

1998

Margaret Lucille Lent v. Norman Floyd Lent : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MARGARET LUCILLE LENT,

Plaintiff/Appellant,

V.

NORMAN FLOYD LENT,

Defendant/Appellee.

Appellate No. 981568-CA

Argument Priority No. 15

BRIEF OF APPELLANT

Appeal from the Order of Dismissal of the
District Court of the Fifth Judicial
District, the Honorable James L. Shumate,
Presiding.

LaMar J. Winward (Bar No. 3528)
150 North 200 East, #204
St. George, Utah 84770

G. Michael Westfall (Bar No. 3434)
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FILED

MAR 08 1999

COURT OF APPEALS

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JURISDICTION OF THE UTAH COURT OF APPEALS

The Utah Court of Appeals has jurisdiction in this matter pursuant to §78-2a-3(h), Utah Code Annotated 1953, as amended.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

ISSUE NO. 1

Did Defendant reside, in the marital relationship, within this state, for purposes of in personam jurisdiction in a divorce proceeding, where he lived and worked in this state during the marriage but maintained his permanent domicile in another state?

ISSUE NO. 2

Did the Trial Court err by ruling that Utah does not have jurisdiction over Defendant where acts that created the irreconcilable differences that exist between the parties, and which were relied on in granting the Decree of Divorce, occurred in the State of Utah.

STANDARD OF REVIEW

The standard of review of this appeal is *de novo* because the issue of jurisdiction is one of law. See *Liska v. Liska*, 902 P.2d 644, 646-47 (Utah App. 1995); *Holm v. Smilowitz*, 840 P.2d 157, 160 (Utah Ap. 1992).

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES,

ORDINANCES AND RULES

Utah Code Ann. § 78-27-24(6) (1998)

Any person, notwithstanding Section 16-10a-1501, whether or not a citizen or resident of this state, who in person or through an agent does any of the following enumerated acts, submits himself, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any claim arising out of or related to . . .

(6) With respect to actions of divorce, separate maintenance, or child support, having resided, in the marital relationship, within this state notwithstanding subsequent departure from the state; or the commission in this state of the act giving rise to the claim, so long as that act is not a mere omission, failure to act, or occurrence over which the defendant had no control.

STATEMENT OF THE CASE

1. NATURE OF THE CASE

Plaintiff filed a Verified Complaint for Divorce in this matter on May 14, 1997, seeking a divorce on the grounds of irreconcilable differences. Defendant filed a Motion to Dismiss for Lack of Jurisdiction on or about September 10, 1997, claiming that he had not resided in Utah with the Plaintiff during their marriage.

In response to Defendant's Motion to Dismiss, Plaintiff alleged that Defendant had lived in Utah on several occasions during the marriage while he worked on projects in this state. Plaintiff alleged that one of the differences between the parties that resulted in the action for divorce was Defendant's marital infidelity which occurred in Utah while he was working and living in this state. Plaintiff also claimed that Defendant had stayed at her residence in Utah on several occasions since she moved here in 1992, but she acknowledged they had not shared the same bed during those stays.

At a hearing held on November 10, 1997, the Trial Court denied the Motion to Dismiss.

As he was permitted to do, Defendant renewed his Motion to Dismiss on June 16, 1998, this time supported by his Affidavit, claiming that he had not engaged in any extra-marital relationship within the State of Utah.

Plaintiff responded to this Second Motion to Dismiss by acknowledging that she could not prove that Defendant's acts of infidelity occurred within the borders of the State of Utah, but maintained that he was living in Utah when the infidelity occurred.

At the hearing on Defendant's Motion to Dismiss, which was combined with a hearing on Plaintiff's Motion to Bifurcate, Plaintiff testified that grounds for the divorce included irreconcilable differences arising out of Defendant's excessive use of alcohol and that he had committed those acts in Utah. The Court granted the Motion to Bifurcate, finding that it had jurisdiction over the marriage, but also granted the Motion to Dismiss, ruling that Defendant did not have sufficient contacts with Utah for the Court to determine any issues other than dissolution of the marriage. This appeal followed that Order of Dismissal.

