

1998

# Jose Ortiz-Uribe v. Laurie Ortiz-Uribe : Brief of Appellant

Utah Court of Appeals

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Laurie Ortiz-Uribe.

Robert L. Moody.

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DOCKET NO. 981224

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**IN THE UTAH COURT OF APPEALS**

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JOSE ORTIZ-URIBE,	:	Case No. 981224
Plaintiff/Appellant,	:	District Court No. 974402506
v.	:	Category 15
LAURIE ORTIZ-URIBE,	:	
Defendant/Appellee.	:	

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**BRIEF OF APPELLANT**

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AN APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF UTAH, STATE OF UTAH

THE HONORABLE RAY M. HARDING, JR.

---

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Request for Oral Argument and published decision

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JURISDICTION OF THE COURT

The Utah Court of Appeals Court has original jurisdiction of this matter in accordance with Article VIII, Section 5 of the Constitution of Utah and Utah Code Annotated 78-2a-3(2)(h) (1996).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

The issues on appeal relate to the trial court awarding alimony. The Appellant contends that the trial court committed error in awarding alimony and relies upon three lines of reasoning to support his position.

1. Whether the Trial Court Erred by Awarding Alimony to a Party Who Had Cohabited Since the Date of Separation?

Determination of whether given circumstances constitute "cohabitation," is in reality a mixed question of fact and law, and the appellate court is not bound by the conclusion reached by the trial court. In reviewing a trial court's actions in a divorce case, the appellate court is

vested with broad equitable powers. Haddow v. Haddow, 707 P.2d 669, 671 (Utah 1985).

Challenging Findings of Fact in a divorce action utilized a clearly erroneous standard. Barnes v. Barnes, 857 P.2d 257, 259 (Utah App. 1993). Issues of law are reviewed under the correction of error standard. Bingham v. Bingham, 872 P.2d 1065, 1067 (Utah App. 1994).

The Appellant preserved this issue for appeal through the examination of multiple witnesses regarding the issue of cohabitation (T. 10, 17, 29, 34). This issue was further preserved for appeal by the trial court's finding that the Respondent had not cohabited since the parties' separation (R. 19).

2. Whether the Trial Court Erred by Awarding Alimony Retroactively to the Time of Separation?

This is an issue of law requiring the trial court's conclusions to be reviewed for correctness. Bingham v. Bingham, 872 P.2d 1065, 1067 (Utah App. 1994).

This issue was preserved for appeal by the trial court's finding which awarded alimony retroactively to the time of separation (R. 18).

3. Whether the trial court erred in awarding alimony by failing to consider the financial ability and needs of the parties?

This is an issue of law which requires the trial court's conclusions to be reviewed for correctness. Bingham v. Bingham, 872 P.2d 1065, 1067 (Utah App. 1994).

This issue is preserved for appeal by the trial court's finding which based the award of alimony primarily on the disparity of the income of the parties (R. 18).

### DISPOSITIVE STATUTES & RULES

The interpretation of the following statutes and rules are important in resolving the issues on appeal in this matter:



Utah Code Annotated 30-3-3 (1993).

(1) In any action filed. . . to establish an order of. . . alimony, or division of property in a domestic case, the court may order a party to pay the costs. . .

(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party. . .

Utah Code Annotated 30-3-5(7)(a)-(d) (Supp. 1998).

(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.

(b) The court may consider the fault of the parties in determining alimony.

(c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

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

Utah Code Annotated 30-3-5(9)

Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.

Utah Rules of Civil Procedure, Rule 3(b)

Rule 3. Commencement of action. *(b) Time of jurisdiction.*

The court shall have jurisdiction from the time of filing of the complaint or service of the summons and a copy of the complaint.

## STATEMENT OF THE CASE

### A. Nature of the Case & Proceedings Below.

This appeal is from a final judgment or decree awarding alimony in the divorce proceeding between the parties.

1. The Petitioner, Jose Rafael Ortiz-Urbe filed a Petition for Divorce on November 12, 1997 (R. 2). The Respondent, Laurie Ortiz-Urbe, answered the Petition for Divorce on December 8, 1997 (R. 7).

2. A Request for Trial Setting was filed by the Petitioner on December 10, 1997 (R. 9). At the pre-trial settlement and scheduling conference held on February 23, 1998, a trial date was scheduled to try the issues of alimony and debts (R. 12, 13).

3. The matter came for trial on March 17, 1998. At the conclusion of the trial, the trial court entered its Ruling which was subsequently incorporated into Findings of Fact, Conclusions of Law, and Decree of Divorce (R. 20, 23).

4. The Petitioner filed his Notice of Appeal on April 21, 1998 (R. 25).

### B. Statement of Facts.

Jose Rafael Ortiz-Urbe (Ortiz) and Laurie Ortiz-Urbe (Urbe) first married on the 24<sup>th</sup> day of December, 1984. That marriage was annulled due to the incapacity of Ms. Urbe to marry because she was not divorced from her previous husband. (R. 20, Tr. 40). The parties subsequently remarried on November 21, 1985. (R. 19, Tr. 40).

In August of 1996, the parties separated.. (R. 19). Mr. Ortiz filed a petition for divorce on November 12, 1997. (R. 2). A trial on the matter was heard on March 17, 1998, to determine

issues of alimony and debts. (R. 13). Prior to the trial date, Ms. Uribe did not request a temporary order for alimony.

Following the parties separation, Ms. Uribe had different men living with her in her mobile home. Ms. Uribe admitted to having a relationship with a Brady Dalton with whom they had sexual relations on a frequent basis. (Tr. 21-22). Though he rented an apartment up the street from Ms. Uribe, he was at the home of Ms. Uribe frequently during the days and nights. (Tr. 15, 22). The two also spent time together at Dalton's apartment. (Tr. 22). Ms. Uribe took care of Dalton's things, and Dalton took care of her things. (Tr. 22). Dalton had frequent use of Ms. Uribe's car (Tr. 14, 31), and helped buy tires for the car. (Tr. 22). It appeared as though Ms. Uribe and Dalton were living together in Ms. Uribe's trailer as boyfriend and girlfriend. (Tr. 31). Dalton acted as though he were the man of the house. (Tr. 34). On January 23, 1998, Dalton died in Ms. Uribe's bed, accidentally overdosing on cocaine (Tr. 22-23).

Shortly after Brady Dalton's death, a Michael Withers died in the home of Ms. Uribe. He overdosed on heroin. (Tr. 23). Ms. Uribe also had Jack and Jake Nyland living at her house following the separation. (Tr. 16). They were long time friends. (Tr. 24).

Mr. Ortiz earned \$23,000 in 1997 (Tr. 12), and reported on his financial declaration that his monthly income was \$1,960. (Tr. 47). Mr. Ortiz listed his financial needs on his financial declaration and testified that those needs were as outlined on his financial declaration.<sup>1</sup>

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<sup>1</sup>The financial declarations prepared and submitted by the parties are not in the court's file at this time. The appellant has no explanation for this, and only became aware of this fact when preparing for this appeal. The court clerk could not locate or provide an explanation as to why the financial declarations were not in the file. The record indicates that the trial court acknowledged receiving the financial declarations and referred to them during the trial. The court indicated that it had received Ms. Uribe's financial declaration at the pre-trial. (Tr. 19). The Court's Minute Entry indicates that Mr. Ortiz filed a financial declaration with the court

At the time of trial, Ms. Uribe was working as a supervisor of housekeeping and laundry at the Hidden Hollow Care Center, where she had worked for over a year. (Tr. 18). Ms. Uribe worked 40 hours a week and earned \$7.75. (Tr. 18-21). Though Ms. Uribe acknowledged earning \$310 a week (Tr. 21), she reported a gross monthly income of \$835.53 on her financial declaration. (Tr. 47). Ms. Uribe testified that her monthly financial needs totaled \$660. (Tr. 19-20).

