

1989

Jeanette Osguthorpe v. Jerry Osguthorpe : Brief of Respondent

Utah Court of Appeals

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Recommended Citation

Brief of Respondent, *Osguthorpe v. Osguthorpe*, No. 890219 (Utah Court of Appeals, 1989).
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BRIEF

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CKET NO. 890219-CA-----ooo0ooo-----

IN THE COURT OF APPEALS OF THE STATE OF UTAH

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JEANETTE OSGUTHORPE,	:	
	:	
Plaintiff/Respondent,	:	
	:	
v.	:	Case No. 890219-CA
	:	
JERRY OSGUTHORPE,	:	District Court No. D87-4967
	:	
Defendant/Appellant,	:	Priority 14(b)

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BRIEF OF RESPONDENT

AN APPEAL FROM THE FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECREE OF DIVORCE
EXECUTED AND ENTERED BY THE
THIRD JUDICIAL DISTRICT COURT,
SALT LAKE COUNTY, UTAH
THE HONORABLE HOMER F. WILKINSON, PRESIDING

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FILED

JAN 3 1990

Mary T. Noonan
Clerk of the Court
Utah Court of Appeals



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STATEMENT OF ISSUES PRESENTED FOR REVIEW

Issue No. 1: Did the trial court abuse the broad discretion afforded it in making its award of child support and alimony?

Issue No. 2: Was there sufficient evidence to support the trial court's award of child support and alimony?

Issue No. 3: Was the trial court's overall property settlement fair and equitable to both parties?

Issue No. 4: Did the trial court error in finding that the gifts made by the Appellant's father throughout the course of the marriage were gifts made to both parties based upon the evidence which was presented at trial?

Issue No. 5: Was there sufficient evidence to justify the trial court's award of one-half of the attorney's fees requested by Mrs. Osguthorpe?

Issue No. 6: Is Mrs. Osguthorpe entitled to an award of the attorney's fees and costs she has now incurred in connection with having to defend on this appeal?

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BRIEF OF RESPONDENT

JURISDICTIONAL STATEMENT

Respondent agrees with and stipulates to the Appellant's Jurisdictional Statement which appears on page 1 of his Brief.

STATEMENT OF THE CASE

This is a divorce case involving a marriage of 14 years. The parties separated in December of 1987. The wife filed a Complaint, seeking among other things, custody of the parties' four minor children, child support, alimony, an equitable distribution of marital property and debts and an award of attorney's fees. At the time of the filing of the Complaint, the wife also secured a temporary restraining order against the husband.

The husband answered and counterclaimed seeking custody of the children, child support from the wife, no alimony, an equitable property and debt distribution and an order requiring each party to bear their own fees.

Both sides conducted discovery including interrogatories and

depositions and the matter was ultimately tried before Judge Homer Wilkinson for two days in August of 1988. Each side testified, called witnesses and presented documentary evidence. The trial court ruled from the bench.

Findings of Fact, Conclusions of Law and a Decree of Divorce were prepared, portions of which were objected to by the husband. Those objections were overruled and a Decree of Divorce was signed and entered on February 28, 1989.

The husband filed his Notice of Appeal on March 28, 1989.

RELIEF SOUGHT ON APPEAL

Mrs. Osguthorpe seeks the following relief in connection with this appeal:

1. For an order affirming the actions of the trial court in all respects.
2. For an order directing that she be awarded all of the attorney's fees and costs she has incurred in connection with having to defend on this appeal, and for an order remanding the matter to the District Court for a determination of those fees and costs.
3. For an order granting such other relief as may be fair and equitable to Mrs. Osguthorpe.

STATEMENT OF FACTS

Because Appellant has omitted certain important facts, has overemphasized some while underemphasized others and has attempted to unilaterally characterize disputed evidence as facts, Respondent must necessarily supplement, clarify and in many respects,

challenge Appellant's Statement of Facts. Respondent believes that the following Statement of Facts more accurately and completely sets forth what transpired in connection with the proceedings below.

Marital History

The parties married in August of 1974 (TR 33) and separated in late December of 1987. (R-2) At the time of the marriage each had basically completed their undergraduate work with Mrs. Osguthorpe receiving a B.S. degree in the spring of 1975 in Home Economics Education. (TR 35) Dr. Osguthorpe decided to go on to veterinarian school and the parties moved to Fort Collins, Colorado in September of 1974. (Ex. P-8) While Dr. Osguthorpe was in school for the next three years, Mrs. Osguthorpe assisted him and worked full time as a waitress and cashier using her earnings to help the family with living expenses. (TR 36, 38, 79 & 80, Ex. P-7)

Dr. Osguthorpe's father, Dr. D.A. Osguthorpe, a Salt Lake Veterinarian, paid for his tuition and books. (TR 280) During those three summers the parties would move back to Utah where Dr. Osguthorpe would work on his father's dairy farm in Park City. (TR 42, Ex. 8) Mrs. Osguthorpe also helped out on the ranch during those times. (TR 42, 236)

The parties moved back to Salt Lake permanently in May of 1977 (TR 43) after Dr. Osguthorpe had received his degree. Mrs. Osguthorpe's last full-time job was in 1976-77 (TR 36) and up until the parties separation she had been a housewife and mother. (TR

31, 128) She was a substitute teacher on one occasion and earned a total of \$40.00. (TR 36)

During this period, the parties had four children who at the time of the trial were twelve, ten and twins seven years of age. All were in good health. (TR 33) After the parties' return to Salt Lake, Mrs. Osguthorpe became a full-time housewife and mother (TR 128) and Dr. Osguthorpe began practicing veterinary medicine with his father out of the Osguthorpe Animal Hospital. Dr. Osguthorpe testified that he had been a "consultant" of the hospital for ten years (TR 268) and that he was not an employee but was only paid a consulting fee which at the time of trial was \$2,000 per month (TR 102) and from that he said he claimed he had to pay his own business expenses of approximately \$1,000 per month. (TR 222 & Ex. D-31) He said he had no other sources of income. He said he owned very little equipment (TR 142), had no pension plan (TR 102) and received no employee benefits. (TR 102) Any fees he earned in connection with his consulting were turned over to his father and the hospital. (TR 105) He said he did not own his veterinarian truck (TR 113-118) although his auto registration and tax returns reflected otherwise. (Ex. P-24, P-25 & 1, 2, 3, 4, & 5) His father characterized him as a very competent and good veterinarian. (TR 275-276) At the time of trial, both parties were in good health although Mrs. Osguthorpe had vision in only one eye because of an accident she had sustained prior to the marriage. (TR 32)

Dr. Osguthorpe brought no property into the marriage. Mrs.

Osguthorpe brought a real estate contract into the marriage which ultimately resulted in the receipt of \$4,081.00 in payments all of which went into the parties' joint account for living expenses. (TR 58, 59) She also had received a personal injury settlement (Ex. P-12) which she had invested in a home on Hillrise Circle which she owned prior to the marriage. (TR 59) The parties lived in the Hillrise home the first two years in Salt Lake at which time they purchased a home on Chris Lane. After they moved to Chris Lane, they rented Hillrise and earned a profit on the property and received substantial tax benefits from it. (TR 62 & Ex. P-15 & P-16) At the time of trial Mrs. Osguthorpe was netting about \$160.00 per month from Hillrise (TR 45-47 & Exhibit P-9)

In 1979 the parties bought the Chris Lane home. (TR 66) They gave a first trust deed and Dr. Osguthorpe's father arranged for an \$18,500 loan with PCA to cover the down payment. (TR 66, 67) For the next two years the parties made payments on this loan (TR 66, 67 & Ex. 39) and in June of 1981 Dr. Osguthorpe Sr. paid the remaining \$10,836 balance off (TR 68) and the parties continued to pay the monthly payments due on the first trust deed. Title to the property has always been in Jerry's and Jeanette's name. Also during the marriage Dr. Osguthorpe Sr. gave the parties periodic cash gifts (Ex. D-34) All of these gifts were in the form of checks from Dr. Osguthorpe Sr. payable to both Jerry and Jeanette, except for the December 1987 gift which was a check made payable only to Jerry. (TR 168, 285)

In December, 1987, the parties had an altercation and Dr.

Osguthorpe forced Jeanette out of the marital residence. (TR 12-13) She filed a Complaint for divorce and secured a restraining order (R-19) and was ultimately restored possession of the Chris Lane home and custody of the children. A temporary support order was entered requiring Dr. Osguthorpe to pay \$550.00 per month in child support and \$200.00 in alimony. (R-104)

Trial Proceedings

A two-day trial was held in August of 1988. Both sides were present and represented by counsel. Both sides testified. In addition, Mrs. Osguthorpe called John Mathews of the Department of Employment Security for the purpose of establishing average salaries of veterinarians. (Ex. P-20 -- \$43,000 in 1985) She also called Dr. Osguthorpe Sr. The Appellant called Jerry Webber, a real estate appraiser.

Mrs. Osguthorpe testified that she had \$160 per month in income and \$2,027.00 in monthly living expenses. (TR 45-47, Ex. P-9) (The job she had secured after separation to make ends meet was to end on August 19, 1988.) (TR 31, Ex. D-9) Dr. Osguthorpe testified that he had a gross income of \$2,350.00 per month, (Ex. D-31) net income after business expenses and taxes of \$1,192.80 (Ex. D-31) and monthly living expenses of \$2,049.60. (Ex. D-36) He said he would only pay \$125.00 per month per child in child support and no alimony. (TR 136)

In Mrs. Osguthorpe's proposal for case resolution (Ex. P-11) she requested child support of \$175.00 per month per child, permanent alimony of \$250.00 per month, all interest in the Chris

Lane home as "equitable restitution" and approximately \$8,000.00 in attorney's fees.

Trial Court's Ruling

At the conclusion of the evidence and after argument the trial court ruled as follows: (A copy of the transcript reflecting the ruling is included in the Addendum of this Brief.)

1. It awarded Mrs. Osguthorpe custody with specific visitation in Dr. Osguthorpe.

2. It made specific findings as to the income and expenses of both parties and found that Dr. Osguthorpe had understated his income or was underemployed.

3. It ordered Dr. Osguthorpe pay child support at \$150.00 per month per child (\$600.00).

4. It ordered \$150.00 per month as alimony for five years. \$1.00 per year for another five years with the same to then terminate.

5. It returned the Hillrise Circle home to Mrs. Osguthorpe as premarital property.

6. It awarded the Chris Lane home to Mrs. Osguthorpe subject to a lien equal to one-half of the present equity in Dr. Osguthorpe payable upon the usual contingencies.

7. It gave Mrs. Osguthorpe the Jeep and household furnishings.

8. It gave Dr. Osguthorpe the 1988 Dodge truck, the \$7,000.00 boat and substantial other personal property.

9. It found that the gifts from Dr. Osguthorpe Sr. were

gifts to both of the parties, and

10. It awarded Mrs. Osguthorpe only half of the fees she requested. (Findings of Fact and Conclusions of Law, R. 251-268)

Subsequent to trial Dr. Osguthorpe filed a Motion for New Trial and objections to the Court's findings on the gift issues, (R. 160 and 239) both of which were denied. (R. 284-285) Dr. Osguthorpe then filed a timely Notice of Appeal. (R. 286)

SUMMARY OF ARGUMENTS

Point I:

Under Utah law, a trial court in a divorce action is afforded a wide latitude of discretion in fashioning a remedy which will fit the needs of the parties and the parties' children. Decisions which fall within that ambit of discretion will not be disturbed unless the Appellant is able to demonstrate that the trial court misunderstood or misapplied the law or found facts not supported by the evidence. In this case, the Appellant has failed in his burden to demonstrate any error on the part of the trial court in connection with any issue raised in Appellant's Brief.

Point II:

Under Utah law, if a witness testifies falsely in one respect, the finder of fact is entitled to disregard all or any portion of that witness's testimony if it elects to do so. In this case, the trial court properly noted inconsistencies in Dr. Osguthorpe's testimony. As such, the trial court was within its right to not consider any of Dr. Osguthorpe's evidence if it chose not to.

Point III:

The trial court's awards of alimony and child support were appropriate and at best minimal. Each award was based on substantial credible evidence related to the Respondent's need for support and her ability to provide support for herself and the children. Each of the findings which the trial court made were supported by substantial amounts of evidence presented by both Respondent and Appellant and independent witnesses. Appellant has not demonstrated any fatal defects related to those findings.

The trial court properly found that either Dr. Osguthorpe understated his income or underemployed himself. In either event, the trial court was justified in fashioning the overall support award and property distribution which it did and Dr. Osguthorpe has shown no error which would in any way justify a reversal.

Point IV:

The trial court properly considered the factors it was required to consider in making an award of alimony to Mrs. Osguthorpe. It considered the length of the marriage, the financial needs of Mrs. Osguthorpe, and the abilities of both Mrs. Osguthorpe and Dr. Osguthorpe to provide support. If anything, the trial court erred by making Mrs. Osguthorpe's award of alimony not permanent.

Point V:

The evidence which was presented to the trial court regarding gifts made during the marriage by the Appellant's father were made to both parties. The trial court was not obligated to conclude that those gifts were made solely to Dr. Osguthorpe simply because

he and his father said so. The trial court was allowed to look at other independent evidence in making a determination of intent and that other independent evidence reflected that all such gifts made by Dr. Osguthorpe Sr. were made to both of the parties except the one which was made after the parties' separation. The trial court committed no error in concluding that Dr. Osguthorpe should not receive any credit for any such gifts.

Point VI

The trial court committed no error in not awarding interest on the lien it gave to Dr. Osguthorpe in the marital residence. Given the unusually low level of child support and alimony awarded by the trial court and the absence of any significant marital property, imposition of any interest rate on such lien would have been unduly burdensome and totally unfair to Mrs. Osguthorpe.

Point VII :

The trial court committed no error in awarding Mrs. Osguthorpe only one-half of the attorney's fees she requested. There was substantial and significant evidence presented relative to the requirements for an award of attorney's fees as set out under Utah law as well as additional substantial evidence relative to Mrs. Osguthorpe's need to have those fees paid. Again, if anything, the trial court erred in not awarding Mrs. Osguthorpe all of the fees she requested.

Point VIII:

Each of the issues raised by Dr. Osguthorpe in connection with this appeal is without merit. Mrs. Osguthorpe has limited

financial means and has difficulty supporting herself and her children, let alone attempting to pay for the services of attorney's in connection with the defending of this appeal. Equity and fairness require that she not be required to pay her fees incurred in connection with this appeal. Because this appeal is totally without merit, Dr. Osguthorpe should be required to pay all of the attorney's fees and costs incurred by Mrs. Osguthorpe in defending this appeal.

ARGUMENT

POINT I

THE DECISION OF A TRIAL COURT IN A
DIVORCE ACTION SHOULD NOT BE
DISTURBED UNLESS THERE IS A CLEAR
SHOWING OF A MISAPPLICATION OF THE
LAW OR AN ABUSE OF DISCRETION
RESULTING IN A SUBSTANTIAL ERROR OR
A SERIOUS INEQUITY

The Appellant, Dr. Osguthorpe, contends that the trial court erred in its awards of child support, alimony, and attorney's fees and in inequitably allocating marital property, and in the handling of gifts given to the parties and, consequently, abused the wide discretion afforded it in making such order. The evidence presented to the trial court clearly shows that this was just not the case.

In order to prevail on this appeal, Dr. Osguthorpe is required to show that the trial court, in making its award of support or distribution of property, misunderstood or misapplied the law, entered findings not supported by the evidence, or caused a serious inequity so as to constitute an abuse of discretion. See English

v. English, 565 P.2d 409, 410 (Utah, 1977). As was clearly stated in Searle v. Searle, 522 P.2d 697 (Utah 1974):

Although it is both the duty and prerogative of this court in a case of equity to review the facts as well as the law, Article 8, Section 9, Constitution of Utah. The trial judge has considerable latitude of discretion in adjusting the financial and property interests in a divorce case. The actions of the trial court are indulged with the presumption of validity, and the burden is on appellant to prove such a serious inequity as to manifest a clear abuse of discretion [footnote]. There is no fixed formula for the division of property; Section 30-3-5 U.C.A. (1953) provides that when a decree of divorce is made the court may make such orders in relation to property as may be equitable. [footnote] Id. at 700.

Dr. Osguthorpe's burden is not an easy one and the record does not show any inequity which would constitute an abuse of discretion by the trial court. As was stated in Bader v. Bader, 18 Utah 2d 407, 424 P.2d 190 (1967):

It would lead to intolerable instability of judgments if this court should assume the prerogative and accept the responsibility of merely second guessing a trial judge who has done a conscientious job of attempting to make just and equitable allocation of the property and income of the parties in regard to alimony and support monies as the trial judge appears to have done here. It is due to this fact, taking into consideration the nature of the trial judge's authority and duty, and his advantaged position, that in such matters he is allowed a comparatively wide latitude of discretion which will not be disturbed in the absence of clear abuse . . . Id. at 151.

After a complete trial and the receipt of comprehensive exhibits, the trial judge properly weighed all of the factors related to this case and fashioned a remedy that would be as fair

as possible to both parties under the circumstances.

Because Dr. Osguthorpe now appears to be dissatisfied with all aspects of the trial court's decision, he has now requested this Court to substitute its judgment for that of the trial court. That request is an invasion of the trial court's function as the fact finder and fashioner of equitable remedies.

As a preliminary matter, it is necessary to set the record straight regarding claims of Appellant that the trial court did not properly consider the evidence which was presented at trial. Evidence was presented by both sides (documents and testimony) pertaining to capacities to earn, historical income, contributions to the marriage and the professional development of Dr. Osguthorpe as well as the property acquired during the marriage and the sources from which it came. The trial court in reaching its final decision, considered all of the evidence presented to it in determining what, indeed, was fact.

It is not a proper approach, as Appellant would urge, to conclude that merely because his evidence was offered with regard to income, expenses, earnings and sources of property, that that evidence need automatically be taken as fact. It is the job of the trial court, after receiving all of that evidence, to carefully weigh the same and conclude, based upon that evidence, what the facts of the case are. That is exactly the procedure used by the trial court in this case and certainly should not be subject to attack, as Appellant has attempted to do in his Brief.

The basic flaw in Mr. Osguthorpe's approach is that he has not

shown that there has been any misapplication of the law or any abuse of discretion which resulted in any inequity to him. Rather, he complains now that the trial court found facts different from the facts Dr. Osguthorpe wanted the trial court to find in making its award of support, attorney's fees and property distribution.

When there is a discrepancy in testimony rendered by the witnesses, the fact-finder must decide which account is the most accurate. Then on appeal, we must review the facts in the light most favorable to the prevailing party. Lamkin v. Lynch, 600 P.2d 530 (Utah, 1979).

The question then becomes: "Was there credible evidence presented to the trial court to allow it to do what it did?" The answer to that question is "yes." Therefore, Dr. Osguthorpe has not in any sense met his burden on appeal and, therefore, the judgment of the trial court should be affirmed in all respects.

