

2009

Manuel Romero v. Alice Romero : Brief of Appellant

Utah Court of Appeals

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Case No. 20090335

Attorneys for Respondent/Appellant

03 2009

IN THE UTAH COURT OF APPEALS

MANUEL ROMERO,

Respondent/Appellant

v.

ALICE ROMERO,

Petitioner/Appellee.

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BRIEF OF APPELLANT

Case No. 20090335

**APPEAL FROM DIVORCE DECREE ENTERED BY THE
THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY
HONORABLE TERRY CHRISTIANSEN**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
A. Cases	ii
B. Rules	ii
C. Statutes	ii
STATEMENT OF JURISDICTION.....	1
STATEMENT OF ISSUES AND STANDARD OF REVIEW	1
CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS WHOSE INTERPRETATION IS DETERMINATIVE OF THE APPEAL OR OF CENTRAL IMPORTANCE TO THE APPEAL	2
STATEMENT OF THE CASE.....	2
A. Nature of the Case, Course of Proceedings and Disposition in the Court Below	2
B. Statement of Facts.....	3
SUMMARY OF ARGUMENTS	6
ARGUMENT	7
I. THE DISTRICT COURT ERRED IN FAILING TO INCLUDE IN ITS FINDINGS MR. ROMERO'S SECOND MORTGAGE ON HIS CONDOMINIUM	7
CONCLUSION	9
CERTIFICATE OF SERVICE	9
ADDENDUM	10

TABLE OF AUTHORITIES

Cases

<i>Anderson v. Thompson</i> , Not Reported in P.3d, 2008 WL 2058253 (Utah Ct. App. 2008) .	1
<i>Jeffs v. Stubbs</i> , 970 P.2d 1234 (Utah 1998)	1
<i>Potter v. Potter</i> , 845 P.2d 272 (Utah Ct. App. 1993)	7
<i>Richard v. Brown</i> , 2009 WL 3463363	1
<i>Stevens v. Stevens</i> , 754 P.2d 952 (Utah Ct. App. 1988)	7, 8
<i>Stonehocker v. Stonehocker</i> , 2008 UT App 11, 176 P.3d 476.....	1, 7

Rules

Utah R. App. Proc. 3(a)	2
-------------------------------	---

Statutes

Utah Code Ann. § 30-3-5 (1)	2
Utah Code Ann. §78A-4-103(h).	1

STATEMENT ON JURISDICTION

This appeal is taken from a divorce decree entered in the Third Judicial District Court, State of Utah, by the Honorable Terry Christiansen. This Court has jurisdiction pursuant to Utah Code Ann. §78A-4-103(h).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Issue: 1. Whether the District Court erred in its failure to find that the Appellant (“Mr. Romero”) had a second mortgage on the condominium located at 416 East Creekside Circle # B, Murray, Utah 84107, which should have been used along with the Court’s other findings regarding marital property, mortgages and remaining equity to calculate the parties’ marital assets and debts and reach an equitable division of those marital assets.

Standard of Review of Issue 1. The court should “defer to a trial court’s factual findings unless there is clear error but review its legal conclusions for correctness. *Richard v. Brown*, 2009 WL 3463363, citing *Jeffs v. Stubbs*, 970 P.2d 1234, 1241 (Utah 1998). If a trial court’s findings are incomplete, this Court may ”order the trial court . . . to supplement, modify, or complete the findings to make them conform to the issues presented and the facts as found from the evidence and may direct the trial court ... to enter judgment in accordance with the findings as revised. Utah R. App. P. 30(a); *Stonehocker v. Stonehocker*, 2008 UT App 11, ¶¶ 15-23, 176 P.3d 476, 481-84; *Anderson v. Thompson*, Not Reported in P.3d, 2008 WL 2058253 (Utah Ct. App. 2008).

**CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND
REGULATIONS WHOSE INTERPRETATION IS DETERMINATIVE OF THE
APPEAL OR OF CENTRAL IMPORTANCE TO THE APPEAL**

Utah Code Ann. § 30-3-5 (1) (2009).

Disposition of property -- Maintenance and health care of parties and children -- Division of debts -- Court to have continuing jurisdiction -- Custody and parent-time -- Determination of alimony -- Nonmeritorious petition for modification.

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

Utah R. App. Proc. 3(a). See Addendum.

STATEMENT OF THE CASE

**A. NATURE OF THE CASE, COURSE OF PROCEEDINGS AND
DISPOSITION OF THE CASE.**

This case was tried before Judge Christensen on January 23, 2009, R. 309-310. Mr. Romero appeals the Third District Court's March 24, 2009, divorce decree denying Mr. Romero any equity interest in the parties' marital property located at 786 River Glenn Drive, Salt Lake City, Utah as inequitable because the District Court failed to include in its Decision and Findings of Facts a material debt. R. 342-343.

Specifically, Mr. Romero appeals the Court's failure to find that Mr. Romero had a second mortgage on the condominium located at 416 East Creekside Circle # B, Murray, Utah 84107, which finding should have been used, along with the Court's other findings regarding marital property, mortgages and remaining equity, to calculate the parties' marital assets and debts and reach an equitable division of those marital assets.