Based upon Mr. Ortiz's earnings as set forth in his financial declaration, \$1,960 a month, and Ms. Uribe's earnings as set forth in her financial declaration, \$835.53 a month, the trial court granted Ms. Uribe's request of \$200 a month alimony. The alimony award was based on the disparity of income of the parties. (R. 18) (Tr. 47).

### SUMMARY OF ARGUMENTS

Following the parties separation in August of 1996, Ms. Uribe cohabited with one or more men. It is clear that Ms. Uribe resided with a person of the opposite sex with whom she was having a sexual relationship. It was an abuse of the trial court's equitable powers in awarding alimony.

It was improper for the trial court to award alimony retroactively. The trial did not have jurisdiction to award alimony retroactively to August of 1996, the time of separation.

Jurisdiction for the court should have commenced from the time of the filing of the petition for divorce or service of the summons and a copy of the petition. In addition, Ms. Uribe did not

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during his opening statements at the trial. (R. 15). Appellant has made copies of the financial declarations from his own file and attached as an addendum for the Appellate Court's reference. Mr. Ortiz listed his financial needs which totaled \$1,500.

request separate support and maintenance during the pendency of the action. She established no financial need prior to the entry of the divorce decree.

The trial court failed to recognize and consider essential factors in determining whether alimony should be awarded: (1) the financial condition and needs of the recipient spouse; (2) the ability of the receiving spouse to produce a sufficient income for herself; and (3) the ability of the responding spouse to provide support. The trial court considered the length of the marriage and based alimony on the disparity of income of the parties. Reviewing the financial conditions and needs of the parties, there is not a disparity of income.

## ARGUMENT

### POINT I

#### THE TRIAL COURT ERRED BY AWARDING ALIMONY TO MS. URIBE WHERE SHE COHABITED WITH ANOTHER PERSON FOLLOWING THE PARTIES SEPARATION.

In Utah, it is well established that cohabitation warrants termination of alimony. Barber v. Barber, 792 P.2d 134, 136 (Utah App. 1990). Utah Code Annotated 30-3-5(9) states: “Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.” Id. There have been various versions of this statute in use during the past few years, but the court of appeals has determined that the semantic distinctions regarding cohabitation are inconsequential. “Cohabitation is comprised of the same two elements: (1) common residency and (2) sexual contact evidencing a conjugal association.” Pendleton v. Pendleton, 918 P.2d 159, 160 [FN1] (Utah App. 1996); citing Haddow, v. Haddow, 707 P.2d 669, 672 (Utah 1985).

As in Pendelton, at 160, sexual contact by Ms. Uribe has been admitted. Ms. Uribe admitted to having a relationship with Brady Dalton with whom they had sexual relations on a frequent basis. (Tr. 21-22). In marshalling the evidence to support the trial court's finding that Ms. Uribe did not cohabit following the separation, the element of residency must be addressed. The only evidence presented at trial establishing that there was not a common residency was through the testimony of Ms. Uribe. When asked whether it was true that Brady Dalton lived in her home, she responded "No, it's not. He stayed there. I can't say whether he's living there or not. He did stay there overnight once in awhile, and sometimes during the day." (Tr. 21-22). She further testified that Dalton rented an apartment just up the street from her place. (Tr. 22). Uribe denied that she and Dalton carried on as though they were husband and wife. (Tr. 22). Uribe also denied that Dalton contributed to her financial support, though he did help her buy tires for the car. (Tr. 22).

Ms. Uribe herself admitted that Brady Dalton lived at her place on a frequent basis. During her cross examination of Mr. Ortiz, Uribe stated "Yes, he did drive my car. Yes, he stayed overnight there quite often." (Tr. 15-16). She then asked "Who else lived at my house?" (Tr. 16), of which Ortiz answered "Who else? I know Jack and Jake Nylund. (Tr. 16). Uribe then responded through her next question, "Right, Jack and Jake Nylund lived at the house". (Tr. 16). Uribe then compared Brady Dalton to Jack and Jake Nylund as just friends staying with her. The problem with this comparison, or at least as admitted to by Uribe, is that she had frequent sexual contact with Dalton, evidencing a conjugal association.

It appeared to Robert Bosserman, as though Ms. Uribe and Dalton were living together in Ms. Uribe's trailer as boyfriend and girlfriend. (Tr. 31). Dalton appeared to live there (Tr. 32) as

he drove Uribe's car (Tr. 30), and used Uribe's household items as though he were the man of the house. (Tr. 34). Another witness, Ramon Perez, went to Ms. Uribe's mobile home a couple of times a month to pick up his mail which was delivered there from Mexico. (Tr. 35). Each time Perez went to the mobile home, Brady Dalton was there. On one occasion, Perez observed Uribe and Dalton sleeping in her bed. (Tr. 36). Dalton actually died in Uribe's bed, accidentally overdosing on cocaine. (Tr. 22-23).

According to Uribe, she would also go to Dalton's apartment on a frequent basis? (Tr. 22). The fact that Dalton rented a separate apartment, does not in and of itself defeat the element of a common residency. Common residency means "the sharing of a common abode that both parties consider their principal domicile for more than a temporary or brief period of time." Sigg v. Sigg, 905 P.2d 908, 917 (Utah App. 1995), citing Haddow, at 672. In Sigg, it was determined that when Ms. Sigg returned from New Zealand, she and her paramour "in effect resided together," even though they had separate condominiums. "The two had a sexual relationship, shared living expenses, had open access to each other's condominiums, ate together and shared food expenses, kept clothing in the same condominium, used the same furniture and 'otherwise lived as though they were husband and wife.'" Id. at 917. In the instant case, Uribe and Dalton had a sexual relationship, had open access to Uribe's mobile home and Dalton's apartment, shared Uribe's cars, and used each other's household items as though they were living together as husband and wife.

Though Uribe testified that Dalton did not contribute to her financial support (Tr. 22), it is likely that he benefitted from her support, if indeed he was unemployed as reported by Uribe. (Tr.

23). Even so, the sharing of the financial obligations surrounding the maintenance of a household is not considered to be a requisite element of cohabitation. Haddow, at 673.

In view of the facts of the present case, it is clear that Ms. Uribe and Brady Dalton had in effect resided together. The common residency element of cohabitation has clearly been established. It was clearly erroneous for the trial court to award alimony to Ms. Uribe.

## POINT II

IT WAS IMPROPER FOR THE TRIAL COURT TO AWARD ALIMONY RETROACTIVELY TO THE TIME OF SEPARATION AS JURISDICTION FOR THE COURT DID NOT COMMENCE UNTIL THE TIME OF FILING OF THE PETITION FOR DIVORCE AND TEMPORARY ALIMONY WAS NOT REQUESTED BY MS. URIBE.

Rule 3 of the Utah Rules of Civil Procedure clearly establishes that jurisdiction of the court begins at the time an action is commenced through the filing of a complaint. This rule states: "The court shall have jurisdiction from the time of filing of the complaint or service of the summons and a copy of the complaint." Utah R. Civ. P. 3(b).

In the instant case, the petition for divorce was filed on November 12, 1997. (R. 2). The summons and petition were served on November 17, 1997. (R. 5). The parties separated in August of 1996. (R. 19). The trial court awarded Ms. Uribe \$200 a month from the time of the separation in August of 1996. (Tr. 47) (R. 22). Mr. Uribe was ordered to pay back the retroactive delinquency at the rate of \$100 per month. (Tr. 51) (R. 22).

According to Rule 3 of the Utah Rules of Civil Procedure, the trial court did not have jurisdiction over the parties to award alimony prior to November 12, 1997. It was improper for



the trial court to award alimony retroactively from the date of separation to the date the petition for divorce was filed.