POINT II

IT WAS WITHIN THE PREROGATIVE OF THE
TRIAL COURT TO DISREGARD ALL OF DR.
OSGUTHORPE'S TESTIMONY IF IT CHOSE
TO DO SO

Deciding whether a witness is believable, and determining what weight to assign a witnesses testimony, are matters within the discretion of the finder of fact. Lemon v. Gates, 735 P.20 58 (Utah 1987).

When a witness testifies falsely, it is within the prerogative of the finder of fact to disregard any portion or all of the witness' testimony if it chooses to do so. Gittens v. Lundberg, 284 P.2d 1115, 3 Utah 2d 392 (1955).

During the trial of this case, Dr. Osguthorpe's credibility was successfully challenged on more than a number of occasions and that lack of credibility was specifically noted by the Court when it stated:

The Court also did note that there was a number of inconsistencies as far as the testimony of the defendant. Of course counsel pointed one out, which the Court did not note this morning, and there were other inconsistencies between his testimony now and the testimony of what - - that he gave at the time of the deposition. Of course his explanation was that he didn't understand the question. Maybe he did and by he didn't. I don't know. But I know there were inconsistencies of course of which the Court did note and the Court must take any consideration in looking at the overall testimony and the believability and the credibility and the testimony of the parties."
(R-343)

This Court should be aware of those inconsistencies in testimony when considering the issues Dr. Osguthorpe now attempts to raise on appeal.

When asked in his deposition as to whether or not Jeannette has assisted him through veterinarian school, he said she had. At trial, he said she didn't. (TR 124, 127)

When asked about his relationship with Osguthorpe Animal Hospital he said he was not an employee and only a "consultant" to his father, the only veterinarian in the hospital (R-106). When confronted with the yellow page ad for the hospital (Ex. P-22 & P-23, See Addendum) showing him to be a veterinarian in the hospital with a phone listing for the Chris Lane residence he said it was there only so that he could take messages for his father (TR 111).

When asked about ownership of his 1979 truck he stated that the hospital owned it. (TR 114) He was then shown the vehicle registration reflecting him to be the owner (Ex. P-24, See Addendum). And when that truck was traded after separation for a brand new 1988 truck he said the hospital owned the new truck (TR 116) and was unable to explain why he signed the affidavit of ownership and why his name was again reflected as the record owner (TR 116-118 and Ex. P-25, See Addendum). After the luncheon recess, he explained he only held legal title and the hospital was the equitable owner (R. 171).

He said he paid for all gas, taxes and insurance on the truck (TR 143 and Ex. 1, 2, 3, 4 & 5) and did not seek reimbursement from his father whereas his father who had not heard that testimony testified that the hospital paid those expenses (TR 266-267) and his returns also reflected otherwise. (Ex. 1, 2, 3, 4 & 5)

He said he hadn't paid his parents any rent while living with them after separation whereas in his deposition he said he had paid rent for the period in question (TR 228-230).

He said his "consulting fee" from his father had gone up dramatically from about \$500 to \$2,000.00 a month during his 10 years of practice (TR 188) whereas his father said he had been paid \$2,000.00 from the start (TR 268).

The above inconsistencies when considered in conjunction with his testimony about his income as was reflected on his tax returns less the deductions he had taken and the resulting net income figures (TR 144-160) (See Point III of this Brief), provided a more

than sufficient basis for Judge Wilkinson to question the truthfulness and the motives of Dr. Osguthorpe.

Those motives clearly became apparent from the following testimony of Mr. Lynn Turnbow, a neighbor of the parties about a conversation he had with Dr. Osguthorpe while this action was pending.

MR. TURNBOW:

A Well, what I remember, he says that she really hasn't got a pot to piss in. And he says, my parents have a lot of money. And he says, I have a checking account. And my family can go out and hire the best lawyers. And he says that she is going to end up with nothing. And he says, The amount of money that I show I make is just not enough that she's even going to be able to survive with four kids, and she's going to be out on the street with nothing. She going to starve.

MR. KASTING:

Q. Is there anything else that you can recall about that conversation as it pertains to this divorce action that Mr. Osguthorpe said to you?

MR. TURNBOW:

A. He just told me that she would be out on the streets with nothing. And he said, She's going to have one hell of a time raising four kids. Because he said, We have the money that we can drag this on. We can fight it forever. He said, Her parents have no money to help her. And he said that the only way she can hire a lawyer is to go take a second mortgage on a second house that they have, I guess. (R. 318-320)

Simply put, given the evidence cited above, any or all of Dr. Osguthorpe's testimony could have been, should have been, and probably was disregarded by the trial court.

POINT III

THE TRIAL COURT'S AWARDS OF ALIMONY WERE APPROPRIATE, SUPPORTED BY THE EVIDENCE, AND CONSISTENT WITH UTAH LAW

Point I of Appellant's Brief is disjointed and confusing as to what errors are claimed to have been committed, but perhaps it can be synthesized into two simple questions:

1. Were the Findings adequately supported by the evidence?
2. Was there evidence to show that Dr. Osguthorpe was earning more than he testified to or, in the alternative, Was there evidence to show that Dr. Osguthorpe was earning less than he was capable of earning?

A.

The Findings of Fact Were Adequately Supported by the Evidence and not Erroneous

To demonstrate the lack of merit to this portion of Dr. Osguthorpe's argument, this Court's attention is called to the following statement on page 14 of Appellant's Brief:

The problem is compounded by the fact that since the trial court entered no finding as to appellant's income, the court failed to provide a baseline for modification purposes. Id.

The trial court certainly did enter a finding as to the Defendant's income as is reflected below:

The Defendant testified that he received \$2,000.00 per month from his employment as a doctor of veterinarian medicine and an additional \$350.00 per month from barn rental on a barn in Park City, which he testified was a gift from his father, for a total monthly income, according to his testimony of \$2,350.00. He further testified he had income taxes of \$154.89 and business expenses of \$1,002.31, leaving him total monthly deductions of \$1,157.20 and a net monthly income of

\$1,192.80, as was reflected on the information contained on Defendant's Exhibit 31. The Defendant further testified that he had estimated actual and anticipated monthly expenses of \$2,049.60, as reflected on Defendant's Exhibit 36. The Court considered each parties' testimony, the Exhibits referred to above and the tax returns filed by the parties and accepted into evidence (Plaintiff's Exhibits 1 through 6), all of which were admitted as evidence.

Based upon the review of all those documents and the testimony on [sic] the parties, the Court finds that the Defendant receives more money by way of monthly income than was reflected on Defendant's Exhibit 36. The Court further finds that the Defendant is employed by his father and has been so since the start of the marriage, and that based on the Defendant's testimony as to what he was paid at the start of their relationship and what he is presently paid, the Court finds that Defendant was either overpaid when he started the relationship or is underpaid at the present time. The Court finds that it is the Defendant's intention to continue the employment relationship with his father and that the Defendant has substantial ability as a doctor of veterinarian medicine. Based upon the foregoing, the Court finds it is reasonable for the Defendant to pay the following sums by way of child support and alimony. (R. 254-255)

The trial court goes on to further find in connection with its alimony award.

The Defendant has chosen to be employed by his father at a salary which appears to be less than he could make in another independent employment situation, and it appears that the Defendant has the ability to earn more than he presently does. The Court further received conflicting testimony as to whether or not the tax returns of the parties accurately reflected the amount of monies available to meet the family's financial needs, and the Court finds that the tax returns appear to understate the actual net income that was available to the parties during the marriage for family and living expenses.

The Court further finds that the Plaintiff did assist the Defendant in completing his education in veterinarian school by her employment, by her caring for the home and raising the children. (R. 256-257)

These are extensive and most adequate findings relative to the Appellant's admitted income and more importantly, to his ability to earn more than what he claimed he was earning.

Further, under Utah law, the findings of a trial court are not limited to the formal Findings of Fact. They may also be set forth in oral statements of the court. Erwin v. Erwin, 773 P.2d 847, 856 (Utah App. 1989). In the case now on appeal, the trial judge stated as follows:

Again, Mr. Kasting did bring out the situation as far as the amount of money that was left there as far as to support the family on, which was just not reasonable. So, there is no question that there is more money in the home than the tax reports show as far as the amount of net income. I am not in the position to go through and to make a definite findings as to just what amount of money is present there. I know what the tax return says. I know what is taken as far as -- and I looked them over -- as far as business expenses and so forth. (TR 349-350)

Taken together, the formal Findings of Fact and the statements made by the trial judge are more than sufficient to meet the standard established in this jurisdiction. That is, the findings must (1) include enough facts to disclose the process through which the ultimate conclusion is reached; (2) indicate the process is logical and properly supported; and (3) be not clearly erroneous. Marchant v. Marchant, 743 P.2d 199 (Utah App. 1987).

These three requirements have been met and Appellant's argument claiming inadequate or erroneous findings is without merit.

B.

Dr. Osguthorpe's income was either understated or Dr. Osguthorpe was capable of making more income than his evidence reflected

Dr. Osguthorpe is a successful, competent veterinarian with ten years of experience. He consistently maintained he worked with his father only as a "consultant" and earned \$1,192.00 per month or said in another way, \$6.93 per hour based on a 40-hour work week. Those figures simply do not square with the income a professional such as the doctor should be making.

In demonstrating that there had to have been more income than what Dr. Osguthorpe stated he earned and what appeared on the returns, Mrs. Osguthorpe's counsel, both at the temporary hearing held in January, 1988 (R 34), and at the trial, presented an analysis of the tax return income information versus the known and fixed monthly expenses which the parties had incurred over the years, i.e., What the parties' stated gross income was for a year and what known expenses as reflected on the returns had to be paid from that income and what was then leftover to feed, transport, clothe, educate and entertain the parties and their children.

Dr. Osguthorpe's testimony related to this analysis appears on pages 144 through 160 of the transcript. Also, to emphasize the importance of this analysis, a complete copy of the parties' 1985

tax returns has been included in the Addendum to this Brief. The following is an analysis of that 1985 income information:

1985 INCOME ANALYSIS
(Figures taken from 1985 Tax Returns)

Adjusted Gross Income:

Includes wages, interest and rental income of both parties	\$15,956.77
---	-------------

Deductions and Expenses
(as reflected on returns):

Federal taxes paid	\$1,710.43	
State taxes paid	182.72	
Dentists and doctors	441.55	
Home interest deduction	4,456.86	\$6,600.00 *
Miscellaneous taxes	1,650.47	
Contributions	399.24	
Rental expenses #1	3,455.80	
#2	482.57	
Total Deductions/Expenses	\$12,779.64	\$14,922.78 *

NET ANNUAL INCOME available for food, clothing, entertainment, transportation, insurance payments, etc. for 2 adults and 4 children	\$3,177.13	\$1,033.99
NET AVAILABLE INCOME PER MONTH	\$264.76	\$86.16

*The parties in fact paid \$550 per month as a house payment for a total of \$6,600 per year.

Similar analysis were made for tax years 1984 through 1987, and interesting enough, the 1987 figures were remarkably different than the earlier years and showed net annual income of \$10,461.92. (TR 160) (The 1987 returns were prepared by Dr. Osguthorpe after the temporary hearing where Mrs. Osguthorpe had presented the same type of analysis for the 1986 income of the parties, to wit: a

total net annual income of \$406.00 for that year, R. 34.)

For these reasons and the additional inconsistencies in Dr. Osguthorpe's testimony, as set out in Point II of this Brief, the trial court was well within its prerogative to disregard his testimony entirely and rely solely on Mrs. Osguthorpe's testimony that her husband's income was at least \$2,350.00 per month.

On the other hand, even if we stretched hard and accepted Dr. Osguthorpe's income figures, the only other logical conclusion is that he is substantially underemployed. The trial court recognized that to be a choice he could make (TR 348). However, as a matter of public policy, in no event should voluntarily underemployment be permitted so as to effectively reduce a father's support obligation.

To demonstrate this underemployment, Mrs. Osguthorpe introduced Exhibit 20 - the 1988-89 Occupations Handbook published by the U.S. Department of Labor (a copy is included in the Addendum to this Brief). Page 135 of the exhibit shows the average net earnings of all veterinarians in private practice was about \$43,000.00 in 1985 - three years prior to trial.

Faced with the question of what should be reasonable support given this evidence, the trial court had to fashion an overall remedy which would allow Mrs. Osguthorpe to raise her four children at at least a minimum standard of living.

When the smokescreen raised in Point I of Dr. Osguthorpe's Brief is dissipated, the real impact of the trial court's decision on the parties is as follows:

1. Dr. Osguthorpe, a successful veterinarian, pays a grand total of \$750.00 per month to support his wife of 14 years and his four children. In addition, he receives no debt, a 1988 Dodge truck with no debt, a \$7,000.00 boat with no debt, a \$22,500.00 lien in the marital residence, and substantial personal and recreational property.

2. Mrs. Osguthorpe, a housewife of 14 years, with no real work history, receives \$750.00 per month in support (\$150.00 of the same being alimony and taxable to her) from which a \$550.00 house payment must be made; use and possession of the family residence, an interest in the house presently equal to her husband's, personal furnishings for she and the children, a 1983 Jeep Cherokee, a house she brought into the marriage which nets her \$160.00 per month in income and a \$4,000.00+ attorney's fee bill. (Dr. Osguthorpe has not paid any of the fees awarded by the trial court.)

To claim that such a result is unfair to Dr. Osguthorpe and an abuse of the trial court's discretion is wholly without merit. The trial court's award of alimony, child support and property distribution should be affirmed in all respects.

POINT IV

THE TRIAL COURT'S AWARD OF ALIMONY
WAS APPROPRIATE AND IN FACT SHOULD
NOT HAVE BEEN LIMITED IN DURATION

In making an award of alimony, a trial court must examine (1) the financial condition and needs of the requesting spouse; (2) the ability of each party to produce income; (3) the length of the marriage; and (4) the recipient spouse's education and

employability. Appellant's Brief P. 18 and Boyle v. Boyle, 735 P.2d 669 (Utah App. 1989).

A review of the record and the Findings of Fact and Conclusions of Law clearly reveals that there was more than sufficient evidence on each of these factors, and based on that evidence, the trial court made specific findings as it is required to do.

1. The Financial Condition and needs of the wife:

See TR: 31, 37, 38, 39, 45-47, 51, 77, 79, 128

See Exhibits: P-9, P-11

See Findings: R. 254, 255, 256, 264 & 265

2. The ability of each to produce income:

See Mrs. Osguthorpe's Testimony: TR 31, 32, 35, 36,
90, 128

See Exhibits: P-6, P-9, P-11, P-20

See Findings: R. 254, 256, 257

See Dr. Osguthorpe's Testimony: TR 99, 100, 102, 103,
104, 105, 260, 266, 267, 270, 275, 276, 305

See Findings: R. 254-255, 256, 257, 264

3. The length of the marriage:

See TR: 33

See Findings: R. 252

4. The recipient spouse's education and employability:

See TR: 31, 35, 36, 37, 38, 87, 90

See Exhibits: P-6

See Findings: R. 254, 255

Synthesizing all of the above evidence to determine the propriety of the alimony award, the trial court was faced with the following: A 14-year marriage where the wife would have custody of four young children; a competent veterinarian of ten years experience who secured his education during the marriage with the assistance of his wife, but who at trial claimed he was only making \$1,000.00 per month from his father; a wife who had monthly expenses for she and her four children of \$2,027.00, and gross income from soon-to-end employment of \$770.00 and rental income of \$160.00; a wife who had a degree in Home Economics with limited work experience having not worked for the last 10 years; statistics showing the average veterinarian earns a net income of \$43,000.00 annually and a marital estate, where but for a home equity, little, if anything, had been acquired.

Alimony is to be based on the paying spouse's ability to pay. Gramme v. Gramme, 587 P.2d 144 (Utah 1978). The ability to pay is not defined by the paying spouse's income at the time of divorce. In Sampinos v. Sampinos 750 P.2d 615 (Utah App. 1988), an award of alimony was upheld even though payment would require the husband to liquidate his sole and separate property. In Paffel v. Paffel, 732 P.2d 96, 102 (Utah 1986), the Utah Supreme Court declared that trial courts could consider a second spouse's income as a source for payment of alimony to a first spouse. In Mortensen v. Mortensen, 760 P.2d 304, 308 (Utah 1988), it was held that property awarded to the husband would be considered as an income source when considering alimony and child support.

The trial court correctly concluded that an award of alimony was appropriate given the factors it was required to consider and awarded alimony of \$150.00 per month for five years and \$1 per year for five years thereafter.

Parenthetically, under the recent holding of Schindler v. Schindler, 776 P.2d 84 (Utah App. 1989), it is not necessary for a trial court's written findings to set forth all of the factors, but only those which it considers to be most pertinent.

The trial court's award of alimony based on the evidence before it was certainly not inappropriate and, if anything, the award was incorrect in that a time period for termination was placed on the award and such a limitation is now inappropriate under this Court's recent decision in Andersen v. Andersen, 757 P.2d 476 (Utah App. 1988).

Appellant has shown no error in connection with the trial court's award of alimony. Therefore, the award should be affirmed or in the alternative, it should be modified and made permanent consistent with the directions and holdings of Anderson, supra.

POINT V

THERE WAS MORE THAN AMPLE EVIDENCE
TO SUPPORT THE TRIAL COURT'S FINDINGS
THAT GIFTS MADE DURING THE MARRIAGE
WERE MADE TO BOTH PARTIES.

In Point III of his brief, Dr. Osguthorpe argues that the trial court erred in not awarding him credit for certain gifts made by his father over the course of the marriage. He relies on the recent Utah Supreme Court's decision of Mortenson v. Mortenson, 760

P.2d 304 (Utah 1988) and his testimony and his father's testimony. He has failed to mention all of the evidence which was presented in connection with the gift issue.

Mrs. Osguthorpe testified that her father-in-law had given them money to live on when Dr. Osguthorpe was in veterinarian school (TR 90) and that when they moved to Salt Lake he arranged for an \$18,500.00 loan with PCA to allow them to purchase the Chris Lane home as the family residence. They then began making monthly payments on that loan (Exhibit P-39 - PCA Payment receipts (TR 284) until the balance had been reduced to approximately \$10,836.00 (TR 68). At which time Dr. Osguthorpe, Sr. paid off the balance. She went on to say that it was always her understanding that these things were done for both she and Jerry (TR 68).

It is said that actions speak louder than words and in this case that maxim is indeed applicable inasmuch as both Dr. Osguthorpe and his father testified that with one exception each of the gifts which they claimed had been made (Exhibit D-34) were made in the form of checks made payable jointly to both Jerry and Jeanette. (TR 168, 226, 285) The one exception was the last gift made about the time the parties separated in December of 1987 and there the check had only Jerry's name on it (TR 227). Point III of Dr. Osguthorpe's brief conveniently omits that evidence, and it is that evidence upon which the trial court correctly concluded that the gifts made by Dr. Osguthorpe, Sr. were made to both his son and daughter-in-law as is reflected by Judge Wilkinson's statement from the bench:

I do know that the money went into the marital estate and was paid out on the home.