B. STATEMENT OF FACTS

Appellant, Mr. Romero and Appellee, (“Mrs. Romero”) were married in May 2004. Prior to their marriage, Mrs. Romero owned a home located at 786 River Glen Drive, in Murray, Utah, and Mr. Romero owned a condominium located at 416 East Creekside # B in Murray, Utah. R. 318-319.

At the time of the parties’ marriage in May 2004, there was no equity existing in either Mr. Romero’s condominium or Mrs. Romero’s home. R. 319. In August 2004, Mr. Romero’s name was added to the title of Mrs. Romero’s home and in May 2006, a second mortgage in the amount of \$31,000.00 was taken out on the home to replace a prior second mortgage existing on the home. R. 319. In January 2007 the parties separated and both filed for divorce. R. 1-4, 11-13, 320. This case was tried before Judge Christensen on January 23, 2009, R. 309-310.

The Court found that the River Glen property was a marital asset with \$67,000.00 equity in the property. R. 379 p. 201. Although the court did not consider the condominium to be a martial asset, the Court found it fair to consider the \$46,000.00 equity in Mr. Romero’s condominium in the division of the marital assets. R. 379 p. 202. Further, the court found the difference in equities of the property to be about \$20,000.00. R. 379 p. 202.

In valuing the property, the District Court found that the fair market value of Mrs. Romero’s home, as of the date of separation, was \$235,000.00 and that the fair market

value of Mr. Romero's was \$122,000.00. R. 320. The District Court found that the debt owing on Mrs. Romero's home was \$168,000.00, representing \$31,000.00 on a second mortgage and \$137,000.00 on a first mortgage. R. 320. The court also found the debt owing on Mr. Romero's condominium was \$76,000.00 but the court failed to include in its calculation the second mortgage that existed on the condominium. R. 320, 379 pp 206-07.

At two different times during the trial Mr. Romero testified that the debt on his condominium included an \$85,000.00 first mortgage and an approximately \$23,000.00 second mortgage. Mr. Romero testified to the first and second mortgage while being examined by Mrs. Romero's attorney and again on direct examination by Mr. Romero's attorney. R. 379 at pp. 111, 123-24. Specifically, Mr. Romero testified that his remaining mortgage balance at the time of trial was approximately \$76,000.00 but that he had acquired a second mortgage in November 2003 for an additional \$23,000.00. R. 379 pp. 109-11, 123-24. Additionally, Mr. Romero filed with the District Court a financial declaration noting that the debt owing on the condominium consisted of both a first mortgage, with an approximate value of \$75,000.00, and a second mortgage, with an approximate value of \$28,000.00. R. 74-79.

In its Ruling and Findings of Facts, the District Court methodically calculated the equity of Mrs. Romero's home, identifying and valuing both the first and second mortgage in its calculation. R. 320. However, when calculating Mr. Romero's equity in

his condominium, the District Court identified and valued the first mortgage but failed to identify and value the second mortgage. R. 320. Mr. Romero's attorney brought this error to the District Court's attention by reiterating Appellant's testimony that there was both a first and second mortgage on the condominium and that the balance of \$76,000.00 represented only the first mortgage. R. 379 pp. 206-08. Mr. Romero's attorney also offered to file a motion to amend the record to clarify this fact. R. 379 p. 207. The District Court indicated it was unwilling to change its findings, stating that the division was "really about the same for each side" and that a subsequent motion to clarify the record "won't make any difference." R. 379 p. 207.

In its findings regarding the division of property, the court found that the condominium was Mr. Romero's separate property and that, while the home was, originally the separate property of Mrs. Romero, it became marital property. R. 320. The District Court then used its equitable power to deviate from the general presumption that marital property be divided equally among the parties and concluded that since there was only an "insignificant" \$20,000.00 difference in equity between the condominium and the home that the Mrs. Romero should be awarded all rights, title, and interest in the home and Mr. Romero should be awarded all rights and interests in the condominium. R. 321.

On April 21, 2009 Mr. Romero filed a motion for appeal. R. 342-343.

SUMMARY OF ARGUMENT

Since the District Court failed to include in its calculation, Mr. Romero's \$23,000.00 second mortgage, the difference in equity between the properties was not \$21,000.00 but was actually \$44,000.00, representing a difference between the equity in the home of \$67,000.00 (FMV \$235,000.00 – (1st mortgage of 137,000+ 2nd mortgage of \$31,000.00)) and of the condominium of \$23,000.00 (FMV \$122,000.00 – (1st mortgage of \$76,000.00 + 2nd mortgage of \$23,000.00)).

The District Court's failure to identify and value the second mortgage on the condominium in its Decision or Findings of Fact is a reversible error. By not identifying the second mortgage in its distribution or explaining the reasoning behind this omission, the appeals court cannot effectively review whether the omission of the second mortgage resulted in a fair and equitable distribution of the party's marital property. Therefore, this court should order the District Court to supplement its findings of fact to include the second mortgage and to reconsider the distribution of assets based on the supplemented findings.