In Shelton v. Shelton, 885 P.2d 807 (Utah App. 1994), an award of retroactive alimony was recognized as a proper exercise of discretion. However, the retroactivity was regarding the award of temporary alimony. In Shelton, the husband had deceived the trial court regarding his income at the time of the initial hearing which addressed temporary alimony. An award of retroactive alimony was awarded to the time the divorce action was filed. Id.

During the pendency of the divorce action, Uribe never requested temporary support and maintenance as permitted by Utah Code Annotated 30-3-3(3). According to her financial declaration and testimony, her income was greater than her financial needs.<sup>2</sup> Uribe established no financial need prior to the trial date. It is unclear why the trial court awarded retroactive alimony, except that that is what Uribe requested at trial. (Tr. 39).

It was improper for the trial court to award alimony retroactively. The trial did not have jurisdiction to award alimony retroactively to August of 1996, the time of separation. As a matter of law, jurisdiction for the court did not commence until the time of the filing of the petition for divorce or service of the summons and a copy of the petition. In addition, Ms. Uribe did not request separate support and maintenance during the pendency of the action. She established no financial need prior to the trial date.

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<sup>2</sup>This is addressed more fully in Point III of the argument.

### POINT III

THE TRIAL COURT FAILED TO RECOGNIZE AND CONSIDER THE FINANCIAL CONDITIONS, NEEDS, AND ABILITIES OF THE PARTIES WHICH ARE ESSENTIAL FACTORS IN DETERMINING WHETHER ALIMONY SHOULD BE AWARDED.

Though a trial court has broad discretion in making an award of alimony, its discretion must be exercised within the appropriate legal standards. See Haumont v. Haumont, 793 P.2d 421, 423 (Utah App. 1990). The decision to award alimony must also be supported with adequate findings and conclusions. Naranjo v. Naranjo, 751 P.2d 1144, 1147 (Utah App. 1988).

As recently pointed out in Childs v. Childs, 353 Utah Adv. Rep. 8, 10 (Utah App. 1998) Section 30-3-5(7)(a) of the Utah Code establishes four factors a trial court must consider in determining alimony: (1) the financial condition and needs of the recipient spouse; (2) the recipient's earning capacity or ability to produce income; (3) the ability of the payor spouse to provide support; and (4) the length of the marriage. Childs at 10; Utah Code Ann. § 30-3-5(7)(a)(i)-(iv) (Supp. 1998). The trial court may also consider fault in determining alimony. See id. §30-3-5(7)(b) (Supp. 1998).

In the instant case, the trial court only found that there was a disparity of income between the parties and a long term marriage. (Tr. 47). Based upon the earnings of the parties as set forth in each of their financial declarations, the trial court found that the disparity of income necessitated the award of alimony. The court granted Uribe's request of \$200 a month alimony. (Tr. 47) (R. 18).

Though Ms. Uribe worked 40 hours a week and earned \$7.75 (Tr. 18-21) (R. 19), which translates to earnings of \$310 a week, the trial court found that the better evidence regarding her

earnings was the amount set forth in her financial declaration of \$835.53 a month. (Tr. 47) (R. 19). The court stated that even if it accepted the posture that Uribe earned over \$1,200 a month, it would still justify the \$200 a month in alimony. (Tr. 49).

The trial court failed to consider the financial condition and needs of Ms. Uribe as well as her earning capacity. She testified that her monthly financial needs, as reported on her financial declaration, were \$660 a month. (Tr. 19-20). Even if her earnings were recognized as only \$835.53 a month, her financial needs would be met. The court, failed to credit her for the additional \$400 a month earning capacity which she was actually earning. Without an award of alimony, Uribe can more than adequately meet her financial needs. An additional \$200 a month from alimony is simply additional spending money.

On the other hand, looking at Mr. Ortiz's financial condition, there is little money left over after paying his expenses to pay alimony. The trial totally failed to consider Mr. Ortiz's ability to provide support. With earnings of \$1,960 a month (Tr. 47), Ortiz reported on his financial declaration that his expenses were \$1,500 a month. What his net income would be, would barely meet his monthly expenses. In addition, the trial court found that because of the disparity of income, Ortiz should pay the U.S. West telephone obligation in the sum of \$1,120. (R. 18) (Tr. 46). On top of this, Ortiz was ordered to pay the delinquent retroactive alimony accrued during the past seventeen months which totalled \$3,400 at the rate of \$100 per month. By imposing ongoing and retroactive alimony payments upon Ortiz was financially overwhelming to him. He clearly had little ability to provide support.

The trial court failed to recognize and consider essential factors in determining whether alimony should be awarded. The parties respective financial conditions, needs, and abilities were

not considered. As a matter of law, these factors must be considered. Through a proper analysis of the parties abilities and needs, it is apparent that a serious inequity has resulted by awarding alimony to Uribe.

### CONCLUSION

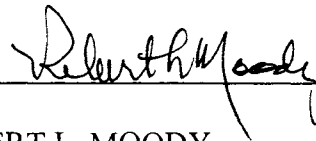
It was improper for the trial court to award alimony to Ms. Uribe in that she cohabitated following the separation with Brady Dalton. The two requisite elements of cohabitation have been met. Uribe and Dalton undeniably had frequent sexual contact evidencing a conjugal association. The common residency element has clearly been established. The facts indicate that Uribe and Dalton had in effect resided together. Mr. Ortiz requests that the appellate court reverse the trial court's order awarding alimony on the basis that Uribe cohabitated following the separation of the parties.

As a matter of law, the trial court did not have jurisdiction to award alimony retroactively from the time the petition for divorce was filed to the time of the parties separation. Jurisdiction commenced once the petition for divorce was filed. It was also improper for the trial court to award alimony retroactively from the date of trial to the time that the petition for divorce was filed. Ms. Uribe did not establish a need nor did she request temporary alimony pending the divorce action. If the award of alimony is affirmed, the order for retroactive alimony should be reversed.

The trial court failed to consider the parties financial conditions, needs, and abilities in determining the award of alimony. As a matter of law, these factors must be considered. It was improper for the trial court to base alimony on the disparity of the parties income. A close

evaluation of the parties financial conditions, needs, and abilities, shows that there is little disparity of income. Mr. Ortiz respectfully requests that the award of alimony be reversed on the basis that the trial court failed to properly consider the parties financial conditions, needs, and abilities, and there was little disparity of income to award alimony. At a minimum, the matter should be remanded for the trial court to consider the required factors in awarding alimony.

DATED THIS 20<sup>th</sup> day of November, 1998.

A handwritten signature in cursive script, appearing to read "Robert L. Moody", is written over a horizontal line.

