

1998

George R. Bradford v. Andrea O. Bradford, James A. Demita : Brief of Appellant

Utah Court of Appeals

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IN THE FOURTH JUDICIAL DISTRICT COURT

COUNTY OF UTAH, STATE OF UTAH

**OF APPEALS
BRIEF**

GEORGE R. BRADFORD,

Plaintiff,

v.

UTAH
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DOCKET NO.

981745

ANDREA O. BRADFORD and JAMES
A. DEMITA,

Civil No. 974401237CS

Defendants.

_____/

IN THE UTAH COURT OF APPEALS

Case No. 981745-CA

BRIEF OF APPELLANT

APPEAL

APPEAL FROM FOURTH DISTRICT COURT, UTAH COUNTY

JUDGE GUY R. BURNINGHAM

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Argument priority classification from Utah R. App. P.29(b)(15)

FILED

Utah Court of Appeals

MAR 16 1999

Julia D'Alesandro
Clerk of the Court

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IN THE FOURTH JUDICIAL DISTRICT COURT

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JURISDICTION

The Court of Appeals has jurisdiction in this matter pursuant to Section 78-2a-3(2)(I) of the Utah Code.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. Did the Court abuse its discretion and incorrectly apply the law when it concluded that Mr. Bradford (hereafter "husband") was Mrs. Bradford's (hereafter "wife") creditor because wife should have reasonably believed that husband might file a divorce action and that he would probably claim the home and marital residence as his separate property.
- II. Did the Court abuse its discretion when it awarded the marital residence solely to husband because it had been inherited by him during the marriage despite finding that husband had deeded a joint tenancy interest in the property to wife eight (8) years prior to the divorce and failing to find that husband intended wife to own one-half of the marital residence.
- III. Did the Court abuse its discretion when it inequitably divided all of the property belonging to husband and wife such that husband received \$186,741.00 worth of marital property and wife received only \$6,741.00 worth of marital property.

The grounds for seeking review of each of the above issues is that the Trial Court abused its discretion when it failed to make adequate findings of fact to support its conclusions of law and orders both with respect to the fraudulent conveyance and the apportionment of marital property. The Trial Court further abused its discretion and misapplied the law by failing to recognize the validity of the transfer of wife's joint tenancy

interest in the property to her son and/or by failing to award her her one-half of the marital residence.

The standard of appellate review is clear and prejudicial abuse of discretion as set forth in Rasband v. Rasband, 751 P.2d 1331 (Utah 1988).

CONSTITUTIONAL PROVISIONS, ETC.

With respect to the issue of fraudulent conveyance, the Uniform Fraudulent Transfer Act, as set forth in Section 25-6-1 et seq., of the Utah Code Annotated is determinative. A copy of said Act is attached hereto as Exhibit "A".

STATEMENT OF THE CASE

This case came before the Fourth District Court on a Complaint for Divorce and Counterclaim for fraudulent conveyance. The matter was tried to the Honorable Steven L. Hansen on March 4, 1998, and Findings of Fact and a Decree of Divorce were entered on July 14, 1998. Thereafter, defendants filed a timely Motion to Alter and Amend Findings of Fact and Conclusions of Law and Decree and the Court denied said Motion September 4, 1998. This appeal followed.

STATEMENT OF FACTS

1. Mr. Bradford and Mrs. Bradford were married in June of 1985 in Provo, Utah, and have been husband and wife since that date. (Findings of Fact No. 1, page 152, Record.)

2. Both parties have been married before, making this a second marriage for both parties. (Findings of Fact No. 4, page 152, Record.)

3. No children were born of this marriage, but each had adult children from prior marriages. (Findings of Fact No. 5, page 151, Record.)

4. Mr. Bradford is 63 years old and Mrs. Bradford is 65 years old. (Findings of Fact No. 6, page 151, Record.)

5. At the time of the parties' marriage, Mrs. Bradford had limited assets other than her personal property and some property in Indianola which eventually sold for \$5,000.00. However, Mr. Bradford gave Mrs. Bradford the funds whose returns were eventually used to pay off the debt on the Indianola land. Mrs. Bradford kept the returns on the sale of the Indianola land for herself. (Findings of Fact No. 7, page 151, Record.)

6. Neither Mr. nor Mrs. Bradford are at a point in their life where they could be retained or develop new skills for purposes of substantially increasing their income. (Findings of Fact No. 12, page 151, Record.)

7. Mr. and Mrs. Bradford have lived in the home in Spanish Fork, Utah, since the marriage. This home was paid for and given to Mr. Bradford as part of his inheritance before the marriage. Mr. Bradford was born and raised in this house. This house has been owned by Mr. Bradford's family for many generations and has been passed down within the family from generation to generation. (Findings of Fact No. 13, page 151, Record.)

8. The Court found that since the marriage of the parties that there have been improvements to the house in that the roof was repaired, a furnace was added, and the septic system had been repaired and the home was hooked up to city water. (Findings of Fact No. 14, page 150, Record.)

9. Although Mrs. Bradford claimed to have been an integral part of the improvements, the Court found that she merely made phone calls and arrangements to have the work completed. Any other projects, such as painting, which she did were not improvements but along the lines of general repair and maintenance of the home. (Findings of Fact No. 15, page 150, Record.)

10. The repairs and improvements were paid for through funds which Mr. Bradford received from a settlement with Geneva Steel. These funds were accumulated prior to the marriage. (Findings of Fact No. 16, page 150, Record.)

11. It is undisputed that the house is worth approximately \$180,000.00. (Findings of Fact No. 17, page 150, Record.)

12. Mr. Bradford intended to give Mrs. Bradford one-half of the marital residence property when he deeded her a joint tenancy interest in it and did so because he was happy with her, wanted to care for her, and loved her. (Record page 190, Trial transcript at page 56, line 11 through 13 and 25, and page 57, line 1 through 12.)

13. Mr. Bradford deeded by way of warranty deed the property back to he and Mrs. Bradford as "joint tenants with full rights of survivorship and not as tenants in common" approximately four years after they had married. (Findings of Fact No. 18, page 150, Record.)

14. In 1992, Mr. Bradford filed for divorce from Mrs. Bradford. At that time, Mr. Bradford requested that the home and real property be awarded to him. This divorce action was dismissed in 1993. (Findings of Fact No. 19, page 150, Record.)

15. Since 1992, Mr. Bradford and Mrs. Bradford have had many arguments and Mr. Bradford has threatened to divorce Mrs. Bradford on many occasions. (Findings of Fact No. 20, page 150, Record.)

16. In 1996, the parties began to jointly develop land for rezoning, division into lots and sale. They hired LSI, Inc., to survey the ground, prepare a subdivision plat and perform other pre-sales work. Mr. DeMita was to receive 25% of the profits from the sale for his assistance in developing the property. (Findings of Fact No. 23, page 149, Record.)

17. In July of 1996, Mr. Bradford came home to various engineers at his home. Although the reasons for the ensuing argument with Mrs. Bradford are in dispute, Mr. Bradford was upset with the way the development was proceeding. This particular argument was more severe than prior arguments and divorce was discussed. (Findings of Fact No. 24, page 149, Record.)

18. The parties continued to take action to develop the subject property until May of 1997. (Record page 190, Trial transcript at page 61, line 5 through page 73, line 25 and page 75, line 19 through page 76, line 23.)

19. On August 8, 1996, Mrs. Bradford by way of Quit-Claim Deed deeded her share of the home to her son, James DeMita. Mr. DeMita gave his mother \$10.00 for the deed. (Findings of Fact No. 24, page 149, Record.)

20. When Mrs. Bradford deeded her half of the property to Mr. DeMita, she did so because she was concerned that if she predeceased him, her children would not get any of her interest in the property and she was not concerned at the time about Mr. Bradford divorcing her. (Record page 190, Trial transcript at page 30, line 16 through 24.)

21. Mrs. Bradford owed nothing to Mr. Bradford and was not indebted to him before or after she quit claimed the subject property to her son. (Record page 190, Trial Transcript at page 78, lines 2 through 7.)

22. The Court found that \$10.00 was not equivalent value of one-half of the house and property. (Findings of Fact No. 26, page 149, Record.)

23. The Court found that the transfer of the Quit-Claim Deed was made to an "insider" according to Utah law as Mr. DeMita is Mrs. Bradford's son. (Findings of Fact No. 27, page 149, Record.)

24. Mrs. Bradford claimed that the transfer to Mr. DeMita was for estate planning purposes. However, she acknowledged that she only deeded the property to him and not her other five children, and that she did not have nor did she prepare a will at that time nor were instructions given regarding the disposition of the property. (Findings of Fact No. 28, page 149, Record.)

25. After the transfer, Mrs. Bradford and Mr. DeMita continued to live in the home as they had before. (Findings of Fact No. 29, page 149, Record.)

26. Neither Mrs. Bradford nor Mr. DeMita told Mr. Bradford of the Quit-Claim Deed. Mr. Bradford subsequently discovered the deed when his daughter went to the County Recorder's Office. Mr. Bradford's daughter went to the recorder's office to verify that the home and property had been rezoned for development a Mr. DeMita had indicated to them. The daughter then discovered the Quit-Claim Deed and that in actuality the property had not been rezoned. (Findings of Fact No. 30, page 149, Record.)

27. Soon after the discovery of this information, Mr. Bradford filed for this divorce action. The time between the granting of the Quit-Claim Deed in August of 1996 and the filing of divorce was approximately eleven months. (Findings of Fact No. 31, page 148, Record.)

28. The transfer of Mrs. Bradford's portion of the home to her son left her in possession of only her personal property, which has limited value. Thus, this transfer constituted a transfer of substantially all of her assets. (Findings of Fact No. 32, page 148, Record.)

29. When asked on cross examination whether she could afford to pay Mr. Bradford one-half of the value of the property, Mrs. Bradford indicated that she did not have the funds and would have to look to family members to assist her if she were obligated to pay this. (Findings of Fact No. 33, page 148, Record.)

30. At the time of the Quit-Claim Deed, Mrs. Bradford should have reasonably believed that Mr. Bradford might file a divorce action and that he would probably claim the home and property as his before the marriage as he had done so in the divorce action which he filed in 1992. (Findings of Fact No. 34, page 148, Record.)

31. The Court found that the house and property is, in fact, not partitionable as it contains a residence, road and river frontage. If an interest were to be conveyed the house would have to be refinanced or sold. (Findings of Fact No. 35, page 148, Record.)

32. Even though Mr. Bradford placed Mrs. Bradford's name on the new deed to the house, the Court found that the house and property belonged to Mr. Bradford as he inherited this from his father before the marriage. This is consistent with previous Utah

Supreme Court Decisions wherein the parties married later in life and one of the parties had brought into the marriage a significant asset which they later deeded to the other spouse and subsequently were divorced. (See Georgedes v. Georgedes, 627 P.2d 44 [Utah 1981]; Jespersion v. Jespersen, 610 P.2d 326 [Utah 1980].)

SUMMARY OF ARGUMENT

1. A person asserting a fraudulent conveyance must be a creditor of the person claimed to have fraudulently conveyed the property. The trial court failed to find that Mrs. Bradford was a creditor of Mr. Bradford's. The transfer of real property between spouses is presumed to be a gift, it is not impliedly limited to the duration of the marriage. There was no evidence at trial to support Mr. Bradford's transfer of the subject property to Mrs. Bradford in joint tenancy was anything but a gift nor any evidence to support a finding that Mrs. Bradford was a creditor of Mr. Bradford's. Therefore, the threshold element of fraudulent conveyance fails.

2. Generally, pre-marital property acquired by one spouse through inheritance or gift is considered separate property and awarded to that spouse upon divorce unless one of the exceptions to the rule is met. One of the exceptions occurs when the acquiring spouse has made a gift of an interest in the subject property to the other spouse, in which case the property is then marital property. Mr. Bradford's quit claiming a joint tenancy interest to Mrs. Bradford in the subject property is presumed to be a gift and thereby marital property. The trial court's finding that the subject property was Mr. Bradford's separate property is neither supported by fact or law and should be reversed.

3. The trial court's decision of the real and personal property owned by the parties during their marriage was not equitable and there were no findings of fact to support the Court's inequitable division of said property. This Court has held that the overriding consideration in dividing property between parties to a divorce is that the ultimate division be equitable, and further, that marital property encompasses all of the assets of every nature possessed by the parties, whenever obtained and from whatever source derived. Equity requires that an unemployed 65 year old woman of a 12 year marriage be awarded more than \$3,500.00 of a \$187,000.00 marital estate.

ARGUMENT

The trial court declared that wife's quit claiming of her one-half joint tenancy interest in the marital residence to her son was a fraudulent conveyance and reverted appellant, James DeMita's property right in said property to husband. Appellants assert that the trial court was mistaken in declaring that a fraudulent conveyance had taken place because the trial court failed to make necessary findings to support that conclusion and further that the court misapplied the facts to the law.

Although the trial court made findings that the quit claim deed transfer was to an insider and that the transfer left wife insolvent, it failed to make a finding that husband was a creditor of wife's or that wife was indebted to husband. The Utah Supreme Court has repeatedly held that the threshold question to be answered in a fraudulent conveyance case is whether a party claiming a fraudulent conveyance is a creditor of the party who has allegedly fraudulently transferred property. It has stated that a creditor must prove by clear and convincing evidence that claimant is a creditor. Territorial Savings & Loan v. Baird, 781

P.2d 452, 458 (Utah 1989), Furniture v. Deamer, 680 P.2d 398, 399 (Utah 1984), and Meyer v. General Amer. Corp., 569 P.2d 1094, 1096 (Utah 1977). Moreover, the Arizona Supreme Court in Clark v. Rossow, 657 P.2d 903, 904 (Az. 1982) stated that the Fraudulent Conveyance Act does not itself create a new claim. If a claim does not exist outside of the Act, there is no remedy. Utah's Uniform Fraudulent Transfer Act only refers to debtors and creditors and specifically states at Section 25-6-5, U.C.A. under the caption "Fraudulent Transfer" "(1) a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, . . ." A non-creditor of a person transferring property cannot assert a claim under the Fraudulent Transfer Act to set aside the conveyance of property by a party who is not his debtor.

In the present case, husband deeded property that was the marital residence and that husband owned separately prior to the marriage to himself and wife in joint tenancy approximately eight years prior to commencement of the divorce proceedings. Husband's testimony at trial admits that wife owed him nothing and that she was not indebted to him before or after she gave her son the Quit Claim Deed to one-half of the marital residence.

