 THE JUDGE: Yes.

10 MR. JONES: But say it's the \$400, \$2,100
11 and \$1,700. You take \$200 off of hers for her
12 child support that makes it 15. You take \$200, it
13 would be \$270 or something off of his, that makes
14 it 18. \$300. 21 minus 3 is 18. 17 minus 2 is
15 15. So there's \$300 even on your, your numbers
16 that you're essentially spinning up. There's
17 still an income disparity of \$300 bending over
18 backwards to his numbers.

19 THE JUDGE: Well I appreciate your
20 manipulation. But he's making \$2,100, she's making
21 \$1,700. He gives her \$250, she gets \$250. And
22 he's \$100 in the hole. That's the way the Court
23 looks at it.

24 MR. JONES: Well but Your Honor, but that
25 doesn't--

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THE JUDGE: End of story, Mr. Jones.
Court will be in recess.

MR. VLAHOS: Thank you, Your Honor.

WHEREUPON, the hearing was concluded.

=====

Larry E. Jones #1745
HILLYARD, ANDERSON & OLSEN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
175 EAST FIRST NORTH
LOGAN, UTAH 84321
TELEPHONE (801) 752-2610

ADDENDUM D

LOGAN DISTRICT
MAR 12 4 32 PM '98

IN THE FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY
STATE OF UTAH

JOAN WILLIAMSON,)	
	)	FINDINGS OF FACT AND
Petitioner,	)	CONCLUSIONS OF LAW
vs.)	
STUART KIM WILLIAMSON,	)	Case No. 954 207
	)	Judge Clint S. Judkins
Respondent.)	

THIS MATTER, having come on regularly for trial on the 11th day of February, 1998, before the Honorable Clint S. Judkins, Judge of the above-entitled Court, sitting without a jury; and the Petitioner appearing in person and with her attorney, Larry E. Jones, and the Respondent appearing in person and with his attorney, Pete N. Vlahos; and it having been shown that the Respondent had previously filed a Petition to Modify and then, by leave of Court, having filed an Amended Petition to Modify; and each of the parties having been sworn and testifying; exhibits having been offered and received; witnesses having been called by both parties; arguments having been made; and the Court being fully cognizant of all matters pertaining therein, enters the following:

FINDINGS OF FACT

1. Petitioner and Respondent were divorced May 24, 1996.

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MAR 25 1998

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2. There was one minor child born as issue of the marriage, TO WIT: Julie Williamson, born September 23, 1985.

3. The Petitioner was awarded the care, custody, and control of said minor child, subject to the respondent's right to visit.

4. The Respondent was ordered to pay to the petitioner the sum of \$368.00 per month as and for child support, and also \$425.00 per month as and for alimony.

5. At the time of the divorce, the Respondent was earning \$3,550.00 per month, and the Petitioner was earning \$1,442.00 per month.

6. Since the Decree was entered, there has been a substantial change of circumstances, in that respondent was terminated from Morton, and that he no longer earns \$3,440.00.

7. The Respondent has obtained employment with Williamson Drywall, and the Respondent's income is \$11:00 per hour. The Court finds that with the overtime, the Respondent earns \$2,090.00 per month.

8. The Respondent's last year's (1997) income based on the tax returns is \$1,832.66 per month.

9. The Petitioner's current income is \$1,692.00 per month which includes a part-time job, where she earns \$75 per month, and also overtime averaging \$70.00 per month.

10. The Respondent's income is based on overtime and his income in the year 1997.

11. The Court finds that there has been a substantial change of circumstance.

12. Based on the substantial change of circumstance, the alimony that respondent was ordered to pay to the Petitioner shall terminate.

13. Based on the parties "now" income, the support shall be reduced to \$252.06 plus Petitioner's out-of-pocket medical insurance expense on the parties' daughter bringing child support to a total of \$271.64 per month effective March 1, 1998. A copy of the Child Support Worksheet is attached hereto Exhibit "A" and by this reference incorporated herein.

14. The Court finds that the termination of alimony should be effective immediately with Petitioner to keep what she has been paid to date and Respondent to owe no more.

15. Each of the parties has incurred attorney fees and the Court finds that each should be required to pay their own.

16. The Respondent will have health and accident insurance in effect, approximately the 1st day of March, 1998, which he will receive through his present wife's employment and that if the petitioner has to pay health and accident insurance for the minor child, then the standard medical shall be adopted. The Respondent would be obligated to pay one-half of the costs of the health and accident insurance for the minor child only, with the Petitioner to provide the Respondent verification.