ARGUMENT

I. THE DISTRICT COURT ERRED IN FAILING TO INCLUDE IN ITS FINDINGS MR. ROMERO'S SECOND MORTGAGE ON HIS CONDOMINIUM.

Failure to identify and value all items of marital property and debt is a reversible error for which an appellate court should order the trial court to supplement its findings and reconsider the distribution of the marital property based upon those findings. *Stevens v. Stevens*, 754 P.2d 952, 955-56 (Utah Ct. App. 1988); *see also Stonehocker v. Stonehocker*, 2008 UT App 11, ¶¶ 15-23, 176 P.3d 476, 481-84 (finding that it was reversible error for the trial court not to assign values for all material marital property); *Potter v. Potter*, 845 P.2d 272, 274 (Utah Ct. App. 1993) (finding that “the trial court’s property distribution must be based on findings which place a dollar value on the distributed assets and liabilities”).

In *Stevens v. Stevens*, this court found that failure to “identify the items of marital property and debt” and “assign values to each item of . . . debt” was a reversible error. *Stevens*, 754 P.2d at 955-56. In the *Stevens* case, the marital property consisted of several pieces of property all of which was heavily indebted and for which controversy existed over the amount of indebtedness each party should be responsible for. *Id.* Despite this controversy, the trial court failed to identify and value the large debt in its decision. *Id.* The appellate court reversed and remanded the trial court’s decision because without a more precise statement of the parties’ assets and liabilities it was unable to “perform [its]

reviewing function and determine whether the parties' property was equitably distributed." *Id.*

Like the trial court in *Stevens*, the Third District Court committed reversible error by not identifying and valuing all items of material, debt and should be ordered to supplement its findings. In its Decision, the Third District Court failed to identify a material item of debt of \$23,000.00 and failed to provide an explanation for its omission. As a result of this omission, when the District Court awarded the condominium to Mr. Romero and the home to Mrs. Romero, the relative value of Mr. Romero's marital property was overstated by approximately \$23,000.00. Without a more precise statement for the District Court's reasoning for this omission, the appellate court cannot determine whether the distribution of marital assets was equitable.

CONCLUSION

For the reasons stated above, the Divorce Decree entered on March 24, 2009, by the Third District Court should be reversed. Appellant respectfully requests this Court to reverse the Third District Court's order and remand the case.

DATED this 2nd day of November 2009.

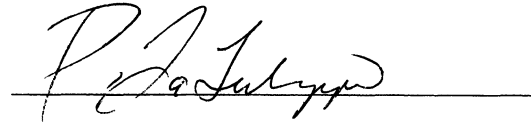
NIELSEN & SENIOR


Patricia L. LaFolippe
Attorney for Respondent/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November 2009, I did cause a true and correct copy of the foregoing **BRIEF OF APPELLANT** to be mailed, United States mail, postage prepaid, addressed to the following:

Richard S. Nemelka
Nemelka & Nemelka
6806 South 1300 East
Salt Lake City, Utah 84121

A handwritten signature in cursive script, appearing to read "P. A. Lutz", is written over a horizontal line.

ADDENDUM

Rule 3. Appeal as of right: how taken

(a) Filing appeal from final orders and judgments. An appeal may be taken from a district or juvenile court to the appellate court with jurisdiction over the appeal from all final orders and judgments, except as otherwise provided by law, by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal or other sanctions short of dismissal, as well as the award of attorney fees.

(b) Joint or consolidated appeals. If two or more parties are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal or may join in an appeal of another party after filing separate timely notices of appeal. Joint appeals may proceed as a single appeal with a single appellant. Individual appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party, or by stipulation of the parties to the separate appeals.

(c) Designation of parties. The party taking the appeal shall be known as the appellant and the adverse party as the appellee. The title of the action or proceeding shall not be changed in consequence of the appeal, except where otherwise directed by the appellate court. In original proceedings in the appellate court, the party making the original application shall be known as the petitioner and any other party as the respondent.

(d) Content of notice of appeal. The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment or order, or part thereof, appealed from; shall designate the court from which the appeal is taken; and shall designate the court to which the appeal is taken.

(e) Service of notice of appeal. The party taking the appeal shall give notice of the filing of a notice of appeal by serving personally or mailing a copy thereof to counsel of record of each party to the judgment or order; or, if the party is not represented by counsel, then on the party at the party's last known address. A certificate evidencing such service shall be filed with the notice of appeal. If counsel of record is served, the certificate of service shall designate the name of the party represented by that counsel.

(f) Filing fee in civil appeals. At the time of filing any notice of separate, joint, or cross appeal in a civil case, the party taking the appeal shall pay to the clerk of the trial court the filing fee established by law. The clerk of the trial court shall not accept a notice of appeal regardless of whether the filing fee has been paid. Failure to pay the filing fee within a reasonable time may result in dismissal.

(g) Docketing of appeal. Upon the filing of the notice of appeal, the clerk of the trial court shall immediately transmit a certified copy of the notice of appeal, showing the date of its filing, and a statement by the clerk indicating whether the filing fee was paid and whether the cost bond required by Rule 6 was filed. Upon receipt of the copy of the notice of appeal, the clerk of the appellate court shall enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the trial court, with the appellant identified as such, but if the title does not contain the name of the appellant, such name shall be added to the title.

1 that you were addicted to porn, correct?