If the Fraudulent Conveyance Act by itself does not make husband the creditor of wife and if husband admits that wife never owed him any money, then husband's only basis for being a creditor under the Fraudulent Transfer Act is that he wants the one-half of the property that he deeded to his wife back. "The transfer of once separate property into joint names of both spouses is deemed a gift." (41 C.J.S. Section 103). "An interspousal gift operates as a transfer to the donee spouse of a separate property interest." (41 C.J.S. Section 102). "A gift from a husband to his wife confers on the wife good title . . ., and is not

impliedly limited to the duration of the marriage." (41 C.J.S. Section 102). "A gift from a wife to her husband is binding as a transaction between other persons The husband cannot be compelled to return the money or property given nor can the wife reclaim or recover it." (41 C.J.S. Section 102). "A husband, in conveying property to his wife, is presumed to intend that his act will have the affect that it purports to have on its face, and that he parts with all his interest in the property conveyed. Placing the separate property of one spouse into the joint names of both spouses creates the presumption that the property was transferred as a gift, which presumption is rebuttable by clear and convincing evidence to the contrary." (41 Am. Jur.2d Section 105). See also Kerley v. Kerley, 910 P.2d 279 (Nev. 1996).

There was no evidence or testimony offered at trial to establish that the marital residence deeded by warranty deed from husband to husband and wife in joint tenancy was other than a gift to wife and was intended to transfer a legal, non-revocable interest in it to her. Certainly husband put on no evidence that meets the clear and convincing standard required to overcome the presumption that the transfer was a gift as stated above.

If there is no clear and convincing evidence to overcome the presumption that husband gifted a one-half interest in the marital property to his wife, and there is no evidence to establish that this gift was for only the term of the marriage and was to be returned upon divorce, then there is no basis for the trial court to find that a fraudulent conveyance had occurred. Wife owned a one-half interest in joint tenancy in the marital residence and had a right to use it as she desired. Deeding it to her son for estate planning purposes was valid. Nothing placed into evidence by husband created a basis for a claim against wife to meet the

threshold requirements of the Uniform Fraudulent Transfer Act. Therefore, the court's determination that conveyance of this property to her son was fraudulent should be reversed and the court should declare that husband and appellant, Mr. DeMita, each own a one-half interest in said property in common.

If the Court determines that the trial court correctly concluded that wife had fraudulently transferred the marital residence to her son and properly set aside that conveyance, appellant wife argues that the trial court made incorrect, inadequate findings of fact to support its conclusion that the marital residence was husband's separate pre-marital property and abused its discretion when it awarded all of that property to him without offset.

The only finding of fact made by the trial court to support its conclusion that the marital residence was husband's separate property is set forth in Finding of Fact No. 36. That finding is conclusory in nature and provides no supporting facts that the residence is husband's separate property other than that husband inherited said property from his parents. There are citations to the cases of Georgedes v. Georgedes, 627 P.2d 44 (Utah 1981), and Jespersion v. Jespersen, 610 P.2d 326 (Utah 1980), but no reference is made in the finding of fact as to how these cases apply to support the trial court's finding. Moreover, these cases that were cited were found to be part of the confusing and conflicting cases concerning award of pre-marital, inherited or gifted property by the Utah Supreme Court in the case of Mortenson v. Mortenson, 760 P.2d 304 (Utah 1988), and should not have been applied in this case.

Mortenson, *id.*, states that the general law with respect to the division of property acquired by one spouse by inheritance or gift as well as the exceptions to this rule. The

general rule is that property acquired by one spouse by gift or inheritance is awarded wholly to that spouse upon divorce. The exceptions to the rule are, (a) when the other spouse has contributed to the augmentation, improvement, or operation of the property or has significantly cared for, protected, or preserved it, thereby acquiring an equitable interest in the property; (b) the property has been consumed or its identity lost through commingling or exchanges; (c) or where the acquiring spouse has made a gift of an interest in the property therein to the other spouse.

In the present case, the subject real property was obtained by the husband as a gift or inheritance from his parents. At the time it was acquired husband owned the property as separate property. Four years into the marriage, the husband gave wife a joint tenancy interest in said property by titling it in both of their names. As set forth in the prior argument concerning fraudulent conveyance, the titling of separate property by one spouse in joint tenancy to both of them is presumed to be a gift to that spouse. (41 C.J.S. Section 103). Thus husband's deeding and recording said deed over to himself and wife changed the nature of the property from separate to marital per exception no. 3 of Mortenson. After this conveyance it became husband's obligation to put on evidence that the conveyance was not a gift or that another bases existed to ignore the presumption that wife held legal title to a one-half interest in the property.

The testimony given at trial concerning the joint tenancy transfer of the marital residence supports wife's contention that it was intended as a gift to her by her husband. Husband's testimony was that it was his intention that wife get one-half of the property when he signed the joint tenancy deed. Wife testified that husband told her that the reason for

deeding the property to her was because he wanted her to have half of the marital residence. There is no testimony in the record refuting the statements that husband wanted wife to have one-half of the property nor refuting his intention to give it to his wife because he loved her, was happy with her and wanted to care for her. There is no evidence or testimony that even remotely suggests that the subject conveyance was for a purpose other than a gift or that the subject conveyance was intended to create anything but a one-half property interest for wife.

Additionally, the evidence establishes that husband and wife made joint efforts to develop the property into sellable lots and entered into contracts regarding this joint venture. Finally, wife acted toward the property as owning a separate one-half interest when she conveyed her one-half interest to her son.

The trial court abused its discretion by concluding that the marital residence was husband's separate property when it failed to find facts to support this conclusion and when the testimony and evidence supports the opposite conclusion that husband gifted a one-half interest in said property to his wife and, therefore, made the property marital property per the exceptions set forth in Mortenson.

Even if this Court determines that the trial court was correct in finding that the marital residence was husband's separate property, the trial court still abused its discretion in not awarding half of said property to wife. In the case of Watson v. Watson, 837 P.2d 1 (Utah App. 1992) the Court reminded us that the rule awarding property, gifts and inheritances as separate property to the party who brought said property into the marriage is not invariable. The Watson Court further stated "[I]n appropriate circumstances, one spouse may be awarded property which the other spouse brought into the marriage. The rationale behind

this exception to the general rule is that marital property encompasses all of the assets of every nature possessed by the parties, whenever obtained and from whatever source derived, and that the trial court may, in the exercise of its broad discretion, divide the property equitably regardless of its source or time of acquisition. Additionally, we have held that in dividing property between parties in a divorce action, the overriding consideration is that the ultimate division be equitable." (Citations omitted).

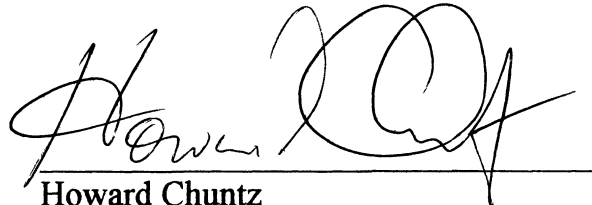
The Bradfords had little other property to divide other than the marital residence. Their marriage had been of 12 years duration (hardly short by today's standard), and they were both nearing retirement age at the time of the divorce. It is not equitable to remove an unemployed 65 year old woman from her home of 12 years with only a small sum for alimony and \$3,500.00 and leave husband with a home worth \$180,000.00 plus an equal sum of \$3,500.00. The Court made no finding to support this inequitable division and the facts that exist support wife's assertion that the trial court abused its discretion in failing to award her an equitable one-half interest in the marital residence.

CONCLUSION

It is clear from a review of the Trial Court's findings of fact that the conclusion to award husband the entire marital residence as his separate property is an error. Both the facts and the law cited support a finding that Mr. Bradford giving Mrs. Bradford a joint tenancy interest in the real property was a gift to her transferring an ownership interest in said property. There was no evidence to support any other intention by Mr. Bradford than that he intended for Mrs. Bradford to own one-half of said property. There was no evidence to support a finding that Mrs. Bradford was Mr. Bradford's creditor and, therefore, a

fraudulent conveyance fails. In the alternative, the gifting of the subject property by Mr. Bradford to his spouse ended the property's status as separate property and caused it to become marital property. The Court has failed to make adequate findings of fact and has incorrectly concluded as a matter of law that Mrs. Bradford should receive anything but one-half of the value of the total marital estate. Appellants pray that this Court reverse the trial court's Order with respect to the marital residence and either award one-half of said real property to Mr. DeMita or to Mrs. Bradford.

DATED March 12, 1999.



Howard Chuntz
Attorney for Defendant

MAILING CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed, postage prepaid, this 16 day of March, 1999, to the following:

Thomas R. Patton
Aldrich, Nelson, Weight & Esplin
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ADDENDUM

ADDENDUM “A”

JUL 1 1998

1 THOMAS R. PATTON (2542)
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8
9
10 IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
11 UTAH COUNTY, STATE OF UTAH

12 GEORGE R. BRADFORD,

13 Plaintiff,

14 vs.

15 ANDREA O. BRADFORD and JAMES A.
16 DEMITA,

17 Defendant.

:
: FINDINGS OF FACT AND
: CONCLUSIONS OF LAW

:
: Civil No. 974401237

:
: Judge Steven L. Hansen DIV 7

18 The above entitled matter came before the Court for trial on March 4, 1998. The Plaintiff was
19 present and represented by counsel, Thomas R. Patton. Defendants were also present and represented
20 by counsel, Howard Chuntz. The Court having heard testimony and evidence and being sufficiently
21 advised in the premises now makes the following:

22 FINDINGS OF FACT

23 1. Mr. Bradford and Mrs. Bradford were married in June of 1985 in Provo, Utah and have been
24 husband and wife since that date.

25 2. Mr. Bradford and Mrs. Bradford are and have been residents of Utah County, Utah for at least
three months prior to the commencement of this action.

3. There have arisen irreconcilable differences between Mr. Bradford and Mrs. Bradford that
make the continuation of this marriage no longer viable.

4. Both parties have been married before, making this a second marriage for both parties.

5. No children were born of this marriage, but each had adult children from prior marriages.

6. Mr. Bradford is 63 years old and Mrs. Bradford is 65 years old.

7. At the time of the parties' marriage, Mrs. Bradford had limited assets other than her personal property and some property in Indianola which eventually sold for \$5000.00. However, Mr. Bradford gave Mrs. Bradford the funds whose returns were eventually used to pay off the debt on the Indianola land. Mrs. Bradford kept the returns on the sale of the Indianola land for herself.

8. Mr. Bradford worked at Geneva Steel before the parties married and subsequently obtained other training and is now a janitor with Nebo School District.

9. Mr. Bradford receives \$410.00 from his current employment at Nebo School District, \$769.00 from Social Security, and \$324.00 from his pension and \$50.00 rent from the property for a total of \$1553.00 net per month. The Court notes that Mr. Bradford pays approximately \$105.00 per month into a retirement account at the school district. Since that payment is discretionary, the Court will add this to his net income for a total of \$1658.00.

10. Mrs. Bradford has worked at temporary jobs, but has not worked for many years as she claims that she has carpal tunnel syndrome and has difficulty focusing on her task.

11. Mrs. Bradford receives approximately \$150.00 for child care of her grandchild, and \$381.00 in Social Security for a total of \$531.00 per month.

12. The Court finds that neither Mr. nor Mrs. Bradford are in a point in their life where they could be retained or develop new skills for purposes of substantially increasing their income.

13. Mr. Bradford and Mrs. Bradford have lived in the home in Spanish Fork, Utah since the marriage. This home was paid for and given to Mr. Bradford as part of his inheritance before the marriage. Mr. Bradford was born and raised in this house. This house has been owned by Mr. Bradford's family for many generations and has been passed down within the family from generation to

1 generation.

2 14. The Court finds that since the marriage of the parties that there have been improvements to
3 the house in that the roof was repaired, a furnace was added, and the septic system had been repaired and
4 the home was hooked up to city water.

5 15. Although Mrs. Bradford claims to have been an integral part of the improvements, the Court
6 finds that she merely made phone calls and arrangements to have the work completed. Any other
7 projects, such as painting, which she did were not improvements but along the lines of general repair and
8 maintenance of the home.

9 16. The repairs and improvements were paid for through funds which Mr. Bradford received
10 from a settlement with Geneva Steel. These funds were accumulated prior to the marriage.

11 17. It is undisputed that the house is worth approximately \$180,000.00.

12 18. Mr. Bradford deeded by way of warranty deed the property back to he and Mrs. Bradford
13 as "joint tenants with full rights of survivorship and not as tenants in common" approximately four years
14 after they had married.

15 19. In 1992, Mr. Bradford filed for divorce from Mrs. Bradford. At that time, Mr. Bradford
16 requested that the home and real property be awarded to him. This divorce action was dismissed in 1993.

17 20. Since 1992, Mr. Bradford and Mrs. Bradford have had many arguments and Mr. Bradford
18 has threatened to divorce Mrs. Bradford on many occasions.

19 21. James Demita, Mrs. Bradford's adult son, has been living with Mr. Bradford and Mrs.
20 Bradford since 1995. Mr. Demita's minor son also stays at the home from time to time. Mr. Demita
21 stays rent free, although he is supposed to be pay the utilities.

22 22. Mr. Demita went to one year of law school and has since worked odd jobs. At the time of
23 the trial, Mr. Demita was working part-time at a computer store. His 1996 gross income was only
24

1 approximately \$3500.00.

2 23. In 1996, the parties began to jointly develop land for rezoning, division into lots and sale.
3 They hired LSI Inc. to survey the ground, prepare a subdivision plat and perform other pre-sales work.
4 Mr. Demita was to receive 25% of the profits form the sale for his assistance in developing the property.

5 24. In July of 1996, Mr. Bradford came home to various engineers at his home. Although the
6 reasons for the ensuing argument with Mrs. Bradford are in dispute, Mr. Bradford was upset with the
7 way the development was proceedings. This particular argument was more sever than prior arguments
8 and divorce was discussed.

9 25. On August 8, 1996, Mrs. Bradford by way of Quit-claim Deed deeded her share of the home
10 to her son James Demita. Mr. Demita gave his mother \$10.00 for the deed.

11 26. The Court finds that \$10.00 was not equivalent value of one-half of the house and property.

12 27. The Court finds that the transfer of the Quit-claim Deed was made to an "insider" according
13 to Utah law as Mr. Demita is Mrs. Bradford's son.

14 28. Mrs. Bradford claimed that the transfer to Mr. Demita was for estate planning purposes.
15 However, she acknowledged that she only deeded the property to him and not her other five children,
16 and that she did not have nor did she prepare a will at that time nor were instructions given regarding the
17 disposition of the property.

18 29. After the transfer, Mrs. Bradford and Mr. Demita continued to live in the home as they had
19 before.

20 30. Neither Mrs. Bradford nor Mr. Demita told Mr. Bradford of the Quit-claim Deed. Mr.
21 Bradford subsequently discovered the deed when his daughter went to the County Recorder's Office.
22 Mr. Bradford's daughter went to the recorder's office to verify that the home and property had been
23 rezoned for development as Mr. Demita had indicated to them. The daughter then discovered the Quit-
24

1 claim Deed and that in actuality the property had not been rezoned.

2 31. Soon after the discovery of this information, Mr. Bradford filed for this divorce action. The
3 time between the granting of the Quit-claim Deed in August of 1996 and the filing of divorce was
4 approximately eleven months.

5 32. The transfer of Mrs. Bradford's portion of the home to her son left her in possession of only
6 her personal property, which has limited value. Thus, this transfer constituted a transfer of substantially
7 all of her assets.