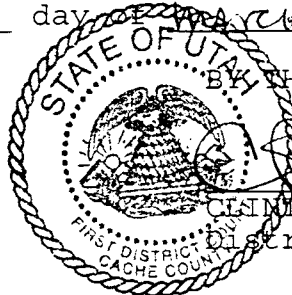
LAW OFFICES, HILLYARD, ANDERSON & OLSEN, 175 EAST FIRST NORTH, LOGAN, UTAH 84321

FROM THE ABOVE AND FOREGOING Findings of Fact, the Court arrives at the following:

CONCLUSIONS OF LAW

1. There has been a substantial change of circumstances on the part of the Petitioner and the Respondent, since the entry of the Divorce Decree.
2. Effective as of the month of February, 1998. the Respondent's obligation to pay the Petitioner alimony terminates.
3. Effective as of March 1, 1998, the child support shall be \$271.64, rather than the \$368.00 as set forth in the Decree of Divorce.
4. Any payments the Respondent made to the Petitioner made to the Respondent on alimony shall stand and the Respondent will not be allowed to go retroactive.
5. Whatever the payments the Respondent have made and whatever payments the Respondent has received as and for alimony shall be a wash, with no obligation owed by either party.
6. Each party shall assume and pay their own attorney fees and costs.
7. If the Respondent's wife obtains insurance for the minor child, he shall maintain it, also.

Dated this 24 day of MARCH, 1998.

BY THE COURT:

 CLINT S. JUDKINS
 District Court Judge

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MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW was mailed, postage prepaid to the following this 12th day of March, 1998:

Pete N. Vlahos
Attorney at Law
2447 Kiesel Avenue
Ogden, UT 84401

Connie S. Draper
Secretary

lej\findings\williamson.fol

LAW OFFICES. HILLYARD, ANDERSON & OLSEN, 175 EAST FIRST NORTH, LOGAN, UTAH 84321

EXHIBIT "A"
 I. THE FIRST JUDICIAL DISTRICT COURT
 CACHE COUNTY, STATE OF UTAH

JOAN WILLIAMSON,)
)
 vs.) CHILD SUPPORT OBLIGATION WORKSHEET
) (SOLE CUSTODY AND PATERNITY)
)
 STUART KIM WILLIAMSON,) Civil No. 9541000207

	MOTHER	FATHER	COMBINED
1. Enter the # natural and adopted children of this mother and father for whom support is to be awarded.			1
2a. Enter the father's and mother's gross monthly income. Refer to Instructions for definition of income.	\$1,643.00	\$2,090.00	
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.	\$1,643.00	\$2,090.00	\$3,733.00
. 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.			
5. Divided each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	44%	56%	
6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$199.00	\$252.06	

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.	\$271.64
------------------------------------------------------------------------------------------------------------------------------------	----------

8. Which parent is the obligor? Mother Father
9. Is the support award ordered different from the guideline amount in Line 7?
 Yes No If YES, enter the amount ordered: \$ _____
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: _____

201

Larry E. Jones #1745
HILLYARD, ANDERSON & OLSEN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
175 EAST FIRST NORTH
LOGAN, UTAH 84321
TELEPHONE (801) 752-2610

ADDENDUM F

LOGAN DISTRICT

MAR 12 4 38 PM '98

IN THE FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY

STATE OF UTAH

JOAN WILLIAMSON,)	
	)	ORDER MODIFYING
Petitioner,	)	DECREE OF DIVORCE
)	
vs.)	
)	
STUART KIM WILLIAMSON,	)	Case No. 954 207
	)	Judge Clint S. Judkins
Respondent.)	

THIS MATTER, having come on regularly for trial on the 11th day of February, 1998, before the Honorable Clint S. Judkins, Judge of the above-entitled Court, sitting without a jury; and the Petitioner appearing in person and with her attorney, Larry E. Jones, and the Respondent appearing in person and with his attorney, Pete N. Vlahos; and each of the parties having been sworn and testifying; exhibits, having been offered and received; witnesses having been called; arguments having been made to the Court; and the Court having rendered its Findings of Fact and Conclusions of Law, separately stated in writing.

NOW THEREFORE IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. There has been a substantial change of circumstances since the entry of the Decree of Divorce.
2. Effective as of the month of February, 1998, the Respondent's obligation to pay the Petitioner alimony terminates.

MICROFILMED

DATE:

3-26-98

MAR 25 1998

FILE NUMBER:

77

202

LAW OFFICES, HILLYARD, ANDERSON & OLSEN, 175 EAST FIRST NORTH, LOGAN, UTAH 84321

3. Effective as of March 1, 1998, the child support shall be \$252.00, rather than the \$368.00 as set forth in the Decree of Divorce.

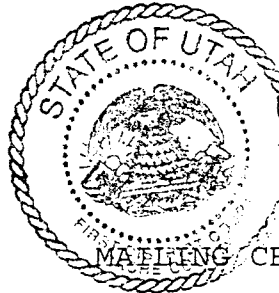
4. Any payments the Respondent made to the Petitioner made to the Respondent on alimony shall stand and the Respondent will not be allowed to be retroactive.

5. Whatever the payments the Respondent have made and whatever payments the Respondent has received as and for alimony shall be a wash, with no obligation owed by either party.

6. Each party shall assume and pay their own attorney fees and costs.

7. If the Respondent's wife obtains insurance for the minor child, he shall maintain it, also.

Dated this 24th day of MARCH, 1998.



BY THE COURT:

[Signature]
CLINT S. JUDKINS
District Court Judge

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW was mailed, postage prepaid to the following this 12th day of March, 1998:

Pete N. Vlahos
Attorney at Law
2447 Kiesel Avenue
Ogden, UT 84401

[Signature]
Secretary

lej\order\williamson.ord