2 A Why would I?

3 Q Okay.

4 A If I wasn't.

5 Q Right. And you - when you and her went to
6 counseling, you knew when she brought all of this up that she
7 felt that you were addicted to pornography?

8 A That was her statement, yes.

9 Q Okay. And you still denied it at that time?

10 A I still, yes.

11 Q And didn't she tell you at that time in '06 that she
12 just found all of this information on the computer?

13 A She stated that she made that statement, yes.

14 Q Okay. And she was obviously really concerned about
15 it?

16 A She stated that to the counselor.

17 Q Okay. And so she agreed to go to counseling with you
18 to work on your problem with pornography?

19 A No. That was not the reason for going to counseling.

20 Q Okay. Do you know what the current mortgage balance
21 is on your condominium?

22 A As of today?

23 Q Yeah.

24 A It's approximately \$115,000, I believe.

25 Q \$115,000? How much was it when you were married?

1 THE COURT: Is that the balance owing or -
2 MR. NEMELKA: Yeah. The balance owing.
3 THE WITNESS: Oh.
4 Q (BY MR. NEMELKA) Your balance owing is \$115,000?
5 A Oh, the balance. No.
6 Q To date.
7 A I'm sorry. No.
8 Q Okay.
9 A Currently?
10 Q Yes.
11 A Oh, the balance on the condo right now is
12 approximately \$76,000. I believe it is.
13 Q \$76,000?
14 A \$76,000, correct.
15 Q And what's the value?
16 A Approximately \$121,000.
17 Q But you had an appraisal done on it, right?
18 A Right.
19 Q What did the appraisal say?
20 A I believe it was \$121,000, but -
21 Q Okay.
22 A - I'm not a hundred percent sure.
23 Q Okay. And do you know what the balance was at the
24 time you got married?
25 A The balance of the just the mortgage payment?

1 Q Right.

2 A I want to say at the time I got married, it had to

3 have been about \$183,000 - 84,000, I believe.

4 Q \$183,000?

5 A I mean, I'm sorry. Eighty -

6 Q \$83,000?

7 A \$84,000, approximately.

8 Q Okay, all right. And do you have a second mortgage

9 on the condo?

10 A I do.

11 Q Pardon?

12 A Yes.

13 Q And when did you take out the second mortgage?

14 A I took it - I took one out in November of '03 for an

15 amount of \$23,500.

16 Q That was before you got married?

17 A Correct.

18 Q Okay. But after you got married, did you take any

19 more?

20 A Yes. I took out another \$5,000.

21 Q When did you do that?

22 A About February of 2007.

23 Q Seven?

24 A Correct.

25 Q That was after you separated from -

1 where were you living?

2 A At the condominium.

3 Q At the time you purchased it?

4 A Yes. Oh, I'm sorry. At the time I purchased the
5 condominium?

6 Q Yes.

7 A Yeah. I was living in -

8 Q I think you testified that you purchased the
9 condominium in October of '03?

10 A Right.

11 Q And -

12 A Oh, yes, yes. I'm sorry. I was living at River Glen
13 at the time. I'm sorry, yes.

14 Q You were living with Ms. Romero?

15 A Correct.

16 Q And did - was she aware that you were buying the
17 condo?

18 A She was.

19 Q Now, did you take out a second mortgage on the condo?

20 A I did.

21 Q And when did you take out that second mortgage?

22 A November of 2003.

23 Q How much equity was in the condo after you took out
24 the second mortgage?

25 A I want to say approximately - I'm sorry. Repeat the

1 question.

2 Q So you purchased the property and you took out a
3 second mortgage in November of '03.

4 A Correct.

5 Q I'm asking you after you took out that second
6 mortgage, how much equity was in the condominium?

7 A Oh, approximately \$23,000, I believe it was.

8 Q After you took out the second mortgage? Let me go
9 back.

10 A Okay.

11 Q How much was your second mortgage for?

12 A \$23,000.

13 Q And you took that out in November of '03?

14 A Correct.

15 Q So now you have a first mortgage of about \$85,000?

16 A Yes.

17 Q Yes. And you have a second mortgage of approximately
18 \$23,000?

19 A Correct.

20 Q So after that - those two mortgages, how much equity
21 was in the condominium?

22 A Oh, it was approx - probably zero.

23 Q And how do you know that?

24 A We checked, cause I maxed it out.

25 Q You wanted to borrow as much as you could -

1 presented, is about \$168,000 - \$31,000 on the second mortgage,
2 and \$137,000 on the first. The testimony as to the debt on the
3 condominium was about \$76,000.

4 The Court has to make a determination based upon the
5 case law cited as to the identity of the property in dispute to
6 determine whether each item is a marital or separate property.
7 The Court finds that nothing was done as it relates to the
8 condominium to make it a marital asset. It was kept in Mr.
9 Romero's sole name. He's the only one that made any payments
10 on it. He took all control and management over that.

11 I do find that the home was originally a separate
12 asset of Mrs. Romero. It then became a marital asset for a
13 number of reasons, the first of which is that - is Mr. Romero's
14 name was placed on the property. He made a number of repairs
15 and improvements to the property, and he made half of the
16 mortgage payment for that property, and it was never considered
17 by him as a rental payment.