8 33. When asked on cross examination whether she could afford to pay Mr. Bradford one-half
9 of the value of the property, Mrs. Bradford indicated that she did not have the funds and would have to
10 look to family members to assist her if she were obligated to pay this.

11 34. At the time of the transfer of the Quit-claim Deed, Mrs. Bradford should have reasonably
12 believed that Mr. Bradford might file a divorce action and that he would probably claim the home and
13 property as his before the marriage as he had done so in the divorce action which he filed in 1992.

14 35. The Court finds that the house and property is in fact not partitionable as it contains a
15 residence, road and river frontage. If an interest were to be conveyed the house would have to be
16 refinanced or sold.

17 36. Even though Mr. Bradford placed Mrs. Bradford's name on the new deed to the house, the
18 Court finds that the house and property belong to Mr. Bradford as he inherited this from his father before
19 the marriage. This is consistent with previous Utah Supreme Court Decisions wherein the parties married
20 later in life and one of the parties had brought into the marriage a significant asset which they later deeded
21 to the other spouse and subsequently were divorced. See *Georgedes vs. Georgedes*, 627 P.2d 44 (Utah
22 1981); *Jespersion vs. Jespersen*, 610 P.2d 326 (Utah 1980).

23 37. Mr. Bradford earns \$1926.00 per month. He nets approximately \$1658. His financial
24
25

1 declaration indicates that his monthly expenses are \$1000.00 per month without rent or a mortgage
2 payment. The Court finds that these expenses are reasonable and necessary.

3 38. Mr. Bradford has approximately \$600.00 per month after necessary expenses. Mr. Bradford
4 would also have at his disposal the house and property which do not currently have a mortgage and are
5 worth approximately \$180,000.00.

6 39. Mrs. Bradford nets \$531.00 per month. She listed her expenses at \$1750 which includes
7 \$600.00 for rent (which she is currently not paying). This leaves Mrs. Bradford with a shortfall of
8 approximately \$1200.00 per month. Mrs. Bradford is 65 years old, not trained in an employable skill, and
9 has health concerns. She gives part-time child care to her grandson for which she is paid \$150.00 per
10 month. Although she may be able to earn more from child care, there was insufficient evidence that she
11 would be able to find such a position or that even if she were to increase her child care hours that it
12 would meet her shortfall. Thus, the Court finds that Mrs. Bradford has a need for alimony.

13 40. Mrs. Bradford has expenses which exceed her income and cannot make up the shortfall. Mr.
14 Bradford has approximately \$600.00 per month in income which exceeds his expenses. Therefore, Mr.
15 Bradford shall pay Mrs. Bradford \$600.00 per month in alimony for a term not exceeding the length of
16 the marriage. This would give \$1131.00 to Mrs. Bradford to meet her expenses and leave \$1058.00 for
17 Mr. Bradford's expenses.

18 41. Mr. and Mrs. Bradford have acquired the following personal property during the marriage
19 which property had value at the time of the trial as follows:

20	First Security Bank Accounts:	\$6492.00
21	Valic IRA	\$2418.00
22	Utah Retirement	\$1583.00
23	Insurance Policy Cash Value	\$3990.00

42. The Court finds that each party should be awarded one-half of the total sum of the above personal property. The remainder of the personal property has been divided between the parties and the same should be awarded as divided.

Having entered its Findings of Fact, the Court now enters it:

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the matter in accordance with the provisions of Utah Code Ann. § 78-3-4(1).

2. The parties are entitled to a Decree of Divorce on the basis of irreconcilable differences.

3. The Court concludes pursuant to Utah Code Ann. § 25-6-2(4) and § 25-6-5 that Mr. Bradford is a creditor of Mrs. Bradford in that he has a claim to the real property which Mrs. Bradford deeded to her son, Mr. Demita.

4. The Court concludes that this transfer between Mr. Bradford and Mr. Demita was made to an insider pursuant to § 25-6-2(7) of the Utah Code.

5. The Court concludes that this transfer made Mrs. Bradford insolvent, according to § 25-6-3 of the Utah Code, as her debts exceeded her income after the transfer was made.

6. According to the provisions of Utah Code Ann. § 25-6-5, the Court concludes that the transfer by Mrs. Bradford to her son Mr. Demita was a fraudulent transfer. The Court looks to the fact that Mrs. Bradford only received \$10.00 for the Quit-claim Deed, not an equivalent value, and that she believed or reasonably should have believed that she would incur debts beyond her ability to pay if she were divorced from Mr. Bradford. The Court also looks to the evidence and applies it to the factors listed in § 25-5-6(2) and notes that the transfer was concealed from Mr. Bradford, Mrs. Bradford continued to live in the house as before, Mr. Bradford had threatened Mrs. Bradford with divorce a matter of weeks before the transfer, and the transfer was substantially all of the assets that Mrs. Bradford believed that

1 she had.

2 7. The Court accordingly sets aside the transfer that Mrs. Bradford made to Mr. Demita as the
3 transfer was a fraudulent conveyance.

4 8. The Court concludes that the property and the house are Mr. Bradford's as he inherited them
5 before the marriage, the parties married later in life for twelve years with no children of issue of the
6 marriage and that Mrs. Bradford brought minimal assets into the marriage and contributed little financially
7 to the improvements on the house.

8 9. Since Mrs. Bradford has a need for alimony in the amount of nearly \$1200.00 which she
9 cannot substantially reduce, and since Mr. Bradford has approximately \$600.00 per month at his disposal
10 after expenses, the Court concludes that Mr. Bradford pay \$600 per month alimony to Mrs. Bradford
11 which payment shall not exceed the length of the marriage.

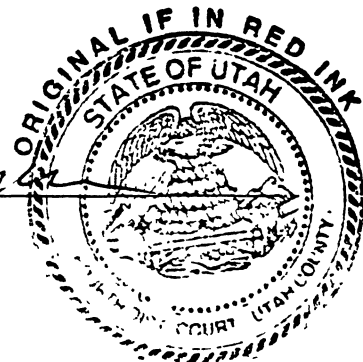
12 10. The Court concludes that the parties shall divide equally the accounts listed in Finding
13 number 41.

14 11. Each party has requested attorneys' fees; however, neither party has submitted testimony
15 regarding that issue. Therefore, each party shall pay their own costs and attorney's fees.

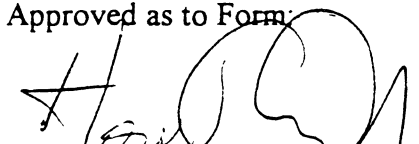
16 DATED this 14 day of July, 1998.

17 BY THE COURT:

18 
19 STEVEN L. HANSEN
20 District Court Judge




21 Approved as to Form:

22 
23 HOWARD CHUNTZ
24

1 MAILING CERTIFICATE

2 I hereby certify that I mailed, postage prepaid, this 30 day of June, 1998, a copy of the
3 foregoing to the following:

4 Howard Chuntz
5 Attorney at Law
6 1149 West Center Street
7 Orem, UT 84057



8 **NOTICE OF INTENT TO SUBMIT FOR SIGNATURE**

9 TO HOWARD CHUNTZ, ATTORNEY FOR DEFENDANT:

10 You will please take notice that the undersigned attorney for Defendant will submit the above and
11 foregoing Order to the Honorable Steven L. Hansen for his signature upon the expiration of five (5) days
12 from the date of this notice, plus three (3) days for mailing, unless written objection is filed prior to that
13 time pursuant to Rule 4-504 of the Utah Rules of Judicial Administration.

14 DATED this 30 day of June, 1998.

15 ALDRICH, NELSON, WEIGHT & ESPLIN



17 THOMAS R. PATTON
18 Attorney for Plaintiff
19
20
21
22
23
24
25

ADDENDUM “B”

JUL 11 1998

THOMAS R. PATTON (2542)
ALDRICH, NELSON, WEIGHT & ESPLIN
Attorneys for Plaintiff
43 East 200 North
P.O. Box "L"
Provo, UT 84603-0200
Telephone: 373-4912

MICROFILMED 7/17/98

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

GEORGE R. BRADFORD,

Plaintiff,

vs.

ANDREA O. BRADFORD and JAMES A.
DEMITA,

Defendant.

: DECREE OF DIVORCE

: Civil No. 974401237

: Judge Steven L. Hansen

The above entitled matter came before the Court for trial on March 4, 1998. The Plaintiff was present and represented by counsel, Thomas R. Patton. Defendants were also present and represented by counsel, Howard Chuntz. The Court having heard testimony and evidence and being sufficiently advised in the premises and having heretofore entered its Findings of Fact and Conclusions of Law, now enters the following:

DECREE OF DIVORCE

1. This Court has jurisdiction over the matter in accordance with the provisions of Utah Code Ann. § 78-3-4(1).
2. The parties are granted a Decree of Divorce on the basis of irreconcilable differences.
3. Pursuant to Utah Code Ann. § 25-6-2(4) and § 25-6-5 Mr. Bradford is a creditor of Mrs. Bradford in that he has a claim to the real property which Mrs. Bradford deeded to her son, Mr. Demita.
4. This transfer between Mr. Bradford and Mr. Demita was made to an insider pursuant to § 25-

1 6-2(7) of the Utah Code.

2 5. This transfer made Mrs. Bradford insolvent, according to § 25-6-3 of the Utah Code, as her
3 debts exceeded her income after the transfer was made.

4 6. According to the provisions of Utah Code Ann. § 25-6-5, the transfer by Mrs. Bradford to her
5 son Mr. Demita was a fraudulent transfer. The Court looks to the fact that Mrs. Bradford only received
6 \$10.00 for the Quit-claim Deed, not an equivalent value, and that she believed or reasonably should have
7 believed that she would incur debts beyond her ability to pay if she were divorced from Mr. Bradford.
8 The Court also looks to the evidence and applies it to the factors listed in § 25-5-6(2) and notes that the
9 transfer was concealed from Mr. Bradford, Mrs. Bradford continued to live in the house as before, Mr.
10 Bradford had threatened Mrs. Bradford with divorce a matter of weeks before the transfer, and the
11 transfer was substantially all of the assets that Mrs. Bradford believed that she had.

12 7. The Court accordingly sets aside the transfer that Mrs. Bradford made to Mr. Demita as the
13 transfer was a fraudulent conveyance. Therefore, Mr. Bradford is awarded all right title and interest in
14 the property located at 1100 South Main, Spanish Fork, Utah. The property is more particularly
15 described as:

16 Parcel No. 2: Beginning at a point which is West 322.35 feet and North 1288.95 feet
17 from the East quarter corner of Section 25, Township 8 South, Range 2 East, of the Salt
18 Lake Base and Meridian; thence South 89° 53' 7" West 259.68 feet; thence South 1° 42'
19 11" West 71.44 feet; thence South 59° 44' 38" West 313.10 feet; thence North 66° 59'
20 34" West along the North bank of the Spanish Fork River 668.40 feet; thence along said
21 river bank South 87° 48' 04" West 592.12 feet; thence North 47° 54' 45" West 140.69
22 feet; thence North 65° 44' 29" East 1150.07 feet; thence South 52° 37' 40" East 509.07
23 feet; thence South 58° 16' 44" East 122.86 feet; thence North 38° 08' 23" East 7.40 feet;
24 thence South 68° 07' 31" East 188.79 feet; thence South 88° 17' 42" East 110.24 feet;
25 thence South 1° 41' 54" West 134.30 feet to the point of beginning.

Together with 13 shares in the Spanish Fork Southeast Irrigation Company.

8. Since Mrs. Bradford has a need for alimony in the amount of nearly \$1200.00 which she
cannot substantially reduce, and since Mr. Bradford has approximately \$600.00 per month at his disposal

1 after expenses, the Court orders that Mr. Bradford pay \$600 per month alimony to Mrs. Bradford which
2 payment shall not exceed the length of the marriage.


3 19. The Court orders that the parties shall divide equally the accounts listed below:

4 First Security Bank Accounts:	\$6492.00
5 Valic IRA	\$2418.00
6 Utah Retirement	\$1583.00
7 Insurance Policy Cash Value	\$3990.00

8 11. The Court orders that each party shall pay their own costs and attorney's fees.

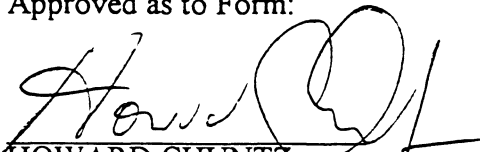
9 DATED this 14 day of ^{July} June, 1998.

10 BY THE COURT:

11 
12 STEVEN L. HANSEN
13 District Court Judge



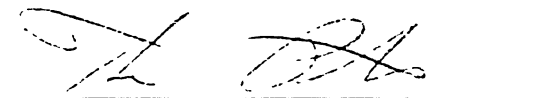
14 Approved as to Form:

15 
16 HOWARD CHUNTZ
17

18 MAILING CERTIFICATE

19 I hereby certify that I mailed, postage prepaid, this 20 day of June, 1998, a copy of the
20 foregoing to the following:

21 Howard Chuntz
22 Attorney at Law
23 1149 West Center Street
24 Orem, UT 84057
25



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NOTICE OF INTENT TO SUBMIT FOR SIGNATURE

TO HOWARD CHUNTZ, ATTORNEY FOR DEFENDANT:

You will please take notice that the undersigned attorney for Defendant will submit the above and foregoing Order to the Honorable Steven L. Hansen for his signature upon the expiration of five (5) days from the date of this notice, plus three (3) days for mailing, unless written objection is filed prior to that time pursuant to Rule 4-504 of the Utah Rules of Judicial Administration.

DATED this 30 day of June, 1998.

ALDRICH, NELSON, WEIGHT & ESPLIN



THOMAS R. PATTON
Attorney for Plaintiff

ADDENDUM “C”

Howard Chuntz, No. 4208
Attorney for Defendant
1149 West Center Street
Orem, Utah 84057
Telephone: (801) 222-9700

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

GEORGE R. BRADFORD,

Plaintiff,

v.

ANDREA O. BRADFORD and JAMES A.
DEMITA,

Defendants.

MOTION TO ALTER AND
AMEND FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECREE

Civil No. 974401237CS
Judge Steven L. Hansen

COME NOW defendants in the above captioned matter, by and through their attorney, Howard Chuntz, and move the Court to alter and amend the Findings of Fact, Conclusions of Law and the Decree of Divorce entered in this matter pursuant to Rules 52(b) and 59(e) of the Utah Rules of Civil Procedure.

The Findings of Fact at paragraph 18 reflect that Mr. Bradford deeded the property to he and Mrs. Bradford in joint tenancy, but do not reflect any statement concerning Mr. Bradford's intent or the reason for doing so. The Findings of Fact should be amended to include two additional findings as follows:

a. When Mr. Bradford deeded the property to Mrs. Bradford in joint tenancy, it was his intent to give her half the property. (See video tape at 2:35:30-48 and 3:09:45-3:10:05).

b. Mr. Bradford gave half of the property to Mrs. Bradford because he wanted her to have half, because he wanted to take care of her and because he loved her. (See video tape at 2:36:27-51 and 3:44:20-50).