ROBERT L. MOODY

Attorney for Plaintiff/Appellant

IN THE UTAH COURT OF APPEALS

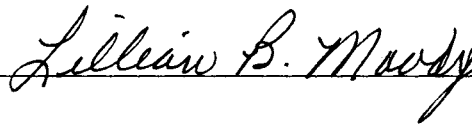
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JOSE ORTIZ-URIBE,	:	CERTIFICATE OF MAILING
Plaintiff/Appellant,	:	
v.	:	
LAURIE ORTIZ-URIBE,	:	Case No. 981224
Defendant/Appellee.	:	

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I hereby certify that on this 23rd of November, 1998, I mailed two true and correct copies of the foregoing **Appellant's Brief**, postage prepaid, to the following:

Laurie Lyn Ortiz-Uribe  
441 South State Street #16  
Orem, UT 84058

  
\_\_\_\_\_

## **ADDENDUM**

Section	
30-3-11.1.	Family Court Act — Purpose.
30-3-11.2.	Appointment of counsel for child.
30-3-11.3.	Mandatory educational course for divorcing parents — Purpose — Curriculum — Exceptions.
30-3-12.	Courts to exercise family counseling powers.
30-3-13.	Repealed.
30-3-13.1.	Establishment of family court division of district court.
30-3-14.	Repealed.
30-3-14.1.	Designation of judges — Terms.
30-3-15.	Repealed.
30-3-15.1.	Appointment of domestic relations counselors, family court commissioner, and assistants and clerks.
30-3-15.2.	Repealed.
30-3-15.3.	Commissioners — Powers.
30-3-15.4.	Salaries and expenses.
30-3-16.	Repealed.
30-3-16.1.	Jurisdiction of family court division — Powers.
30-3-16.2.	Petition for conciliation.
30-3-16.3.	Contents of petition.
30-3-16.4.	Procedure upon filing of petition.
30-3-16.5.	Fees.
30-3-16.6.	Information not available to public.
30-3-16.7.	Effect of petition — Pendency of action.
30-3-17.	Power and jurisdiction of judge.
30-3-17.1.	Proceedings deemed confidential — Written evaluation by counselor.
30-3-18.	Waiting period for hearing after filing for divorce — Exemption — Use of counseling and education services not to be construed as condonation or promotion.
30-3-19 to 30-3-31.	Repealed.
30-3-32.	Visitation — Intent — Policy — Definitions.
30-3-33.	Advisory guidelines.
30-3-34.	Best interests — Rebuttable presumption.
30-3-35.	Minimum schedule for visitation for children 5 to 18 years of age.
30-3-35.5.	Minimum schedule for visitation for children under five years of age.
30-3-36.	Special circumstances.
30-3-37.	Relocation.
30-3-38.	Pilot Program for Expedited Visitation Enforcement.

### 30-3-1. Procedure — Residence — Grounds.

(1) Proceedings in divorce are commenced and conducted as provided by law for proceedings in civil causes, except as provided in this chapter.

(2) The court may decree a dissolution of the marriage contract between the petitioner and respondent on the grounds specified in Subsection (3) in all cases where the petitioner or respondent has been an actual and bona fide resident of this state and of the county where the action is brought, or if members of the armed forces of the United States who are not legal residents of this state, where the petitioner has been stationed in this state under military orders, for three months next prior to the commencement of the action.

(3) Grounds for divorce:

- (a) impotency of the respondent at the time of marriage;
- (b) adultery committed by the respondent subsequent to marriage;
- (c) willful desertion of the petitioner by the respondent for more than one year;

(d) willful neglect of the respondent to provide for the petitioner the common necessities of life;

(e) habitual drunkenness of the respondent;

(f) conviction of the respondent for a felony;

(g) cruel treatment of the petitioner by the respondent to the extent of causing bodily injury or great mental distress to the petitioner;

(h) irreconcilable differences of the marriage;

(i) incurable insanity; or

(j) when the husband and wife have lived separately under a decree of separate maintenance of any state for three consecutive years without cohabitation.

(4) A decree of divorce granted under Subsection (3)(j) does not affect the liability of either party under any provision for separate maintenance previously granted.

(5) (a) A divorce may not be granted on the grounds of insanity unless:

(i) the respondent has been adjudged insane by the appropriate authorities of this or another state prior to the commencement of the action; and

(ii) the court finds by the testimony of competent witnesses that the insanity of the respondent is incurable.

(b) The court shall appoint for the respondent a guardian ad litem who shall protect the interests of the respondent. A copy of the summons and complaint shall be served on the respondent in person or by publication, as provided by the laws of this state in other actions for divorce, or upon his guardian ad litem, and upon the county attorney for the county where the action is prosecuted.

(c) The county attorney shall investigate the merits of the case and if the respondent resides out of this state, take depositions as necessary, attend the proceedings, and make a defense as is just to protect the rights of the respondent and the interests of the state.

(d) In all actions the court and judge have jurisdiction over the payment of alimony, the distribution of property, and the custody and maintenance of minor children, as the courts and judges possess in other actions for divorce.

(e) The petitioner or respondent may, if the respondent resides in this state, upon notice, have the respondent brought into the court at trial, or have an examination of the respondent by two or more competent physicians, to determine the mental condition of the respondent. For this purpose either party may have leave from the court to enter any asylum or institution where the respondent may be confined. The costs of court in this action shall be apportioned by the court.

1997

### 30-3-2. Right of husband to divorce.

The husband may in all cases obtain a divorce from his wife for the same causes and in the same manner as the wife may obtain a divorce from her husband.

1953

### 30-3-3. Award of costs, attorney and witness fees — Temporary alimony.

(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.

(2) In any action to enforce an order of custody, visitation, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense. The court, in its discretion, may award no fees or limited fees against a party if the court finds the party



is impecunious or enters in the record the reason for not awarding fees.

(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in the custody of the other party.

(4) Orders entered under this section prior to entry of the final order or judgment may be amended during the course of the action or in the final order or judgment.

1993

#### **30-3-4. Pleadings — Findings — Decree — Use of affidavit — Sealing.**

(1) (a) The complaint shall be in writing and signed by the petitioner or petitioner's attorney.

(b) A decree of divorce may not be granted upon default or otherwise except upon legal evidence taken in the cause. If the decree is to be entered upon the default of the respondent, evidence to support the decree may be submitted upon the affidavit of the petitioner with the approval of the court.

(c) If the petitioner and the respondent have a child or children, a decree of divorce may not be granted until both parties have attended the mandatory course described in Section 30-3-11.3, and have presented a certificate of course completion to the court. The court may waive this requirement, on its own motion or on the motion of one of the parties, if it determines course attendance and completion are not necessary, appropriate, feasible, or in the best interest of the parties.

(d) All hearings and trials for divorce shall be held before the court or the court commissioner as provided by Section 78-3-31 and rules of the Judicial Council. The court or the commissioner in all divorce cases shall enter the decree upon the evidence or, in the case of a decree after default of the respondent, upon the petitioner's affidavit.

(2) The file, except the decree of divorce, may be sealed by order of the court upon the motion of either party. The sealed portion of the file is available to the public only upon an order of the court. The concerned parties, the attorneys of record or attorney filing a notice of appearance in the action, the Office of Recovery Services if a party to the proceedings has applied for or is receiving public assistance, or the court have full access to the entire record. This sealing does not apply to subsequent filings to enforce or amend the decree.

1997

#### **30-3-4.1 to 30-3-4.4. Repealed.**

1990

#### **30-3-5. Disposition of property — Maintenance and health care of parties and children — Division of debts — Court to have continuing jurisdiction — Custody and visitation — 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. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children;

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders; and

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Recovery Services.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide child care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.

(4) (a) In determining visitation rights of parents, grandparents, and other members of the immediate family, the court shall consider the best interest of the child.

(b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include in an order establishing a visitation schedule a provision, among other things, authorizing any peace officer to enforce a court ordered visitation schedule entered under this chapter.

(5) If a petition for modification of child custody or visitation provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(6) If a petition alleges substantial noncompliance with a visitation order by a parent, a grandparent, or other member of the immediate family pursuant to Section 78-32-12.2 where a visitation right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation.

(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.

(b) The court may consider the fault of the parties in determining alimony.

(c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

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

(e) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

(f) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.

(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.

(h) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

(8) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

(9) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.

1997

### 30-3-5.1. Provision for income withholding in child support order.

Whenever a court enters an order for child support, it shall include in the order a provision for withholding income as a means of collecting child support as provided in Title 62A, Chapter 11, Recovery Services.

1997

### 30-3-5.2. Allegations of child abuse or child sexual abuse — Investigation.

When, in any divorce proceeding or upon a request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court shall order that an investigation be conducted by the Division of Child and Family Services within the Department of Human Services in accordance with Title 62A, Chapter 4a. A final award of custody or visitation may not be rendered until a report on that investigation is received by the court. That investigation shall be conducted by the Division of Child and

Family Services within 30 days of the court's notice and request for an investigation. In reviewing this report, the court shall comply with Section 78-7-9.