18 The Court next must consider whether there are
19 exceptional circumstances that are from the general presumption
20 that marital property be divided equally between the parties,
21 and I find that there are those circumstances, and I will cite
22 those as follows: Number one, it was the clear intent from the
23 testimony of both Mrs. Romero and Mr. Romero that both
24 properties would be put in both names. And had that been done,
25 then there would have been a claim of title based upon deeds to

1 each property.

2 Furthermore, I find it inherently unfair that Mr.
3 Romero can receive \$650 per month rent from his condominium,
4 put it into his separate bank account, and not get any income
5 from the home. It seems to me they should be treated
6 similarly. And what he did is he took the rent on the
7 condominium, put it into his own account. So he obtained all
8 the equity in that property, and had a third party basically
9 pay his mortgage payment. Certainly, Mrs. Romero could have
10 done the same thing had they moved into the condominium. I
11 don't think would be fair to Mr. Romero if that property was
12 leased to someone that she knew, or even just a tenant off the
13 street, and then she kept all that money.

14 It seems to me this is fairly a novel case, because
15 both parties come into this marriage, which is rather short in
16 duration, with an asset with no equity. The values are not way
17 different. There's, according to the Court calculations -
18 \$67,000 equity in the home as of the date of separation.
19 \$46,000 equity in the condominium. That's about \$20,000
20 approximately. There's not that much difference.

21 I do think, however, that there should be
22 reimbursement for some of the repairs and improvements made on
23 the property. Some there should not be. The picture window
24 was installed at \$500, but I think that is offset by the fact
25 that there's \$1,200 needed to repair the walls as a result of

1 Mrs. Romero said he did not. I just - I can't determine from
2 the evidence who's correct and who isn't. There's \$450 in
3 dispute, and I'm just not in a position that I can say who is
4 accurate and who isn't. So the burden hasn't been met as it
5 relates to reimbursement of those funds.

6 All right. I addressed the division of real
7 property. I addressed reimbursement of marital funds, grounds
8 for annulment and attorney's fees. Anything the Court has not
9 addressed?

10 MS. LATULIPPE: The only question I have, Your Honor
11 - and if the Court would like, I can file a motion - a
12 subsequent motion, but I believe the testimony on the mortgage
13 on the condo was that there was a first mortgage for \$83,000
14 and a second mortgage for \$22,000. And so the number of
15 \$73,000 on the mortgage, I believe that's - or \$76,000 debt on
16 the condo, I believe that's just on the first mortgage.

17 MR. NEMELKA: But there's also testimony that my
18 client knew nothing about the second mortgage.

19 THE COURT: Yeah. He testified -

20 MR. NEMELKA: He took it out.

21 THE COURT: He testified that there was \$76,000
22 balance on the condo, and the value was \$121,000.

23 MR. NEMELKA: Right.

24 THE COURT: That was my - what I wrote down.

25 MS. LATULIPPE: But I think there was a clarification

1 right after that, Your Honor, that it was - that's what he
2 thinks the value on the first mortgage was, but he testified
3 that the month after he bought the condo in November, 2003, he
4 took out another mortgage on the property for approximately -

5 THE COURT: Yeah, but I'm not looking at the 2003
6 value. I'm looking at the 2007 value, and his testimony was
7 that there was \$76,000 owing on the condominium, and he
8 estimated the value at a \$121,000.

9 MR. NEMELKA: That's correct.

10 MS. LATULIPPE: But when - I think his testimony was,
11 and I can go through the record, but I think his testimony was
12 that he's continued to maintain the second mortgage as well.
13 There are two mortgages on the condo just like there are two
14 mortgages on the River Glen property.

15 THE COURT: I thought it was ironic that both second
16 mortgages were used to pay off individual debts from the
17 individual parties. I mean, so it's really about the same for
18 each side and -

19 MS. LATULIPPE: But my - and I - if you want me to
20 file a motion, I will. But if we can deal it with it here -

21 THE COURT: It won't make any difference.

22 MS. LATULIPPE: Because my concern is, in looking at
23 the River Glen property, you took into consideration the first
24 and the second mortgage. But when you looked at the
25 condominium, you only took into consideration the first

1 mortgage, not the second mortgage when you were calculating the
2 value. And both of those mortgages are still on the property.

3 THE COURT: Well, I base my decision on the testimony
4 that was presented, and that was the testimony that I heard
5 from your client. So that's where I'm taking it from. All
6 right. Mr. Nemelka, I'll have you prepare the findings of
7 facts and conclusions of law in the decree of divorce.

8 MR. NEMELKA: Thank you, Your Honor. In regard to
9 getting a copy of your ruling, do we do that through that here?

10 THE COURT: Just talk to my clerk. I do need those
11 exhibits. I've got - Roy, do you want to get those for me?

12 ROY: I will.

13 THE COURT: Does counsel want the courtesy copies
14 back?

15 MR. NEMELKA: No.

16 THE COURT: Or throw them away?

17 MS. LATULIPPE: I don't, Your Honor.

18 THE COURT: Okay. I've just got the originals in the
19 file. All right. Court's in recess.

20 (Whereupon the trial was concluded)

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-b-

FILED
THIRD DISTRICT COURT
MAR 25 2009
WEST JORDAN DEPT.