The Court's Findings of Fact reflect at paragraph 19 that at the time of the 1992 divorce proceedings, Mr. Bradford requested that the home and real property be awarded to him and that

that action was dismissed in 1993. There should be additional findings of fact to reflect that Mr. Bradford took no action nor made any demand of Mrs. Bradford for a reconveyance of the subject property subsequent to the 1992 divorce until filing again in 1997.

The Court should find that at the time Mrs. Bradford quit claimed her interest in the property to Mr. DeMita, she was not indebted to Mr. Bradford. (See video tape at 3:07:20-30).

There is no evidence to support finding no. 34 that Mrs. Bradford should have reasonably believed that Mr. Bradford might file a divorce action and that he would probably claim the home and property as he had done so in the divorce action in 1992. From the facts and circumstances adduced at trial and under which the parties lived, Mrs. Bradford could just have reasonably believed that Mr. Bradford had given up any demand for a return of half of the property that he gave to her. This belief could be reasonably founded on the basis that there had been no further demand to deliver the property to him during the intervening four to five years, despite the numerous threats of divorce, and in addition, because the parties continued to deal with the property as joint owners, particularly with respect to their efforts to develop and sell lots in the property. In fact, it seems more reasonable that Mrs. Bradford should have expected that any issue concerning demand for return of the property was long in the past and that she and Mr. Bradford, in fact, each owned one-half because the parties continued to work together to develop and sell the property after the "severe argument and discussion of divorce in July of 1996 and the fact that no divorce action took place for a year after that time.

The Court's finding in paragraph 36 that ". . . the house and property belonged to Mr. Bradford . . ." is not consistent with the evidence nor case law. Although Mr. Bradford owned the property prior to the parties' marriage, he chose to give half of it to Mrs. Bradford after they had been married several years because he cared for her, wanted to take care of her and because he loved her. He intended to give her the property and it was his intent that she own one-half of it. This gifting of one-half of the property changed the nature of the property from solely owned pre-marital property to jointly held marital property as set forth in Mortensen v. Mortensen, 760 P.2d 304 (Utah 1988). In that case, the Court ruled that property acquired by gift or inheritance by one spouse should be awarded to that spouse on divorce unless the

acquiring spouse places title in their joint names in such a manner as to evidence and intent to make it marital property. (id) That is the very situation in the present case. Mr. Bradford obtained the property as a gift from his parents, but deeded it in joint tenancy to Mrs. Bradford with the intent to give her half because he cared for her, loved her, wanted to take care of her and wanted her to have one-half of the property. The case of Jespersion v. Jespersen cited in paragraph 36 of the Court's Findings should be distinguished as not applicable to the present case because in that case the Court found ". . . there was no intention by plaintiff to create a one-half property interest in defendant, nor any expectation by defendant that he had received a one-half property interest." (Jespersion v. Jespersen, 610 P.2d 326, 328 (Utah 1980)). The case of (Georgedes) cited by the Court in paragraph 36 should also be distinguished. In that case the Court considered the marriage of fairly short duration whereas in this case the marriage is of almost thirteen years. In addition, the Court also weighed in connection with the property settlement the fact that the party receiving the property was also being burdened with all of the outstanding debts and that any increase in the value of the property was offset by the marital debt that was being taken on. Finally, Georgedes was decided several years prior to Mortensen v. Mortensen and makes no mention of the Court's rule in Mortensen regarding the gifted property.

The Court should amend paragraph 3 of the Conclusions of Law to reflect that Mr. Bradford was not a creditor of Mrs. Bradford's because Mr. Bradford's claim to the real property is not based on any legal right and Mrs. Bradford's knowledge of any such claim at the time of her conveyance to her son would have been purely speculative.

The Court should amend paragraph 6 of its Conclusions of Law to reflect that the conveyance from Mrs. Bradford to Mr. DeMita was not a fraudulent transfer.

The Court should amend paragraph 7 of the Conclusions of Law so as to remove the same and not set aside the transfer from Mrs. Bradford to Mr. DeMita as no fraudulent conveyance occurred.

The Court should amend paragraph 8 of the Conclusions of Law to be reflective of the amended Findings of Fact set forth above by defendants.

In the alternative, if the Court continues to conclude that there was a fraudulent conveyance, it should conclude that the parties own the real property jointly, that the property should be sold and the equity divided equally between them as each of them needs the funds therefrom to maintain a place of abode and that the property cannot be equitably divided without sale.

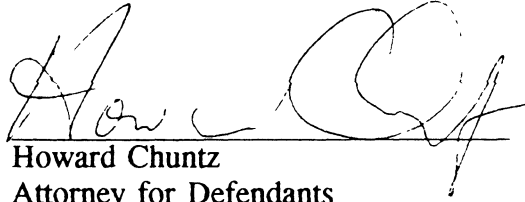
Defendant, Andrea Bradford, should be restored to her former name of Andrea DeMita.

Finally, the Court should amend and alter paragraphs 3, 4, 5, 6 and 7 of the Decree of Divorce to be consistent with the amendments and alterations to the foregoing Findings of Fact and Conclusions of Law and to reflect that either Mr. Bradford owns a one-half interest in the subject real property or that Mrs. Bradford owns a one-half interest in the subject property and to require the property to be sold and the proceeds divided between Mr. Bradford and whichever of the defendants the Court deems to own the other half.

The Court has broad discretion in dividing the parties' property at the time of a divorce regardless of its source or time of acquisition. In the exercise of discretion, trial courts need to 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. Read v. Read, 594 P.2d 871 (Utah 1979). The Court's present Findings of Fact, Conclusions of Law and Decree work an entirely and equitable outcome. The parties were married more than twelve years and are now into or close to their retirement from gainful employment. It is inequitable and does not serve the best interest of the parties to go forward in their lives to deprive Mrs. Bradford of any and all value in the real property that she was given by Mr. Bradford and which she believes she owned for more than seven years. The facts of the case, the law applicable to this case, and equity all require that the Court amend and alter its Findings of Fact, Conclusions of Law and the Decree as set forth herein and defendants'

respectfully pray that the same be done.

DATED this ^{22nd}~~2nd~~ day of July, 1998.


Howard Chuntz
Attorney for Defendants

MAILING CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed, postage prepaid, this 23rd day of July, 1998, to the following:

Thomas R. Patton
Aldrich, Nelson, Weight & Esplin
Attorneys for Plaintiff
43 East 200 North
P.O. Box "L"
Provo, UT 84606



div mot

ADDENDUM “D”

Howard Chuntz, No. 4208
Attorney for Defendant
1149 West Center Street
Orem, Utah 84057
Telephone: (801) 222-9700

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

GEORGE R. BRADFORD,

Plaintiff,

v.

ANDREA O. BRADFORD and JAMES A.
DEMITA,

Defendants.

ORDER

Civil No. 974401237CS

The Court having reviewed defendants' Motion to Alter and Amend Findings of Fact and Conclusions of Law and Decree of Divorce and finding that the Court's original Findings of Fact and Conclusions of Law issued by Judge Hansen are appropriate, therefore, denies defendants' Motion.

DATED September 4/1998.

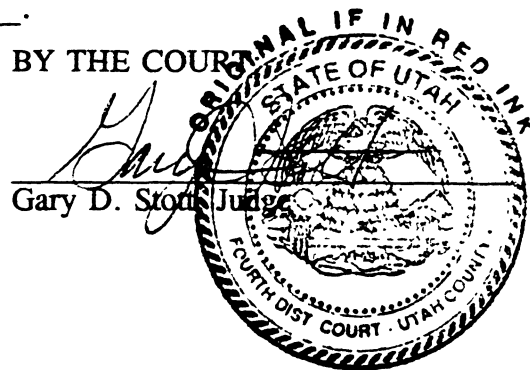
BY THE COURT

Gary D. Stone, Judge

Approved as to form:



Thomas R. Patton
Attorney for Plaintiff



ADDENDUM “E”

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

GEORGE R. BRADFORD,
Plaintiff,

vs.

ANDREA O. BRADFORD and
JAMES DEMITA,
Defendants.

Copy

Case No. 974401237 CS
(Partial transcript)

Hearing
Electronically Recorded on
March 4, 1998

BEFORE: THE HONORABLE STEVEN L. HANSEN
Fourth District Court Judge

For the Plaintiff: Thomas R. Patton
ALDRICH, NELSON, WEIGHT
& ESPLIN
43 East 200 North
Provo, Utah 84606
Telephone: (801)373-4912

For the Defendants: Howard Chuntz
1149 West Center Street
Orem, UT 84057
Telephone: (801)222-9700

Transcribed by: Beverly Lowe RPR/CSR/CCT

1641 SOUTH 350 WEST
OREM, UTAH 84058
TELEPHONE: (801)225-0234

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P R O C E E D I N G S

(Electronically recorded on March 4, 1998)

(Direct examination of Mrs. Bradford by Mr. Patton in progress. Certain portions extracted)

Q. BY MR. PATTON: Do you think that those things are worth more than \$500 if you added them all together?

A. I don't know the market value that people would buy -- what they would pay for it. I don't know how much people would pay me for those.

Q. Would it be worth more than a thousand?

A. It would be worth more to me because to replace it I would have to pay more.

Q. Can you tell the Court what you own right now that's worth more than \$300, any item of property that you own that is worth more than \$300?

A. A stereo, stereo console.

THE COURT: What console?

THE WITNESS: A stereo console. It's an old -- I don't know how you say it -- a console.

THE COURT: For a stereo?

THE WITNESS: Console.

Q. BY MR. PATTON: Do you remember when I took your deposition last year?

A. Yes.

1 Q. You indicated that you own two dressers; is
2 that correct?

3 A. Yes, that's correct.

4 Q. And you also owned a wooden kitchen table
5 and six chairs; is that right?

6 A. Yes, that's right.

7 Q. And then you also had personal pictures and
8 family genealogy?

9 A. Yes.

10 Q. And those items--

11 A. And a bed.

12 Q. And a bed. And that if they were all added
13 together, and you had to sell them at a yard sale or
14 sell them as used furniture, could you get more than a
15 thousand dollars for them?

16 A. Antiques, like -- I don't know.

17 Q. You don't know?

18 A. I don't know what people pay.

19 Q. Do you remember signing a quit claim deed to
20 Mr. Demita?

21 A. Yes.

22 Q. And that was for half of the property that
23 Mr. Bradford owned prior to the marriage; is that
24 correct?

25 A. What I owned -- my half what I owned is what

1 I quit claimed.

2 Q. You quit claimed to Mr. Demita?

3 A. Yes.

4 Q. When did you do that?

5 A. When did I do that?

6 Q. Yes.

7 A. August 8th, 1996.

8 Q. I'm going to show you what's been marked
9 Plaintiff's Exhibit No. 1 for identification and ask
10 if you recognize that document. Is that a copy of the
11 quit claim you signed to Mr. Demita?

12 A. Yes, it is.

13 Q. And when you are looking at that quit claim
14 deed, whose handwriting is printed in there word,
15 "Andrea Bradford, Spanish Fork, James Demita," whose
16 handwriting is that?

17 A. That's James Demita's handwriting. I asked
18 him to make up the form for me.

19 Q. And then you signed the quit claim deed?

20 A. Yes, I did.

21 Q. And it was notarized?

22 A. Yes.

23 Q. And that was by Lorea Galloway?

24 A. Yes.

25 Q. And whose office did you go to so that could

1 be notarized?

2 A. It wasn't an office, I went to a bank.

3 Q. You went to a bank and had it notarized?

4 A. Yes.

5 Q. Prior to signing that quit claim deed did
6 you talk to my client about it?

7 A. No.

8 Q. Did you tell him you were going to do it?

9 A. No.

10 Q. After you did it did you tell him you had
11 signed that?

12 A. Yes.

13 Q. You did tell him?

14 A. Yes.

15 Q. When did you tell him you had done it?

16 A. In order to get the right date it was one of
17 the only times that Phyllis Penner came into our
18 kitchen -- so she might remember the date -- and
19 Phyllis and George were in the kitchen with me, and I
20 told George and Phyllis both that they didn't need to
21 worry about their concerns they had about if I died
22 first that his children wouldn't get any of the
23 property. So I told them that I took care of it to
24 make sure, and I ensured that -- I promised you that
25 you will get half of the property because I took care

1 of it so that it will be that way.

2 MR. PATTON: May I approach the witness,
3 your Honor?

4 THE COURT: You may.

5 MR. PATTON: Your Honor, we would submit
6 Plaintiff's Exhibit No. 1 for identification as
7 Plaintiff's Exhibit No. 1.

8 THE COURT: Okay, you're offering it into
9 evidence. Any objection?

10 MR. CHUNTZ: No objection, your Honor.

11 THE COURT: Number 1 will be received.
12 (Exhibit No. 1 received into evidence)

13 Q. BY MR. PATTON: When I took your deposition
14 I asked you if you owed Mr. Demita any money when you
15 signed that quit claim deed, and in fact you didn't
16 owe him any money when you signed that, did you?

17 A. No.

18 Q. And when I asked you why you signed it you
19 said it was simply estate planning. Is that why you
20 signed that deed?

21 A. Yes.

22 Q. Did you sign a will?

23 A. No.

24 Q. Did you go see an attorney?

25 A. Yes.

1 Q. Who did you go see?

2 A. Howard Chuntz.

3 Q. And you went to his office and met with him
4 prior to signing the quit claim deed?

5 A. I can't remember if it was on the telephone
6 or in his office, but I remember he told me I had two
7 options, that I could either -- I wasn't knowledgeable
8 about how to take care of my -- what I owned in case I
9 died, and so I asked him what I -- how I should ensure
10 that my child will get what I have -- what I own when
11 I die. He said I have two options, I could either
12 quit claim it or I could put it in some kind of a
13 trust -- family fund or something like that, and he
14 said the second option will cost you money to do that,
15 and the first -- quit claim won't cost you any money,
16 and I said, "Well, I'll--" so I decided I wanted to do
17 it the quit claim way.

18 Q. When I took your deposition last year you
19 indicated that you believed you had talked to him by
20 phone; isn't that correct?

21 A. Say that again.

22 Q. Last year when I took your deposition you
23 believed that you had talked to Mr. Chuntz by phone
24 and received that advice; isn't that correct?

25 A. Yes.

1 Q. And you still believe you talked to him by
2 phone, don't you?

3 A. Yes.

4 Q. It was Mr. Demita who actually went to his
5 office and met with him; isn't that true?

6 A. No, he was the one that was talking on the
7 phone with me.

8 Q. So it was Mr. Demita who called Mr. Chuntz?

9 A. I don't know who dialed the number, but it
10 was -- I needed some attorney and I didn't ever have
11 an attorney in my life so I asked my son which
12 attorney I could find this information from, and he
13 suggested Howard Chuntz.

14 Q. And when you signed the quit claim deed I
15 asked you if you believed the home was worth -- or the
16 property was worth \$190,000, and your answer was yes,
17 wasn't it?