2. STATEMENT OF FACTS

The Plaintiff and Defendant were married on March 27, 1954, in Riverside, Bingham County Idaho. (See Affidavit of Margaret Lucille Lent, filed September 29, 1997) (*R. at 26*)

During the parties' marriage the Defendant worked in the State of Utah on several occasions and, in several instances, for extended periods of time. (*R. at 26-27*)

The Defendant worked at a power plant in Castle Gate, Utah, from April of 1957 until some time during the month of July of 1957. Defendant lived in Utah that entire time. (*R. at 27*) Defendant brought the parties' children and Plaintiff to stay with him for about two weeks while he worked there. Plaintiff and Defendant stayed at a motel in, Helper, or one of the surrounding communities. (*R. at 27*)

In 1960, from March through July, the Defendant was working on a project at Geneva Steel in Utah County, Utah. He lived in Utah that entire time. The parties' children and Plaintiff accompanied the Defendant to the area where he worked. The Plaintiff and Defendant stayed at

a red brick colored complex where some of Defendant's associates were also living for the length of the project. Plaintiff believes the complex was on Main Street in Pleasant Grove, Utah County, Utah. The Plaintiff and Defendant resided together at that time for approximately two weeks. (*R. at 27*)

From April of 1961 until sometime in August of 1961 the Defendant worked on the construction of the Flaming Gorge Dam near Dutch John, Utah. During that time Defendant came to Pocatello to get Plaintiff and Defendant and Plaintiff traveled to the place he was living at in the Dutch John/ Manilla area of Utah (about 35 miles from Vernal). Plaintiff and Defendant and their children lived in a mobile unit designed like a complex with another couple occupying the other half while Defendant worked there. Plaintiff was there with him for approximately two weeks. (*R. at 27*)

On the instances that Plaintiff recalls when the Defendant was working in Utah and Plaintiff resided with him, the Defendant and Plaintiff clearly did so as husband and wife so that they could be together while Defendant worked in the State of Utah. They shared the same bed and Plaintiff maintained the home. (*R. at 27-28*)

In 1976, from March 10 until June 16, Defendant lived in Utah and worked on the Carbon Power Plant near Castlegate, Utah. (*R. at 28*)

There are numerous other instances when Defendant has lived and worked in Utah for shorter periods of time. (*R. at 28*)

One of the irreconcilable differences that developed during Plaintiff and the Defendant's marriage arose out of Defendant's marital infidelity. That marital infidelity occurred while the Defendant was working in the State of Utah. (*R. at 28*)

Defendant denies having engaged in any extra marital relationship within the State of

Utah. (*R. at 74-75*)

There was a four to five week period of time in approximately 1992, while Plaintiff was attending school in Provo, Utah, that the Defendant stayed at her apartment. Plaintiff and Defendant slept separately on that occasion because the sleeping facilities were limited to one small single bed. (*R. at 28*)

The Defendant and Plaintiff resided together at Plaintiff's residence in Provo while Defendant was working on a job on the boiler at the Brigham Young University campus in 1992 or 1993. Plaintiff and Defendant didn't share a bed on that occasion but Plaintiff fixed Defendant's lunch and other meals and did Defendant's laundry. (*R. at 28*)

There was an additional week when the Defendant came and resided with Plaintiff in Provo to repair Plaintiff's car. (*R. at 28-29*)

On another occasion, sometime in 1992 or 1993, Defendant stayed with Plaintiff on his way to a job at Delta, Utah. On that occasion Defendant became ill and was hospitalized in Delta with severe back pain. When Defendant was well enough to drive he came back to Provo to stay at Plaintiff's apartment. Defendant ultimately did return to Pocatello on that occasion. (*R. at 29*)

While Plaintiff was in Provo the Defendant spent Thanksgiving and Christmas with Plaintiff there. On one occasion Plaintiff and Defendant had Thanksgiving dinner with a family at the Excelsior Hotel and Defendant helped with gift wrapping and Christmas lights. (*R. at 29*)

Because of tax advantages the Defendant and Plaintiff had declared Idaho as their permanent residence. As Plaintiff understood it the Defendant was able to deduct rent and expenses in other states if they did so. However, there have been numerous instances during the parties' marriage, as indicated above, when the Plaintiff claims that Defendant has resided in the

State of Utah while working and, on occasion, Plaintiff has joined him here. (*R. at 29*)

Although Defendant does not deny Plaintiff's allegations concerning his work history and where he lived while working in Utah, he did sign an affidavit in which he claimed that he had "never been a resident of the State of Utah." (*R. at 74*)