And then the father also later on pays off or give the balance off and pays off the loan. He doesn't designate that it only went to him. There wasn't any documents signed, a promissory note, that it was due and payable back to the father that the Court can say that this was a legal relationship.

Therefore, I just have to look upon it as to what the father was doing as to what he did during the next five or six or seven years where he gave them money. He says that he only meant it for his son. But there is just no way that this Court in my opinion can look upon that as a gift going to his son when it was given in the marriage and was used in the marriage, and especially of course in 1987 when he gave it especially only to his son as far as the check was concerned.

But even then, if it was used in the marriage, I would have to look upon that as a gift. And therefore, I cannot say that the amount given by the father is separate property as far as the property of the son. (R. 358-359.)

The trial court was well within its prerogative as a fact finder to conclude that past history of gift giving as established by the names appearing on the checks demonstrated the true intent of Dr. Osguthorpe, Sr. in making the gifts he did.

Appellants assertion that the Utah Supreme Court's decision in Mortenson, supra, is controlling is erroneous for two reasons. First, since the trial court specifically found these gifts to be joint gifts the general guidelines set down by Mortenson, supra, are not applicable. Mortenson was intended to apply to situations where a gift is given to one spouse only.

Second assuming arguendo that Mortenson applies, it only sets

out the general rule regarding gifted and inherited property and in no way prevents trial courts from veering from that general rule if the facts and circumstances of a particular case would make its application inequitable.

Such a situation arose in the case of Peterson v. Peterson, 748 P.2d 593 (Utah App. 1988), where the decision of the trial court to not return to the husband a residence he brought into the marriage was upheld so as to allow the wife and the children of the marriage a home in which to live.

In Peterson, this Court stated:

Instead, we construe Utah Code Ann. Section 30-3-5(1) to mean that not only may the parties' premarital property be subject to division by the court, but that the court shall consider all of the circumstances of the parties in determining the distribution of real and personal property, including the obligations of the parties for child and spousal support. Id. at 595

Similarly, in Naranjo v. Naranjo 751 P.2d 1144 (Utah App. 1988) the court said:

As a general rule, pre-marital property, gifts, and inheritances may be viewed as the separate property of the parties. Burke v. Burke, 733 P.2d 133, 135 (Utah 1987). However, in appropriate circumstances, a party may be awarded property which the other spouse brought into the marriage. Id. In fashioning an equitable property division, trial courts must consider all of the pertinent circumstances, including the amount and kind of property to be divided, the source of the property, the parties' health, the parties' standard of living and respective financial conditions, their needs and earning capabilities, the duration of the marriage, what the parties gave up by the marriage, and the relationship the property division has with the amount of alimony awarded. Id. Trial courts "need be

guided by the general purpose to be achieved by a property division, which is to allocate the property in a manner which best serves the needs of the parties and best permits them to pursue their separate lives." Id.

The manner in which the trial court in the present case dealt with the issue of gifted property was most appropriate and well within its discretion given the evidence which was presented at trial. Point III of Appellant's Brief is without merit and the decision of the trial court should be affirmed.

POINT VI

THE NON-INTEREST BEARING LIEN GIVEN
THE APPELLANT IN THE MARITAL
RESIDENCE WAS APPROPRIATE GIVEN THE
UNUSUALLY LOW LEVEL OF CHILD SUPPORT
AND ALIMONY AWARDED BY THE TRIAL
COURT

In the last paragraph of Point III of Appellant's Brief a statement is included about the propriety of the non interest bearing lien awarded Dr. Osguthorpe in the marital residence. While not related to the gift issue raised in Point III it is necessary that Mrs. Osguthorpe respond to make certain that Dr. Osguthorpe does not "win by default" on that issue.

The parties stipulated that the equity in this residence was \$45,000.00 (TR 30, Ex. P-21). In fashioning an overall remedy which was fair to both parties, the trial court awarded Dr. Osguthorpe a non-interest bearing lien in the amount of \$22,500.00 payable when Mrs. Osguthorpe's died, remarried, cohabitated, sold or moved from the home or when the youngest child reached the age of majority.

The decision as to what interest if any Dr. Osguthorpe should have in the marital residence was a matter well within the trial court's discretion and in this case the lien which was granted was clearly appropriate given the unusually low award of child support, the low amount of alimony awarded for a very limited term, the refusal to give Mrs. Osguthorpe any significant reimbursement for her assistance in connection with Dr. Osguthorpe's education and the award of only half of the attorney's fees she requested.

To argue that this lien should now bear interest at 12% per annum means a burden to her of over \$225.00 per month or said in another way over one third of the monthly child support award of \$600.00 per month for four children. To impose such a financial burden on Mrs. Osguthorpe would be unconscionable and the trial court correctly recognized that in not awarding interest on Dr. Osguthorpe's lien. His claim of error on this issue is without merit.

POINT VII

THERE WAS MORE THAN AMPLE EVIDENCE TO SUPPORT THE TRIAL COURT'S AWARD OF ATTORNEYS FEES TO MRS. OSGUTHORPE

In Point IV of his Brief, Dr. Osguthorpe claims that there was inadequate and insufficient evidence for the trial court to make any award of attorneys fees to Mrs. Osguthorpe. He states there was no proof of the reasonableness of the requested fee (Page 26 Appellant's Brief) nor any evidence as to Mrs. Osguthorpe's need to have those fees paid.

Perhaps the best way to demonstrate the spuriousness of this

position is to set out verbatim the evidence which was presented on the issue of attorneys fees by Mrs. Osguthorpe.

With regard to the issue of reasonableness, Dr. Osguthorpe's attorney agreed to accept a proffer of proof from Mrs. Osguthorpe's attorney, and in connection with that proffer offered a written summary of the time spent and costs expended on Mrs. Osguthorpe's behalf (Ex. P-30). That exhibit was received without objection and has been included in the addendum to this Brief. The testimony went as follows:

THE COURT: So are you saying you are ready to put on your fees now?

MR. KASTING: I'll put on evidence as to my fees.

MR. DOLOWITZ: We also thought that information with regard to scheduling, we believe we will finish by mid-morning, would help the Court in terms of scheduling its day, too.

THE COURT: It does.

MR. DOLOWITZ: I will accept a proffer on this, your Honor, as opposed to testimony.

THE COURT: Thanks, counsel.

MR. DOLOWITZ: Without accepting my client's responsible for it.

THE COURT: I know what you mean.

MR. KASTING: Your Honor, pursuant to the stipulation on the proffer, if I were called to testify, the substance of my testimony would be as follows: I am an attorney licensed to practice law in the State of Utah and a member in good standing of the Utah State Bar. I have been so for 15 years. My area of concentration in my practice is domestic relations law.

I am familiar with the rates commonly charged in the community relative to actions of this type, domestic actions. My hourly rate for my time is \$100 per hour. I consider that to be a reasonable rate.

My hourly rate for my associates is presently \$90 per hour. But at the time the fee agreement was entered into between Mrs. Osguthorpe and our office, the associates rate was \$75 an hour. And so therefore, my calculations regarding associates time reflects the \$75 per hour rate.

Likewise for paralegal and clerk time, at the time the fee agreement was entered into, we were billing \$35 per hour. We now bill \$40 an hour. Again the calculations are based upon \$35 per hour. Both the \$35 and \$75 are reasonable in my opinion, my professional opinion.

The date our representation commenced with regard to this matter was approximately December 29, 1987. As Mrs. Osguthorpe has testified, she paid to us a \$2,000 retainer.

I have reviewed our time records and have those time records with me if the Court wants to review them. But in the course of reviewing those records, I have prepared a summary exhibit which I will present to the Court reflecting time spent as of Sunday evening.

I have not included time for yesterday nor time for today and what time is necessary in connection with tomorrow and the preparation of final pleadings. I can give my time for yesterday and today I suppose, but I still have some more things to do. But I will estimate as to what additional fees I think will be incurred or have been incurred from Monday on to the conclusion of this matter.

I present to the Court our original Exhibit, your Honor. As reflected in that exhibit through the 21st--or through the 14th, we had spent 26.7 attorney hours, two associate hours, 36.55 paralegal hours. We had total court costs of \$326.25. We have had total deposition costs of \$296.80. \$120 of those deposition costs are for Dr. Osguthorpe, Sr. It has been necessary for me to use those depositions in both the proceeding yesterday and the proceeding today in the course of the examination. And therefore in my professional opinion, those costs are properly taxable under the present status of the law in Utah relative to allowable court costs.

The incidental costs as provided by our fee agreement are \$94.50. Services through 8-14-88, \$4,879.30, \$2,000 retainer paid, leaving a balance as of 8-14 of \$2,879.30.

I had ten hours in yesterday and I'll probably have ten hours in today. And as reflected in the Exhibit 11 which has been admitted, it is estimated that the costs--let

me read from the exhibit, and that would be my testimony.

In addition, there will be trial preparation and attendance fees for August 15, 16 and 17, and any additional fees and costs related to post-trial motions and preparation of final papers. It is estimated that those additional fees and costs will range between \$3,000 and \$4,500.

Your Honor, I have reviewed the time records. I find that all the time we have spent in connection with this matter is reasonable and necessary in order for us to adequately prepare and present our client's case.

That would be my proffer. We would request an award of fees in conjunction with that proffer.

THE COURT: Thanks, counsel.

MR. DOLOWITZ: I have two questions. Mr. Dart covered two pretrial hearings for you. His billing rate is \$150 an hour, isn't it?

MR. KASTING. That's correct, your Honor. With regard to that, that appeared on our computer printout. I adjusted it down to \$100, down for those appearances and adjusted that rate down to my rate, the rate our client agreed upon.

MR. DOLOWITZ: I would agree, your Honor, that that would be the testimony. We would not agree that my client should be responsible for those fees.

MR. KASTING: I think I added, your Honor, those fees were reasonable in my opinion and the costs was reasonable. But if I didn't, I would like to add that to make certain it's in the record.

MR. DOLOWITZ: I am not willing to stipulate to that. But I will stipulate that that would be his testimony.

THE COURT: Thank you. (R-240-245).

Then at the conclusion of trial, the additional follow-up evidence on Mrs. Osguthorpe's attorneys fees was offered and received by the Court:

MR. KASTING: Your Honor, I'd like to supplement my proffer on attorneys fees at this time if I can. And I have one brief rebuttal witness that's out in the hall

that I'd have to get.

* * *

MR. KASTING: Your Honor, supplementing my proffer on attorneys fees yesterday, I went back and recalculated my time. On August 15th, I spent 10 hours and August 16th, yesterday, I spent 10 hours. I estimated six hours for today. I arrived at 6 this morning and I figure we will finish by noon. And I estimate five hours in document preparation for a total fee of and cost award of \$7,869.30.

That would be my proffer. And my proffer would be subject to the same testimony I gave yesterday relative to the reasonableness and the other requirements I am required to give under Kerr v. Kerr. (R-311,312).

With regard to the issue of need, in addition to Mrs. Osguthorpe's testimony and exhibits related to her income and expenses and need for alimony and child support, she also testified as follows:

Q: Have you had the occasion in connection with this litigation to retain my office and me to represent you in connection with this case?

A: Yes.

Q: And did you sign a fee agreement related to our representation?

A: Yes, I did.

Q: And that fee agreement reflected that my billing rate was \$100 per hour, my associates were \$75 per hour and my paralegals and law clerks were \$35 per hour.

A: Yes.

Q: And is that the basis on which you hired my law firm and me.

A: Yes, it is.

Q: You have indicated on Exhibit 11 that you have requested your husband to pay the fees that you have incurred in connection with this case. Is that your desire?

A: Yes, it is.

Q: And is it your desire that the Court award fees as we requested to be increased by whatever time it has taken us from yesterday to conclude this matter?

A: Yes.

Q: Do you have any funds of your own with which to pay our office?

A: No, I don't.

Q: You paid us a \$2,000 retainer, did you not?

A: Yes, I did.

Q: And where did you get those funds?

A: \$1,000 of it I had, and \$1,000 I borrowed from my parents.

Q: Do you have to pay the thousand dollars back to your parents?

A: Probably.

Q: And the thousand dollars that you had of your own, where did that come from?

A: That came from some money that my father had set aside for me in case something happened and I ever needed to use it in an emergency situation.
(TR 77-79; Emphasis added).

Dr. Osguthorpe offered and no evidence to contradict Mrs. Osguthorpe's testimony other than he didn't want to pay any portion of her fees.

With the above evidence before it, the trial court found as follows:

16. Attorney's Fees. Plaintiff presented evidence that her attorney had expended or would expend in connection with the final document preparation and post-trial Motions the total sum of \$7,879.30 in attorney's fees and costs (Plaintiff's Exhibit 39). The evidence

reflects and the Court finds those fees to be reasonable and necessary. The Court further finds that Plaintiff does not have sufficient funds to pay her lawyer and that the Defendant has the ability to pay a portion of Plaintiff's attorney's fees and costs. The hourly rate charged by Plaintiff's counsel is reasonable and consistent with the hourly rates charged in the community for similar services and the hours expended by Plaintiff's counsel in connection with this case were necessary.

Based upon the foregoing, the Court finds that a reasonable award of attorney's fees in this case is the sum of \$3,939.65, as and for the Defendant's contribution towards the Plaintiff's attorney's fees and costs and judgment may be entered against him accordingly. (R. 263-264) (Emphasis added)

As was stated in this Court's recent opinion in the case of Porco v. Porco, 762 P.2d 365 (Utah App. 1988) in affirming a trial court's award of attorneys fees:

Evidence of defendant's need for assistance in paying her attorney fees unfolded during the entire trial, so a special proceeding specifically concerned with determination of her need is not necessary. The Utah Supreme Court is similarly concluded in Newmeyer v. Newmeyer, 745 P.2d 1276, 1279 (Utah 1987), stating: "Because ample evidence of [the wife's] financial condition was before the court, we reject [the husband's] argument that the trial court's finding of need was unsupported by the evidence." Id. at 368.

In claiming error on the attorney's fee award, Dr. Osguthorpe also fails to mention the fact that at the time of separation, the parties had \$5,418.16 in a savings account (Ex. P-18) all of which Dr. Osguthorpe took with him and spent prior to trial in violation of a restraining order. (TR 139) Three thousand dollars of those joint funds were spent on his lawyer's retainer (Ex. P-33) and in spite of that now claims his wife should not have been awarded any

fees.

It is inconceivable to the writer of this Brief that Dr. Osguthorpe can now in good faith argue that evidence as to the reasonableness and need on the issue of attorneys fees was lacking. That is simply not true. To the contrary, given Mrs. Osguthorpe's lack of financial resources, the attitude Dr. Osguthorpe maintained throughout these proceedings and his ability to earn sums well in excess of that which he said he was earning, if anything, the trial court erred in not awarding Mrs. Osguthorpe all of the attorneys fees she requested instead of only half.

All of the elements required to prove and substantiate an award of attorney's fees under Kerr v. Kerr, 610 P.2d 1380 (Utah 1980), Sorensen v. Sorensen, 769 P.2d 304 (Utah 1988), and Talley v. Talley, 739 P.2d 83 (Utah App. 1987) were present in the evidence before the trial court. Point IV of Dr. Osguthorpe's Brief is without merit. His request for relief on the issue of attorneys fees should be denied.

POINT VIII

RESPONDENT IS ENTITLED TO AN AWARD OF HER ATTORNEY'S FEES AND COSTS ASSOCIATED WITH THIS APPEAL

This Court need only review the Respondent's Statement of Facts as supported by the evidence, the statement of the trial court in ruling from the bench and then in denying Dr. Osguthorpe's Motion For new Trial, the Findings of Fact; Conclusions of Law; and the Exhibits received at trial to conclude that Dr. Osguthorpe's appeal is entirely without merit.

As an example of that lack of merit, this Court's attention is respectfully called again to Point IV of Dr. Osguthorpe's brief regarding his claim that there was not sufficient evidence to support the trial court's award of attorney's fees. As has been clearly shown in Point IV of this Brief, such a claim is meritless.

No error has been shown to have been committed and Dr. Osguthorpe's appeal is without merit. When an appeal is shown to be without merit, the Respondent has the right to request this Court to award her attorney's fees on appeal. As the Utah Supreme Court properly concluded in Carter v. Carter, 584 P.2d 904 (Utah 1978):

However, the defendant argues that inasmuch as the plaintiff was unwilling to abide by the trial court's judgment, and that she has been put to the necessity of defending this appeal, the plaintiff should have to bear the costs thereof, including reasonable attorney's fees for her counsel. We agree with the reasonableness and propriety of her request [footnote] Id. at 906.

See also, Ehninger v. Ehninger, 596 P.2d 1104 (Utah, 1977).

Here, Mrs. Osguthorpe does not have substantial assets and has a very limited income. On the other hand, Dr. Osguthorpe is a successful Doctor of Veterinary Medicine, has access to substantial assets sufficient to allow him to purchase new vehicles, pay his own attorney's fees and pursue this appeal. Fairness requires that Respondent not be required to deplete her limited assets in demonstrating that this appeal is without merit. She requests this Court to remand to the trial court for determination and award of her attorney's fees and costs associated with this appeal.

CONCLUSION

In reviewing Appellant's Brief, it becomes clear that Appellant has taken what can be properly characterized as a "shotgun approach" in connection with this appeal. Said in another way "if we raise enough issues on appeal, we may be able to give the impression that error was committed by the trial court." Such an approach is not appropriate nor should it ever be sanctioned.

Respondent has fully addressed each of the issues raised by Appellant and has specifically demonstrated that there was more than adequate evidence to support each of the Findings of Fact and the overall support and property awards.

As was recently stated by this Court in Schindler v. Schindler, 776, P.2d 84 (Utah App. 1989):

To mount a successful attack on the trial court's factual findings, an appellant must marshall all the evidence in support of the trial court's findings and then demonstrate that, even viewing the evidence in the light most favorable to the findings, the evidence is insufficient to support the findings, Scharf v. BMG Corp., 700 P.2d 1068, 1070 (Utah 1985), or that its findings are otherwise clearly erroneous. A finding is clearly erroneous when, even though there is evidence to support it, the reviewing court is "left with the definite and firm conviction that a mistake has been committed." State v. Walker, 743 P.2d 191, 193 (Utah 1987). This court does not consider evidence de novo, so the mere fact that we might reach a different result than the trial court on the same evidence does not justify setting aside the trial court's findings. Id. at 88.

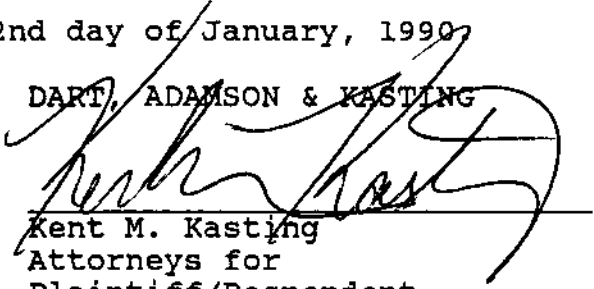
The decision of the trial court and the concomitant Findings were thorough, well reasoned, consistent with existing law and more

than fair to Dr. Osguthorpe.