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Attorneys for Petitioner

IN THE THIRD JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH, WEST JORDAN DEPARTMENT

ALICE M. ROMERO,

Petitioner,

vs.

MANUEL ROMERO,

Respondent.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Case No.074400280

Judge : CHRISTIANSEN

The trial in the above matter came on before the Court on the 23rd of January 2009 before the Honorable Terry Christiansen, Petitioner being present and represented by Richard S. Nemelka and Respondent being present and represented by Patricia LaTulippe and witness having been sworn and testified and exhibits having been admitted and the court having reviewed the same and the parties having previously stipulated to the resolution of all but four issues and good cause appearing therefore, the Court hereby finds as follows:

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FINDINGS OF FACT

1. That Petitioner is a bona fide resident of Salt Lake County, State of Utah, and has been for more than three (3) months prior to the commencement of this action

2. That Petitioner and Respondent were married on the 1st day of May, 2004, in Las Vegas, State of Nevada, and now are and ever since have been husband and wife

3. Petitioner testified that prior to the marriage the Respondent failed to disclose information to her in regard to his financial honesty and his involvement with another woman and pornography. The Respondent testified and the Petitioner acknowledged that she went to a swingers bar with him prior to getting married and also knew about the affair with another woman. The Court finds that the Petitioner failed to meet her burden to establish fraud going to the essence of the marriage and of such a degree that it defeated the essential purpose of the injured spouse inherent in the contracting of the marriage. Therefore, Petitioner's request for an annulment is denied.

3 That during the course of the marriage various irreconcilable differences arose between the parties herein making it impossible for Petitioner to continue this marriage, and Petitioner is entitled to a Decree of Divorce severing the bonds of matrimony between the parties herein.

5. That no minor children have been born as issue of this marriage

6. That both parties are currently employed and capable of supporting themselves and therefore neither party should be awarded alimony and the same should be waived.

7 That the Petitioner owned a home and residence prior to the marriage located at 786 River Glen Drive in Murray, Utah, and the Respondent owned a condominium which he acquired prior to the marriage located at 416 East Creekside # B in Murray, Utah

8 The court finds that Petitioner purchased her home in 1998 with a boyfriend In 1998 she took out a second mortgage for \$20,000 00 to cash out the boyfriend She paid \$8,000 00 to the boyfriend for his down payment and for any equity accumulated against the balance for debts In April of 2003, Respondent moved into the property and paid her \$563 00 which was approximately half of the house payment At that time his name was not on the property The Parties got married over a year later in May 2004 and then in August 2004 Respondent's name was added to the title of the property (Exhibit C) There is testimony that there was conversation between the parties that not only Mr Romero's name be added to the home but that Mrs Romero's name would be added to the condo that Mr Romero had purchased prior to the marriage

9 As it relates to the condo the court finds that the property was purchased from Respondent's nephew in 2003 for approx \$85,000 00 , and the court finds that at the time of the marriage in 2004 there was no equity in either the home originally purchased by Mrs Romero or the condo originally purchased by Mr Romero

10 In May 2006, a second mortgage was placed on Petitioner's home in the amount of \$31,000 00 and it replaced the prior \$20,000 second mortgage Most of that equity was used to pay off Mrs Romero's debts

11 In January 2007 the parties separated and the court finds that the fair market value of the properties should be valued at that time for the reason that Mr Romero quit making payments on the Petitioner's home after he left in January of 2007 Both parties paid their own mortgage payments after that date The Court finds that the fair market value of the Petitioner's home as of the date of separation was \$235,000 The Court finds that the fair market value of the condo or Respondent's home at the date of separation was \$122,000 The debt owing on the Petitioner's home based on exhibits presented was about \$168,000, \$31,000 on the second mortgage and \$137,000 on the first mortgage The testimony as to the debt on the condo or Respondent's home indicated it was about \$76,000

12 The court has to make a determination based upon the case law cited as to the identity of the property in dispute to determine whether each item is martial or separate property The court finds that nothing was done as it relates to the condo to make it a martial asset It was kept in Mr Romero's sole name, he was the only one who made any payments upon it, and he took all control and management over it The Court finds that the home originally was a separate asset of Mrs Romero, but then became a marital asset for a number of reasons First of which was that Mr Romero's name was placed on the property, he made a number of repairs and improvements to the property and he made half of the mortgage payment for that property and it was never considered by him as a rental payment

13 The court next must consider whether there are exceptional circumstances that would warrant the Court deviating from the general presumption that martial property be divided

equally between the parties. The Court finds that there are exceptional circumstances as follows:

A. It was the clear intent from the testimony of both Mrs. Romero and Mr. Romero that both properties would be put in both names and had that been done then there would have been a claim of title based upon the deeds to each property.

B. Furthermore, the Court finds it inherently unfair that Mr. Romero can receive \$650 per month rent from his condo and put it in his separate bank account. What he did is he took the rent on the condo and put it in his own account so he obtained all the equity in that property and had a third party basically pay his mortgage payment to Mrs. Romero for her home.. Certainly Mrs. Romero could have done the same thing if they would have moved into the condo. That would not have been fair to Mr. Romero if the home was leased to someone that Mrs. Romero knew or a tenant off the street and she kept all that money.