1996

### 30-3-5.5, 30-3-6. Repealed.

1991, 1993

### 30-3-7. When decree becomes absolute.

(1) The decree of divorce becomes absolute:

(a) on the date it is signed by the court and entered by the clerk in the register of actions if both the parties who have a child or children have completed attendance at the mandatory course for divorcing parents as provided in Section 30-3-11.3 except if the court waives the requirement, on its own motion or on the motion of one of the parties, upon determination that course attendance and completion are not necessary, appropriate, feasible, or in the best interest of the parties;

(b) at the expiration of a period of time the court may specifically designate, unless an appeal or other proceedings for review are pending; or

(c) when the court, before the decree becomes absolute, for sufficient cause otherwise orders.

(2) The court, upon application or on its own motion for good cause shown, may waive, alter, or extend a designated period of time before the decree becomes absolute, but not to exceed six months from the signing and entry of the decree.

1994

### 30-3-8. Remarriage — When unlawful.

Neither party to a divorce proceeding which dissolves their marriage by decree may marry any person other than the spouse from whom the divorce was granted until it becomes absolute. If an appeal is taken, the divorce is not absolute until after affirmance of the decree.

1988

### 30-3-9. Repealed.

1969

### 30-3-10. Custody of children in case of separation or divorce — Custody consideration.

(1) If a husband and wife having minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate. In determining custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties. The court may inquire of the children and take into consideration the children's desires regarding the future custody, but the expressed desires are not controlling and the court may determine the children's custody otherwise.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

(3) If the court finds that one parent does not desire custody of the child, or has attempted to permanently relinquish custody to a third party, it shall take that evidence into consideration in determining whether to award custody to the other parent.

(4) (a) A court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

(b) If a court takes a parent's disability into account in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody, the parent with a disability may rebut any evidence, presumption, or inference arising therefrom by showing that:

(i) the disability does not significantly or substantially inhibit the parent's ability to provide for the physical and emotional needs of the child at issue; or

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OF UTAH COUNTY STATE OF UTAH

1998 MAR 25 PM 3:11

Robert L. Moody, No. 2302  
MOODY & BROWN  
Attorneys for Petitioner  
2525 North Canyon Road  
Provo, Utah 84604  
Telephone: (801) 373-2721

MICROFILMED 3126198

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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY  
STATE OF UTAH

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JOSE RAFAEL ORTIZ-URIBE,	:	<b>DECREE OF DIVORCE</b>
Petitioner,	:	
v.	:	
LAURIE ORTIZ-URIBE,	:	Civil No. 974402506
Respondent.	:	Judge Ray M. Harding, Jr. ✓

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The above entitled matter having come on regularly for trial on the 17th day of March, 1998, and the Petitioner having presented evidence and the Respondent having presented evidence and the court having considered the same and having made in writing its Findings of Fact and Conclusions of Law,

NOW HEREBY ORDERS, ADJUDGES AND DECREES AS FOLLOWS:

1. Petitioner is hereby awarded a Decree of Divorce from the Respondent, the same to become final upon the signing and entry in the Registry of Actions.

2. Each of the parties are hereby awarded the personalty now in their respective possessions as a full and complete property settlement.

3. Petitioner is ordered to pay to the Respondent alimony in the sum of \$200.00 per month retroactive to August of 1996 and continuing from said date until the Respondent's remarriage, co-habitation or for five years, whichever occurs first.

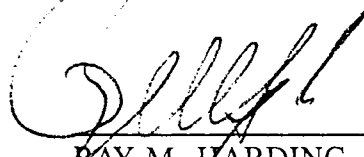
4. Petitioner is ordered to pay the delinquent support which has accrued pursuant to the Findings of Fact made by this court in the sum of \$100.00 per month. Petitioner is ordered to pay said \$100.00 together with \$200.00 per month alimony commencing on the 25th day of March, 1998, and continuing on the 10th and 25th of each month thereafter until Respondent's remarriage, cohabitation or the expiration of five years from August 1996, whichever occurs first.

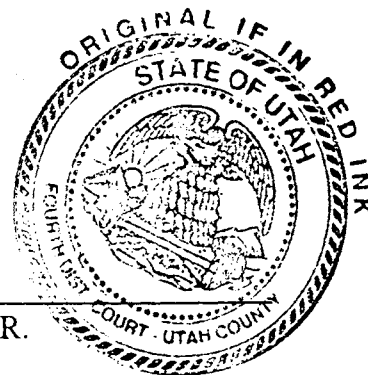
5. Petitioner is ordered to pay the judgment against the Respondent with Knight Adjustment Bureau and to hold Respondent harmless from liability thereon.

6. Respondent's maiden name, Paskett, is hereby restored.

DATED this 24<sup>th</sup> day of March, 1998.

BY THE COURT:

  
RAY M. HARDING, JR.  
Judge

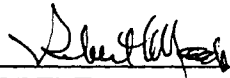


NOTICE TO RESPONDENT

TO: Laurie Ortiz-Uribe  
441 South State, #16  
Orem, Utah 84058

YOU WILL PLEASE TAKE NOTICE that the undersigned, Attorney for Petitioner, will submit the above and foregoing **Decree of Divorce** to the Honorable Ray M. Harding, Jr., for his signature, upon the expiration of five (5) days from the date of this Notice, plus three (3) days for mailing, unless written objection is filed prior to that time, pursuant to Rule 4-504 of the Rules of Judicial Administration. Kindly govern yourself accordingly.

DATED this 16<sup>th</sup> day of March, 1998.

  
\_\_\_\_\_  
ROBERT L. MOODY  
Attorney for Petitioner

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Robert L. Moody, No. 2302  
MOODY & BROWN  
Attorneys for Petitioner  
2525 North Canyon Road  
Provo, Utah 84604  
Telephone: (801) 373-2721

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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY  
STATE OF UTAH

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JOSE RAFAEL ORTIZ-URIBE,	:	<b>FINDINGS OF FACT AND</b>
	:	<b>CONCLUSIONS OF LAW</b>
Petitioner,	:	
v.	:	
LAURIE ORTIZ-URIBE,	:	Civil No. 974402506
	:	Judge Ray M. Harding, Jr.
Respondent.	:	

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The above entitled matter having come on regularly for trial on the 17th day of March, 1998, and Petitioner being present and being represented by counsel, Robert L. Moody, and Respondent being present pro se and the court having heard the Stipulation of the parties and evidence with regard to alimony and the debt owing to U.S. West and being fully advised in the premises:

NOW ENTERS THE FOLLOWING:

**FINDINGS OF FACT**

1. The court finds that the parties first married on the 24th day of December, 1984, that marriage was annulled due to the incapacity of the Respondent to marry the

Petitioner, and they were remarried in November of 1995, and since that time have been, and now are, husband and wife.

2. The court finds that the parties have been residents of Utah County, State of Utah, for more than three months prior to the filing of this action.

3. The court finds that the parties have developed irreconcilable differences making the continuation of the marriage impossible.

4. The court finds that no children have been born as issue to the marriage and none are expected.

5. The court finds that the parties have divided the personal property and each should be awarded the personalty now in their respective possession as a full and complete property settlement.

6. The court finds that Petitioner is employed by Capital Roofing and in 1997 earned \$19,060 gross. The court further finds that Respondent is employed by a nursing home and earns \$7.75 per hour and works 40 hours a week. The court finds that the better evidence with regard to Respondent's earnings is the amount set forth in the financial declaration submitted by Respondent to the clerk in the sum of \$800.00 per month.