The trial court's decision should be affirmed in its entirety and Mrs. Osguthorpe should be awarded her attorney's fees and costs related to this Appeal. The case should be remanded for a determination of those fees.

Respectfully submitted this 2nd day of January, 1990

DART, ADAMSON & KASTING



Kent M. Kasting
Attorneys for
Plaintiff/Respondent
At Trial and on the Appeal

ADDENDUM

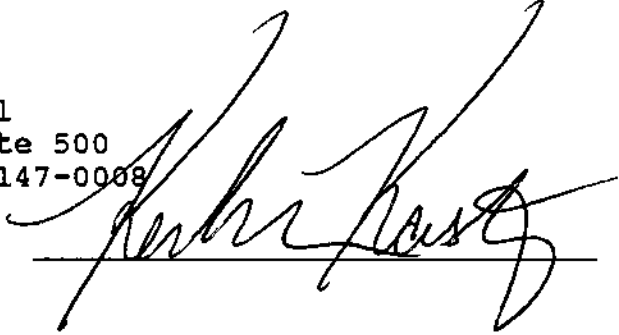
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CERTIFICATE OF SERVICE

I hereby certify I caused four true and correct copies of the Brief of Respondent to be hand-delivered to the following counsel of record on the 3RD day of January, 1990:

David S. Dolowitz, Esq.
M. Joy Douglas, Esq.
Cohne, Rappaport & Segal
525 East 100 South, Suite 500
Salt Lake City, Utah 84147-0008

A handwritten signature in dark ink, appearing to read "M. Joy Douglas", is written over a horizontal line.

0817061 ORIGINAL

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

* * *

JEANETTE OSGUTHORPE,

:

Plaintiff,

: Civil No. D87-4967

v.

: Transcript of:

JERRY OSGUTHORPE,

: JUDGE'S BENCH RULING

Defendant.

:

* * *

BEFORE THE HONORABLE HOMER F. WILKINSON, JUDGE

SALT LAKE CITY, UTAH

August 17, 1988

APPEARANCES:

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REPORTER:

SUZANNE WARNICK, RPR, CSR

Official Court Reporter

240 East 400 South, #A 534

Salt Lake City, Utah 84111

FILED IN CLERK'S OFFICE

Salt Lake City, Utah

AUG 29 1988

H. Dixon Hindsley, Clerk of District Court
By *Michael Hindsley*

Deputy Clerk

FILED

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1 WEDNESDAY, AUGUST 17, 1988; A.M. SESSION

2 B E N C H R U L I N G

3

4 THE COURT: Well, counsel, let me state this
5 at the outset. As I sat here listening to the testimony
6 -- and I am not here as a marriage counselor, but I will
7 state this for the benefit of these two individuals:
8 That it's too bad that two young people who, to me,
9 could have the world by the tail in their lives with
10 both good educations, both having the ability to earn
11 good livings, and both of them come into court and blame
12 the other's parents for what has taken place in this
13 marriage.

14 Although the plaintiff, herself, hasn't
15 really taken the stand and criticized the defendant's
16 parents, her counsel has certainly put the blame on it
17 as far as the income and the salary structure is
18 concerned. The defendant has, of course, put blame on
19 the plaintiff's parents during the marriage.

20 But it's too bad that the two of them
21 couldn't have got their lives together and done what
22 they need to do, and maybe not work for the father. If
23 the plaintiff's parents were having influence, to tell
24 them to back off and get out of there, and get along
25 with their lives.

1 It seems to me that there is something here
2 that these two could have had a very happy and
3 profitable life together. Of course, you are here
4 before the Court now, and that's the decision I must
5 make and must make it based on what is here.

6 There has been a lot of conflict of testimony
7 in here. I have to be somewhat amazed when I hear the
8 defendant take the stand, and his father take the stand,
9 and that the defendant -- the father agrees to pay the
10 defendant's way through school and pay all of his
11 expenses -- and the defendant says, Well, all the
12 plaintiff did was earn enough to support herself. She
13 didn't help me any; my father did that.

14 I thought that when a person got married they
15 became as one. And that the money that came into the
16 marriage was both their moneys and wasn't her money and
17 wasn't his money. And the money she earned wasn't her
18 money to support her, and the money he gave him wasn't
19 his money. It was to be used to share and support each
20 other. Of course, the defendant failed to recognize
21 during this period of time that when the first child was
22 born, and four children were born, that she was raising
23 children.

24 During the summertime -- of course there is
25 conflict there as to how much she worked. And I don't

1 know if the defendant wanted me to believe that she
2 didn't do anything; that all she was was there. The
3 plaintiff says that she was participating. So, I look
4 upon it as I think she probably participated but I'm
5 sure she wasn't doing the work he was doing. And I
6 don't think she's capable of doing the physical work he
7 was doing, and I don't think she's knowledgeable of
8 doing that type of work. But during the summertime she
9 was there as far as being his wife was concerned and
10 participating.

11 The Court also did note that there was a
12 number of inconsistencies as far as the testimony of the
13 defendant. Of course counsel pointed one out, which the
14 court did note this morning, and there were other
15 inconsistencies between his testimony now and the
16 testimony of what -- that he gave at the time of the
17 deposition. Of course his explanation was that he
18 didn't understand the question. Maybe he did and maybe
19 he didn't. I don't know. But I know there were
20 inconsistencies of course of which the Court did note
21 and the Court must take into consideration in looking at
22 the overall testimony and the believability and the
23 credibility and the testimony of the parties.

24 Well, the Court does find, based on the
25 testimony of the plaintiff, there are sufficient grounds

1 for divorce and does grant a divorce to the plaintiff,
2 Jeanette Osguthorpe, on the grounds of irreconcilable
3 differences. The Court also finds, based upon the
4 testimony of the defendant, there are sufficient grounds
5 of divorce and does grant a divorce to the defendant,
6 Jerry Osguthorpe, on the grounds of irreconcilable
7 differences, the same to become final upon law and
8 entry, this being a joint divorce.

9 The Court does feel in most marriages, and I
10 think this is one also, that it takes two to tango. And
11 neither party walked into this court with clean hands
12 and without any fault. I think both of them were at
13 fault in many of the things which they did in their
14 lives. And that both of them did participate and did
15 aid as far as the cause of the divorce is concerned.

16 The parties have asked for an injunction, and
17 the Court is going to grant it. Although every time I
18 hear this asked for, and every time I grant it, I shake
19 my head in disgust that these two people can't -- they
20 have had their differences -- why they can't walk out of
21 the court now -- I haven't met them, but they are
22 probably four very lovely children, of which they want
23 to carry this over and continue to fight and let the
24 children know about it instead of being pleasant with
25 each other; where they have asked the maternal

1 grandparents not to be present at all where the father
2 is, the defendant is.

3 And that stems from the marriage. But it's
4 too bad that now it's over they can't let the children
5 have an enjoyable life and enjoy each of the father and
6 the mother and the grandparents and maybe a little
7 relationship with them. But anyway, I hope that they do
8 get their lives in order, that this doesn't have an
9 effect on the emotional stability of their four
10 children.

11 The custody, of course that had been agreed
12 upon, and is awarded to the plaintiff with reasonable
13 visitation to the defendant as set forth in Plaintiff's
14 Exhibit 11, except that I am altering that as far as
15 Christmas is concerned. That the defendant -- the
16 custodial parent will have the children every Christmas
17 as far as being in the home for Santa Clause to come.
18 That at noon, as they have indicated here, the defendant
19 may take the children until 8 o'clock on the 26th. Then
20 the defendant during the Christmas vacation is to have
21 one half of every Christmas vacation.

22 Christmas Day and Christmas Eve is to be with
23 the custodial parent. The balance of Christmas day and
24 the 26th is to be with the defendant. And then they are
25 to split the remaining portion of the Christmas

1 vacation. And I would indicate that if they can't do
2 it, then I will indicate this: That the children be
3 returned on the 26th; that you are to keep them for the
4 next half of the period of time and then be returned to
5 the defendant for the balance of the Christmas
6 holidays.

7 The Court would also grant to the defendant
8 a modification as far as the summertime, not all of the
9 summer vacation but one half of the summer vacation or
10 at least six weeks during the summer vacation. And that
11 does not necessarily have to be in a continuous period
12 of time but it can be split up. If the parties can't
13 work it out, then of course the Court would have to.
14 But I hope they could do it.

15 I would note, too, that each of the parties,
16 the mother and the father, are to share the children on
17 their birthday. They will be in the home of the
18 mother. If it's a school day -- probably will be --
19 then of course it's going to just have to be maybe for a
20 couple of hours with the father, maybe from 6 o'clock to
21 8 o'clock. But the father should be able to see the
22 children on each of their birthdays. If it's a
23 Saturday, then of course the father should have half the
24 time. And if it's a time when it's the father's time to
25 have the children, then the mother is entitled to half

1 the day of the birthday.

2 The Court would order the defendant pay to
3 the plaintiff for the care and support of the children
4 the sum of \$150 per month for each child. And of course
5 that can be paid on the 5th and the 20th of the month,
6 which they have requested here, and that is fine.

7 And let me state as far as the alimony is
8 concerned -- and you have noted it as well as I have,
9 that there has been a lot of testimony and a lot of
10 conflicting testimony. And this is difficult as far as
11 the Court is concerned as to knowing just exactly what
12 these two individuals do have and what they are
13 earning.

14 The plaintiff comes into court with a college
15 education, with a teaching certificate that's not
16 renewed, knowing that she's going into this divorce, and
17 in this divorce she doesn't pursue it and get it renewed
18 and still has some hours. And I understand that
19 teaching jobs are scarce right now, but I don't know the
20 full import of it, of whether they are or some are
21 available or not. I don't know.

22 But to top it off, then she comes in and says
23 the other job she has ends as of this week, which she
24 then is unemployed. She says that she knew at the time
25 she was going into it it was that way and she hoped to

1 have a job teaching. If she knew that, why she didn't
2 get her teaching certificate renewed, I don't know. But
3 she comes into the court in that situation.

4 The defendant comes to court -- and this is
5 what he chooses to do, so I am not here to tell him how
6 to run his life. The fact that I would have made a
7 different decision, and the fact that his wife's
8 attorney would make a different decision, or somebody
9 else would make a different decision, that doesn't
10 necessarily mean that we are right and he is wrong.

11 But anyway, he has seen fit to take a job
12 with his father at a certain sum of money, what he terms
13 as an independent contractor or consultant fee, and
14 that's his choice. And maybe it's good and maybe it's
15 bad. I don't know enough about the veterinary
16 profession to completely say he is wrong or completely
17 say he is right.

18 But I do know that for him to be in that
19 position -- and his father testified here today that
20 when he left school he started this relationship and it
21 has continued on. I know that that's not correct; that
22 this gentleman has a lot more ability. Either he was
23 overpaid when he started or he's underpaid now. I don't
24 know. But the relationship continues, so I don't know
25 what the situation is that's between him and his father

1 and just what is going on as far as their relationship.

2 What the father does as far as his will and
3 trust and what he leaves to his sons and I guess
4 daughters, that's up to him. And of course it's not
5 before this Court and I am not getting into that as far
6 as the situation is concerned.

7 But I do know that the testimony brought out
8 as far as the tax forms are concerned -- and they tried
9 to pass it back and forth as far as she preparing them
10 and him preparing them -- well, I don't know. I don't
11 think that one person in a marriage does the preparing
12 of the tax reports without the consultation and the
13 input of the other person. And I think that both of
14 them knew what was going on.

15 And especially -- of course, I am a man so I
16 have to take a man's position more -- but I cannot
17 conceive of how I would allow my wife to prepare a tax
18 return without my knowing what the contents were. I
19 don't think that most people in a profession would allow
20 that to be done. So, I do think the defendant knew just
21 exactly what was going into those tax returns.

22 Again, Mr. Kasting did bring out the
23 situation as far as the amount of money that was left
24 there as far as to support the family on, which was just
25 not reasonable. So, there is no question that there is

1 more money in the home than the tax reports show as far
2 as the amount of net income. I am not in the position
3 to go through and to make a definite finding as to just
4 what amount of money is present there. I know what the
5 tax return says. I know what is taken off as far as --
6 and I looked them over -- as far as business expenses
7 and so forth.

8 Well, that's between these two parties and
9 the IRS, and that's what takes place. Therefore, I have
10 nothing to say concerning that except they did have more
11 money in the home to operate on. But I don't know how
12 much.

13 But I am going to award alimony at the sum of
14 \$150 a month for a period of five years, and then \$1 a
15 year for the next five years. And this is subject to
16 being modified during the first five years, and for the
17 next five years or even in the future by further orders
18 of this Court. But of course it would have to be
19 modified, as I understand the law, prior to the alimony
20 terminating.

21 What I'm indicating, I don't know just
22 exactly what the relationship is as far as the parties
23 are concerned, but I am of the opinion that alimony
24 should be paid. And I am saying five years because I
25 think this plaintiff has the ability to obtain gainful

1 employment, good gainful employment, and that she should
2 do so.

3 But I also recognize the fact that she has
4 four children in the home, and that's a major job right
5 there. It takes a lot of time and it takes a lot of
6 energy. And that just the fact that he is paying child
7 support, the defendant, is not sufficient. And that
8 counsel will have to see what takes place as far as her
9 obtaining employment and whether this alimony needs to
10 be increased. Of course, opposing counsel will have to
11 see, what type of employment she gains, whether it needs
12 to be decreased.

13 I am of the opinion and I so make a finding
14 that this lady, plaintiff, did assist this gentleman,
15 the defendant, in getting through school, as far as
16 referring to the Martinez case. That no, she did not
17 give him the money; she did not pay for the tuition and
18 the books. But she cared for the home; she worked
19 during the summer; she worked during school. She had
20 children and has been raising children for him. So, I
21 am of that opinion and so make that finding as far as
22 the equitable restitution concept is concerned.

23 The Court does order the defendant to provide
24 health insurance for the children. The Court would
25 order that any insurance coverage that is not covered

1 by the parties be shared equally among the parties.

2 That would be medical, dental and optometry --

3 optometric expenses.

4 The Court would order the defendant to
5 continue life insurance. And I understand this is a
6 stipulation except as to the plaintiff. But I would
7 have it to the plaintiff as long as alimony is due and
8 payable.

9 The Court would award to the plaintiff free
10 and clear of any claim by the defendant the Hillrise
11 Circle home. The Court is of the opinion that that home
12 was obtained by her. That the defendant and the
13 plaintiff both worked on that home. I have no question
14 in my mind that the defendant put in some hours of
15 physical labor and in the yard and painting. I don't
16 see how, frankly, any family cannot do it, living in a
17 home with four children, and putting in some improvement
18 and some work and some sweat and some toil.

19 But I think they both did it. I think they
20 both benefited. The defendant benefited from living in
21 the home and benefited from the income from that home
22 coming in during the marriage. It went into the marital
23 estate and was used by both of them. But the
24 appreciation of the home belongs to the defendant -- to
25 the plaintiff. And the home is awarded free and clear

1 to her.

2 The Court does find, and so orders as far as
3 the Chris Lane home is concerned, that it awards the
4 present use of the home to the plaintiff and the four
5 children until such time as the plaintiff remarries,
6 sells the home, lives with a male without the benefit of
7 a marriage, a marriage, or moves from the home. I
8 believe that's the conditions that are on the law.
9 Counsel, you can bring me up to date on that if I missed
10 one of them. The Court would award to the parties, to
11 the defendant, one half of the present equity in the
12 home. And that equity is to be a lien on the home and
13 is to be awarded to him upon the happening of one of
14 those five conditions.

15 The plaintiff will have the responsibility of
16 making the house payments on the home. And any
17 appreciation in the home of course would then go to her,
18 and of course any depreciation would also. But the
19 defendant would have a lien for one half of the present
20 equity in the home, the value of the home being at
21 \$92,000 and, as I understand, the present mortgage to be
22 at \$47,000. You can determine the equity as well as I
23 can.

24 The personal property. I think most of this
25 has really been distributed but I am going to go down

1 just to make sure.

2 The plaintiff is awarded the Jeep
3 automobile. Now, that's being awarded to her for two
4 reasons, and I think that the defendant is receiving
5 other property which offsets that. But also the
6 plaintiff has got to have some means of transportation
7 as far as these children are concerned. Many times when
8 we sit here in a divorce case and we decide it and we
9 award it to the plaintiff with four children, we think
10 the plaintiff is taking these things. This car is going
11 to be used up more by those four children than by the
12 plaintiff. She will be driving it, but the use is for
13 their benefit. And both of them have that
14 responsibility to provide transportation as far as these
15 children are concerned. So, the Court does award that
16 to the plaintiff.

17 The Court awards the household furnishings to
18 the plaintiff that are in the home that are necessary
19 as far as the use and care of the home is concerned and
20 the joy and happiness of the children.

21 Now, on Plaintiff's Exhibit 35 there are a
22 number of items of which defendant asks for which have
23 been stipulated that he may take. And they are awarded
24 to the defendant. And that would include the hibachi
25 which belongs in the boat. The Court would also award

1 to the defendant, as far as just looking at the
2 household furnishings, any personal property of which
3 he, himself, has had and used: his personal belongings,
4 jewelry, things of this sort.

5 The Court would award to the defendant the
6 video camera, which I understand that there is one. The
7 Court would not award the TV or the VCR. I understand
8 there is only one TV and VCR. I do note that the VCR is
9 a very expensive VCR. And if it is a VCR that is used
10 by the defendant in his business and purchased for that,
11 then I would award that to him upon him obtaining a
12 reasonable -- I don't say the best and I am not saying
13 the cheapest VCR, but a reasonable VCR for the benefit
14 of that household, the children and the plaintiff. And
15 if he can obtain that for \$2- or \$300, then the
16 expensive VCR would be awarded to him for his use and
17 his benefit.

18 Now, as I note, most of the other things in
19 the house, there are not duplicates.

20 Are there any other questions first as far as
21 the household goods are concerned?

22 As far as the water skis and things of that
23 are concerned, I am saying each of them take their own
24 skis. The tennis ball machine would go to the
25 plaintiff. Each of them have divided their bicycles.

1 Their personal effects to go to each of them.

2 The defendant would receive the Cordova
3 boat. The defendant would receive the three
4 snowmobiles. I am putting a value on the boat of \$7,000
5 and putting a value on the snowmobiles -- that's the
6 three, the one newer one and two older ones -- at the
7 value of a total of \$1825. The defendant would take the
8 two-track Skidoo, and putting a value on that of \$550.

9 Now, also in relation to the personal
10 property, I don't know what this Dodge truck is. But I
11 don't think I have to make a decision concerning it.
12 Because I think the distribution of the property is fair
13 and equitable as far as the dollar value is concerned.