18 A. Say that again.

19 Q. The home and the land that you quit claim
20 deeded to Mr. Demita, if it hadn't been divided I
21 asked you if you believed it was worth \$190,000, and
22 you said yes, you believed that, didn't you?

23 A. Yes.

24 Q. And you still believe that?

25 A. That is what the county had when they sent

1 our tax notice.

2 Q. And you received from Mr. Demita for your
3 one-half interest \$10; is that correct?

4 A. Not correct.

5 Q. Did he give you any money?

6 A. He gave me labor, which would amount to more
7 than enough.

8 Q. So when you say you gave it to him for an
9 estate plan, you're now saying it wasn't an estate
10 plan, you sold him your property?

11 MR. CHUNTZ: Objection, your Honor, she
12 hasn't said it wasn't for estate planning. He's
13 mischaracterizing the witness' statement.

14 THE COURT: Sustained.

15 Q. BY MR. PATTON: How many children do you
16 have, ma'am?

17 A. Five.

18 Q. Are they all still alive?

19 A. Yes.

20 Q. Are all of their names on that quit claim
21 deed?

22 A. No.

23 Q. Just Mr. Demita's?

24 A. Yes.

25 Q. And you did that for estate planning

1 purposes?

2 A. Yes.

3 Q. What did you intend -- did you intend to
4 continue living in the home? When you signed the deed
5 did you plan to continue living in the home?

6 A. Actually I didn't have any plans.

7 Q. You had no plans?

8 A. No plans.

9 Q. Did you continue to live in the home?

10 A. I did, but--

11 Q. Did you believe that Mr. Demita was going to
12 force you to not live in the home? Did you expect he
13 was going to force you out of the home?

14 A. Again, I never had any thoughts about
15 anything like that.

16 Q. When did you intend for him to actually own
17 the half-interest in the home? Was it when you died
18 or was it when you gave him the deed?

19 MR. CHUNTZ: Objection, your Honor, that
20 calls for a legal conclusion, the deed and delivery of
21 the deed created ownership, occupancy has nothing to
22 do with that. I think the questions are confusing to
23 the witness.

24 THE COURT: He's not asking for a legal
25 conclusion, he wants to know what her intent was,

1 overruled.

2 MR. CHUNTZ: Maybe he could rephrase it in a
3 way that doesn't--

4 THE COURT: Go ahead and rephrase it.

5 MR. PATTON: And I'll do that, your Honor.

6 Q. BY MR. PATTON: I'm not trying to trick you,
7 ma'am. I'm trying to figure out this: did you plan
8 that he would immediately own half the home when you
9 gave him the deed, or did you plan that he got it when
10 you died? Do you understand the difference?

11 A. Okay, say that slower.

12 Q. Did you plan that he would get the home when
13 you deeded it to him? In other words when you signed
14 the deed that, "I'm giving you half my home now," or
15 did you plan that he wouldn't actually get that until
16 you died?

17 MR. CHUNTZ: Your Honor, objection again.
18 That goes to the question of ownership as opposed to
19 the question of occupancy. I think the witness could
20 be confused as to whether her leaving the home had to
21 do with ownership or not. I mean these are legal
22 technicalities that we understand but lay men don't
23 particularly understand.

24 THE COURT: Well, I think you can follow up
25 with your own questions to her to help her understand.

1 I think Mr. Patton's question is appropriate, it only
2 goes to what she--

3 MR. PATTON: May I approach the witness,
4 your Honor?

5 THE COURT: --her intent.

6 MR. PATTON: May I approach the witness?

7 THE COURT: Go ahead.

8 Q. BY MR. PATTON: Mrs. Bradford, I'm going to
9 show you some questions that I asked you last year at
10 the deposition. My question was, "When did you intend
11 for him to get it?" And your answer was?

12 A. "The date that I signed it over to him."

13 Q. And then my question was, "So you intended
14 it to be his at that time?" And what was your answer?

15 A. "Yes."

16 Q. And then my question was, "But you continued
17 to live in the home?" And what was your answer?

18 A. "And why not?"

19 Q. And then you said, "Why not?" And then I
20 pressed you further, I asked the question again, "You
21 continued to live in the home, yes or no?" And what
22 was your answer?

23 A. "Yes."

24 Q. And you still live in the home?

25 A. Yes.

1 Q. So even though you gave him the deed, you
2 lived in the home?

3 A. Yes.

4 Q. And you used it as your primary residence?

5 A. Yes.

6 Q. And I asked you -- may I approach the
7 witness again?

8 THE COURT: You may.

9 Q. BY MR. PATTON: My question was, "Did you
10 tell my client, Mr. Bradford, that you had signed that
11 quit claim deed?" And what was your answer?

12 A. "I had no reason to."

13 Q. Do you remember having an argument with my
14 client in July of 1996?

15 A. (No response)

16 Q. Do you remember some engineers coming to the
17 home?

18 A. Can I answer your first question?

19 Q. You bet.

20 A. I can remember having arguments with your
21 client continuously through our marriage.

22 Q. Do you remember a specific argument that
23 happened in July of 1996 when there were some
24 engineers in the home? Do you remember that day?

25 A. Yes.

1 Q. And did you and he have an argument?

2 A. Yes.

3 Q. And was he complaining that he didn't want
4 the home condemned?

5 A. Yes.

6 Q. And he was also complaining that he didn't
7 like Mr. Demita living there for nothing, without
8 paying; isn't that true?

9 A. That's what he claimed, but that wasn't
10 true, that he was living for nothing.

11 Q. When you signed this quit claim deed to Mr.
12 Demita August 8th, within a month of the argument that
13 takes place in July -- you acknowledge you had that
14 argument, right?

15 A. In July we had an argument.

16 Q. You signed the quit claim in August, right?
17 When you signed that quit claim deed to Mr. Demita,
18 did you have any side agreements with him concerning
19 that quit claim deed? In other words, he's going to
20 give it back to you or anything like that?

21 A. No.

22 Q. Did you have an agreement that he would
23 continue to allow you to live there?

24 A. We didn't discuss anything at all. I was
25 just doing what I wanted to do.

1 Q. So you didn't have a discussion about it?

2 A. No, that I remember.

3 Q. When you deeded that property away to Mr.
4 Demita, the property that you kept in your possession,
5 was it worth \$40,000 or \$50,000? In other words, your
6 furniture, your car, everything else you owned, was it
7 worth \$40,000?

8 A. You mean if I sold it?

9 Q. Right. May I approach again, your Honor?

10 THE COURT: You may.

11 Q. BY MR. PATTON: I took your deposition last
12 year, and my question was, "The real property that you
13 deeded away, did you own any other assets that were
14 worth \$40,000 or \$50,000?" And what was your answer?

15 A. "No."

16 Q. And my question was, "Did you own any other
17 assets that were worth \$85,000 or \$90,000?" And what
18 was your answer?

19 A. "No."

20 Q. And you don't own any property now that is
21 worth \$40,000 or \$50,000, do you?

22 A. No.

23 Q. Do you remember filing an affidavit in this
24 matter for an order to show cause?

25 A. What do you mean?

1 Q. A document called an affidavit.

2 A. That I signed?

3 Q. Yes. Do you remember signing one?

4 A. About what?

5 MR. PATTON: May I approach the witness,
6 your Honor?

7 THE COURT: You may.

8 Q. BY MR. PATTON: Let me show you what's been
9 marked Plaintiff's Exhibit No. 2 for identification.
10 It's entitled, "Affidavit of Andrea Bradford," and it
11 purports to have been signed by Andrea Bradford. Do
12 you recognize that document?

13 A. Yes, that's -- you're right.

14 Q. I want you to continue looking at that. The
15 first paragraph says that you're the defendant in the
16 action, that just labels who you are; is that right?

17 A. Right.

18 Q. And then it indicates that you received a
19 one-half joint tenancy interest in 1989, that's
20 paragraph 2, right?

21 A. Yes.

22 Q. And then you state that during your 12 years
23 of marriage you've helped to maintain the property,
24 care for it and improve it.

25 A. Yes.

1 Q. What improvements did you make to the
2 property during the 12 years of the marriage, ma'am?

3 A. When I say improve it, does that mean that I
4 have to -- are you saying that it was from my own
5 personal money or from our marital money that I made
6 the improvements?

7 Q. Ma'am, I didn't write the affidavit, I'm
8 asking you what you meant. Do you know what you
9 meant?

10 A. Yes.

11 Q. What did you mean?

12 THE COURT: Which paragraph are you
13 referring to?

14 MR. PATTON: May I approach, your Honor? I
15 can give you a copy of the affidavit, if you want it.

16 THE COURT: I think I have it, let's just
17 make sure it's the right one.

18 MR. PATTON: I'm referring to paragraph 3 of
19 her affidavit.

20 THE COURT: Okay.

21 THE WITNESS: You want -- okay--

22 Q. BY MR. PATTON: Let me ask you this, did you
23 build on any rooms on the home?

24 A. No, but more important, I built -- I had
25 installed the basic utilities that we needed that

1 weren't there when I moved in.

2 Q. What basic utilities were those?

3 A. I don't have the drain field with me here,
4 but I have the others with me, the documents what I
5 improved on.

6 Q. And I'm just asking what improvements did
7 you make? I'm not asking to see the documents, I just
8 want to know what--

9 A. I called up -- this was one of our very
10 first arguments.

11 Q. Stop there. I don't want an explanation.

12 A. Okay, because you said--

13 Q. Did you build on a room? Let me ask you
14 that, did you build a room or make any additions to
15 the home?

16 A. Yes, I made additions to the home.

17 Q. Just tell me what the exact additions --
18 just list what the additions were.

19 A. One was a sewer so we could use the septic
20 tank -- sewage system. I had to order a new drain
21 field.

22 Q. So you improved the septic system?

23 A. No, there was no septic system there when I
24 moved in. The black sludge was coming up into the
25 home in the basement where I had to take a shower, and

1 there was no plumbing sewage place, there was nothing
2 there for a sewage to go to, it was plugged with a
3 piece of wood, so I had to keep unplugging the piece
4 of wood to use the shower that I had to have to take a
5 shower, and then plug the piece back in.

6 Q. Ma'am, I know you want to tell your story,
7 and your counsel can let you do that. I just asked --
8 let me ask you this. Was there indoor plumbing when
9 you moved into the home?

10 A. Not up to city code, no.

11 Q. But there was indoor plumbing?

12 A. Very poor.

13 Q. Just yes or no.

14 A. There was some plumbing, I'll say, some.

15 Q. And so when you say that the addition was
16 made, what you did was you improved the plumbing?

17 A. Yes. And then another thing I improved, I
18 improved was there was also -- I ordered a -- the
19 chimney hadn't been cleaned for long years -- many
20 years, so I improved to have the chimney cleaned, but
21 the furnace man said to have the coal furnace cleaned
22 so that -- to eliminate all of the coal smoke that was
23 coming throughout the house constantly, so when I had
24 it cleaned the furnace man said the coal furnace was
25 so defective that the tears -- I think that's the

1 word -- were all--

2 Q. Did you add a furnace, is that what--

3 A. So I ordered a new furnace and changed it
4 from coal to gas furnace.

5 Q. So you ordered a new furnace and you
6 improved the septic system?

7 A. And also the well, the drinking water, and
8 the water I used for brushing my teeth and the shower
9 was contaminated, so I had to have it tested at the --
10 by the State, and I have a thing here to--

11 Q. Did you dig a new well?

12 A. No, we didn't. Our bishop asked George
13 to -- more or less told George to get on the city
14 water right now.

15 Q. So did you get on city water?

16 A. Yes.

17 Q. Now besides improving the septic system,
18 changing the furnace and changing to city water, did
19 you make any improvements to the property or any
20 additions?

21 A. What would entail improvements?

22 Q. Well, I don't know, that's why I asked you.
23 You said you made improvements and I asked you what
24 they were. Now you've listed three.

25 A. In the back, out in the back where the farm

1 is I did a lot of cleaning up to improve the
2 sanitation and the health and life risks that were
3 there.

4 Q. So you also cleaned up around the home?

5 A. In the home and in the back of the whole
6 property.

7 Q. What else did you do?

8 A. I did so much I don't think I'd ever be able
9 to tell you here.

10 Q. Well, I'm just asking you what your
11 improvements were. Are those the big items that you
12 did?

13 A. Those are the main ones, but there are many,
14 many smaller ones that were equally as threatening to
15 my health and my life.

16 Q. So those were day-to-day maintenance items;
17 is that right? The other items were more day-to-
18 day -- they weren't a big project, but you would work
19 on a regular basis; is that what you're saying?

20 A. Now what did you say?

21 Q. You've listed the main items that you
22 improved; is that correct, the ones you've listed?

23 A. Yes.

24 Q. And then you state that there were other
25 things that you did, right?

1 A. Yes, many.

2 Q. But those were more on a day-to-day basis
3 and not a big project like improving the sewer or
4 changing the plumbing. We're talking day-to-day go
5 out and haul trash away, clean things up and make it
6 more presentable; is that right?

7 A. Yes.

8 Q. And when you say that you maintained the
9 property, that's what you're saying when you
10 maintained it and cared for it; isn't that correct?

11 A. Yes.

12 Q. You also indicate in paragraph 6, it says,
13 "My conveyance of my interest in this subject real
14 property did not and has not made me insolvent."
15 Isn't that what you said?

16 A. Yes.

17 Q. What did you mean?

18 A. Well, I asked you what insolvent meant
19 because I'm not that--

20 Q. And I'm asking you what you meant when you
21 filed the affidavit.

22 A. I thought it meant that I would be
23 destitute, or something like that, I don't know, and I
24 never lacked for anything, even with my conveyance, I
25 know I would not lack.

1 Q. And the reason you didn't lack is because
2 you were married to Mr. Bradford who supported you;
3 isn't that true?

4 A. That's kind of questionable.

5 Q. Are you saying you can support yourself?

6 A. I never felt that I was supported.

7 Q. Are you saying you can support yourself if
8 you're divorced, that you don't need money from Mr.
9 Bradford?

10 A. I don't know the future because I can't
11 foresee what I might -- I'm 65, I don't know if I'll
12 be -- my health might deteriorate or whatever, I can't
13 foresee the future.

14 Q. The fact of the matter is, ma'am, when you
15 signed that affidavit saying that you weren't
16 insolvent, you didn't know what the word "insolvent"
17 meant, did you?

18 A. I thought it meant being without, I think,
19 without anything.

20 MR. PATTON: I have no further questions of
21 this witness.

22 THE COURT: Let's take a five minute break.
23 We'll be in recess for five minutes.

24 (Short recess)

25 Q. BY MR. PATTON: When I took your deposition

1 last year, I asked you this question: "Did you owe
2 Mr. Demita -- when you signed this quit claim deed to
3 Mr. Demita, did you owe him any money?" And what was
4 your answer?

5 A. "No."

6 Q. And I said, "Okay, can you tell me why you
7 signed the quit claim deed to Mr. Demita?" And your
8 answer was, "Sure." And then I said, "Why did you
9 sign it?" And what was your answer?