7. The court finds that Petitioner's and Respondent's needs are as set forth in their respective Financial Declarations.

8. The court finds that Respondent has not co-habited since the separation.

9. The court finds that the parties separated in August of 1996.



10. The court finds that because of the disparity of income of the parties that Petitioner should pay to the Respondent as alimony the sum of \$200.00 per month retroactive to August of 1996 and continuing until Respondent's remarriage or co-habitation or until the expiration of five years, whichever occurs first.

11. The court finds that Petitioner should pay to Respondent delinquent support that has accrued during the past seventeen months or \$3,400.00 at the rate of \$100.00 per month. The delinquent support and continuing alimony of \$200.00 a month shall commence on the 25th day of March, 1998, and shall be payable on the 10th and 25th of each month thereafter until the further order of the court or the expiration of the five years or remarriage or cohabitation, whichever occurs first.

12. The court finds that because of the disparity of income that Petitioner should pay the judgment against the Respondent in favor of Knight Adjustment Bureau representing the U.S. West telephone obligation in the sum of \$1,120 and Petitioner should hold Respondent harmless from said debt.

The court having made in writing its Findings of Fact,

NOW ENTERS THE FOLLOWING:

#### **CONCLUSIONS OF LAW**

1. The court concludes that Petitioner is entitled to a decree of divorce from the Respondent.

2. The court concludes that Respondent has not cohabited.



3. The court concludes that Petitioner should pay alimony retroactive to August of 1996 in the amount and at the times as set forth in the foregoing Findings of Fact.

4. The court concludes that Petitioner should pay the debt owing to Knight Adjustment representing a collection matter for U.S. West and hold Respondent harmless from liability thereon.

DATED this 24<sup>th</sup> day of March, 1998.

BY THE COURT:

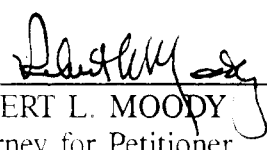
  
RAY M. HARDING, JR.  
Judge

**NOTICE TO RESPONDENT**

TO: Laurie Ortiz-Uribe  
441 South State, #16  
Orem, Utah 84058

YOU WILL PLEASE TAKE NOTICE that the undersigned, Attorney for Petitioner, will submit the above and foregoing **Findings of Fact and Conclusions of Law** to the Honorable Ray M. Harding, Jr., for his signature, upon the expiration of five (5) days from the date of this Notice, plus three (3) days for mailing, unless written objection is filed prior to that time, pursuant to Rule 4-504 of the Rules of Judicial Administration. Kindly govern yourself accordingly.

DATED this 16<sup>th</sup> day of March, 1998.

  
ROBERT L. MOODY  
Attorney for Petitioner

1       cohabits one doesn't get alimony.

2               THE COURT: In this matter I am going to  
3       grant the petitioner a divorce on the basis of  
4       irreconcilable differences, and I will require each  
5       party to pay their own debts and obligations, with the  
6       exception of the telephone bill owed to United  
7       Adjustment Bureau, which has been reduced to a  
8       judgment lien in the amount of \$1122, which the  
9       petitioner shall assume and pay and hold the defendant  
10      harmless there from. I'm going to require that he  
11      make that full payment within 60 days from today's  
12      date.

13              MR. MOODY: Can he make a satisfactory  
14      arrangement with them rather than 60 days?

15              THE COURT: Yes, he can satisfy that  
16      directly with them within 60 days -- I see what you're  
17      suggesting.

18              MR. MOODY: If he contacted them and they  
19      agreed to take a monthly payment.

20              THE COURT: Any objection to that?

21              MS. ORTIZ: No, I don't have any objection  
22      to that, but I would like (inaudible) if I was going  
23      to be granted a divorce, maybe I can go back to using  
24      my name, Paskett.

25              THE COURT: Any objection to that request?

1 MR. MOODY: No, your Honor (inaudible).

2 THE COURT: And the defendant shall be  
3 returned to her maiden name, which is?

4 MS. ORTIZ: Paskett, P-a-s-k-e-t-t.

5 THE COURT: Thank you. Yes, he can satisfy  
6 that -- he'll just hold her harmless from that  
7 obligation, then, and satisfy United Adjustment Bureau  
8 on those payments.

9 As to the household furniture, furnishings  
10 and vehicles, they'll each have those that they  
11 currently have in their possession.

12 As to the alimony issue, I do find that  
13 there is a disparity of income between these parties  
14 and a long term marriage, and based upon his earnings  
15 set forth in his financial declaration, \$1960 a month,  
16 and her earnings as set forth in her financial  
17 declaration of \$835.53 a month, I do find that  
18 disparity necessitates the award of alimony in this  
19 matter.

20 I'll award the defendant the alimony she's  
21 requesting of \$200 a month from the time that he left  
22 in August of 1996 until such time as she remarries or  
23 cohabitates or five years, whichever occurs first. I  
24 will specifically find that the incidents regarding  
25 the males to this point have not constituted

1 cohabitation.

2 I'll require each party to bear their own  
3 costs and attorneys fees in this action. Are there  
4 any other items that we need an order on, Mr. Moody?

5 MR. MOODY: Well, let me (inaudible) if I  
6 may clarify.

7 THE COURT: Yes.

8 MR. MOODY: I would suggest that alimony --  
9 she didn't come in for temporary alimony, we don't go  
10 backwards to 1996.

11 THE COURT: I'll allow you to speak to that.

12 MR. MOODY: If the Court wants to award her  
13 five years alimony, I certainly think that's  
14 (inaudible) discretion of the Court, but to impose  
15 upon him alimony backwards -- I mean how we have a  
16 lump sum -- if he obviously can't pay, he can't pay  
17 the telephone bill. If the Court wants to order him  
18 to pay five years alimony, it should begin in the  
19 month of March or April of 1998 and go for five years.

20 THE COURT: Why do you believe that, Mr.  
21 Moody?

22 MR. MOODY: Well, because she didn't come in  
23 and get a temporary order to penalize him to reduce it  
24 to a judgment back to August of 1996 to the present  
25 time. That just penalizes him and it makes him

1       unable, and then if she starts garnishing his check,  
2       he may or may not be able to make that and the alimony  
3       payments.

4               If the Court (inaudible) my arithmetic shows  
5       that she doesn't earn what she puts on her  
6       declaration. If she earns \$7.75 an hour, then that's  
7       \$1210 a month gross income. There's certainly a  
8       disparity, but she makes \$1200 and he makes \$1900, not  
9       the \$800 that she reports on her financial  
10      declaration. A little arithmetic on 40 hour work week  
11      at \$7.75 an hour creates--

12              THE COURT: Even if I were to accept your  
13      posture, it would justify the \$200 a month in alimony,  
14      Mr. Moody. I'll hear your response with regards to  
15      the claim that we shouldn't go back to the date of  
16      August of 1996.

17              MS. ORTIZ: Your Honor, I didn't know that I  
18      was supposed to file anything with the Court. I  
19      didn't know -- what did you call it, I needed to  
20      file--

21              MR. MOODY: A temporary order.

22              MS. ORTIZ: A temporary order. I don't know  
23      what that is, actually, when I filled out the  
24      financial declaration, and this has kind of all been a  
25      legal learning process for me. I put on the back of

1 it that that's what I had asked for. That was the  
2 first time I knew that I was to do anything except for  
3 ask for the stipulations and the (inaudible) sent to  
4 you.

5 THE COURT: Thank you.

6 Mr. Moody, I'm going to base it on the \$835  
7 she shows in her financial declaration. I'll also  
8 find, however, that in the event she were making the  
9 \$1200 a month which you referred to, that it would  
10 still justify the amount of \$200 a month.