Although the Plaintiff cannot prove that the Defendant's act of sexual intercourse with another woman occurred within the boundaries of the State of Utah, the Defendant has engaged in acts of sexual intercourse while he was living and working in the State of Utah. The Plaintiff confronted the Defendant about whether he had had sexual intercourse with another woman during one of the times he lived in Utah and he did not deny that he had sex with another woman. In fact, his response was, "Everybody has slept with her, including Butch." (*R. at 73*)

The Plaintiff has seen a Utah birth certificate for a child born approximately 35 years ago and Defendant was listed as the father on that birth certificate. Plaintiff has attempted to locate a copy of that birth certificate and has been unable to do so. (*R. at 72*)

Although the Defendant and Plaintiff do have assets in the State of Idaho, the Defendant is a member of the Boilermakers Local Union No. 182 in Salt Lake City, Utah. This is the source of Defendant's retirement plan. (*R. at 29-30*)

At trial the Plaintiff testified that, since 1995, the Defendant had spent time in her home, including staying overnight in her home although the parties have not shared the same bedroom. She also testified that one of the irreconcilable differences that arose between the parties during their marriage was the Defendant's consumption of alcohol in the State of Utah. (*R. at 106 page 13-17*)

SUMMARY OF ARGUMENTS

Although the Defendant did not officially change his domicile, he did reside in the

marital relationship within the state as required by UCA §78-27-24(6) in the following particulars:

- (1) He resided in the State of Utah while the parties were married and he worked in the State of Utah;
- (2) He resided with the Plaintiff for brief periods of time while she lived in the State of Utah since 1995.

The irreconcilable differences that exist between the parties and resulted in the entry of a Decree of Divorce included not only infidelity, which the Plaintiff is unable to prove actually occurred within the boundaries of the State of Utah, but the Defendant's use and abuse of alcohol, which Plaintiff did testify at trial occurred within the State of Utah as recently as since 1995. Therefore, Plaintiff maintains that at least some of the "acts" giving rise to the Plaintiff's claim of irreconcilable differences arising out of Defendant's alcohol use were committed in this state.

Since the Defendant did reside in the marital relationship within this state and acts giving rise to the Plaintiff's claim for divorce based on irreconcilable differences were also committed in this state, the Trial Court had jurisdiction over Defendant and should not have dismissed the Plaintiff's Complaint for want of in personam jurisdiction.

ARGUMENT

Utah Code Annotated §78-27-24(6) provides as follows:

"Any person . . . who . . . does any of the following enumerated acts, submits himself, . . . to the jurisdiction of the courts of this state as to any claim arising from: (6) with respect to actions of divorce, separate maintenance, or child support, having resided, in the marital relationship, within this state notwithstanding subsequent departure from the

state; or the commission in this state of the act giving rise to the claim, so long as that act is not a mere omission, failure to act, or occurrence over which the Respondent had no control; . . .”

If the Defendant “resided, in the marital relationship, within this state” or if Defendant committed any act in this state giving rise to Plaintiff’s claim, then this Court has jurisdiction over the Defendant.

A. DEFENDANT RESIDED IN THE MARITAL RELATIONSHIP IN THIS STATE.

Plaintiff does not maintain that the Defendant was an “actual and bonafide resident” of this state, as would be required under UCA §30-3-1(2) if Plaintiff were seeking to have this Court exercise jurisdiction over the subject matter of the case based on Defendant’s “actual and bonafide” residency. There is clearly a difference between actual and bonafide residence of the county in which the proceeding is commenced in order to confer subject matter jurisdiction and “residence in the marital relationship” in order to confer jurisdiction over a party. The Fifth District Court has jurisdiction over the Defendant because he resided in this state while working here for periods of time during the parties’ marriage. He did so on several occasions during the parties’ marriage in conjunction with his employment and while the Plaintiff was attending school in Utah County.

The terms “resided” and “marital relationship” will be considered separately in analyzing whether Defendant’s conduct satisfies the minimal contacts required for in personam jurisdiction in a divorce proceeding.

The term “marital relationship” means nothing more than that the parties are married i.e., had the relationship of husband and wife, at the time the event occurred. In essence, this means

that if a party resided in the State of Utah prior to being married and never resided in the State of Utah while the parties' were married this Court would not have jurisdiction over that party since the residence in the State of Utah had not occurred during the marital relationship i.e. while the parties' were married.