14. It seems to the Court that this a fairly novel case because both parties came into this marriage, which was rather short in duration, with an asset with no equity. The values of the properties according to the court calculations are \$67,000 equity in the home as of the date of separation, and \$46,000 equity in the condo. That's approximately \$20,000 which is not that much difference. Therefore, the Petitioner shall be awarded all rights, title and interest in her home located at 786 River Glen Drive in Murray, Utah and the Respondent shall be awarded all rights, title and interest in his condo located at 416 East Creekside #B in Murray, Utah, each free and clear of any interest, claim or equity of the other party except as stated herein. Further, both

parties shall sign and execute any and all deeds or documents necessary to transfer title as stated above or to obtain refinancing as required herein.

15. The Court finds however that there should be reimbursement for some of the repairs and improvements made on the property, and some there should not be. The picture window was installed for \$500 but I think that is offset by the fact there is \$1200 needed to repair the walls as a result of the picture window being placed in the home improperly. The stepping stones in the yard are minimal as are painting three walls in the garage and putting in the sink and kitchen faucets in the kitchen and the bathroom. They were purchased for minimal amounts as were the wire shelves for \$15-20 dollars. However, the patio roof is somewhat different, and the Court finds this is an improvement to the home and not just a minor repair. It is reasonable to order that there be a reimbursement from Mrs. Romero to Mr. Romero for the patio roof, but the Court doesn't have sufficient evidence to determine that amount. Counsel for both parties shall, look at the documentation, share their documentation and if they cannot agree you the parties can come back and present evidence on the issue, but the court's ruling is whatever Mr. Romero paid for the patio cover will be reimbursed because that is an improvement to the home. If the parties cannot agree on the value and the issue is brought back then the Court is willing to assess attorney's fees to the party who loses.

16. The Court finds that the landscaping work was of little value, but any tools purchased by Mr. Romero should be returned to him for reuse in landscaping. The same thing with the fans in the bedroom and in the garage, those are also minimal expenses. The nephew

put them in. The painting, and furnace repair goes along with the home. Further repairing any leaks, railings, and the shelving are not substantial enough to give an offset.

17. It is reasonable that Mrs. Romero refinance the second mortgage within 90 days and that Mr. Romero's name be taken off the second mortgage so his credit is not affected in any manner.

18. It is reasonable that if Mr. Romero elects to do so he can take back the shed that he purchased to put his stuff on the property. If he doesn't take it off in the next 30 days, then he will have waived any right to take over the shed.

19. Next issue is the \$650 that was allegedly taken by Mrs. Romero to pay the January 2007 mortgage payment and the \$200 of which was apparently returned. The Court does not find that either party has met their burden with respect to that, the testimony is conflicting. Mr. Romero testify that he paid the January payment of about \$500 and Mrs. Romero said he did not. The Court cannot determine from the evidence who's correct and who isn't.

8. That during the marriage the parties acquired certain items of personal property and it is reasonable that each party be awarded all of the items of personal property that were in their possession at the time of the separation of the parties, which was the 20th of January, 2007. Further it is reasonable that each party be awarded all those items of personal property in their name only including but no limited to checking accounts, savings accounts, stocks, bonds and other assets.

9. During the marriage the parties acquired an interest in retirement benefits and accounts and it is reasonable that each party be awarded their own retirement benefits and accounts including but not limited to 401K's, IRS's and pensions.

10. It is reasonable that each party assume and pay those debts and obligations incurred by that party prior to the marriage, and that each party assume and pay any and all debts and obligations incurred by the party in their own name during the marriage.

11. It is reasonable that each party be awarded all their premarital assets.

12. It is reasonable that the Petitioner be restored her maiden name of Maestas.

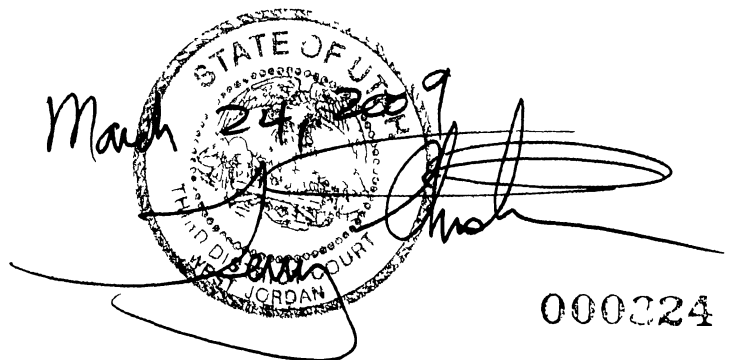
13. It is reasonable that each party pay their own attorney's fees and costs incurred in this matter based upon the Court's finding that the parties earn approximately the same amount of income and neither has a financial need where they cannot pay their own attorney's fees.

From the foregoing Findings of Fact the Court now enters it's Conclusions of Law.

CONCLUSIONS OF LAW

1. The Petitioner is entitled to a Decree of Divorce severing the bonds of matrimony between the parties herein the same to become final upon signing and filing with the court.