11 I am going to require the alimony payment  
12 from August of 1996. I will, however, provide that he  
13 can pay the delinquency that has accrued to the  
14 current date at the rate of -- what would be a  
15 satisfactory amount to you, ma'am?

16 MS. ORTIZ: I'm not sure (inaudible).

17 THE COURT: I'm going to allow him to pay  
18 the amount that's accrued thus far to this date in  
19 payments to you.

20 MS. ORTIZ: That's fine.

21 THE COURT: Is there an amount of payment  
22 that would be acceptable to you?

23 MS. ORTIZ: I don't know, is it by monthly,  
24 is it--

25 THE COURT: I'm going to require it monthly.

1 MS. ORTIZ: That's probably (inaudible) from  
2 months, you know, I--

3 THE COURT: You've got ongoing of \$200 a  
4 month at this point, and then an amount towards the  
5 delinquency. What amount--

6 MS. ORTIZ: Well, he could just add like  
7 maybe just \$300 (inaudible).

8 THE COURT: I will allow that delinquency to  
9 be paid at the rate of \$100 per month, and the first  
10 payment of ongoing and delinquency shall be paid  
11 within five days from today's date. In other words,  
12 let's get this started immediately.

13 Any further questions or issues that either  
14 party would like to raise to the Court?

15 Mr. Moody, if you'll prepare that findings  
16 conclusion and decree consistent with that order--

17 MR. MOODY: Do I prepare a judgment for  
18 delinquency?

19 THE COURT: No, I've allowed him to pay the  
20 delinquency at the rate of \$100 per month, with his  
21 first payment due with the first alimony payment in  
22 five days. So he's going to be paying \$300 a month  
23 until he gets the delinquency paid, and then it will  
24 drop down to the \$200 a month until she--

25 MR. MOODY: It will run for five years from

1 August of 1995?

2 THE COURT: August of 1996.

3 MR. MOODY: Excuse me, August of 1996.

4 THE COURT: Five years or until she  
5 remarries or cohabitates, whichever occurs first, and  
6 as I've indicated so there's no issue, I've found that  
7 the incidences occurring to this date do not  
8 constitute cohabitation.

9 MS. ORTIZ: That's what I wanted to make  
10 sure that I know for sure what you mean by  
11 cohabitating, moving in together; is that correct?

12 THE COURT: That's correct, residing  
13 together as man and wife.

14 MS. ORTIZ: Okay.

15 MR. MOODY: Thank you, your Honor.

16 MS. ORTIZ: Thank you, your Honor.

17 THE COURT: Thank you.

18 (Hearing concluded)



Robert L. Moody, No. 2302  
MOODY & BROWN  
Attorneys for Plaintiff  
2525 North Canyon Road  
Provo, Utah 84604  
Telephone: (801) 373-2721

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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY  
STATE OF UTAH

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JOSE RAFAEL ORTIZ-URIBE,	:	<b>FINANCIAL DECLARATION</b>
Plaintiff,	:	
v.	:	
LAURIE ORTIZ-URIBE	:	Civil No. 974402506
Defendant,	:	Dated 3/5/98

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Husband: Jose Rafael Ortiz-Urbe  
Address: 250 West Center Street  
Pl. Grove, UT 84062  
Soc. Sec. No.: \_\_\_\_\_  
Occupation: Roofer  
Employer: Capital Roofing  
Birthdate: 8-24-63

Wife: Laurie Ortiz-Urbe  
Address: 441 S. State, #16  
Orem, UT 84057  
Soc. Sec. No.: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Birthdate: \_\_\_\_\_

NOTE: This Declaration must be filed with the Domestic Calendar Clerk 5 days prior to the Pre-Trial Hearing. Failure by either party to complete, present, and file this form as required will authorize the Court to accept the statement of the other party as the basis for its decision.

Any false statement made hereon shall subject you to the penalty for perjury and may be considered a fraud upon the Court.

# STATEMENT OF INCOME, EXPENSES, ASSETS, AND LIABILITIES

(Note: To arrive at monthly figures when income is received and deductions are made weekly, multiply by 4.3; if figures are on a bi-weekly basis, multiply by 2.167)

	HUSBAND	WIFE
1. Gross monthly income from: Salary and wages, including commissions, bonuses, allowances and overtime, payable (pay period)	\$1960.00	
Pensions and retirement		
Social security		
Disability and unemployment insurance		
Public assistance (welfare, AFDC payment, etc.)		
Child support from any prior marriage		
Dividends and interest		
Rents		
All other sources: (Specify) - Alimony \$250, Medical Insurance pursuant to Decree \$63		
TOTAL MONTHLY INCOME	\$1960.00	

Itemize monthly deductions from gross income:

2. State and federal income taxes		
Number of exemptions taken		
Social security		
Medical or other insurance (describe fully)		
Union or other dues		
Retirement or pension fund		
Savings plan		
Credit union		
Other: (specify)		
TOTAL MONTHLY DEDUCTIONS	\$	\$

3. NET MONTHLY INCOME—TAKE HOME PAY	\$1500.00	
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## 4. DEBTS AND OBLIGATIONS

Creditor's Name	For	Date Payable	Balance	Monthly Payment
TOTAL DEBTS AND OBLIGATIONS				

5. ALL PROPERTY OF THE PARTIES KNOWN TO ME

Owned individually or jointly (indicate who holds or how title held: (H) Husband, (W) Wife, (J) Jointly).

		VALUE	OWED THERE- ON
(a)	Household furnishings, furniture, appliances, and equipment		
(b)	Automobile (Year-Make)		
(c)	Securities—Stocks, Bonds		
(d)	Cash and Deposit Accounts (banks, savings and loans, credit unions—savings and checking)		
(e)	Life Insurance:		
	Company Name	Policy No.	Face Amount
			Cash value, accumulated dividend, or loan amount
(f)	Profit Sharing or Retirement Accounts	Value of interest and amount presently vested	
	Name:		
	Name:		

(g) Real Estate (Where more than one parcel of real estate owned, attach sheet with identical information for all additional property)

Address: \_\_\_\_\_  
 Original Cost \$ \_\_\_\_\_  
 Cost of Additions \$ \_\_\_\_\_  
 Total Cost \$ \_\_\_\_\_  
 Mortgage Balance \$ \_\_\_\_\_  
 Other Liens \$ \_\_\_\_\_  
 Equity \$ \_\_\_\_\_  
 Monthly Amortization \$ \_\_\_\_\_  
 Taxes \$ \_\_\_\_\_

Type of Property \_\_\_\_\_  
 Date of Acquisition \_\_\_\_\_  
 Total Present Value \$ \_\_\_\_\_  
 Basis of Valuation \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 And to whom \_\_\_\_\_

Individual contributions \$ \_\_\_\_\_

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Machine-generated OCR, may contain errors.

(h) Business Interest (indicate name, share, type of business value less indebtedness)

\_\_\_\_\_

(i) Other assets (Specify)

\_\_\_\_\_

6.TOTAL MONTHLY EXPENSES

Specify which party is the custodial parent and list name and relationship of all members of the household whose expenses are included:

	HUSBAND	WIFE
Rent or mortgage payments (residence)	\$250.00	
Real property taxes (residence)		
Real property insurance (residence)		
Maintenance (residence)		
Food and household supplies	450.00	
Utilities including water, electricity, gas, and heat		
Telephone	100.00	
Laundry and cleaning	50.00	
Clothing	50.00	
Medical		
Dental		
Insurance (life, accident, comprehensive liability, disability) Exclude payroll deducted - Health Insurance		
Child Care		
Payment of child spousal support re: prior marriage		
School		
Entertainment (includes clubs, social obligations, travel, and recreation)	50.00	
Incidentals (grooming, tobacco, alcohol, gifts, and donations) - Misc.	100.00	
Transportation (other than automobile)		
Auto expense (gas, oil, repair, insurance)	350.00	
Installment payment(s). (Insert total and attach itemized schedule if not fully set forth in (d) on the first page hereof)		
Other expenses (Insert total and specify on attached schedule) - Credit Card and Charge Accounts		
TOTAL EXPENSES	\$ \$1400.00	

SIGNED on the date written above.