In this instance, the acts which the Plaintiff claims give rise to this Court's exercise of jurisdiction over the Defendant, including Defendant's residence in this state, did occur while the parties' were married i.e. during the marital relationship.

The next key term that needs to be considered is the term "reside."

Had the Utah State legislature intended that a party have been an "actual and bonafide resident" of the State of Utah during the marital relationship in order for this Court to assert jurisdiction the legislature clearly could have done so. However, the legislature, instead, chose to grant jurisdiction over a party if he had resided, during the marriage, in this State. The distinction between "actual and bonafide resident, " required under UCA §30-3-1 to confer subject matter jurisdiction and "residing" in the state for a period of time in order to confer in personam jurisdiction is not insignificant.

There is a distinction between "actual and bonafide residence" and residence in the state.

In 25 Am Jur 2d Domicile §4 the commentator notes that:

"'Residence' may mean a temporary, permanent, or transient character; or it may means one's fixed abode, depending on the particular object of it's use. In determining it's meaning as it is used in particular pieces of legislation, it's context within the statute and the legislative purpose are examined. Thus, in some instances, residence requires mere physical presence, while in others something more than physical presence is required and the element of intent becomes material, even where "residence" is not deemed to be the equivalent of a "domicile."

In 25 Am Jur 2d Domicile § 6 the commentator notes as follows:

"A distinction between "legal residence" and "actual residence" has been recognized.

“Actual residence” has connotations of a more temporary character, while the phrase “legal residence” is sometimes used as the equivalent of domicile.”

The term “actual and bonafide resident” is more akin to the “legal residence” referred to in Am Jur 2d Domicile. On the other hand, the legislature’s use of the term “resident,” without any limitations, is more like the term “actual residence” as used in the Am Jur 2d Domicile article. The legislature quite clearly intended that a party reside in the State of Utah during the marriage, i.e., live in this state, not that he have attained the status of “legal residence” in order to confer in personam jurisdiction.

In *Snelling v. Gardner*, 590 N.E. P.2d 330 (Ohio App. 1990) the Ohio Court of Appeals noted, in reversing a trial court’s failure to assume in personam jurisdiction under URESA that

“The trial court, however, appears to have grounded its decision upon an assumption that respondent’s residence is equivalent to respondent’s domicile. Although the terms “residence” and “domicile” are frequently used interchangeably, they in fact are distinctly different, albeit related, concepts. [citations omitted] ‘Domicile’ has most often been defined as a legal relationship between a person and a particular place which contemplates two factors: first, residence, at least for some period of time and, second, the intent to reside in that place permanently or at least indefinitely. [citations omitted]

Thus, ‘residence’ is encompassed within the definition of ‘domicile.’ An important distinction, however, lies in the fact that, while a person can only have one domicile, he generally may have more than one residence.” [citations omitted] *Id at 332-333*.

In *Snelling* the trial court concluded that, while the State of Ohio was not the respondent’s domicile he was capable of having multiple residence and that he had resided in the State of Ohio.

Plaintiff does not claim that the Defendant was domiciled in the State of Utah. However, just as the respondent in *Snelling* resided in the State of Ohio, the Defendant in this proceeding resided in the State of Utah in the marital relationship.

The Utah State Legislature clearly intended that the Defendant in a divorce proceeding

have some contact with this state more than just passing through the state or staying overnight on vacation. However, to live or reside in the state while working here for weeks at a time, even if a party retained his legal domicile in another state, would satisfy that requirement.

In this case the Defendant resided in the State of Utah for periods of time during the parties' marriage while he worked on various projects in conjunction with his full-time employment. Joint residency in this state does not appear to be required by the statute i.e. the statute does not appear to require that the parties have slept in the same bed in this state. However, on occasion when the Plaintiff did come and reside with the Defendant in this state the Plaintiff and Defendant did share the same bed and maintain a marital household.

The Defendant clearly had the benefits of the laws of the State of Utah while he resided in this state in conjunction with his employment. Although he may never have acquired the status of legal domicile, his actual residence in this state is sufficient to confer jurisdiction over him in this divorce proceeding.