10 A. "It was simply estate planning."

11 Q. And you didn't owe him any money when you
12 signed it, did you?

13 A. No.

14 MR. PATTON: Thank you.

15 CROSS EXAMINATION

16 BY MR. CHUNTZ:

17 Q. Mr. Patton was asking you about improvements
18 that you made to the property, or that were made to
19 the property during the 12 plus years that you've
20 lived there. Was anything done to the roof?

21 A. Yes.

22 Q. What was done to the roof?

23 A. The whole entire roof was shingled.

24 Q. Was there any painting done to the property?

25 A. Yes.

1 Q. What was painted, inside or out?

2 A. Inside and -- the house is brick, so all the
3 trim was painted, and the porch railings, and inside
4 rooms have been painted because I asked my son to help
5 me paint.

6 Q. Now Mr. Patton was asking you some questions
7 about insolvency. At the time in August of 1996 when
8 you deeded the property to your son, did you owe
9 anybody any money at that time?

10 A. No.

11 Q. Did you have any bills that were
12 outstanding?

13 A. No.

14 Q. And you were able to pay for your living
15 expenses between what you got from Social Security and
16 what Mr. Bradford provided?

17 A. Yes.

18 Q. Mr. Patton asked you about a time in July
19 when Mr. Bradford came home and there were some
20 engineers at the house. Were the engineers at the
21 house concerning condemning the house?

22 A. No.

23 Q. Was there any discussion at all at that time
24 or at any time about tearing the house down?

25 A. No.

1 Q. Were you and Mr. Bradford planning and
2 working on developing the property?

3 A. Yes.

4 Q. You were planning on selling it?

5 A. Yes.

6 Q. Could the property have been developed
7 without tearing down the home?

8 A. Yes.

9 Q. When Mr. Patton was asking you about this
10 July argument, you had wanted to tell the Court
11 something about this argument or arguments. Why don't
12 you tell the Court about arguments with George. Did
13 George and you have arguments often or not?

14 A. Yes, very often.

15 Q. About how often would you say that you and
16 George had arguments?

17 A. Out of a month's time, you mean?

18 Q. Okay, out of a month's time.

19 A. Every three days and more.

20 Q. Did George ever talk about divorce during
21 these arguments?

22 A. He always threatened me with divorce if he
23 didn't like the decisions I made for the property --
24 of repairing and any -- even the little things in the
25 kitchen, if I threw kitchen garbage in the garbage and

1 if I wanted to have a place to dump my garbage, he
2 always went into ranting and raving and rages --
3 violent rages to me all the time.

4 Q. Did he raise the issue of divorce during
5 these times?

6 A. Yes, every time he threatened me with
7 divorce when I wouldn't agree with the way he wanted
8 things done.

9 Q. So divorce was a regular and common subject
10 in your household?

11 A. Yes.

12 Q. And what was your reaction to these threats
13 of divorce?

14 A. At first I was frightened, but he always
15 ended up saying that he was sorry after, and he would
16 always apologize and be -- lived like civil together,
17 and so I never paid much attention after that because
18 he was always threatening me and then never doing
19 anything, so I just assumed that we never would ever
20 be divorced.

21 Q. Did you take his threats of divorce
22 seriously?

23 A. Never after so many times, no.

24 Q. Did you make plans or take actions on the
25 basis that when he told you he was going to divorce

1 you that you better do something about that?

2 A. No.

3 Q. This argument that Mr. Patton refers to that
4 occurred in July of 1996, did George threaten to
5 divorce you at that argument?

6 A. Yes, he was constantly threatening me around
7 that time.

8 Q. And did things get resolved between you and
9 he after that argument?

10 A. Yes, we still--

11 Q. Did he go back to being civil?

12 A. Yes.

13 Q. Between that July argument and when you
14 deeded the property -- quit claimed the property to
15 your son in August, was he still threatening to
16 divorce you during this time?

17 A. (No response)

18 Q. Let me ask you a different question. Were
19 you and Mr. Bradford continuing to attempt to develop
20 the property after the July argument?

21 A. Yes, we were always doing that.

22 Q. And between this July argument and the day
23 you deeded the property to your son, did Mr. Bradford
24 tell you again that he was going to divorce you?

25 A. What was that again?

1 Q. After the July argument, between that time
2 and when you deeded your property in August to James,
3 did Mr. Bradford, while you were continuing to try to
4 develop the property, did he threaten to divorce you
5 again?

6 A. During the time we were developing he never
7 ever mentioned divorce then.

8 Q. Well, he mentioned it at this argument in
9 July when you were developing it.

10 A. Right, just because he was mad for that one
11 day, yeah.

12 Q. And then he let it go?

13 A. Yes, because then it was just the same
14 pattern, he just said he was sorry and apologized and
15 then afterwards keep on talking about developing.

16 Q. So when you deeded your property to James in
17 August, you didn't do it because you were concerned
18 about George's divorcing you?

19 A. No.

20 Q. You did it because you wanted to take care
21 of the problem of if you died before George, George
22 would get all of the property and your children would
23 get nothing?

24 A. Right.

25 Q. Now there's been some suggestion that you

1 didn't do this deed to James for estate planning
2 because you only gave the property to James and not to
3 your other children. Why didn't you deed the property
4 to your other children's names?

5 A. Because my other four children are in
6 another age bracket, they're ten years way over James,
7 and they've already established themselves well in
8 life, and they all own their own -- have their own
9 home, and I wanted before I died to make sure that all
10 my children had a home.

11 MR. CHUNTZ: Thank you.

12 MR. PATTON: First your Honor, let me submit
13 Plaintiff's Exhibit No. 2 for identification as
14 Plaintiff's Exhibit No. 2. It's her affidavit.

15 MR. CHUNTZ: No objection, your Honor.

16 THE COURT: Number 2 will be received.

17 (Exhibit No. 2 received into evidence)

18 REDIRECT EXAMINATION

19 BY MR. PATTON:

20 Q. First I want to make it clear in my mind,
21 when you say you deeded to James Demita, you intended
22 for him to get the entire thing.

23 A. What entire thing?

24 Q. Your half interest in that home. Isn't that
25 right, just--

1 A. Just whatever I owned, yes.

2 Q. And so you didn't intend for your other
3 children to get any of it?

4 A. I know my children, and I know that if any
5 of my any other children were in need that James would
6 help them and give them whatever they needed. I know
7 that.

8 Q. But when you signed the quit claim deed it
9 wasn't your intent that they each get the same amount,
10 it was that it all go to him; is that what your
11 testimony just was?

12 A. Yes, because I know he would do the right
13 thing with it.

14 MR. PATTON: May I approach the witness,
15 your Honor?

16 THE COURT: You may.

17 Q. BY MR. PATTON: At the deposition I asked
18 you this question: "Is there a reason you didn't quit
19 claim to all of them?" And what was your answer?

20 A. "Just to simplify it," like I said.

21 Q. And then you went on, what did--

22 A. "I knew James would do the right thing and
23 share and share alike."

24 Q. And then my next question was, "Did you give
25 him instructions to do that?" And what was your

1 answer?

2 A. "I didn't need to. He told me that's what
3 he would do."

4 Q. So he told you he would share equally with
5 his brothers and sisters?

6 A. Only if there was a need.

7 Q. Only if there was a need?

8 A. But I didn't add that on there. That was--

9 MR. CHUNTZ: I'm going to object to this
10 line of questioning, your Honor, I don't think it goes
11 to anything that's relevant.

12 MR. PATTON: They opened the door.

13 THE COURT: Overruled. Go ahead.

14 MR. PATTON: No further questions.

15 MR. CHUNTZ: Nothing further, your Honor.

16 THE COURT: You may step down.

17 (Court handles another matter)

18 THE COURT: All right.

19 MR. PATTON: Your Honor, I would call George
20 Bradford to the stand.

21 COURT CLERK: You do solemnly swear that the
22 testimony you are about to give in this case now
23 pending before the Court will be the truth, the whole
24 truth, and nothing but the truth, so help you God?

25 THE WITNESS: Yes.

GEORGE BRADFORD

having been first duly sworn,

testifies as follows:

DIRECT EXAMINATION

BY MR. PATTON:

Q. Mr. Bradford, I'm going to show you some documents that I've marked Plaintiff's Exhibit No. 3 for identification. It's just a packet of documents.

THE COURT: Is this a courtesy copy?

MR. PATTON: That's correct.

Q. BY MR. PATTON: Mr. Bradford, will you please state your name for the record, please?

A. George Roy Bradford.

Q. Mr. Bradford, are you familiar with the property that we've been talking about here today, this home and land?

A. Yes.

Q. How are you familiar with it?

A. That's where I was born and raised.

Q. When you say were you born and raised there, what do you mean you were born and raised there? Were you actually born on that property?

A. No, I was born in the old house that my father sold and moved up town.

Q. Did that home used to be part of this

1 property?

2 A. No. Yes, excuse me.

3 Q. And the land that we're talking about, it's
4 a home and how many acres?

5 A. There's only 20 acres all together.

6 Q. And the first Bradford that owned that home
7 and acreage, who was that?

8 A. Pleasant Sprague Bradford.

9 Q. And who was that in relationship to you?

10 A. My father's dad, my grandpa.

11 Q. So your grandpa owned it originally?

12 A. Yes.

13 Q. And then who owned it after him?

14 A. My father, Roy Bradford.

15 Q. And?

16 A. Minnie Williams Bradford.

17 Q. And then who owned it after them?

18 A. I did.

19 Q. And when did you get it? Did you get it
20 before or after you married Andrea?

21 A. It was before.

22 Q. And when you married Andrea did you owe any
23 money on that property?

24 A. No.

25 Q. I see you looking and thinking hard. Do you

1 have some trouble with your thought process on
2 occasion?

3 A. Yes.

4 Q. Why is that?

5 A. Sometimes my mind goes almost blank, I
6 can't--

7 Q. Did you ever have any accidents that has
8 complicated this?

9 A. When I was three I was kicked in the head by
10 a horse -- a colt, it wasn't a horse, and it seemed to
11 slow my thinking a lot.

12 Q. Can you tell the Court how much education
13 you have?

14 A. Well, I graduated from high school, 12
15 years, and then I have -- after they closed the
16 foundry down at Geneva they told us that we had an
17 option of we could go take a class in UVSC in several
18 different areas, auto repair or maintenance or
19 mechanic.

20 Q. So did you get that education?

21 A. Yes.

22 Q. How many additional years?

23 A. I started in 1985 and it was a two year
24 course.

25 Q. Do you remember marrying Andrea in 1985?

1 A. Yes.

2 Q. Were you still working at Geneva when you
3 married her?

4 A. Yes.

5 Q. And how long had you worked at Geneva?

6 A. Total?

7 Q. Yes.

8 A. Twenty-two years something.

9 Q. And so when you were with Andrea working at
10 Geneva, when did you retire from Geneva?

11 A. I believe it was 1986 that they ordered us
12 off the property.

13 THE COURT: Just a minute, let me make sure
14 I'm clear. What did he start in 1985? You said he
15 started in 1985.

16 MR. PATTON: He married in 1985.

17 THE COURT: I got that.

18 MR. PATTON: And he started an educational
19 program in 1985.

20 THE COURT: Thank you.

21 Q. BY MR. PATTON: You worked at Geneva a total
22 of 22 years?

23 A. And so many months, yes.

24 Q. And you married Andrea in 1985?

25 A. Yes.

1 Q. And then you worked at Geneva another year
2 before--

3 A. No -- well, it was close to a year because
4 1986, I believe, was when they ordered us off the
5 place.

6 Q. So it was about a year. So out of the 22
7 years that you worked there you were married to Andrea
8 one year?

9 A. Yeah.

10 Q. I'm going to ask you to look at the very
11 first document on top that you've got there. It's a
12 document entitled, "Order of Dismissal," and it
13 purports to be a divorce action George Bradford and
14 Andrea Bradford, just the very first page, don't turn
15 back, very first page. Do you remember filing a
16 divorce action against Andrea in 1992?

17 A. Yes.

18 Q. And that was--

19 A. Okay.

20 Q. And that was dismissed in 1993 in February;
21 is that right?

22 A. Yes.

23 Q. And you and Andrea decided to try and make
24 your marriage work; is that right?

25 A. Yes.

1 Q. Did you continue to have arguments and
2 discussions about divorce?

3 A. Yes.

4 Q. Did you continue to have arguments and
5 discussions about divorce up until the time you filed
6 this divorce action?

7 A. Yes.

8 Q. Do you remember an argument that you had
9 with Andrea in July of 1996?

10 A. Yes.

11 Q. And was that at your home?

12 A. Yes.

13 Q. Was it like all of the other arguments or
14 was it smaller or was it bigger?

15 A. It was bigger.

16 Q. Why was it bigger?

17 A. Because I had a feeling that those engineers
18 were down there for a purpose, and--

19 Q. For what purpose did you think they were
20 there for?

21 A. To condemn the place.

22 Q. And when you argued with Andrea that day,
23 how long did that argument last?

24 A. Well, I worked at the school, and I don't
25 get off until about 4 -- it must have been off and on

1 the rest of the day.

2 Q. Did you hear Andrea say that that argument
3 sort of slopped over -- in other words, it was around
4 that time -- in other words it wasn't just that day,
5 but it was actually around that time. Do you recall
6 that happening?

7 A. Yes, around that day?

8 Q. Yes.

9 A. Yes.

10 Q. Did you argue about anything other than just
11 the fact that the people were there, or did you argue
12 about anything else, too?

13 A. Yes.

14 Q. Did you argue about Mr. Demita?

15 A. Yes.

16 Q. What was that argument about?

17 A. That he wasn't living up to the verbal
18 agreement that we made, and that he -- I wanted him
19 out of there.

20 Q. You wanted him out of where?

21 A. Out of the place, out of the home because of
22 his long stay, that he had already been there.

23 Q. And what verbal agreement wasn't he living
24 up to?

25 A. We made a verbal agreement that he would pay

1 all the utility bills and he never did, he only paid
2 for the first three months, and then after that I paid
3 them.

4 Q. When was that agreement made?

5 A. In December of 1985.

6 Q. In December of 1985?

7 A. I mean December of 1995, excuse me.

8 Q. So he moved in in December of 1995?

9 A. No, he lived there in -- he moved in
10 December of 1995.

11 Q. Did he bring anyone with him?

12 A. No.

13 Q. Did he have his son with him?

14 A. No.

15 Q. But did he have an agreement to pay
16 utilities?

17 A. Yes.

18 Q. How many months did he pay utilities?

19 A. Three months.

20 Q. And then what happened?

21 A. And then I paid them from then on.

22 Q. Did there come a time that his son started
23 living with you, too?

24 A. Well, after he was born, yes.

25 Q. When was that?

1 A. Well, he's 11 now, so it's been 11 years
2 ago.

3 Q. Now in the July argument it's your testimony
4 that you told your wife you wanted Mr. Demita out of
5 that house?

6 A. Yes.

7 Q. Had you and your wife and Mr. Demita, had
8 you guys talked about trying to develop the property
9 part of that?

10 A. What day are we using?

11 Q. July of 1996 when you have the fight, prior
12 to July of 1996 -- when the engineers were there,
13 prior to that date had you and she and Mr. Demita
14 talked about developing that property?