14 It's a very strange relationship. The truck
15 is in the defendant's name. And yet the father, he says
16 it belongs to him. And I don't know what took place.
17 If the defendant had happened to have got killed a year
18 ago, what would have taken place as far as that truck
19 and as far as the home and so forth is concerned as far
20 as all these gifts. It's a strange relationship.

21 And there is no documentary evidence that
22 this Court can rely on or can make a finding on.
23 Therefore, as far as that truck is concerned, it's
24 awarded -- if there is any interest -- it's awarded to
25 the defendant.

1 The defendant is awarded his books,
2 periodicals which he of course -- and any of his tools
3 -- that he uses as far as his profession is concerned.
4 I think that I have covered all of the personal
5 property.

6 MR. DOLOWITZ: Your Honor, there are two
7 stereos. My client would like one of the two.

8 THE COURT: There are two stereos, is that
9 correct? I see a stereo and stereo CD tape deck. And
10 the one doesn't have a tape deck in it?

11 DR. OSGUTHORPE: They both do. They both do.
12 I'd like to have the one that was a birthday gift to me.

13 THE COURT: You say what, sir?

14 DR. OSGUTHORPE: I'd like to have the stereo
15 that was a birthday gift to me in November.

16 MR. KASTING: That's acceptable, your Honor.

17 THE COURT: That would be awarded to the
18 defendant.

19 THE COURT: Let me state -- I didn't state as
20 far as the Chris Lane property is concerned. This
21 becomes extremely difficult when of course the father
22 has given considerable -- the defendant's father has
23 given considerable as far as this marriage is
24 concerned. And I don't want to fault a man that gives
25 gifts to his children. I say that he should be praised

1 and complimented for it and commented for it to want to
2 aid his children and want to do things for them when he
3 has the means and can do so.

4 But the testimony is there is \$18,000,
5 \$18,500 -- but then his son was given this profit from
6 the barn as a gift, and I have no reason to believe that
7 was not a gift. Maybe it was supposed to be a
8 compensation; maybe the father felt he has been acting
9 for a number of years as consulting; maybe that's
10 income. I don't know what they have said and I don't
11 know what the relationship is. I do know that the money
12 went into the marital estate and was paid out on the
13 home.

14 And then the father also later on pays off or
15 gives the balance off and pays off the loan. He doesn't
16 designate that it only went to him. There wasn't any
17 documents signed, a promissory note, that it was due and
18 payable back to the father that the Court can say that
19 this was a legal relationship.

20 Therefore, I just have to look upon it as to
21 what the father was doing as to what he did during the
22 next five or six or seven years where he gave them
23 money. He says that he only meant it for his son. But
24 there is just no way that this Court in my opinion can
25 look upon that as a gift going to his son when it was

1 given in the marriage and was used in the marriage, and
2 especially of course in 1987 when he then gave it
3 especially only to his son as far as the check was
4 concerned.

5 But even then, if it was used in the
6 marriage, I would have to look upon that as a gift. And
7 therefore, I cannot say that the amount given by the
8 father is separate property as far as the property of
9 the son.

10 The Court would also award to the plaintiff
11 for use and benefit of her attorney one half of the
12 attorney fees requested by the plaintiff, which if my
13 figure is correct is \$3,939.65.

14 Are there any questions? Is there anything I
15 have not covered?

16 May I commend both counsel for the
17 professional job you have done in presenting this to the
18 Court. I think you have done a good job and brought the
19 evidence out the best that you could and been courteous
20 as far as the parties are concerned.

21 If you have no further questions,
22 Mr. Kasting, will you prepare the pleadings and submit
23 them to Mr. Dolowitz for his approval?

24 MR. KASTING: I will, your Honor.

25 THE COURT: Court will be in recess.

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C E R T I F I C A T E

STATE OF UTAH)
 :
COUNTY OF SALT LAKE)

I, SUZANNE WARNICK, RPR, CSR, do certify that
I am a Registered Professional Reporter and Certified
Shorthand Reporter and Notary Public in and for the
State of Utah;

That at the time and place of the proceedings
in the foregoing matter, I appeared as the court
reporter for the Third Judicial District Court, Judge
Homer F. Wilkinson, and thereat reported in stenotype
all of the proceedings had therein;

That thereafter, my said shorthand notes of
the Judge's Bench Ruling were transcribed by computer
into the foregoing pages; and that this constitutes a
full, true and correct transcript of the same.

WITNESS MY HAND and official seal at Salt Lake
City, Utah, this 29th day of August, 1988.

Suzanne Warnick
Suzanne Warnick, RPR, CSR



My commission expires:
1 April 1991.

FILED DISTRICT COURT
Third Judicial District

FEB 28 1989

By S. W. Shields
SALT LAKE COUNTY
Deputy Clerk

KENT M. KASTING (1772)
DART, ADAMSON & KASTING
Attorneys for Plaintiff
310 South Main, Suite 1330
Salt Lake City, Utah 84101
Telephone: (801) 521-6383

IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----o0o-----

JEANETTE CRAWFORD OSGUTHORPE,	:	
	:	FINDINGS OF FACT AND
Plaintiff,	:	CONCLUSIONS OF LAW
	:	
v.	:	
	:	Civil No. D87-4967
JERRY SILVER OSGUTHORPE,	:	
	:	Judge Homer Wilkinson
Defendant.	:	

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The above-entitled matter came on regularly for trial on the 17th and 18th days of August, 1988. The Plaintiff appeared in person and was represented by her counsel, Kent M. Kasting, Esq., and the Defendant appeared in person and was represented by his counsel, David S. Dolowitz, Esq., the parties were sworn, testimony was taken of the parties and other witnesses, documentary evidence was introduced and the matter was argued to the Court. The Court considered all of the foregoing and ruled from the bench. Being fully advised in the matter, the Court now makes the following:

FINDINGS OF FACT

1. Jurisdiction. The Plaintiff and Defendant are residents of Salt Lake County, State of Utah, and have been

so for more than three months immediately prior to the filing of this action for divorce.

2. Marriage Information. The Plaintiff and Defendant were married on the 26th day of August, 1974, in Salt Lake City, Utah, and separated on the 26th day of December, 1987.

3. Decree of Divorce. During the course of this marriage, irreconcilable differences have arisen between the parties to the extent that the parties no longer desire to live together or to continue the marriage relationship, and the Court finds that each of the parties should be entitled to a Decree of Divorce from the other, which Decree should be final upon signing and entry.

4. Injunction. The Court finds that the parties have had altercations between themselves in terms of fights, arguments and other unacceptable behavior. Based on that, each party is permanently enjoined and restrained from in any way bothering, harming or annoying the other; from in any way making disparaging remarks about the other in front of the children or any third parties; and from coming on or to the residential premises of the parties.

5. Child Custody and Visitation. Four children have been born as issue of this marriage, namely, Jeffrey, born July 12, 1976; John, born April 30, 1978; and twins, Julie and Jennifer, born October 9, 1980. The parties stipulated

that Plaintiff would be awarded the permanent care, custody and control of these children. The Court finds that Plaintiff is a fit and proper person to be awarded such permanent care, custody and control of these minor children, subject to Defendant's reasonable rights of visitation, which rights of visitation should include the following:

- A. Alternating weekends;
- B. One evening each week until 8:00 o'clock p.m.
- C. Alternating red-letter holidays;
- D. Christmas visitation beginning Christmas Day at noon, until December 26th at 8:00 o'clock p.m., and one-half of the Christmas vacation then remaining;
- E. Thanksgiving in odd-numbered years;
- F. Defendant's birthday;
- G. Father's Day;
- H. One-half of each child's birthday, when that birthday falls on a non-school day; or 6:00 o'clock p.m. to 8:00 o'clock p.m., if that birthday falls on a school day; or at such other times as the parties may agree between them;
- I. Six weeks each summer, not necessarily

Exhibit 36. The Court considered each parties' testimony, the Exhibits referred to above and the tax returns filed by the parties and accepted into evidence (Plaintiff's Exhibits 1 through 6), all of which were admitted as evidence.

Based upon the review of all of those documents and the testimony on the parties, the Court finds that the Defendant receives more money by way of monthly income than was reflected on Defendant's Exhibit 36. The Court further finds that the Defendant is employed by his father and has been so since the start of the marriage, and that based on the Defendant's testimony as to what he was paid at the start of this relationship and what he is presently paid, the Court finds that Defendant was either overpaid when he started the relationship or is underpaid at the present time. The Court finds that it is the Defendant's intention to continue the employment relationship with his father and that the Defendant has substantial ability as a doctor of veterinarian medicine. Based upon the foregoing, the Court finds it is reasonable for the Defendant to pay the following sums by way of child support and alimony.

7. Child Support. Commencing with the month of September, 1988, Defendant should pay to the Plaintiff the sum of \$150.00 per month for each of the four minor children of the parties, as child support, for a total child support

obligation of \$600.00 per month. This child support shall continue until each child reaches the age of eighteen or graduates from high school in his normal year of graduation, whichever occurs last.

8. Alimony. The Court finds that the Plaintiff has a college education with a teaching certificate, but that her certificate is not presently renewed. At the time of trial, the Plaintiff was employed at Utah Farm Bureau, but it was expected that that employment was due to end on August 19, 1988. However, the Court finds that the Plaintiff is capable of finding good, gainful substitute employment.

The Defendant has chosen to be employed by his father at a salary which appears to be less than he could make in another independent employment situation, and it appears that the Defendant has the ability to earn more than he presently does. The Court further received conflicting testimony as to whether or not the tax returns of the parties accurately reflected the amount of monies available to meet the family's financial needs, and the Court finds that the tax returns appear to understate the actual net income that was available to the parties during the marriage for family and living expenses.

The Court further finds that the Plaintiff did assist the Defendant in completing his education in veterinarian

school by her employment, by her caring for the home and raising the children.

Based on the foregoing, the Court finds it to be reasonable that commencing with the month of September, 1988, the Defendant shall pay to the Plaintiff the sum of \$150.00 per month, as and for alimony, for a period of five years. At the end of five years, that alimony award should be reduced to the sum of \$1.00 per year for an additional five-year period, or until such time as the Plaintiff remarries, cohabits or dies, whichever of the four events is first to occur.

9. Health Insurance. The Court finds that the Defendant has available to him or is able to obtain adequate health insurance coverage for the benefit of the minor children of the parties. It is reasonable that the Defendant should provide such health insurance on each child during each child's respective period of minority. It is further reasonable that the Defendant cooperate with the Plaintiff to assist her in converting their present health insurance coverage to individual coverage for the Plaintiff under the provisions of Cobra. It is further reasonable that the Plaintiff shall be responsible for her own health insurance premiums and medical expenses.

10. Uninsured Medical Expenses. It is reasonable that any medical, dental, optometric and orthodontic expenses of the children not covered by insurance should be shared equally by the parties.

11. Life Insurance. The Court finds that the Defendant presently has a life insurance policy on his life, with a face value of \$90,000.00, and it is reasonable that the Defendant should continue in force that life insurance policy, with the Plaintiff and each of the four minor children to be named as equal beneficiaries thereunder, for so long as the Defendant has obligations of alimony and child support to the Plaintiff.

12. Hillrise Circle Home. The Court finds that the home and real property on Hillrise Circle was obtained by the Plaintiff prior to the marriage of the parties. The home was purchased by her prior to the marriage with certain personal injury proceeds also received by her prior to the marriage. The Court further finds that Plaintiff and Defendant have both invested labor and expense in maintaining the home, but also finds that both benefitted from the income which this home generated as rental property and which was received during the marriage and was used by both of the parties for day-to-day normal and necessary family expenses. Based on that, the Court finds that the Hillrise Circle home, and any

appreciation related to this home, belongs to the Plaintiff and should be awarded to her free and clear of any claim of the Defendant. Defendant should execute a Quit-Claim Deed in the Plaintiff's favor in relation to this property.

13. Chris Lane Home. The Court finds that the parties have an interest in a home and real property located at 7049 Chris Lane, Salt Lake City, Utah. The home has a fair market value of \$92,000.00 and a present mortgage obligation of approximately \$47,000.00, for a net equity of \$45,000.00. The Court finds that the Plaintiff and the four minor children of the parties are in need of this residence and should be awarded the exclusive use and occupancy of the same. However, Plaintiff's interest in this home shall be subject to a non-interest bearing equitable lien in the Defendant for one-half of the present equity in the home, as found by the Court, to-wit: the lien amount should be \$22,500.00. This lien shall be paid to Defendant when the Plaintiff remarries, cohabits, sells the home or moves from the home, or when the youngest child reaches the age of majority, whichever is first to occur. It is reasonable that the Plaintiff should assume and pay the outstanding mortgage obligation on this house and real property, and hold Defendant harmless from it, and any future appreciation or depreciation related to this home and real property should

have no affect on the Defendant's lien, as established above, which shall remain fixed at \$22,500.00.

14. Personal Property. The Court finds that during the course of the marriage the parties have acquired certain items of personal property, which should be distributed to the parties in the following manner:

A. Plaintiff should be awarded the following items of personal property, free and clear of any claim of the Defendant:

(1) The 1983 Jeep automobile, valued at \$9,800.00. In this regard, the Plaintiff is awarded the automobile, first on the grounds that the Defendant has been awarded other property which offsets the value of this automobile, and second on the grounds that the Plaintiff is in need of dependable, reliable transportation for her and the children's use and benefit.

(2) All household furnishings presently in the home, for the use and benefit of herself and the parties' children, including the television and VCR, except that the Defendant may be

awarded the VCR if he purchases a replacement VCR for the use of the family at a reasonable cost of \$200.00 to \$300.00, and except for those items specifically awarded to the Defendant in paragraph B below.

(3) Her own sports equipment, including water skis, bicycle and tennis ball machine.

(4) Her personal effects and clothing.

B. Defendant should be awarded the following items of personal property, free and clear of any claim of the Plaintiff:

(1) The 1988 Dodge truck, valued at \$1,6500.00. The Court is unable to determine whether the Defendant has an interest in this vehicle based on conflicts in Defendant's testimony and documentary evidence which was admitted.

(2) The Cordova boat, valued at \$7,000.00, together with any boating accessories and the hibachi.

(3) Three snowmobiles, valued at \$1,825.00.

(4) 2-track Skidoo, valued at \$550.00.

(5) His own sports equipment, including water skis and bicycle.

(6) Video camera.

(7) Veterinarian tools and equipment, books and periodicals related to his profession.

(8) The stereo which was a birthday gift to Defendant.

(9) Chinese rug.

(10) Freezer.

(11) The tools, except that Plaintiff should be allowed to retain a sufficient amount for normal repairs on the home.

(12) Lionel train.

(13) Coisant vase.

(14) Lladro.

(15) His personal effects and clothing, including his jewelry box.

15. Gifts During the Marriage. The Court finds that during the course of the marriage, various sums of money were given to the parties by the Defendant's father, including an \$18,500.00 down payment on the Chris Lane home. The Court further finds that during the time these gifts were made, Defendant was employed by his father and was never paid more than \$2,000.00 per month as a doctor of veterinarian medicine. Based upon the testimony of the parties, the testimony of the Defendant's father and the documents received into evidence related to these contributions, the Court finds that any such gifts were intended by Defendant's father as a gift to both parties, with those monies being contributed to the marital estate and used in connection with the maintenance of the family during the course of this marriage. The Court finds that the money so transferred by the Defendant's father are not separate property of the Defendant, but rather were given to both parties for their mutual use and benefit during the marriage, and the Court has considered those monies in the overall property distribution set forth in the Findings.

16. Attorney's Fees. Plaintiff presented evidence that her attorney had expended or would expend in connection with the final document preparation and post-trial Motions the total sum of \$7,879.30 in attorney's fees and costs

(Plaintiff's Exhibit 39). The evidence reflects and the Court finds those fees to be reasonable and necessary. The Court further finds that Plaintiff does not have sufficient funds to pay her lawyer and that the Defendant has the ability to pay a portion of Plaintiff's attorney's fees and costs. The hourly rate charged by Plaintiff's counsel is reasonable and consistent with the hourly rates charged in the community for similar services and the hours expended by Plaintiff's counsel in connection with this case were necessary.

Based upon the foregoing, the Court finds that a reasonable award of attorney's fees in this case is the sum of \$3,939.65, as and for the Defendant's contribution towards the Plaintiff's attorney's fees and costs and judgment may be entered against him accordingly.

17. Contributions of the Plaintiff Towards the Education of the Defendant. The Court finds that the Plaintiff did assist the Defendant in completing veterinarian medical school. The Court finds that Plaintiff did not give him the money, nor did she pay for tuition and books, but that she cared for the home, worked during the summer and worked during school. She further bore the four children and has been the primary caretaker and raised the children while the Defendant went to school and thereafter, while he has

worked as a doctor of veterinarian medicine. Based on those contributions, the Court finds that it is reasonable to consider these contributions of the Plaintiff and the Court has done so in connection with its award of alimony, as set forth in paragraph 8 of these Findings.

18. Court's Ruling. The Court hereby incorporates by reference each and every aspect of its ruling from the bench made at the conclusion of trial in this matter, to-wit: August 17, 1988, and specifically makes that ruling a part of these Findings of Fact.

From the foregoing Findings of Fact, the Court now makes the following:

CONCLUSIONS OF LAW

1. Each of the parties are entitled to a Decree of Divorce, one from the other, on the grounds of irreconcilable differences, which Decree shall be final upon signing and entry.

2. Each party is permanently enjoined and restrained from in any way bothering, harming or annoying the other; from in any way making disparaging remarks about the other in front of the children or any third parties; and from coming on or to the residential premises of the parties.

3. Plaintiff is awarded the permanent care, custody and control of the minor children of the parties, subject to

Defendant's reasonable rights of visitation, as more particularly set forth in paragraph 5 of the Findings of Fact.

4. Plaintiff is awarded child support from the Defendant in the amount and upon the terms provided in paragraph 7 of the Findings of Fact.

5. Plaintiff is awarded alimony from the Defendant in the amount and upon the terms provided in paragraph 8 of the Findings of Fact.

6. Defendant is ordered to provide health insurance coverage for the benefit of the minor children of the parties, as provided in paragraph 9 of the Findings of Fact.

7. Any uninsured medical, dental, optometric and orthodontic expenses of the children not covered by insurance shall be shared equally by the parties.

8. Defendant is ordered to continue in force the current life insurance policy, as provided in paragraph 11 of the Findings of Fact.

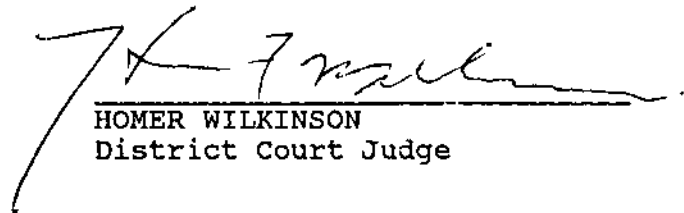
9. The real and personal property of the parties is awarded, as provided in paragraphs 12, 13, 14 and 15 of the Findings of Fact.