B. THE ACTS GIVING RISE TO PLAINTIFF'S CLAIM OCCURRED IN THIS STATE.

1. Marital Infidelity

Plaintiff claims that the irreconcilable differences that exist arose out of, among other things, Defendant's marital infidelity and alcohol abuse. Plaintiff could not prove that the Defendant committed sexual intercourse within the boundaries of the State of Utah. However his instances of infidelity did occur while he was working in the State of Utah and, therefore, the irreconcilable differences arose while he was in this state, even if the actual acts of sexual intercourse were consummated in a neighboring state. Therefore, although Plaintiff might not be able to prove that the Defendant engaged in sexual intercourse within the boundaries of the State

of Utah, if the infidelity occurred during a period of time that Defendant was residing in the State of Utah, working on projects in this State, and the grounds for divorce are irreconcilable differences, arising out of, among other things, the Defendant's marital infidelity, a trial court in Utah should assert jurisdiction based on UCA §78-27-24(6). That statute should not be restricted so as to protect a person from the jurisdiction of a court of this state where the party is residing in the State of Utah at the time the marital infidelity occurred but steps across the state line, if that is the case, in order to consummate a specific act of infidelity.

2. ALCOHOL USE

UCA §78-27-24(6) "indicates that this court has jurisdiction over a person who commits in this state . . .the act giving rise to the claim, . . ." In this instance as in many divorces it is impossible to isolate one specific act that created the irreconcilable differences. There are typically numerous acts that eventually result in a conclusion that the differences between the parties are irreconcilable. In this instance, the Defendant's use and abuse of alcohol is an act, or acts, that occurred on numerous occasions but also which occurred in the State of Utah.

The evidence before the Court in this instance established that the Defendant had committed the act of alcohol use and that this act, or these acts, created one of the irreconcilable differences which resulted in this divorce. Defendant had committed that act, or acts, in the State of Utah. Since that act, the use of alcohol, occurred within this state and that is the act or, at least, one of the acts giving rise to the Plaintiff's claim for irreconcilable differences, and the trial court granted the Plaintiff a divorce on the grounds of irreconcilable differences, the trial court had jurisdiction over the Defendant and should have heard the remainder of the pending case.

Since the act or acts which resulted in irreconcilable differences were committed by the

Defendant within the State of Utah, the trial court erred when it dismissed the Plaintiff's Complaint for lack of in personam jurisdiction.

CONCLUSION

Although the Defendant did not officially change his domicile or full-time residence, the Defendant did reside in marital relationship within the State of Utah. He worked for extensive periods of time in the State of Utah while maintaining a domicile in the State of Idaho. He resided in Utah during those periods of time. The Defendant also resided with the Plaintiff for brief periods of time since 1995 while she was living in Provo, Utah and attending school. The trial court had jurisdiction over the Defendant based on his having resided in the marital relationship in the State of Utah.

The irreconcilable differences that arose between the parties arose because of acts committed by the Defendant while he was residing in the State of Utah. Although the Plaintiff could not prove to the trial court that the sexual act that evidenced the Defendant's marital infidelity occurred within the boundaries of the state, she did present testimony which was accepted by the trial court that the act of alcohol use and abuse occurred within the boundaries of the State of Utah and that the alcohol use and abuse was an irreconcilable difference that resulted in the Plaintiff's seeking a Decree of Divorce.

The trial court had jurisdiction over the Defendant both because the Defendant had resided in the marital relationship within the State of Utah and because the Defendant had committed acts in the State of Utah giving rise to the Plaintiff's claim for a divorce based on irreconcilable differences and, therefore, the trial court should not have dismissed the Plaintiff's Complaint. The trial court's Order dismissing the Plaintiff's Complaint should be set aside and the Plaintiff should be permitted to proceed to a trial on the merits in the State of Utah to resolve

the remaining issues between the parties.

DATED this 24 day of March, 1999.