2. The Decree of Divorce shall be consistent with the terms and provisions as stated herein above.



DATED this _____ day of March, 2009.

BY THE COURT



Honorable Terry Christiansen, District Court Judge

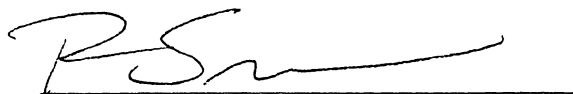
Approved as to form

Patricia LaTulippe, Attorney

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Findings to the following, postage prepaid, this 28 day of March 2009.

Patricia LaTulippe
Attorney at Law
5217 South State Street, Suite 400
Salt Lake City, Utah 84107



~~FILED~~
THIRD DISTRICT COURT
JAN 25 2009
WEST JORDAN DEPT.

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Decree of Divorce and Judgment



JD28397713

pages: 4

074400280 ROMERO,MANUEL

Attorneys for Petitioner

IN THE THIRD JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH, WEST JORDAN DEPARTMENT

ALICE M. ROMERO Petitioner, vs. MANUEL ROMERO, Respondent.	DECREE OF DIVORCE Case No.074400280 Judge : TERRY CHRISTIANSEN
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The trial in the above matter came on before the Court on the 23rd of January 2009 before the Honorable Terry Christiansen, Petitioner being present and represented by Richard S. Nemelka and Respondent being present and represented by Patricia LaTulippe and witness having been sworn and testified and exhibits having been admitted and the court having reviewed the same and the parties having previously stipulated to the resolution of all but four issues and the Court having entered it's Findings of Fact and Conclusions of Law, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS

1 The Petitioner is hereby awarded a Decree of Divorce severing the bonds of matrimony between the parties herein, with the same to be final upon entry

2 The Petitioner shall be awarded all rights, title and interest in her home located at 786 River Glen Drive in Murray, Utah and the Respondent shall be awarded all rights, title and interest in his condo located at 416 East Creekside #B in Murray, Utah, each free and clear of any interest, claim or equity of the other party except as stated herein Further, both parties shall sign and execute any and all deeds or documents necessary to transfer title as stated above or to obtain refinancing as required herein

3 It is hereby ordered that there be a reimbursement from Mrs Romero to Mr Romero for the patio roof, but the Court doesn't have sufficient evidence to determine that amount Counsel for both parties shall, look at the documentation, share their documentation and if they cannot agree you the parties can come back and present evidence on the issue, but the court's ruling is whatever Mr Romero paid for the patio cover will be reimbursed because that is an improvement to the home If the parties cannot agree on the value and the issue is brought back then the Court is willing to assess attorney's fees to the party who loses

4 Any tools purchased by Mr Romero should be returned to him for reuse in landscaping

5 Mrs Romero shall refinance the second mortgage within 90 days and Mr Romero's name shall be taken off the second mortgage so his credit is not affected in any manner

6. Mr. Romero may elect to take back the shed that he purchased to put his stuff on the property. If he doesn't take it off in the next 30 days, then he will have waived any right to take over the shed.

8. Each party is awarded all of the items of personal property that were in their possession at the time of the separation of the parties, which was the 20th of January, 2007. Further, each party is awarded all those items of personal property in their name only including but no limited to checking accounts, savings accounts, stocks, bonds and other assets.

9. Each party is awarded their own retirement benefits and accounts including but not limited to 401K's, IRS's and pensions.

10. Each party shall assume and pay those debts and obligations incurred by that party prior to the marriage, and that each party shall assume and pay any and all debts and obligations incurred by the party in their own name during the marriage.

11. Each party be awarded all their premarital assets.

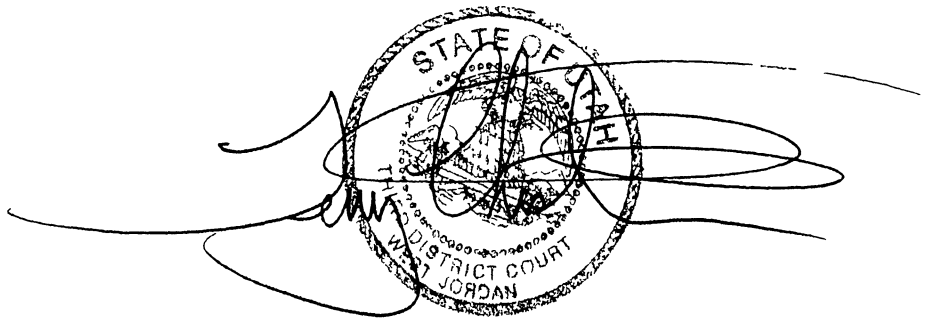
12. The Petitioner is restored her maiden name of Maestas.

13. Each party pay their own attorney's fees and costs incurred in this matter.

DATED this 24 day of March, 2009.

Approved as to form

Patricia LaTulippe



BY THE COURT



Honorable Terry Christiansen, District Court Judge

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Decree to the following, postage prepaid, this 3 day of March 2009.

Patricia LaTulippe
Attorney at Law
5217 South State Street, Suite 400
Salt Lake City, Utah 84107