10. Defendant shall pay to Plaintiff the sum of \$3,939.65, as and for Defendant's contribution towards the

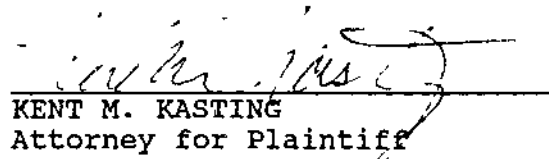
Plaintiff's attorney's fees and costs and judgment shall be entered against him accordingly.

DATED this 28 day of ~~January~~^{Feb.}, 1989.

BY THE COURT:


HOMER WILKINSON
District Court Judge

Approved as to substance and form:


KENT M. KASTING
Attorney for Plaintiff

Date

CERTIFICATE OF HAND-DELIVERY

I hereby certify that on the 30 day of January, 1989, a true and correct copy of the foregoing Findings of Fact and Conclusions or Law was hand-delivered to the following:

David S. Dolowitz, Esq.
Cohne, Rappaport & Segal
525 East 100 South
Salt Lake City, Utah 84147-0008

A handwritten signature in dark ink, appearing to read "David S. Dolowitz", is written over a horizontal line.



PLAINTIFF'S PROPOSAL FOR CASE RESOLUTION

OSGUTHORPE v. OSGUTHORPE

(Civil No. D-87-4967)

Plaintiff Jeannette Osguthorpe proposes the following resolution of the outstanding issues in this divorce action.

1. Decree of Divorce. Plaintiff to receive a divorce from the Defendant based on irreconcilable differences to become final upon signing and entry.

2. Injunction. Defendant to be permanently enjoined from in anyway bothering, harming or annoying the Plaintiff, from making disparaging remarks about Plaintiff in front of the children or any third parties, and from coming on the premises of the Plaintiff.

3. Custody and Visitation. Plaintiff to be awarded the permanent custody of the parties' four minor children, ages 12, 10, 7 and 7, subject to the following visitation for the Defendant:

- a. alternating weekends;
- b. one evening each week until 8:00 p.m.;
- c. alternating red-letter holidays;
- d. December 25 at noon until December 26 at 8:00 p.m.;
- e. Thanksgiving in odd-numbered years;
- f. Defendant's birthday;

g. Father's Day;

h. four consecutive weeks each summer with one month of advance notice to Plaintiff, and with child support to abate by 25% during these four weeks;

i. at such other times and places as the parties can agree.

4. Child Support. Commencing September, 1988, Defendant to pay child support in the total sum of \$175.00 per month per child, one-half on the 5th day and one-half on the 20th day of each month.

5. Alimony. Commencing September, 1988, Defendant to pay Plaintiff the sum of \$250.00 per month as permanent alimony, to continue until Plaintiff's death, remarriage or cohabitation.

6. Health Insurance. Defendant to keep the children adequately insured for so long as they qualify for dependency coverage.

7. Uncovered Medical, Dental and Optometric Expenses and Insurance Deductibles. The parties are to share responsibilities for these costs related to the children in proportion to their annual income.

8. Life Insurance. Defendant to carry present \$90,000 life insurance policy and name Plaintiff and the four children as equal beneficiaries to continue for so long as Defendant has support obligations.

9. Hillrise Circle Home. Plaintiff to receive all interest in Hillrise Circle home as her separate pre-marital property and assume any obligations related to it.

10. Chris Lane Home. Plaintiff to receive all interest in this home and assume the outstanding obligations related to it in satisfaction of her right to "equitable restitution" from the Defendant and for the difference in property awards set forth below in paragraph 11.

11. Distribution of Remaining Personal Property.

<u>Plaintiff</u>		<u>Defendant</u>	
1983 Jeep	\$ 9,800	1988 Dodge Truck	\$16,500
Household furnishings*	11,000	1979 Cordova Boat	7,000
Plaintiff's personal effects and those of children		3 snowmobiles @ 500	1,500
		2 track Ski-Doo	2,500
		1st Interstate Savings (balance as of separation)	5,458
		Defendant's veterinary equipment	?
		Defendant's personal effects	
	<hr/>		<hr/>
	\$20,800		\$32,958

* Defendant to receive the following specific items:

- a. boating accessories
- b. Chinese rug
- c. freezer
- d. Tools, except a sufficient amount to allow Plaintiff to have tools available for normal repairs on the home.
- e. Lionel train
- f. personal jewelry box

- g. Coisant vase
- h. Lladro
- i. books and periodicals

12. Attorneys' Fees and Costs. Plaintiff to be awarded \$4,099.25 attorneys' fees, court costs of \$326.25, incidental costs of 94.50, and deposition costs of \$396.80, for the total sum of \$4,879.30 for all services rendered through August 14, 1988. In addition, there will be trial preparation and attendance fees for August 15, 16, and 17, 1988, and any additional fees and costs related to post-trial motions and preparation of final papers. It is estimated that those additional fees and costs will range between \$3,000-4,500.00.



ACTUAL AND ESTIMATED INCOME AND EXPENSES
JEANETTE OSGUTHORPE

Income

Rental income on premarital property purchased with personal injury settlement \$500

Less rental property expenses:

Mortgage payment	\$(175)	
Utilities/maint.	(100)	
Taxes/insurance	(65)	
		(340)

NET MONTHLY INCOME \$160 *

*Plaintiff has been employed at Utah Farm Bureau at a net monthly income of \$770; this employment ends due to a layoff on 8/19/88.

Expenses (Plaintiff and four children)

House payment	\$550
House maintenance	80
Electricity	65
Mountain Fuel	85
Water, sewer, garbage	30
Telephone	30
Food and household supplies	375
School lunches--\$14.00 per week for 4 children	56
Clothing	150
Dry cleaning/laundry	15
Automobile expenses: Gasoline, maintenance, repairs	95
Automobile insurance (\$124 per quarter)	41

Medical including prescriptions (uninsured portion, not including deductible--see note** below)	20
Dental	30
Optometrist (Jennifer)	10
Orthodontist (John)	? *
Health insurance (Jeanette)--estimated	120 **
Children's lessons/recreation--	
Swimming (Julie, Jennifer--\$60/year)	
Golf (Jeff, John--\$120/year)	
Skiing (Jeff, John--\$560/year)	
Dance (Julie, Jennifer--\$120/year)	75
Entertainment	100
Incidentals and miscellaneous, including grooming, gifts, newspaper and magazines, etc.	100
	<hr/>
TOTAL MONTHLY EXPENSES	\$2,027

*John's dentist recommended orthodontic care prior to the start of this divorce action. John is therefore overdue for treatment. Plaintiff does not know what this care will cost.

**Defendant should continue in force the current health insurance coverage on the children and should also be responsible for the \$750 health insurance deductible.



WORK HISTORY
JEANETTE OSGUTHORPE

Feb 1988 to Aug 1988	Insurance Clerk	Utah Farm Bureau	\$833/month gross 770/month net
Nov 1987 to Jan 1988	Temporary sales/ inventory	ZCMI	\$537 total gross 504 total net (2 months)
Nov 1987	Substitute teacher	Jordan School Dist.	\$40.00 total
May-Aug 1986 May-Aug 1986	Tennis instructor	Salt Lake County Recreation	1987: \$849 total 1986: 1293 total
1975-1977	Cashier/ Clerical	Colo. State Univ. Veterinary Hospital	
1974 (6 mo.)	Alterations	Campus Cleaners	
1974 (2 mo.)	Counter help	MacDonald's	
Various years	Temporary Christmas sales	ZCMI	



CHRONOLOGY, INCOME, EXPENSES AND TAX DEDUCTIONS
RECEIVED FROM HILLRISE CIRCLE HOME

May, 1977 Moved to home at 1732 Hillrise Circle;
 Resided there until September, 1979.

TAX DEDUCTIONS ON HILLRISE AS RESIDENCE

1978	Property taxes	\$641.64
	Mortgage interest	379.39
1979	Property taxes	504.00
	Mortgage interest	631.00

TAX BENEFITS ON HILLRISE AS RENTAL PROPERTY

	<u>Rents</u>	<u>Expenses</u>	<u>Depreciation</u>	<u>Net Income</u>
1979 (Sept-Dec)	\$1,318	797	733	(212)
1980	4,064	2,209	733	1,122
1981	3,570	1,916	733	921
1982	3,650	2,133	733	784
1983	4,155	2,152	733	1,270
1984	4,200	2,527	733	940
1985	4,200	3,456	733	11
1986	4,250	2,944	733	573
1987	6,000	1,763	733	3,504
	<hr/>	<hr/>	<hr/>	<hr/>
	\$35,407	\$19,897	\$6,597	\$8,913

Occupational Outlook Handbook

1988-89
Edition



U.S. Department of Labor
Bureau of Labor Statistics
April 1988

Bulletin 2300

LAWYER
CHEMIST
COUNSELLOR
COOK
TYPIST
PLUMBER
ACCEING
GAS FITTER
ARCHITECT
COMPUTER PROGRAMMER

Second- and third-year residencies provide more extensive training in a specialty, usually surgery.

There are three recognized certifying boards: The American Board of Podiatric Surgery, the American Board of Podiatric Orthopedics, and the American Board of Podiatric Public Health. Certification means that the DPM meets higher standards than those required for licensure. Each board has specific requirements, including advanced training, successful completion of written and oral examinations, and experience as a practicing podiatrist.

Persons planning a career in podiatry should have scientific aptitude, manual dexterity, and interpersonal skills. They must be able to acquire scientific knowledge and stay abreast of new developments in the field of medicine; develop the motor functions and professional skills needed for clinical practice; and develop personal rapport and empathy with patients. A good business sense and congeniality are assets, as in any medical profession.

Most podiatrists are in private practice, which means that they are in fact running a small business. Depending upon the size of the practice, podiatrists may handle administrative and managerial duties personally, or delegate decisionmaking in these areas to an office manager.

Job Outlook

Employment of podiatrists is expected to grow much faster than the average for all occupations through the year 2000 as more people turn to podiatrists for foot care. Very rapid growth in the population 65 years and over is expected to spur demand for podiatrists: Older people have more severe foot problems than younger ones. Moreover, the popularity of jogging, tennis, racquetball, and other fast-moving sports will spur demand in the specialty of podiatric sports medicine.

Because health insurance helps people pay



Demand for podiatrists is expected to grow very rapidly.

for podiatric care, widespread access to health insurance will contribute to increased demand in the years ahead—provided current benefit patterns are not altered substantially. Generally speaking, Medicare and most private health insurance programs cover acute medical and surgical foot services as well as diagnostic X-rays, fracture casts, and leg braces. Routine foot care—including the removal of corns and calluses—is not ordinarily paid for by health insurance. Health maintenance organizations and other prepaid plans may provide routine foot care, however.

In addition to opportunities created by rapid growth in employment, many openings will result from the need to replace podiatrists who retire or stop working for other reasons. Opportunities for graduates to establish new practices, as well as to enter salaried positions, should be favorable.

Earnings

According to a survey conducted by *Podiatry Management*, the median net income of podiatrists was about \$63,000 in 1986. Newly licensed podiatrists with less than 4 years of experience earned around \$35,000. Income generally rises significantly as the practice grows. Newly licensed podiatrists hired by Veterans Administration hospitals earned starting salaries between \$27,200 and \$32,600 in 1987.

Related Occupations

Podiatrists work to prevent, diagnose, and treat diseases, disorders, and injuries. Workers in other occupations that require similar skills include chiropractors, dentists, optometrists, physicians, and veterinarians.

Sources of Additional Information

For information on podiatric medicine as a career, contact:

American Podiatric Medical Association, 9312 Old Georgetown Rd., Bethesda, MD 20814-1621.

Information on colleges of podiatric medicine, entrance requirements, curriculums, and student financial aid is available from:

American Association of Colleges of Podiatric Medicine, 6110 Executive Blvd., Suite 204, Rockville, MD 20852.

For information about financial assistance programs administered by the U.S. Department of Health and Human Services, write to:

Division of Student Assistance, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, MD 20857.

Veterinarians

(D.O.T. 073 except .361-010)

Nature of the Work

Veterinarians care for pets and livestock, treat sporting animals, and protect the public from exposure to animal diseases. Many enter the field because they like working with animals.

Typically, veterinarians diagnose medical problems in their animal patients, perform surgery, and prescribe and administer medicines and drugs.

Most veterinarians engage in private practice and treat small companion animals such as dogs, cats, and birds. Many veterinarians concentrate on larger food animals or have a mixed practice of both large and small animals.

Companion animal medicine encompasses the prevention, diagnosis, and treatment of pet diseases—typically found in dogs and cats. Veterinarians in this field provide these services in animal hospitals or clinics.

Food animal veterinarians specialize in the health care needs of cattle, poultry, swine, fish, and sheep. They provide preventive care by advising ranchers and farmers on the proper care and management of livestock.

The type of practice varies by geographic region. Veterinarians in rural areas are more likely to work with livestock and horses than those in metropolitan centers. Since pets are found everywhere, however, very few veterinarians work exclusively with large animals.

A number of veterinarians engage in research, food safety inspection, or education. It is not generally understood that veterinarians contribute to human as well as animal health care. Veterinarians may join physicians and scientists in carrying out research at an academic medical center, for example, and explore such topics as techniques of organ transplantation or the efficacy of a new drug.

Some veterinarians are in regulatory medicine or public health. They inspect food, investigate outbreaks of disease, and work in scientific laboratories. Veterinarians help prevent the outbreak and spread of animal diseases, some of which—like rabies—can be transmitted to human beings.

Protection of the population from environmental hazards is a major concern of the small but significant number of veterinarians who specialize in toxicology or animal pathology. Although there have been impressive successes in controlling diseases transmitted through food animals, changing technology and more complex methods of food production present new threats to food safety. Residues from herbicides, pesticides, and antibiotics used in food production pose a particular problem. Scientific advances in livestock production have, paradoxically, created a need for veterinarians capable of dealing with contamination of the food chain by toxic chemicals.

Some veterinarians teach in veterinary colleges, work in zoos or animal laboratories, or engage in a combination of clinical and research activities.

Working Conditions

Veterinarians usually treat pet animals in hospitals and clinics. Those in large animal practice usually work out of well-equipped mobile clinics and drive considerable distances between farms and ranches to care for their animal patients. Through their interaction with diseased animals, veterinarians can be exposed to



Some veterinarians specialize in the care of large farm animals.

injury, disease, and infection if precautions are not exercised.

Those in private practice often work long hours, and food animal veterinarians may work outdoors in all kinds of weather. Self-employed veterinarians set their own schedules and may work nights and weekends.

Employment

Veterinarians held 37,000 jobs in 1986. Most were in private practice. The Federal Government employed about 2,000 veterinarians in civilian jobs, chiefly in the U.S. Department of Agriculture and the U.S. Public Health Service. Other important employers of veterinarians are State and local governments, international health agencies, colleges of veterinary medicine, medical schools, research laboratories, livestock farms, animal food companies, and pharmaceutical companies.

Training, Other Qualifications, and Advancement

All States and the District of Columbia require that veterinarians be licensed. To obtain a license, applicants must have a Doctor of Veterinary Medicine (D.V.M. or V.M.D.) degree from an accredited college of veterinary medicine and pass written and, in most States, oral State board proficiency examinations. Some States issue licenses without further examination to veterinarians already licensed by another State.

For veterinarians seeking positions in research and teaching, an additional master's or Ph.D. degree usually is required. (About one-fifth of all students enrolled in veterinary programs are pursuing advanced degrees.) Increasingly, academic positions require specialty board certification as well. Veterinarians who seek specialty board certification in a field such as pathology, preventive medicine, tox-

icology, or laboratory animal medicine must complete an approved residency program, pass the board's examination, and meet any other board requirements.

The D.V.M. or V.M.D. degree requires a minimum of 6 years of college, consisting of at least 2 years of preveterinary study that emphasizes the physical and biological sciences and a 4-year professional degree program. Most successful applicants have completed 4 years of college. In addition to rigorous academic instruction, professional training includes considerable practical experience in diagnosing and treating animal diseases, performing surgery, and performing laboratory work in anatomy, biochemistry, and other scientific and medical subjects.

In 1987, all 27 colleges of veterinary medicine in the United States were accredited by the Council on Education of the American Veterinary Medical Association (AVMA). Admission to these schools is highly competitive. Although the number of applicants has decreased in recent years, there are more qualified applicants than the schools can accept. Serious applicants usually need grades of "B" or better, especially in science courses; and some programs require applicants to take either the Veterinary Aptitude Test, Medical College Admission Test, or the Graduate Record Examination. Experience in part-time or summer jobs working with animals is advantageous. Colleges usually give preference to residents of the State in which the college is located, because these schools are largely State supported. In the South and West, regional educational plans permit cooperating States without veterinary schools to send students to designated regional schools. In other areas, colleges that accept out-of-State students give priority to applicants from nearby States that do not have veterinary schools.

Veterinary medical education is expensive. However, students in veterinary programs are often able to obtain guaranteed student loans from the Federal Government to help meet educational expenses. The average 1986 graduate had a debt of over \$23,000.

A small number of veterinarians receive their training in another country. To meet State licensure requirements, foreign-trained veterinarians must fulfill the English language and clinical evaluation requirements of the Educational Commission for Foreign Veterinary Graduates. About one-third of all applicants pass this examination.

Most veterinarians begin as employees or partners in established practices. Those who can afford the substantial investment needed for drugs, instruments, and other startup costs may set up their own practices. An even greater investment is needed to open an animal hospital or purchase an established practice.

Newly trained veterinarians may qualify for civilian jobs with the U.S. Government as meat and poultry inspectors, disease-control workers, epidemiologists, research assistants, or commissioned officers in the U.S. Public Health Service. A license usually is not required for Federal employment.

Job Outlook

Employment of veterinarians is expected to grow much faster than the average for all occupations through the year 2000, primarily because of demand for veterinary services. Modest growth in the companion and food animal populations, emphasis on scientific methods of raising and breeding livestock and poultry, and continued support for public health and disease control programs will contribute to employment demand. Many veterinarians will find jobs arising from the need to replace those who stop working.

Veterinary school enrollments have grown extremely fast over the last 20 years. Although enrollment levels are expected to decline slightly through the year 2000, the number of active veterinarians could exceed demand, resulting in increased competition for jobs, lower than anticipated earnings, or difficulty securing a salaried position.

New veterinary school graduates are expected to encounter keen competition as they set out to establish a clinical practice. Establishing a large animal practice will be very difficult in some places because future growth

in the food animal population will be unevenly distributed. Demand for food animal veterinarians is expected to decline in some regions.

The outlook is extremely good for veterinarians with specialty training, which generally involves at least 2 years of formal education beyond the basic veterinary medicine degree. Demand for specialists in toxicology, laboratory animal medicine, and pathology is expected to remain strong, as is the demand for faculty at colleges of veterinary medicine.