G. Michael Westfall
of and for
GALLIAN, WESTFALL, WILCOX & WRIGHT

I, G. Michael Westfall, certify that on March 3, 1999, I served two copies of the attached Brief of Appellant upon LaMar J. Winward, the counsel for the Appellee in this matter, by mailing it to him by first class mail with sufficient postage prepaid to the following address:

LaMar J. Winward
150 North 200 East, #204
St. George, Utah 84770



Attorney of Record

ADDENDUM

Partial Transcript of July 17, 1998 Hearing i

Order of Dismissal ix

Findings of Fact and Conclusions of Law In Re: Bifurcated Decree of Divorce xi

1 IN THE FIFTH JUDICIAL DISTRICT COURT
2 WASHINGTON COUNTY, STATE OF UTAH
3 (ST GEORGE DEPARTMENT)
4 =====

5 MARGARET LUCILLE LENT,) DIVORCE HEARING
6)
6 Plaintiff,) Case No. 97450000368 DA
7)
7 vs.)
8)
8 NORMAN FLOYD LENT,) Hon. JAMES L. SHUMATE
9)
9 Defendant.) APPEAL #981568
10 -----
11)

11 ORIGINAL

12 BE IT REMEMBERED that on the 17th day of July,
13 1998 this matter came on regularly for hearing
14 before the above-named court.

15 WHEREUPON, the parties appearing and
16 represented by counsel, the following proceedings
17 were held:

18 A P P E A R A N C E S

19 FOR THE PLAINTIFF:

20 G. MICHAEL WESTFALL, ESQ.
21 59 SOUTH 100 EAST
22 ST. GEORGE, UT 84770

23 FOR THE DEFENDANT:

24 LAMAR J. WINWARD, ESQ.
25 150 NORTH 200 EAST #204
ST GEORGE UT 84770

FILED
Utah Court of Appeals
NOV 02 1998
Julia D'Alesandro
Clerk of the Court

981568-CA

PENNY C. ABBOTT, CSR - LIC. 22-102811-7801
10445 SOUTH 600 EAST, SALEM, UT 84653
PHONE: 423-1009

Addendum i

1 any difficulty in allowing Ms. Lent to testify
2 right now as to grounds and jurisdiction and
3 granting her her divorce?

4 MR. WINWARD: I would suggest that that
5 happen immediately and then following the entry of
6 the decree, the balance of the issues be dismissed
7 pursuant to Court's order.

8 THE JUDGE: And then once she is divorced
9 then she can go to Idaho as a separate party and
10 sue for the dissolution of the marital assets at
11 that point. It's a peculiar situation. She
12 can't ask for divorce up there but I'll bet she
13 could ask for the property interests.

14 MR. WESTFALL: May I have my client sworn
15 then and testify to that issue?

16 THE JUDGE: Mrs. Lent, would you please
17 face the clerk, raise your right hand and be
18 sworn?

19 WHEREUPON,

20 MARGARET LUCILE LENT
21 having been placed under oath by the clerk of the
22 court and sworn to testify truthfully in this
23 matter, upon examination testified as follows:

24 THE JUDGE: Ma'am, I'm not going to make
25 you come up to the witness stand but you can have a

PENNY C. ABBOTT, COURT REPORTER

1 seat right there if you would.

2 EXAMINATION BY THE JUDGE.

3 THE JUDGE: Would you please state your
4 full name?

5 A. Margaret Lucile Lent.

6 THE JUDGE: Mrs. Lent, you have been an
7 actual and bona fide resident of Washington County,
8 State of Utah for at least three months before May
9 14th of 1997. Is that correct?

10 A. That's correct.

11 THE JUDGE: All right. Now Mrs. Lent,
12 you were married to Mr. Norman Floyd Lent on March
13 27th of 1954 in Bingham County, Idaho. Is that
14 correct?

15 A. That's correct.

16 THE JUDGE: And since that time you have
17 remained in the relationship of husband and wife.
18 Is that correct?

19 A. That's correct.

20 THE JUDGE: During the term of your
21 marriage Mr. Lent has behaved in a fashion making
22 it impossible for the marriage relationship to
23 continue having carried on the abuse of alcohol
24 such that you simply cannot remain married to him,
25 as well as the other problems that you have had

PENNY C. ABBOTT, COURT REPORTER

PAGE 13

Addendum III

1 with he and other women. Is that correct?

2 A. That's correct.

3 **THE JUDGE:** All right. The Court finds
4 that there is jurisdiction to grant a decree of
5 divorce to Margaret Lucile Lent from Norman Floyd
6 Lent. Adequate jurisdiction has been laid and
7 grounds are laid. The decree of divorce shall
8 become final and effective immediately upon signing
9 and placing in the file.

10 Mrs. Lent, I understand that it looks very
11 peculiar to you that you can get divorced here but
12 you can't get an order that takes any effect
13 there. But I wish you the very best in getting
14 this completely finished out.