15 A. Yes.

16 Q. Had you talked about selling the home or
17 bulldozing the house down?

18 A. No.

19 Q. What was the agreement in terms of
20 developing the house?

21 A. Well, it started out with two other
22 developers that were interested in it, and it fell
23 through, so James claimed he could do it himself, so I
24 wanted to have it developed. I accepted until I found
25 out later that none of the stuff that he was telling

1 me was true.

2 Q. Was there a reason the property in the back
3 of your home couldn't be developed?

4 A. Yes.

5 Q. What was the problem?

6 A. It was on a flood plain, mostly, and that
7 there was no access to it -- the code of the city
8 required you to have 160 some-odd feet to get to the
9 property, and there wasn't--

10 Q. You say 160-odd feet, is that 160-odd feet
11 on a city road?

12 A. Yes, for a city road, a double lane road
13 going down.

14 Q. And was there 160 some-odd feet?

15 A. No, sir, there wasn't.

16 Q. Was there 160 some-odd feet if the house was
17 taken down?

18 A. Yes. No, no, excuse me, there wasn't
19 because -- I'm not sure of the width of the place, I
20 think it's 130 some-odd feet.

21 Q. Did you ever agree that the house would be
22 taken down?

23 A. No.

24 (Direct testimony of Mr. Bradford by Mr. Patton
25 continues. Certain portions extracted)

1 Q. BY MR. PATTON: Other than the thousand
2 dollars you took out and \$700 you took out, since this
3 divorce has been pending have you taken any other
4 money out of your savings or IRA, that you're aware
5 of?

6 A. No.

7 Q. Not that you're aware of?

8 A. Not that I'm aware of, no.

9 Q. Have you made additional contributions to
10 it? Do you put money in each month?

11 A. No, I just barely have enough to pay the
12 bills, utility bills.

13 Q. The next document claims it's a warranty
14 deed.

15 A. Yes.

16 Q. It says it's a warranty deed and it's dated
17 November 1989, and it purports to be a deed
18 transferring property to you and Andrea as husband and
19 wife with full rights of survivorship and not as
20 tenants in common. Is that the deed that you signed
21 that transferred the property to you and Andrea?

22 A. Yes.

23 Q. And then the next page is a document
24 entitled, "Quit Claim Deed," and that's the document
25 that purports that Andrea transferred it to Mr.

1 Demita. Were you aware that she had done that?

2 A. No, sir, I wasn't.

3 Q. How did you become aware of the fact that
4 she had done that?

5 A. Through my daughter.

6 Q. How did your daughter tell you?

7 A. My lawyer asked for a copy of the deed, and
8 my daughter went to the courthouse to get it and then
9 she found out that this had been done.

10 Q. When you say the deed, you didn't mean the
11 quit claim deed, did you?

12 A. No.

13 Q. You mean the deed transferring it to you and
14 Andrea?

15 A. Yes.

16 Q. So you weren't aware that there had even
17 been a quit claim deed?

18 A. No.

19 Q. And when did you find out there had been a
20 quit claim deed?

21 A. When my daughter, Phyllis, told me.

22 Q. Do you know about what year that was, was it
23 in 1996, was it in 1997?

24 A. It happened in 1997.

25 Q. Was that at or about the time you filed for

1 divorce, was it about the same time?

2 A. Yes, about the same.

3 MR. PATTON: Your Honor, we would submit
4 Plaintiff's Exhibit No. 3 for identification as
5 Plaintiff's Exhibit No. 3.

6 MR. CHUNTZ: I have no objection, your
7 Honor.

8 THE COURT: Three will be received.
9 (Exhibit No. 3 received into evidence)

10 Q. BY MR. PATTON: Mr. Bradford, did you hear
11 the statements that were made by your wife here today?

12 A. Yes.

13 Q. Do you agree with all those statements?

14 A. No, I don't.

15 Q. Do you think she's misrepresented some of
16 the facts to the Court?

17 A. Yes.

18 Q. If you were to tell the Court what you
19 believe the real problem in your marriage to Mrs.
20 Bradford is, what would you be telling him you think
21 the real problem in the marriage is?

22 A. Having her son living with us and his son.

23 Q. Were you residing in Utah County for three
24 months immediately prior to the commencement of this
25 action?

1 A. Yes.

2 Q. And were you a resident of Utah County?

3 A. Yes.

4 Q. And in your complaint for divorce you've
5 alleged that there are irreconcilable differences
6 between you and she; is that correct?

7 A. Yes.

8 Q. And are there in fact irreconcilable
9 differences?

10 A. Yes.

11 Q. And are those differences Mr. Demita?

12 A. Yes.

13 Q. And his continuation in the home?

14 A. Yes.

15 Q. And as a result of that are you requesting
16 the Court to award you a divorce?

17 A. Yes.

18 Q. And if the Court awards the divorce, are you
19 asking the Court to set aside the transfer from your
20 wife to Mr. Demita -- set that aside and say it
21 belongs to you and she?

22 A. Yes.

23 Q. And then are you asking the Court to award
24 the property to you as your premarital property?

25 A. Yes.

1 Q. I want to make it clear, and I want to be
2 fair to her and I want to be fair to you and I want to
3 be fair to the Court -- the improvements, the furnace,
4 the sewage system, the painting, the other things that
5 she described, where did the money come from that
6 those things were paid for?

7 A. Out of my pocket. Like I say, I had to use
8 up that sub that had collected at Geneva before I was
9 eligible -- before I could get any pension from them
10 or before I was able to even start the rule of 65,
11 that had to be used up first, she told me, the lady
12 over at Geneva.

13 Q. If the Court orders that we can't set aside
14 the deed, are you asking the Court to let you purchase
15 Mr. Demita out?

16 A. Yes.

17 Q. And do you need 90 to 120 days to do that?

18 A. Yes.

19 Q. And you understand if the Court does that
20 and you can't, that the Court's likely to say that Mr.
21 Demita can purchase you out?

22 A. Yes.

23 Q. Do you have any reason to disbelieve that
24 the home and the property is worth \$180,000, less the
25 \$9,000 to fix the tanks?

1 A. (No response)

2 Q. Remember the appraisals we both--

3 A. Yes.

4 Q. And both appraisals were for \$180,000,
5 weren't they?

6 A. Yes.

7 Q. And then there's the tank issue and it's
8 going to cost \$9,000 to remove them, right?

9 A. Yes.

10 Q. If they're removed?

11 A. Yes.

12 Q. And do you believe they need to be removed?

13 A. Yes.

14 Q. Did you hear your wife testify that on the
15 date she signed that quit claim deed to Mr. Demita she
16 didn't owe him any money?

17 A. Yes.

18 Q. Is that true?

19 A. I don't know about their financial business.
20 From all that I know I don't think she owes him any.

21 MR. PATTON: Thank you, no further
22 questions.

23 (Cross examination of Mr. Bradford beginning by Mr.
24 Chuntz. Certain portions extracted)

25 ///

CROSS EXAMINATION

BY MR. CHUNTZ:

Q. Good afternoon, Mr. Bradford.

A. Good afternoon.

Q. One little item that you were just testifying about when Mr. Patton finished with you was these items that were about your property, the motorcycle, some tanks, some things like that, that was all rusted out stuff that you actually helped Mr. Demita load onto a truck and take down to the scrap metal place?

A. No, I didn't help him.

Q. You didn't help him with that at all?

A. No, I didn't. I dug that one out of the river, somebody had hauled it down there to the -- dumped some fill in the river, and I had dug it out there and hauled it up there, and it was clear out of sight.

Q. But this was all old stuff.

A. Well, does that matter how old it is, it's still important to me. That's all I wanted was the frame.

Q. So it wasn't a matter of how much value it had, it had sentimental value to you?

A. Well, it's just that I was going to use it

1 someday. I had high hopes of using it, not rebuilding
2 the cycle, making another thing out of it, and I
3 needed the frame to do it.

4 Q. Now the tanks that are still buried on the
5 property, they're still there now?

6 A. Yes, sir.

7 Q. And you haven't had to remove them anytime
8 during the years that you've owned the property; is
9 that correct?

10 A. That's right, yes.

11 Q. And nobody's told you that you had to remove
12 them, have they?

13 A. No.

14 Q. As far as you know at this point in time
15 there's no need to remove any of the tanks?

16 A. I guess not if nobody demands that they be
17 removed.

18 Q. You got this property from your mom and dad?

19 A. I inherited it, yes.

20 Q. When you say you inherited it, they were
21 alive when they deeded it to you, weren't they?

22 A. Yes.

23 Q. So you got it by deed from them?

24 A. Yes.

25 Q. It was a gift?

1 A. Yes.

2 Q. At the time that they deeded this property
3 to you -- do you have brothers and sisters?

4 A. Yes.

5 Q. How many?

6 A. I have a brother and two sisters.

7 Q. They didn't deed any part of this property
8 to your brother and sisters, did they?

9 A. Of the property that I have?

10 Q. Uh-huh.

11 A. No, but they were questioned about it if
12 they wanted it, and they all refused it.

13 Q. Your dad, he got the property from--

14 A. His father, yes, sir, Pleasant Sprague.

15 Q. And his father deeded it to him alone,
16 didn't he?

17 A. From what I know.

18 Q. And then later your dad added your mother's
19 name after they got married, your dad added your
20 mother's name to the property; is that right?

21 A. I don't know, I just know her name was on it
22 with dad's on the deed.

23 Q. But originally it was deeded -- let me show
24 you this and ask if you've ever seen this document.

25 A. No, I've never.

1 Q. Is that a deed to the property?

2 MR. PATTON: Objection, he's indicated he's
3 never seen it before. I don't think he knows.

4 THE COURT: Sustained as to the form of the
5 question.

6 THE WITNESS: Dora Hansen, that's my
7 father's mother.

8 Q. BY MR. CHUNTZ: Did she deed that -- does
9 that deed deal with the property that you presently
10 own?

11 A. Let's see--

12 Q. Does that have the same legal description on
13 it as the property that you presently own?

14 MR. PATTON: Your Honor, maybe we could
15 short circuit this. I'm not sure my client would
16 know. I'm not sure he can read well enough -- if
17 counsel wants to bring it (inaudible) we might be able
18 to stipulate.

19 THE WITNESS: I've never read this before, I
20 don't know -- it's new to me, no. Does this pertain
21 to the property where we live?

22 MR. PATTON: Your Honor, counsel has two
23 documents, and maybe if he would just proffer what
24 they are, it might save us some time because I don't
25 think I'd object to them. We've already agreed that

1 documents like this could come in and we would save
2 bringing people in to testify, and I'm not sure my
3 client knows.

4 THE COURT: State your proffer.

5 MR. CHUNTZ: I have a deed -- all of these
6 deeds deal with the subject farm, the legal
7 descriptions are the same. I have a deed from Dora
8 Hansen.

9 Q. BY MR. CHUNTZ: Was Dora Hansen your
10 grandmother?

11 A. Yes.

12 Q. And the deed deeds the subject property to
13 Roy Bradford, and that's your father, right?

14 A. Yes.

15 Q. And then subsequently I have a deed from Roy
16 Bradford to Roy and Minnie Bradford as joint tenants,
17 and Minnie Bradford is your mother?

18 A. Yes, sir.

19 MR. PATTON: We wouldn't have any dispute
20 that those are the documents (inaudible).

21 THE COURT: Have them marked and they'll be
22 received.

23 Q. BY MR. CHUNTZ: You have filed for divorce
24 previous to this time against Mrs. Bradford, haven't
25 you?

1 A. Yes.

2 Q. That was in 1992?

3 A. 1992, yes.

4 Q. And you were the one that filed?

5 A. Yes.

6 Q. And then you had that divorce dismissed,
7 didn't you, in February of 1993?

8 A. Yes.

9 Q. You've indicated already that you had
10 several discussions -- frequently discussed divorcing
11 Mrs. Bradford with her over the years that you were
12 married; is that true?

13 A. Off an on, yes.

14 Q. How often did that happen?

15 A. Maybe every other month or more often, I
16 don't -- I'm not sure.

17 Q. Maybe even more often than that?

18 A. Yes, on times.

19 Q. So divorce was a frequent conversation
20 around your home, wasn't it, but you didn't act on it
21 very often, did you?

22 A. Not until this event took place that really
23 stirred me up.

24 Q. What stirred you up the first time? Why did
25 you file for divorce the first time in 1992?

1 A. My wife was stepping out on me.

2 MS. BRADFORD: That's his first wife, not
3 me.

4 THE WITNESS: In 1992, excuse me.

5 Q. BY MR. CHUNTZ: In 1992. Why did you file
6 for divorce from Andrea in 1992?

7 A. I really don't remember right now. I can't
8 remember.

9 Q. You married Andrea in 1985?

10 A. Yes.

11 Q. And then in 1989 you gave her the subject
12 property in joint tenancy; is that right?

13 A. Yes.

14 Q. You gave that to her as a gift, didn't you?
15 You wanted her to have--

16 MR. PATTON: Objection, that calls for a
17 legal conclusion. I think he can ask if he signed it,
18 I think he can ask why, but if he wants my client to
19 give a legal conclusion, your Honor, I think that
20 that's an (inaudible) my client may not understand
21 that term. I think he's already explained why he gave
22 it to her and why he did it. There's a difference
23 between saying that and saying it's a gift.

24 THE COURT: Sustained.

25 Q. BY MR. CHUNTZ: You were happy with Andrea

1 in 1989; were you not?

2 A. Yes, 1989, yes.

3 Q. At the time when you deeded the real
4 property over to her--

5 A. Half, yes.

6 Q. You were happy?

7 A. Yes.

8 Q. Did you want to take care of her at that
9 time?

10 A. Yes.

11 Q. Did you love her at that time?

12 A. I must have, yes.

13 Q. Do you remember at about that time your
14 parents deeding some property over to you and she,
15 their property?

16 A. At 245?

17 Q. Pardon?

18 A. Their property?

19 Q. Their property.

20 A. At 245 South Main?

21 Q. I think so.

22 A. Yes.

23 Q. And they deeded that over to you and to
24 Andrea as joint tenants with rights of survivorship;
25 is that correct?

1 A. I don't know how it read, I didn't--

2 Q. But it was to you and Andrea?

3 A. Yes. Andrea's name was added later, yes.

4 Q. And you didn't try to dissuade them from
5 doing that? You didn't try to convince them not to
6 put her name on their property, did you?

7 A. No.

8 Q. Because you wanted Andrea to have that as
9 well with you?

10 A. No.

11 Q. You didn't?

12 A. Not necessarily. My father put Andrea's
13 name on it.

14 Q. Why did he do that?

15 A. I don't know.

16 Q. Did you try to talk him out of it?

17 A. No.

18 Q. This was at a time when--

19 A. He had deeded it to me first, and then after
20 we were married he added her name onto it, I didn't
21 know it.

22 Q. You didn't know it?

23 A. Until she told me. Then the State took it
24 from us because of a shortage of time.

25 Q. Let me show you this document, the warranty

1 deed. Is this the property that your mom and dad own
2 in Spanish Fork?