Earnings

Newly graduated veterinarians working in private practices of established veterinarians typically earned \$20,000 to \$22,000 in 1986, according to the American Veterinary Medical Association. After 2 to 4 years, earnings rise significantly. The average net earnings of all veterinarians in private practice were about \$43,000 in 1985.

Newly graduated veterinarians employed by the Federal Government started at either \$22,500 or \$27,200 a year in 1987 depending on their academic record. The average annual

salary of veterinarians in the Federal Government was \$41,300 in 1987.

Related Occupations

Veterinarians use their professional training to prevent, diagnose, and treat diseases, disorders, and injuries. Workers in other occupations who require similar skills are audiologists, chiropractors, dentists, optometrists, physicians, podiatrists, and speech pathologists. Other occupations that involve working with animals include zoologists, marine biologists, and naturalists.

Sources of Additional Information

A pamphlet entitled *Today's Veterinarian* discusses career opportunities in veterinary medicine and lists accredited colleges of veterinary medicine. A free copy may be obtained by submitting a request, together with a self-addressed, stamped, business-size envelope, to: American Veterinary Medical Association, 930 N. Meacham Rd., Schaumburg, IL 60196.

For information on scholarships, grants, and loans, contact the financial aid officer at the veterinary schools to which you wish to apply.

Veterinarians & Veterinary Hospitals (Cont'd)

Thomas M. 1031 West 532-1100
 Perry Raymond G.
 900 W. West Valley City 968-9932
 r Thomas L.
 Ar South Salt Lake 487-1321

NM VALE VETERINARY CLINIC
SCOTT C. WILDE DVM
 For Emergencies Call 266-1701
 #4800 S. Murray 266-1701

JS COVE VETERINARY CLINIC
 1300 S 485-6060
 lease See Advertisement This Page
 Bert E. 2206 S. McClelland 487-9981
 rpe Animal Hospital
 thorpe DVM
 Jyuthorpe DVM
 Small Animal Hospital
 Highland Dr. Holladay 277-0771

Jan Brent
 7800 S. West Jordan 561-9271
 M Midvale 4 W 7200 S 561-7875
 Please See Ad on Opposite Page
 vid K DVM
 1700 W. South Jordan 254-3661
 s Animal Hospital
 bedwood Rd 966-3974
 lease See Advertisement Page 1697

DD ANIMAL HOSPITAL
 CHARLES J. HYMAS
 MAX R. HYMAS
 S Redwood Rd 966-3974
 nergencies Call 966-3974

per E
 11400 S. South Jordan 254-2333

ON VETERINARY HOSPITAL
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S.700 E. Sandy 566-2410

addy C. 1221 E. 3300 S 486-0123
 Animal Hospital
 catch Springs Animal Hospital
 Beck 532-1100

John DVM
 11400 S. South Jordan 254-2333
 infel A. 2155 S. 500 W. Bountiful 292-7219
 ott M

11400 S. South Jordan 254-2333
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3305 S. ORCHARD BOUNTIFUL, UT 84010



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Richard G. Allen D.V.M.



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Monday Thru Friday 8:00 AM-6:00 PM

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10572 S. 700 E. Sandy 571-8050

Emergencies 571-8050

(Continued Next Page.)

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 lot of people to see? Put it in a
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487-1325

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UTAH
TAX COMM
DMV



08-16-01 #13

IN.FEE 5.00
SUBTL 5.00
CHECK 5.00

3CL 6243 08:33

PLATE-NO ----- TITLE REGISTRATION DISCHG ----- STREET ADDRESS -----
NMS168 OSGUTHORPE JERRY 112M HWY 224
----- CITY ----- ST ----- ZIP ----- CO DIST VALUE MICROFILM
PART CITY UT 84020 12 0000 6880120826 PREV REGISTRATION
RENEWAL-DATE TYPE TITLE-NO TYPE T-DATE PAYMENT P-SHEETX ST VE PLATE-NO
11 83 Y 0701 N 020881 UT 16 NMS168
VEHICLE DESCRIPTION VIN 1247585104104 VIN-1-PLG
STATUS TYPE MAKE ST F MAKE ST F ST F ST F ST F ST F ST F ST F ST F ST F ST F ST F ST F ST F
TE 0003 PT 020020 29 05 08 6 11800014 012088
SEE INFORMATION
NAME ----- STREET ADDRESS ----- CITY ----- ST ----- ZIP
LEA HOLDER INFORMATION
NAME ----- STREET ADDRESS ----- CITY ----- ST ----- ZIP
ONE
CURRENTS FROM

OP-10 EXAM-OF
OR 5555

I do hereby certify that the photostat
copy is a true and correct copy of the
document on file with the State Tax
Commission

AUG 08 1988

James L. Hall
E01872
Title

REGISTRATION AND TITLE SPECIALIST

NO CARBON PAPER REQUIRED
STATE TAX COMMISSION
MOTOR VEHICLE DIVISION

FORM TC - 888 A
REV. 8/85

PLEASE TYPE OR PRINT IN PEN AND INK

SEE INSTRUCTIONS ON REVERSE SIDE

① UTAH APPLICATION FOR: (Place an "X" in the appropriate box)

- ☒ TITLE & REGISTRATION
☐ TITLE LIEN CHANGE
☐ OTHER

☐ PLATE & TITLE TRANSFER
☐ FUEL TYPE

DRIVER LICENSE NUMBER
(SEE ITEM #1 ON REVERSE SIDE)

8423650

EXPIRATION DATE FOR
DUPLICATE REGISTRATION

LESSEE'S
NAME

ADDRESS

CITY

STATE

ZIP

INSURANCE COMPANY:

From Bureau Inc.

POLICY NUMBER:

Applied For

② VEHICLE IDENTIFICATION NUMBER

NEW PLATE NUMBER

1B7JD24Y7JS676178

9288 BF

MAKE Dodge

YEAR 88

TYPE

CYL 8

BODY STYLE P.U.

MODEL D250

COLOR

Silver/White

COUNTY

STATE PREV. REG.

ODOMETER READING

OFFICIAL USE ONLY

New

35

6,000

OWNER'S
NAME

Jerry Osguthorpe

ADDRESS

3120 N. Hwy 224

CITY

Park City

STATE Utah

84060

I/WE CERTIFY UNDER PENALTY OF LAW THAT THIS VEHICLE WILL
BE INSURED WHILE OPERATED THROUGHOUT THE PERIOD OF REGISTRATION
AS PRESCRIBED BY LAW

SIGNATURE

X Jerry Osguthorpe

③

PLATE NO

VIN

MAKE

BODY STYLE

YEAR

MODEL

GROSS
WEIGHT

STATE TAX COMMISSION
VALIDATED
APR 18 1988
EO 2271 AG

NOTE: THIS SPACE MUST BE
STAMPED WITH THE DATE OF
OR A CERTIFICATE OF ASSESSMENT
FURNISHED TO THE OWNER OF THIS
VEHICLE IN ORDER TO OBTAIN
REGISTRATION IN ACCORDANCE WITH
UTAH CODE ANN. § 41-1-32.

APR 20 1988

JIM TALBOT
MILLARD COUNTY ASSESSOR
AS required (41-1-32)

④ OFFICIAL USE ONLY - FEE SCHEDULE

NEW TITLE FEE \$ 2
TRANSFER FEE \$ 5
REGISTRATION FEE \$ 12.50
REFLECTORIZATION \$ 4
DRIVER'S EDUCATION FEE \$ 5
% WEIGHT INCREASE \$
MISSING DECAL OR PLATE \$
ADDITIONAL FEES \$
TOTAL AMOUNT DUE \$ 20.50

⑤ LIEN HOLDER

Commission Will Assume Applicant Is Legal Owner If No Lien Holder Is Given

⑥

FIRST LIEN HOLDER

None

SECOND LIEN HOLDER

ADDRESS

ADDRESS

CITY

STATE

ZIP

CITY

STATE

ZIP

⑦

PREVIOUS REGISTRATION INFORMATION

STATE

TITLE
NUMBER

YEAR

PLATE
NUMBER

PREVIOUS
OWNER

New

ADDRESS

CITY & STATE

⑧

REPORT OF SALE BY UTAH LICENSED AND BONDED DEALER

☒ NEW

☐ USED

BONDED DEALER NUMBER 1188

DATE OF REPORT 4-14-88

DATE OF SALE 4-13-88

DATE OF PERMIT 4-13-88

☐ CHECK IF NON-RESIDENT SALE

Temporary permit number E40397

The vehicle described herein has been transferred to the named purchaser
by the signatory manufacturer or dealer who warrants title thereto and
certifies the information in this report to be true and correct and in compliance
with the Motor Vehicle Act (Title 41 chapter 1, Utah Code Annotated
1953)

DEALER Sahara Motors, Inc.

SIGNATURE AND TITLE John Coffey Secretary

ADDRESS P.O. Box 997

CITY Delta

MUST BE COMPLETELY FILLED IN WITH TYPEWRITER OR PEN AND INK

⑨

AFFIDAVIT OF OWNER

STATE OF UTAH

COUNTY OF Millard

I, the undersigned, being first duly sworn, depose and say that I
am the owner of the vehicle described above and that my address
given and information contained herein is true and correct.

SUBSCRIBED AND SWORN TO before me this 14th day of April, 1988.

NOTARY PUBLIC

RESIDING AT

Delta, Utah

⑩

CERTIFICATE OF MOTOR VEHICLE INSPECTION

CITY

DATE

This is to certify that I have personally inspected the vehicle and
above and find the description to be correct.

SIGNED

AGENCY

⑪

NEW TITLE CLEARED FOR SALES OR USE TAX

HOW CLEARED:

☐ DUE

☐ DEALER RESALE TAX LIC. NO.

☐ OTHER SPECIFY FORM COMPLETED

3 1 1 6 8 8 8 7 4 1 5

CERTIFICATE OF ORIGIN FOR A VEHICLE

CHRYSLER
MOTORSDATE
11 16 87INVOICE NO
JD2HC920101VEHICLE IDENTIFICATION NO
1D7JD24Y7JS676178YEAR
1988MAKE
DODGEBODY TYPE
D250 PICKUPSHIPPING WEIGHT
4164

HP (SAE)

GVWR

NO CYLS

SERIES OR MODEL

48.9

3/4 TON

7500#

8

RAM D2L62

I, the undersigned authorized representative of the company, firm or corporation named below, hereby certify that the new vehicle described above is the property of the company, firm or corporation and is transferred on the above date and under the invoice number indicated to the following distributor or dealer.

NAME OF DISTRIBUTOR, DEALER, ETC.

DEALER NUMBER 67407

 PAINTERS SUN CTRY CHR INC
 1600 SOUTH HILTON DR
 ST GEORGE UT 84770

 STATE TAX
 VALUED AT
 \$18,198.00
 EQ 221 AG

I further certify that this was the first transfer of such new vehicle in ordinary trade and commerce.

 CANCELLED
 UTAH TITLE ISSUED

11012693

CHRYSLER MOTORS

BY

(SIGNATURE OF AUTHORIZED REPRESENTATIVE)

GORDON CLARK

(AGENT)

DETROIT MICHIGAN

CITY - STATE

33-215-0726 3/84



PLAINTIFF'S ATTORNEYS' FEES AND COSTS

OSGUTHORPE V. OSGUTHORPE

(Civil No. D-87-4967)

Date representation commenced: December 29, 1987

Total attorney hours:	26.7
Total attorney fees @ 100.00/hour	2,670.00
Total associate hours:	2.00
Total associate fees @ 75.00/hour	150.00
Total paralegal and clerk hours:	36.55
Total paralegal and clerk fees @ 35.00/hour	1,279.25
Total court costs:	326.25
Total deposition costs:	396.80
Total incidental costs:	94.50
Total services through 8/14/88:	4,879.30
Retainer paid:	2,000.00
Balance as of 8/14/88:	2,879.30

Does not include 8/15 trial preparation
8/16 and 8/17 trial attendance, post
trial motions and pleadings, or
miscellaneous copy and delivery costs.



OSGUTHORPE v. OSGUTHORPE
DEFENDANT'S MONTHLY INCOME

DATE: AUGUST 17, 1988

*Gross Monthly Income from:

Salary and wages, including commissions,
bonuses allowances and overtime payable \$2,000.00

Barn Rent - Park City, Utah - Gift from Father \$ 350.00

TOTAL MONTHLY INCOME: \$2,350.00

Monthly Deductions from Gross Income:

*State and federal income taxes and
social security \$154.89

Business expenses (See schedule "C"
attached hereto): \$1,002.31

TOTAL MONTHLY DEDUCTIONS: \$1,157.20

NET MONTHLY INCOME: \$1,192.80

*Plaintiff receiving rent from Hillrise Circle Home-
\$500.00/month.

OSGUTHOR EX5\HB

OSGUTHORPE v. OSGUTHORPE
DEFENDANT'S MONTHLY EXPENSES



DATE: AUGUST 17, 1988

*Rent	\$550.00
Food and household supplies	300.00
*Utilities including water, electricity, gas and heat	100.00
*Telephone	40.00
*Laundry and cleaning	100.00
Clothing	75.00
Medical (\$750/deductible per family per year)	10.00
Dental	25.00
Insurance: Life, Health	183.00
Entertainment (Includes clubs, social obligations, travel, recreation)	100.00
Incidentals (grooming, gifts and donations)	75.00
*Automobile Payment	300.00
*Auto Expense:	
Insurance	41.60
Repair	50.00
Gas	100.00
	<u>\$ 191.60</u>
TOTAL EXPENSES:	<u>\$2,049.60</u>

*Projections

OSGUTHORPE v. OSGUTHORPE
GIFTS FROM DR. OSGUTHORPE, SR.
TO DEFENDANT



<u>YEAR</u>	<u>*AMOUNT</u>	<u>SPENT ON</u>	<u>EXPENDITURES</u>
1. August, 1979	\$18,500.00	a) Chris Lane Home (down payment)	\$18,500.00
2. Christmas, 1982	\$10,000.00	a) 1983 Jeep Wagoneer - b) Dress for Jeannette - c) (Defendant used interest on account plus some personal funds to supplement purchase of jeep)	\$14,000.00 179.77
3. Christmas, 1983	10,000.00	a) Sales Tax on Jeep - b) Boat - c) Cordova -	786.00 79.00 9,100.00
4. Christmas, 1984	10,000.00	a) Beta Movie Camera - b) Beta Recorder - c) T. V. - d) Ski Doo Snowmobile	1,119.51 1,151.61 1,023.66 2,900.00
5. Christmas, 1985	5,000.00	a) Microscope - b) Redwood Deck (Chris Ln.) -	1,100.00 5,136.25
6. Christmas, 1986	1,000.00	a) Couch Sectional - b) Had Jeep Painted -	1,618.44 600.00
7. Christmas, 1987	1,000.00	a) Taxes - b) Stereo (ZCMI) -	1,624.64 1,000.00
	\$ _____		\$ _____
TOTAL IN GIFTS:	<u>\$55,500.00</u>	TOTAL EXPENDITURES:	** <u>\$59,918.88</u>

*Placed in Money Market Account No. 13150 with First Interstate Bank in the name of Jerry S. Osguthorpe only.

**The difference in totals is the result of added interest.

A-502

PLAINTIFF'S
EXHIBIT
4
D87-4967

02R611150211



INDIVIDUAL INCOME TAX RETURN
For the year ending December 31, 1985 or other taxable year
Beginning _____, 1985, ending _____, 1985
1985
FORM TC-40

Use label (if possible) to print name of spouse or partner in block or blue ink.

Name: **CAR-RT-PRESORT** SSN: **CR10**
Address: **JERRY S & JEANETTE C OSGUTHORPE**
7049 CHRIS LN
SALT LAKE CITY UT 84121

Spouse's name: **JEANETTE C OSGUTHORPE**
Spouse's SSN: **879-80-6803**

Occupation: **Veteration**
Spouse's occupation: **Housewife**

1. FILING STATUS — Check only one
A. ☐ Single, except head of household
B. ☐ Head of Household — Enter name of qualifying child/dependent
C. ☐ Married filing joint return
D. ☐ Married filing separately. Give spouse's social security number in heading above and enter spouse's full name here

2. EXEMPTIONS
Regular 65 or over Blind
Yourself ☐ ☐ ☐
Spouse ☐ ☐ ☐
Number of dependent children who lived with you: **28**
Number of other dependents: **2C**
TOTAL EXEMPTIONS CLAIMED: **20**

3. ELECTION CAMPAIGN FUND — Check box indicating (1) party to which you wish to make a \$1.00 contribution, (2) no contribution. Checking box will not increase tax or reduce refund.
Democrat ☐ Yourself ☐ Spouse ☐
Republican ☐ ☐ ☐
No Contribution ☐ ☐ ☐

4. Federal Return: (Check type of return filed. Attach complete copy with all schedules) ☐ Form 1040 ☐ Form 1040 A ☐ Form 1040 EZ

5. Adjusted Gross Income (from Federal return — see instructions for line 5) **15,956.77**

6. Deductions: Check type of deduction being used on state return — CHECK ONLY ONE
☐ (A). Itemized Deductions (amount shown on line 24 of Federal Schedule A), OR
☐ (B). Standard Deduction (for single, married filing jointly and head of household: \$1,300.00 minimum or 15% of line 5 with a \$2,000.00 maximum. For married filing separately: \$650.00 minimum or 15% of line 5 with a \$1,000.00 maximum. Please read instructions for exceptions)

7. Exemptions (total exemptions claimed on line 20 times \$750.00) **15,000.00**

8. Federal Income Tax Determined for the Same Period (see instructions for line 8) **360.00**

9. Interest from U.S. Government Obligations (included in Federal adjusted gross income) **0.00**

10. Retirement Income (complete Schedule B on back of form) **0.00**

11. State Tax Refund (if included as income on Federal return) **0.00**

12. Adoption, Railroad Retirement, and Other Deductions (see instructions, attach explanatory) **0.00**

13. Total Exemptions and Deductions (add lines 6 through 12) **11,366.57**

14. Total Income Less Exemptions and Deductions (line 5 less line 13) **4,590.20**

15. Add State Income Tax (amount shown on line 9 of Federal Schedule A) **149.55**

16. Equitable, Lump Sum, and Other Adjustments (see instructions, attach explanation) **0.00**

17. Total Additions (add lines 15 and 16) **149.55**

18. Total Utah Taxable Income (add lines 14 and 17) **4,738.75**

19. Utah Tax Compute income tax (line 18) from Tax Rate Schedule on back of form, use tax (line 18) from worksheet at page 6
Income Tax from rate schedule: **169.12** Use Tax from worksheet: **0.00**

20. Credit for Utah Income Tax Withheld (attach withholding forms) **0.00**

21. Credit for Income Taxes Paid to Another State (complete Schedule A on back of form) **0.00**

22. Credit for Utah Income Tax Prepaid **0.00**

23. Other Credits (complete Schedule C on back of form) **0.00**

24. Total Credits (add lines 20 through 23) **0.00**

25. Additional Tax Due — If line 19 is larger than 24, subtract 24 from line 19 and enter balance — PAY THIS AMOUNT. **182.72**

26. Refund — If line 24 is larger than line 19, subtract line 19 from line 24 and enter balance. **182.72**

27. Utah Nongame Wildlife Fund I wish to contribute ☐ \$1 ☐ \$5 ☐ \$10 or \$ **0.00**

28. Not Refund — subtract line 27 from line 26. This amount will be refunded to you. Please allow 90 days for processing. **182.72**

Send return and payment to: **UTAH STATE TAX COMMISSION**
100 E. THIRD SOUTH
SALT LAKE CITY, UTAH 84143-0001

OFFICIAL USE ONLY ☐ YES ☐ NO

Signature: **JEANETTE C OSGUTHORPE** Date: **4-15-86**

Signature: **JERRY S OSGUTHORPE** Date: **4-15-86**

1040

U.S. Individual Income Tax Return

1985

Use IRS label. Other-wise, please print or type.