15 **MR. WESTFALL:** There are a couple of
16 questions I would like to ask if the Court would
17 allow.

18 **THE JUDGE:** Certainly, Counsel.

19 **EXAMINATION BY MR. WESTFALL**

20 **MR. WESTFALL:** Mrs. Lent, during the
21 period of time that-- How long have you lived in
22 the State of Utah?

23 A. Since July 1st, 1950. Or excuse me, 1995.

24 Q. And during the period of time that you
25 have lived in the State of Utah has the defendant,

PENNY C. ABBOTT, COURT REPORTER

1 Norman Floyd Lent, have you seen him in the State
2 of Utah?

3 A. Yes.

4 Q. Approximately how many occasions has he
5 been in the State of Utah?

6 A. Can I back up and say that I also lived in
7 the State of Utah from 1989 to 1993. And in that
8 period of time I've seen him probably 10 times.

9 Q. Okay. And since 1995 have you seen him--

10 A. Yes.

11 Q. -- in the State of Utah?

12 A. Yes.

13 Q. Has, during either of those periods of
14 time has he spent any time in your home?

15 A. Yes, he has.

16 Q. Has he stayed overnight in your home?

17 A. Yes.

18 Q. Have you shared-- You haven't, you
19 haven't shared the same bedroom though?

20 A. That's right.

21 Q. He has slept on the couch or somewhere
22 else in the home. Is that correct?

23 A. Yes.

24 Q. You've indicated that one of the
25 irreconcilable differences that arose during your

1 marriage was Mr. Lent's consumption of alcohol. Is
2 that correct?

3 A. That's correct.

4 Q. And in that context or with regard to the
5 consumption of alcohol have there been instances
6 when he has visited you in the State and he has
7 consumed alcohol?

8 MR. WINWARD: Your Honor, I'm going to
9 object because this has never been made a part of
10 the pleadings and for the first time is raised
11 today. And the divorce has already been granted.

12 THE JUDGE: I understand your argument,
13 Counsel. But I am going to allow Mr. Westfall to
14 preserve his record.

15 MR. WESTFALL: Thank you, Your Honor.

16 THE JUDGE: Go ahead, Counsel.

17 MR. WESTFALL: Thank you. Have there
18 been instances when, during the times that Mr. Lent
19 has visited you in the State of Utah that he has
20 consumed alcohol in the State of Utah?

21 THE WITNESS: Yes.

22 MR. WESTFALL: And did his consumption of
23 alcohol in the State of Utah on any of those
24 occasions contribute toward your irreconcilable
25 differences that leads you to believe that this

PENNY C. ABBOTT, COURT REPORTER

1 marriage needs to be terminated?

2 THE WITNESS: Yes.

3 MR. WESTFALL: That's all I have.

4 THE JUDGE: All right. Mrs. Lent, I
5 hope I've been able to do some good for you
6 today. Good luck to you, ma'am.

7 MR. WINWARD: And Your Honor, I would
8 just lay this record because this issue, it's the
9 first time it has been raised I have not had an
10 opportunity to discuss alcohol consumption with
11 Mr. Lent. He is not here for this hearing to
12 defend himself on that point.

13 THE JUDGE: You have your record.
14 Counsel. All right.

15 WHEREUPON, the hearing was concluded.

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FILED
DISTRICT COURT

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COUNTY

BY AA

LaMAR J WINWARD - A3528
Attorney for Respondent
150 North 200 East, Suite 204
St. George, UT 84770
Telephone: (435) 628-1191

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

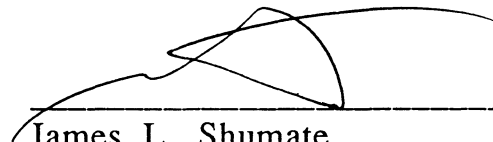
MARGARET LUCILE LENT,)	
)	ORDER OF DISMISSAL
Petitioner,)	
vs.)	
)	
NORMAN FLOYD LENT,)	
)	Civil No. 974500368
Respondent.)	Judge James L. Shumate

Respondent's motion to dismiss came on for hearing on July 17, 1998, before the Honorable James L. Shumate, District Court Judge. Petitioner was present personally and represented by counsel, G. Michael Westfall. Respondent was represented by counsel, LaMar J Winward. The Court having reviewed the file, the affidavits of the parties, having heard the arguments of counsel, and being fully advised in the premises, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that respondent's motion should be granted as to all issues except for the issue of divorcing the parties themselves. Therefore, the petitioner's

complaint, except as to the issue of divorce itself, is hereby dismissed.