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ROBERT L. MOODY  
Attorney for Plaintiff

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JOSE RAFAEL ORTIZ-URIBE

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

Jose Rafael Ortiz Uribe

Plaintiff

FINANCIAL DECLARATION

vs.

Civil No. 974402506

Laurie Lyn Ortiz Uribe

Defendant

Husband: \_\_\_\_\_

Address: \_\_\_\_\_

Soc. Sec. No. \_\_\_\_\_

Occupation: \_\_\_\_\_

Employer: \_\_\_\_\_

Birthdate: \_\_\_\_\_

Wife: Laurie Lyn Ortiz Uribe

Address: 441 South State St #16

Orem, UT 84058

Soc. Sec. No. 108-62-6857

Occupation: Supervisor Housekeeping & Laundry

Employer: Hollen Hollow Care Center

Birthdate: Feb. 5, 1963

NOTE: This declaration must be filed with the domestic calendar clerk 5 days prior to the pre-trial hearing. Failure by either party to complete, present, and file this form as required will authorize the Court to accept the statement of the other party as the basis for its decision. Any false statement made hereon shall subject you to the penalty for perjury and may be considered a fraud upon the Court.

STATEMENT OF INCOME, EXPENSES, ASSETS AND LIABILITIES:

Note: To arrive at monthly figures when income is received and deductions are made weekly, multiply 4.3; if figures are on a bi-weekly basis, multiply by 2.167.

1. Gross monthly income from:

Salary and wages, including commissions, bonuses, allowances and overtime.

Payable: \_\_\_\_\_ Pay Period: \_\_\_\_\_

Based on Jan 1998 Income & Sec Attached Payroll Receipts

Pensions and retirement \_\_\_\_\_

Social Security \_\_\_\_\_

Disability and unemployment insurance \_\_\_\_\_

Public assistance (welfare, AFDC payments etc. \_\_\_\_\_

Child support from any prior marriage \_\_\_\_\_

Dividends and interest \_\_\_\_\_

All other sources (specify) \_\_\_\_\_

TOTAL MONTHLY INCOME \_\_\_\_\_

-Varies on each payday-

Husband

Wife

835.53

835.53

	<u>Husband</u>	<u>Wife</u>
2. Itemize monthly deductions from gross income:		
State and federal income taxes		<u>131.23</u>
Number of exemptions taken		<u>0</u>
Social Security		<u>51.80</u>
Medical or other insurance (describe fully)		
life, health, medical disability		<u>12.12</u>
Union or other dues		
Retirement or pension fund		
Savings Plan		
Credit Union		
Other (specify) - Retirement loan		
<b>TOTAL MONTHLY DEDUCTIONS</b>		<u>195.15</u>
3. Net monthly income--take home pay		<u>640.38</u>

4. Debts and obligations:

Creditor's Name	FOR	DATE PAYABLE	<u>BALANCE</u>	<u>MONTHLY PAYMENT</u>
<u>* see attached List of</u>				
<u>Debts &amp; Creditors</u>				
			<u>\$ 1949.15</u>	<u>0</u>
<b>TOTAL</b>				
If insufficient space, insert total and attach schedule)				

5. All property of the parties known to be owned individually or jointly (indicate who holds or how title held: (H) husband (W) Wife or (J) Jointly)

WHERE SPACE IS INSUFFICIENT FOR COMPLETE INFORMATION OR LISTING PLEASE ATTACH A SEPARATE SCHEDULE.

	<u>VALUE</u>	<u>OWED</u>
(a) Household furnishing, furniture, appliances and equipment	<u>10,000</u>	<u>0</u>
(b) Automobile (Year-Make)		
<u>1961 Chev Impala</u>	<u>3,500</u>	<u>0</u>
(c) Securities: Stocks\bonds		
	<u>0</u>	<u>0</u>

- (d) Cash and Deposit Accounts (banks, savings & loans, credit unions - savings and checking)

\$ 1.98

Checking Account @ First Security w/ 0 Balance

- (e) Life Insurance:

Cash Value  
accumulated  
dividend

Name of Company	Policy No.	Face Amount	or Loan Amount
<u>0</u>		\$	\$
		\$	\$
		\$	\$

- (f) Profit Sharing or Retirement Accounts: Value of Interest  
Amount of presently vested

Name: 0  
Name: 0

- (g) Other Personal Property and Assets (Specify)

0

- (h) Real Estate (where more than one parcel of real estate owned, attach sheet identical information for all additional property)

Address 441 So. State St #16 (Trailer)  
Orion UT 84058

Original Cost	\$ <u>2000.00</u>	Type of Property	<u>Mobil Home 1960</u>
Cost of Additions	\$	Date of Acquisition	<u>Aug 1989</u>
Total Cost	\$ <u>2000.00</u>	Total Present Value	\$ <u>4500.00</u>
Mortgage Balance	\$	Basis of Valuation	<u>County Assessor</u>
Other Liens	\$		
Equity	\$	And to whom	<u>LAURIE LYN PASKETT</u>
Monthly Amortiz.	\$	Title	<u>Belongs to:</u>
Taxes	\$ <u>24.66 year</u>		
Ind. contributions	\$		

- (i) Business Interest (Indicate name, share, type of business, value less indebtedness)

0

- (j) Other Assets (specify)
- 0



6. Total monthly expenses: (Specify which party is the custodial parent and list name and relationship of all members of the household whose expenses are included: LAURIE LYN ORTIZ URIBE)

	<u>Husband</u>	<u>Wife</u>
Rent or mortgage payments (residence)		<u>270.00</u>
Real property taxes (residence)		
Real property insurance (residence)		
Maintenance (residence)		<u>50.00</u>
Food and household supplies		<u>100.00</u>
Utilities including water, elec., gas & heat		<u>100.00</u>
Telephone		
Laundry and cleaning		<u>40.00</u>
Clothing		
Medical		
Dental		
Insurance (life, health, accident, comprehensive disability) Exclude payroll deducted		
Child care		
Payment of child/spousal support re prior marriage		
School		
Entertainment (includes clubs, social obligations, travel, recreation)		
Incidentals (grooming, tobacco, alcohol, gift donations, including tithing)		
Transportation (other than automobile)		
Auto expenses (gas, oil, repair, insurance)		<u>100.00</u>
Auto payments		
Installment payments (insert total and attach itemized schedule if not fully set forth in (4))		
Other expenses (insert total and specify on an attached sheet)		
<b>TOTAL EXPENSES</b>		<b><u>\$ 660.00</u></b>

I declare under penalty of perjury that the foregoing, including any attachments are true and correct and that this declaration was executed on the \_\_\_\_\_ day of \_\_\_\_\_, 1998, at \_\_\_\_\_.

\_\_\_\_\_  
Attorney signature  
(Plaintiff or Defendant)

Laurie Lyn Ortiz Uribe  
Party's signature

BRING TO THE PRETRIAL HEARING ALL DOCUMENTS AND OTHER SUPPORTING INFORMATION NECESSARY TO EXPLAIN THE STATEMENTS MADE IN THIS DECLARATION, INCLUDING BUT NOT LIMITED TO PAYROLL STUBS FOR THE MOST RECENT 90 DAYS, 3 MOST RECENT TAX RETURNS, CREDIT UNION STATEMENTS, PASSBOOKS, CHECKBOOKS, CANCELLED CHECKS, CERTIFICATES, POLICIES AND OTHER RELEVANT AND MATERIAL DOCUMENTATION.