CAI-RT SORT 00LR 10
 YJ 524-NC-4453 524-HU-6H03 524 30
 JERRY S & JEANNETTE C CSOUTHERN R
 7049 CHRIS LAKE
 SALT LAKE CITY UT 84121

1040 (print)
 10 (date by 1/15/76)
 Your name
 Your social security number
 Spouse's social security number
 Your occupation Veterinarian
 Spouse's occupation

Presidential Election Campaign: Do you want \$1 to go to this fund? ☒ Yes ☐ No
 If joint return, does your spouse want \$1 to go to this fund? ☒ Yes ☐ No

Filing Status: 1 ☐ Single
 2 ☒ Married filing joint return (even if only one had income)
 3 ☐ Married filing separate returns (enter spouse's social security no. above and full name here)
 4 ☐ Head of household (with qualifying person) (See page 5 of instructions.) If the qualifying person is your unmarried child but not your dependent, write child's name here.
 5 ☐ Qualifying widow(er) with dependent child (your spouse died in 19) (See page 6 of instructions.)

Exemptions: 6a ☒ Yourself ☐ 65 or over ☐ Blind
 b ☒ Spouse ☐ 65 or over ☐ Blind
 c First names of your dependent children who lived with you: Jeffrey, John
Jennifer, Julie
 d First names of your dependent children who did not live with you (see page 6).
 (If pre 1985 agreement, check here ☐)
 e Other dependents:
 (1) Name (2) Relationship (3) Number of months lived in your home (4) Did dependent have income of \$1,000 or more? (5) Did you provide more than one-half of dependent's support?
 1 Total number of exemptions claimed (also complete line 36)

Income: 7 Wages, salaries, tips, etc. (Attach Form(s) W-2)
 8 Interest income (also attach Schedule B if over \$400)
 9a Dividends (also attach Schedule B if over \$400) 9b Exclusion
 9c Subtract line 9b from line 9a and enter the result
 10 Taxable refunds of state and local income taxes, if any, from the worksheet on page 9 of instructions.
 11 Alimony received
 12 Business income or (loss) (attach Schedule C)
 13 Capital gain or (loss) (attach Schedule D)
 14 40% of capital gain distributions not reported on line 13 (see page 9 of instructions)
 15 Other gains or (losses) (attach Form 4797)
 16 Fully taxable pensions, IRA distributions, and annuities not reported on line 17 (see page 9).
 17a Other pensions and annuities, including rollovers. Total received 17b
 17c Taxable amount, if any, from the worksheet on page 10 of instructions
 18 Rents, royalties, partnerships, estates, trusts, etc. (attach Schedule E)
 19 Farm income or (loss) (attach Schedule F)
 20a Unemployment compensation (insurance) Total received 20b
 20c Taxable amount, if any, from the worksheet on page 10 of instructions
 21a Social security benefits (see page 10) Total received 21b
 21c Taxable amount, if any, from worksheet on page 11
 22 Other income (list type and amount—see page 11 of instructions)
 23 Add lines 7 through 22. This is your total income

Adjustments to Income: 24 Moving expense (attach Form 3903 or 3903F)
 25 Employee business expenses (attach Form 2106)
 26 IRA deduction, from the worksheet on page 12
 27 Keogh retirement plan deduction
 28 Penalty on early withdrawal of savings
 29 Alimony paid (recipient's full name, address, and social security no.)
 30 Deduction for a married couple who work together (attach Schedule W)
 31 Add lines 24 through 30. These are your total adjustments

Adjusted Gross Income: 32 Subtract line 31 from line 23. This is your adjusted gross income. If this line is less than \$11,000 and a child lived with you, see "Earned Income Credit" (line 59) on page 16 of instructions. If you are not IRS's "tax-exempt" see page 13 of instructions.

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SCHEDULES A&B
(Form 1040)

Department of the Treasury
Internal Revenue Service

Replaces SS Form 1040

Schedule A—Itemized Deductions

(Schedule B is on back)

► Attach to Form 1040 ► See instructions for Schedules A and B (Form 1040)

1985

629.86 453

Medical and Dental Expenses	1 Prescription medicines and drugs and insulin	1	14	75	
	2 a Doctors, dentists, nurses, hospitals, insurance premiums you paid for medical and dental care, etc.	2a	366	60	
	b Transportation and lodging	2b	60	00	
	c Other (list—include hearing aids, dentures, eyeglasses, etc.)	2c			
	3 Add lines 1 through 2c, and write the total here	3	441	35	
	4 Multiply the amount on Form 1040, line 33, by 5% (.05)	4	707	83	
	5 Subtract line 4 from line 3. If zero or less, write -0-. Total medical and dental	5			0
Taxes You Paid	6 State and local income taxes	6	148	85	
	7 Real estate taxes	7	1156	92	
	8 a General sales tax (see sales tax tables in instruction booklet)	8a	543	00	
	b General sales tax on motor vehicles	8b			
	9 Other taxes (list—include personal property taxes)	9			
	10 Add the amounts on lines 6 through 9. Write the total here. Total taxes	10			1650 47
Interest You Paid	11 a Home mortgage interest you paid to financial institutions	11a	4455	38	
	b Home mortgage interest you paid to individuals (show that person's name and address)	11b			
	12 Total credit card and charge account interest you paid	12		1 58	
	13 Other interest you paid (list)	13			
	14 Add the amounts on lines 11a through 13. Write the total here. Total interest	14			4456 86
Contributions You Made	15 a Cash contributions. (If you gave \$3,000 or more to any one organization, report those contributions on line 15b.)	15a	399	24	
	b Cash contributions totaling \$3,000 or more to any one organization. (Show to whom you gave and how much you gave)	15b			
	16 Other than cash. (You must attach Form 8283 if over \$500.)	16			
	17 Carryover from prior year	17			
	18 Add the amounts on lines 15a through 17. Write the total here. Total contributions	18			399 24
Casualty and Theft Losses	19 Total casualty or theft loss(es). (You must attach Form 4684 or similar statement.)	19			
Miscellaneous Deductions	20 Union and professional dues	20			
	21 Tax return preparation fee	21			
	22 Other (list type and amount)	22			
	23 Add the amounts on lines 20 through 22. Write the total here. Total miscellaneous	23			
Summary of Itemized Deductions	24 Add the amounts on lines 5, 10, 14, 18, 19, and 23. Write your answer here.	24	6566	57	
	25 If you checked Form 1040, line Status box 2 or 5, write \$3,540; line Status box 1 or 4, write \$2,390; line Status box 3, write \$1,770.	25	3540	00	
	26 Subtract line 25 from line 24. Write your answer here and on Form 1040, line 34a. (If line 25 is more than line 24, see the instructions for line 25 on page 22.)	26	2966	57	

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Schedule B - Interest and Dividend Income Form 1040 (2010) Page 2
 Your social security number
FRANK S. JEANETTE C. CROTHORPE

If you received more than \$400 in interest income, you must complete Part I and list ALL interest received. If you received interest as a nominee for another, or you received or paid accrued interest on securities transferred between payment dates, see page 22.

Interest Income		Amount
1	Interest income from seller-financed mortgages (See instructions and show name of payer)	
2	Other interest income (list name of payer)	
	<i>Manu Market Acct (First Interstate)</i>	<i>739 06</i>
	<i>Checkbook Int. Acct (Fidelity)</i>	<i>44 87</i>
3	Total (the amounts on lines 1 and 2. Write the total here and on Form 1040, line 8)	<i>783 93</i>

If you received more than \$400 in gross dividends and other distributions on stock, or you are electing to exclude reinvested dividends from a public utility, complete Part II. If you received dividends as a nominee for another, see page 23.

Dividend Income		Amount
4	Dividend income (list name of payer—include on line 4 capital gain distributions, capital gain distributions, etc.)	
5	Total (the amounts on line 4. Write the total here)	
6	Capital gain distributions. Enter here and on line 15, Schedule D	
7	Reinvested dividends from a public utility (See page 23 of instructions.)	
8	Total (the amounts on lines 6, 7, and 8. Write the total here)	
9	Total (the amounts on lines 5, 6, 7, and 8. Write the result here and on Form 1040, line 9a)	

If you received capital gain distributions for the year and you do not need Schedule D to report any other gains or losses, do not file that schedule. Instead, enter 40% of your capital gain distributions on Form 1040, line 14.

If you received more than \$400 of interest or dividends, OR if you had a foreign account or were a grantor of, or a transferee in, a foreign trust, you must answer both questions in Part III.	Yes	No
At any time during the tax year, did you have an interest in or a signature or other authority over a financial account in a foreign country (such as bank account, securities account, or other financial account)? (See page 22 of the instructions for exceptions and filing requirements for Form TD F 90-22.1.)		
If "Yes," enter the name of the foreign country in Part III.		
If you are the grantor of, or a transferee in, a foreign trust which existed during the current tax year, whether or not you have any beneficial interest in it. If "Yes," you may have to file Forms 3520, 3520-A, or 926.		

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SCHEDULE E
(Form 1040)

Supplemental Income Schedule

(from rents and royalties, partnerships, estates, and trusts, etc.)

OMB No. 1545-0044

85

Department of the Treasury
Internal Revenue Service

▶ Attach to Form 1040 ▶ See instructions for Schedule E (Form 1040)

13

Name(s) shown on Form 1040

Terry S. + Jeanette L. Coughlin

Your social security number

520 80 4453

Part I Rental and Royalty Income or Loss

- 1 In the space provided below, show the kind and location of each rental property.
- 2 For each property listed, did you or a member of your family use for personal purposes any of the properties for more than the greater of 14 days or 10% of the total days rented at fair rental value during the tax year? Yes No

Property A *Single family dwelling - 1732 Hillside Cir*

Property B *Barn - Snyderville*

Property C

Yes No
X
X

Rental and Royalty Income

Properties
A B C
Totals
(Add columns A, B, and C)

- 3 a Rents received
b Royalties received

4200 00 4200 00 8400 00

Rental and Royalty Expenses

- 4 Advertising
- 5 Auto and travel
- 6 Cleaning and maintenance
- 7 Commissions
- 8 Insurance
- 9 Legal and other professional fees
- 10 Mortgage interest paid to financial institutions (see instructions)
- 11 Other interest
- 12 Repairs
- 13 Supplies
- 14 Taxes (Do not include Windfall Profit Tax here. See Part III, line 24.)
- 15 Utilities (see below)
- 16 Wages and salaries

247 80 3249

100 00

490 38 490 38

739 08 161 61

774 54 287 07

749 48

- 17 Other (list) ▶ *Utilities:*

water

sewer

garbage

230 61

100 00

24 00

- 18 Total expenses other than depreciation and depletion. Add lines 4 through 17.

3455 00 482 57 3038 46

- 19 Depreciation expense (see Part V instructions), or depletion

733 00 - 733 00

- 20 Total. Add lines 18 and 19.

4188 59 482 57

- 21 Income or (loss) from rental or royalty properties. Subtract line 20 from line 3a (rents) or 3b (royalties).

11 11 3717 43

- 22 Add properties with profits on line 21, and write the total profits here.

3728 54

- 23 Add properties with losses on line 21, and write the total (losses) here.

-

- 24 Combine amounts on lines 22 and 23, and write the net profit or (loss) here.

3728 54

- 25 Net farm rental profit or (loss) from Form 4835, line 35.

3728 54

- 26 Total rental or royalty income or (loss). Combine amounts on lines 24 and 25, and write the total here. If Parts II and III on page 2 do not apply to you, write the amount from line 26 on Form 1040, line 18. Otherwise, include the amount in line 36 on page 2 of Schedule E.

3728 54

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule E (Form 1040) 1983

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SCHEDULE SE
(Form 1040)

Use this form if you are a self-employed person (an individual who is not an employee) and you have net earnings from self-employment of \$400 or more.

Computation of Social Security Self-Employment Tax

See instructions for Schedule SE (Form 1040).

Attach to Form 1040

OMB No. 1545-0047

85

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Name of self-employed person (as shown on Social Security card)

Jerry S. Casabianca

Net self-employment tax

524 86 4453

Part I Regular Computation of Net Earnings From Self-Employment

Note: If you performed services for certain churches or church-controlled organizations and you are not a minister or a member of a religious order, see the instructions.

1 Net farm profit or (loss) from Schedule F (Form 1040) line 12 and farm partnerships, Schedule K-1 (Form 1065) line 13a

2 Net profit or (loss) from Schedule C (Form 1040) line 33, Schedule K-1 (Form 1065), line 13a (other than farming), and Form W-2 wages of \$100 or more from an electing church or church-controlled organization (See instructions for other income to report)

Note: Check here if you are exempt from self-employment tax on your earnings as a minister, member of a religious order, or Christian Science practitioner because you filed Form 4361

See instructions for kinds of income to report. If you have other earnings of \$400 or more that are subject to self-employment tax, include those earnings on line 2

1		
2	<u>11,444</u>	<u>36</u>

Part II Optional Computation of Net Earnings From Self-Employment
(See "Who Can Use Schedule SE")

Generally, this part may be used only if you meet any of the following tests:

- A Your gross farm income (Schedule F (Form 1040), line 12) was not more than \$2,400, or
- B Your gross farm income (Schedule F (Form 1040), line 12) was more than \$2,400 and your net farm profits (Schedule F (Form 1040) line 39) were less than \$1,600, or
- C Your net nonfarm profits (Schedule C (Form 1040), line 33) were less than \$1,600 and also less than two thirds (2/3) of your gross nonfarm income (Schedule C (Form 1040) line 5)

See instructions for other limitations.

3 Maximum income for optional methods

\$1,600 00

4 Farm Optional Method—If you meet test A or B above, enter the smaller of two thirds (2/3) of gross farm income from Schedule F (Form 1040) line 12, and farm partnerships, Schedule K-1 (Form 1065), line 13b, or \$1,600

4

5 Subtract line 4 from line 3

5

6 Nonfarm Optional Method—If you meet test C above, enter the smallest of two thirds (2/3) of gross nonfarm income from Schedule C (Form 1040), line 5, and Schedule K-1 (Form 1065), line 13c (other than farming), or \$1,600, or, if you elected the farm optional method, the amount on line 5

6

Part III Computation of Social Security Self-Employment Tax

7 Enter the amount from Part I, line 1, or, if you elected the farm optional method, Part II, line 4

7

8 Enter the amount from Part I, line 2, or, if you elected the nonfarm optional method, Part II, line 6

8

9 Add lines 7 and 8. If less than \$400, do not file in the rest of the schedule because you are not subject to self-employment tax. (Exception: If this line is less than \$400 and you are an employee of an electing church or church-controlled organization, complete the schedule unless this line is a loss. See instructions.)

9

10 The largest amount of combined wages and self-employment earnings subject to social security or railroad retirement tax (Tier 1) for 1985 is

10

11 a Total social security wages and tips from Forms W-2 and railroad retirement compensation (Tier 1). Note: U.S. Government employees whose wages are only subject to the 1.35% hospital insurance benefits tax (Medicare) and employees of certain church or church-controlled organizations should not include those wages on this line (see instructions)

11a

b Unreported tips subject to social security tax from Form 4137 line 9 or to railroad retirement tax (Tier 1)

11b

c Add lines 11a and 11b

11c

12 a Subtract line 11c from line 10

12a

b Enter your "qualified" U.S. Government wages if you are required to use the worksheet in Part III of the instructions 12b

c Enter your Form W-2 wages from an electing church or church-controlled organization 12c

13 Enter the smaller of line 9 or line 12a

13

If line 13 is \$39,600, fill in \$4,672.80 on line 14. Otherwise, multiply line 13 by .118 and enter the result on line 14

14

14 Self-employment tax. Enter this amount on Form 1040 line 5

14

For Paperwork Reduction Act Notice, see Form 1040 instructions

Schedule SE (Form 1040) 1985

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Form **4562****Depreciation and Amortization**

OMB No. 1545-0077

1985

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Department of the Treasury
Internal Revenue Service (45)▶ See separate instructions
▶ Attach this form to your return.

Name(s) as shown on return

Terry S. Oseuthorne

Identifying number

0-1152

Business or activity to which this form relates

*veterinarian***Part I Depreciation**

Use Part III, Specific Information Concerning Automobiles and other Listed Property, for certain transportation equipment (e.g. autos), amusement/recreation property, and computer/peripheral equipment

Section A.—Election to Expense Recovery Property (Section 179)

(a) Class of property	(b) Cost	(c) Expense deduction
1		
2 Listed property—Enter total from Part III, Section A, column (b)		
3 Total (see instructions for limitations) (Partnerships or S corporations—see the Schedule K and Schedule K-1 Instructions of Form 1065 or 1120S)		

Section B.—Depreciation of Recovery Property

(a) Class of property	(b) Date placed in service	(c) Cost or other basis	(d) Recovery period	(e) Method of figuring depreciation	(f) Deduction
4 Accelerated Cost Recovery System (ACRS) (see instructions) For assets other than automobiles and other listed property placed in service ONLY during tax year beginning in 1985					
a 3-year property					
b 5-year property					
c 10-year property					
d 15-year public utility property					
e Low-income housing					
f 15-year real property					
g 18-year real property					
(See "Items You Should Note")					

- 5 Listed property—Enter total from Part III, Section A, column (d)
- 6 ACRS deduction for assets other than automobiles and other listed property placed in service prior to 1985 (see instructions)

*774.00***Section C.—Depreciation of Nonrecovery Property**

- 7 Property subject to section 168(e)(2) election (see instructions)
- 8 Other depreciation (see instructions)

Section D.—Summary

- 9 Total (Add deductions on lines 3 through 8). Enter here and on the Depreciation line of your return (Partnerships and S corporations—Do NOT include any amounts entered on line 3)

*774.00***Part II Amortization**

(a) Description of property	(b) Date acquired	(c) Cost or other basis	(d) Cost method	(e) Amortization period or percentage	(f) Amortization for this year

Total. Enter here and on Other Deductions or Other Expenditures of your return.

See Paperwork Reduction Act Notice on page 1 of the separate instructions.

Form 4562 (1985)

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