DATED this 3 day of ^{Aug}~~July~~, 1998.

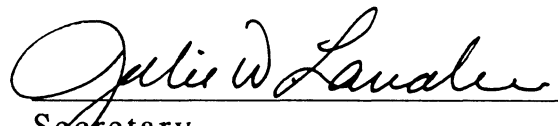


James L. Shumate
District Court Judge

MAILING CERTIFICATE

This is to certify that I mailed a true and exact UN-signed copy of the above and foregoing ORDER OF DISMISSAL, postage prepaid, on this 23rd day of July, 1998, to:

Mr. G. Michael Westfall
59 South 100 East
St. George, UT 84770



Secretary

GALLIAN, WESTFALL, WILCOX & WRIGHT
G. MICHAEL WESTFALL #3434
59 South 100 East
St. George, UT 84770
(435) 628-1682

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STY

M

Attorney for Plaintiff

IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR

WASHINGTON COUNTY, STATE OF UTAH

MARGARET LUCILE LENT,

Plaintiff

vs.

NORMAN FLOYD LENT,

Defendant

)

)

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**FINDINGS OF FACT AND
CONCLUSIONS OF LAW IN RE:
BIFURCATED DECREE OF DIVORCE**

Civil No. 974500368

Judge James L. Shumate

The above entitled matter came before the Court for hearing on Plaintiff's Motion to Bifurcate on Friday, July 17, 1998. Plaintiff was present in person and represented by her counsel of record, G. Michael Westfall of the law firm of GALLIAN, WESTFALL, WILCOX & WRIGHT. The Defendant was not present. However, he was represented by his counsel of record, LaMar J. Winward. The Court granted the Plaintiff's Motion to Bifurcate and proceeded to take evidence on the issue of jurisdiction and grounds to support the Petitioner's Complaint for divorce.

Consistent with the evidence presented the Court hereby makes and enters the following:

FINDINGS OF FACT

1. The Plaintiff is an actual and bona fide resident of Washington County, Utah, was an actual and bona fide resident of Washington County, Utah, at the time these proceedings were

commenced, and had been a resident of Washington County, Utah, for at least three months next prior to the commencement of these proceedings.

2. The Plaintiff and Defendant are wife and husband, having been married on March 27, 1954, in Riverside, Bingham County, Idaho.

3. During the parties' marriage there have developed differences between them which are irreconcilable. Those irreconcilable differences include the Defendant's infidelity and his use and abuse of alcohol.

4. The parties separated in January of 1989 when the Plaintiff moved to Utah to further her education and not have lived together as husband and wife since that time.

5. The parties have attempted to reconcile their differences by visiting each other during the time of their separation. Despite their efforts to reconcile, irreconcilable differences remain. The Plaintiff is therefore entitled to a Decree of Divorce from the Defendant on the grounds of irreconcilable differences, the same to become final and effective immediately upon signature and entry.

From the foregoing Findings of Fact the Court makes and enters the following:

CONCLUSIONS OF LAW

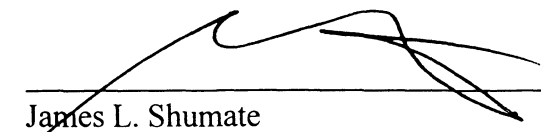
1. This Court has jurisdiction over the parties marriage by reason of the Plaintiff's residence in the State of Utah consistent with UCA §30-3-1 and, therefore, has the authority to grant a Decree of Divorce to the Plaintiff, severing the bonds of matrimony between the Plaintiff and the Defendant.

2. The Plaintiff is entitled to a Decree of Divorce from the Defendant on the grounds of

irreconcilable differences, the same to become final and effective immediately upon signature and entry.

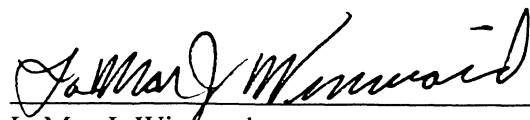
DATED this 10 day of Aug, 1998.

BY THE COURT:



James L. Shumate
District Court Judge

APPROVED AS TO FORM AND CONTENT:



LaMar J. Winward
Attorney for Defendant