3 A. At 245, where is that?

4 Q. I don't know that there's an address on it.

5 A. I guess if it's up in town, nine rods south.

6 Q. Did they own any other property in town?

7 A. No.

8 Q. And this is your mother and father's names?

9 A. Yes.

10 Q. So they were the owners of the property back
11 in March of 1989?

12 A. Yes.

13 Q. Who did they deed this property to?

14 A. George Bradford and Andrea Bradford, husband
15 and wife.

16 MR. CHUNTZ: May I have this marked? I move
17 to admit Exhibit 6.

18 THE COURT: Any objections?

19 MR. PATTON: No, I'd like counsel to lay a
20 little more foundation. I'm not sure my client
21 understands what it was. Again, this is the type of
22 document counsel and I talked about, we're not going
23 to object and bring a lot of people in.

24 THE COURT: Is it at 245 South?

25 MR. CHUNTZ: Yes, I believe it is.

1 MR. PATTON: No objection.

2 THE COURT: It will be received.

3 (Exhibit No. 6 received into evidence)

4 Q. BY MR. CHUNTZ: So your parents deeded that
5 property to you and Andrea, right?

6 A. Yes.

7 Q. And you didn't try to talk your mom or dad
8 out of doing that?

9 A. No, sir, we tried to -- not we -- I tried to
10 talk to them that they ought to deed that place to
11 somebody or else the State's going to end up with it.

12 Q. And so they deeded it to both you and she?

13 A. Too late. We hadn't had it in our names
14 for -- I believe the time was 33 months, and we only
15 had it 11 months in our name, and dad was in a rest
16 home and as soon as mother passed away the place filed
17 back to dad in his name, and the State said we had to
18 sell it or get -- they just told us we had to sell it
19 in order for dad to stay in the rest home.

20 Q. Was Andrea taking care of your parents at
21 that time?

22 A. Off and on, yes. I stayed with mother quite
23 a bit at nights.

24 Q. You did?

25 A. Yes, while dad was in the rest home or while

1 she was alone.

2 Q. She was down there taking care of your mom
3 during the day?

4 A. At times, not all the time.

5 Q. In February of 1996 you were interested in
6 selling the subject property, weren't you?

7 A. 1996?

8 Q. 1996. You entered into a real estate sales
9 agreement with a Mr. Mullen, GM Development?

10 A. I didn't.

11 Q. You didn't?

12 A. Is that the one that -- okay, it was with
13 David Gardner and it fell through?

14 Q. Let me show you, I believe it probably is,
15 and I'll show you a document marked Exhibit 7, and let
16 me ask you if--

17 A. That's my--

18 Q. Is that your signature?

19 A. Yes. So is that the agreement that was--

20 Q. Do you remember what that is? Do you recall
21 that agreement?

22 A. No, but I signed it.

23 Q. Do you recall entering into an agreement
24 with GM Development and Mr. Mullen?

25 A. Well, it's just one that Jim had us sign.

1 Q. Do you remember getting \$10,000 earnest
2 money on the agreement?

3 A. He said something about it, but I never did
4 get it, no.

5 Q. The agreement that you recall, did that fall
6 through?

7 A. Yes. This one?

8 Q. Yes.

9 A. Yes.

10 Q. It fell through?

11 A. It didn't go through, yes.

12 Q. And you had to give back the earnest money?

13 A. I never did see it.

14 Q. Do you recall this Exhibit marked No. 8?
15 Your signature's on that.

16 A. What's this on?

17 Q. This is an escrow agreement whereby you
18 instruct the title company to return the \$10,000 to GM
19 Development.

20 A. Yes, he said something about -- Jim
21 explained something about that if they didn't do it in
22 so many months, I believe, that you had -- that they
23 were -- I didn't have to pay it; is that right?

24 Q. So you signed that agreement?

25 A. Yes, that's my signature.

1 MR. CHUNTZ: I move to admit 7 and 8.

2 MR. PATTON: No objection.

3 THE COURT: Seven and eight will be
4 received.

5 (Exhibit Nos. 7 and 8 received into evidence)

6 Q. BY MR. CHUNTZ: So after that deal fell
7 through, you still wanted to develop the property,
8 didn't you?

9 A. Yes and no because of the funny stories I
10 was getting back from the way the city was accepting
11 it when the city hadn't accepted it at all.

12 Q. Let me show you what's been marked as
13 Exhibit 9 and ask you if your signature appears on
14 this document.

15 A. Yes.

16 Q. That document is entitled a "Contract?"

17 MR. PATTON: Your Honor, I don't have any
18 objection if he stands next to my client and points to
19 the document and help my client find those things.

20 THE COURT: Go ahead.

21 MR. CHUNTZ: I'm going to give him an
22 opportunity to read it, see if he recalls it.

23 THE WITNESS: Yes, I remember it.

24 Q. BY MR. CHUNTZ: This is an agreement that
25 you entered into with your wife and James Demita?

1 A. Yes, this is the one that I should have
2 talked to my attorney about and I didn't.

3 Q. And this is an agreement that was putting a
4 prior oral agreement in writing?

5 A. It says yes, 25 percent.

6 Q. James was going to get 25 percent, wasn't
7 he, of the property?

8 A. That's what it says on here, yes, value of
9 the lot, yes.

10 Q. So you were willing to transfer a portion of
11 the proceeds from the sale of those lots--

12 A. This was if he developed it, which he never
13 did.

14 Q. I understand, but you were willing to--

15 A. Well, why is it still in force?

16 THE COURT: Just a minute, sir. Please
17 answer the questions.

18 Q. BY MR. CHUNTZ: You were willing to go
19 forward with this transaction?

20 A. Yes, if he developed it.

21 MR. CHUNTZ: I move to admit No. 9.

22 MR. PATTON: No objection.

23 THE COURT: Number 9 will be received.

24 (Exhibit No. 9 received into evidence)

25 Q. BY MR. CHUNTZ: That was in -- you entered

1 into that agreement in late April of 1996, right?

2 A. What's the date on it, I don't know.

3 Q. That's what it says, April 26th.

4 A. Okay.

5 Q. Did the three of you continue with
6 development activities, trying to get the property
7 developed?

8 A. No, I think shortly after that I stopped it.

9 Q. Did you? When did you stop it?

10 A. When I found out what he was doing to me.

11 Q. When was that?

12 A. A little past this date that was on there.

13 Q. A little past, is that a few days, a few
14 weeks, a few months?

15 A. I don't know when it was. As soon as I
16 found out from the city that none of this stuff had
17 been passed through that he said had been all voted
18 on. Nothing had been passed by the city, that's what
19 they told me.

20 Q. Let me show you what's been marked as
21 Exhibit 10. Do you recognize that document?

22 A. Yes.

23 Q. What's River and Park View Estates?

24 A. That's the name we agreed on.

25 Q. What is the document?

1 A. What is the document?

2 Q. Yes. Have you ever seen this or something
3 like this before?

4 A. This document?

5 Q. Yes.

6 A. Yes, I guess. This is the one that they
7 had -- he had LEI map out.

8 Q. Who's "he?"

9 A. James.

10 Q. Did you hire LEI?

11 A. No, I didn't.

12 Q. Did you have anything to do with LEI?

13 A. No.

14 Q. How about paying them for their services?

15 A. Yes.

16 Q. You paid them for their services?

17 A. After this was all mapped out, yes.

18 Q. You knew they were doing that, right?

19 A. Yes.

20 Q. Do you remember having the whole property
21 surveyed?

22 A. By LEI?

23 Q. Yes.

24 A. Yes.

25 Q. And did you talk with LEI about any of this

1 development or mapping out the property?

2 A. No.

3 Q. The date on Exhibit 10 shows 6/96. Is that
4 when LEI did its work?

5 A. I can't tell you that -- yes, if that's the
6 date on it.

7 Q. Do you have a recollection yourself?

8 A. No, I don't. If that's when it's dated,
9 that's when they did the work, I guess.

10 MR. CHUNTZ: I move to admit 10.

11 THE COURT: Any objection?

12 MR. PATTON: And 10 was the topographical
13 map?

14 MR. CHUNTZ: Yeah, the plat map.

15 MR. PATTON: No objection.

16 THE COURT: Ten will be received.

17 (Exhibit No. 10 received into evidence)

18 Q. BY MR. CHUNTZ: Exhibit 11 consists of two
19 checks for the -- copies of the two checks. Do you
20 recognize these two checks?

21 A. No, I don't. That's not my writing.

22 Q. That's not your writing?

23 A. No.

24 Q. Is this your signature down in here?

25 A. This is mine, yes.

1 Q. That's your signature down in here?

2 A. Yes.

3 Q. These are checks to whom?

4 A. LEI Engineers.

5 Q. What are the dates on the two checks?

6 A. June 1st of 1996 and June 17th of 1996.

7 Q. And are there notations on those checks as
8 to what these payments were for?

9 A. Subdivision, yes.

10 Q. These had to do with the subdivision?

11 A. That's what it says on here, yes.

12 Q. And you signed these checks?

13 A. I must have, that's my signature, yes.

14 Q. But you don't recall now being involved with
15 LEI and what they were doing? What are the dates on
16 the two checks?

17 A. One is the 1st of June and the other is the
18 17th.

19 Q. Of June?

20 A. Yes.

21 Q. Both in 1996?

22 A. Yes.

23 Q. So you were paying money to LEI, signing
24 checks, but you didn't know what they were doing?

25 A. Okay, this one was on the -- he said that

1 this on the -- when they mapped it out for \$1400.

2 Q. And is that the subdivision plot, Exhibit 10
3 that I just showed you? That's what that was for when
4 they mapped it out?

5 A. I think so.

6 Q. And did you get to see that at the time it
7 was done?

8 A. Showed us that, yes.

9 Q. So you did see it and you paid for it?

10 A. Yes.

11 MR. CHUNTZ: We move to admit Exhibit 11.

12 MR. PATTON: No objection.

13 THE COURT: Eleven will be received.

14 (Exhibit No. 11 received into evidence)

15 Q. BY MR. CHUNTZ: In June of 1996 you were
16 still working on the project, weren't you?

17 A. It looks like it, yes. When was this
18 that -- the question before that, what was it you
19 asked about, if you remember.

20 Q. If I remember I'll ask it again. I'm sorry,
21 I don't remember. Let me show you Exhibit 12. Do you
22 remember getting this bill from LEI?

23 A. This is that \$1400.

24 Q. I think that's a different \$1400.

25 A. No, I only paid them once, didn't I?

1 Q. Well, I think not. If it will help--

2 A. I made two checks after that \$1400?

3 Q. Let me show you Exhibit 13, and ask you if
4 your signature appears at the bottom of this.

5 A. Yes, that's it.

6 Q. That's it?

7 A. Yes.

8 Q. That's another check for \$1405, that's the
9 amount of this invoice, right?

10 A. Yeah.

11 Q. What's the date on the invoice?

12 A. This is in September.

13 Q. This is in September, in fact it's September
14 30th that you paid it; isn't that correct?

15 A. Yes.

16 Q. So you were still working with LEI in
17 September of 1996?

18 A. Yes.

19 Q. Working on developing this property?

20 A. It looks like it.

21 MR. CHUNTZ: I move to admit 12 and 13.

22 MR. PATTON: No objection.

23 THE COURT: Twelve and thirteen will be
24 received.

25 (Exhibit Nos. 12 and 13 received into evidence)

1 Q. BY MR. CHUNTZ: Let me show you Exhibit No.
2 14. Is your signature there on this one?

3 A. Yeah.

4 Q. And this one is made out to Newman Bundy?

5 A. Yes, I owed him \$500.

6 Q. He delivered some dirt to the property,
7 right? That was part of the development of the
8 property, wasn't it?

9 A. No, that was part of the -- just to fill up
10 the land, and they had some dirt they wanted to get
11 rid of.

12 Q. But you needed the dirt to fill in the land?

13 A. Yeah, we agreed that -- I agreed to buy it,
14 yes.

15 Q. And that was part of the development process
16 that you were going through there in September?

17 A. Yes, if that's what you want to call it, the
18 development project. Yeah.

19 MR. CHUNTZ: I move to admit 14.

20 MR. PATTON: No objection.

21 THE COURT: Fourteen will be received.

22 (Exhibit No. 14 received into evidence)

23 Q. BY MR. CHUNTZ: In fact, you were still
24 going forward with the development of the project in
25 trying to get in position to sell lots and trying to

1 have James work with the city all the way up until
2 April of 1997, weren't you?

3 A. I don't know, was it that late?

4 Q. Do you remember talking to your daughter,
5 Phyllis, and asking her to contact the city and find
6 out what was going on?

7 A. Yes.

8 Q. And that was in about April of 1997?

9 A. I don't know the time.

10 Q. Let me show you Exhibit 15, it's the letter
11 that Phyllis received. Did you ever get to see this?
12 Look at that letter. Do you remember having a
13 conversation with Phyllis about that letter or seeing
14 that letter before?

15 A. Just a minute. I don't remember, but this
16 is the one that she we went to Comstock and received,
17 yes.

18 Q. Comstock, he's the planning--

19 A. Yes, engineer.

20 Q. Planning engineer for Spanish Fork?

21 A. Yes.

22 Q. Did you ask her to go and see him?

23 A. Yes, talk to him.

24 Q. Why was that?

25 A. Because all the stuff that he was telling me

1 that hadn't been--

2 Q. Are you talking about James Demita?

3 A. Yes.

4 Q. So James was telling you things about the
5 project?

6 A. He was going to these council meetings, and
7 he would come home and say, "Well, I can't believe how
8 fast they accepted all these things, and it's all
9 passed," and I went to Comstock and he said no, it
10 hadn't been passed by the city at all.

11 Q. So you asked your daughter to talk to--

12 A. Talk to Comstock, yes.

13 Q. And that was just before you got this
14 letter?

15 A. Yes.

16 Q. So before you learned that, you were still
17 moving ahead with James and--

18 A. Well, yes, I thought he was being truthful
19 with me.

20 Q. The three of you were still trying to
21 develop the property to sell as late as April, and
22 maybe even as late as May of 1997?

23 A. I didn't think it was that late.

24 Q. Well, the letter is May 5, 1997?

25 A. May 5th, yes.

1 Q. Then you got angry after you learned that
2 James wasn't telling you the truth, right?

3 A. Yes, I was angry before, too.

4 Q. But you were willing to continue developing
5 the property with him?

6 A. Yes.

7 Q. Then you went to see your lawyer after you
8 got this letter -- saw this letter?

9 A. Yes.

10 Q. And that's when you went to see him about
11 getting a divorce, right?

12 A. Yes.

13 Q. That's when you asked Phyllis to go over and
14 check on the records to see who owned the property; is
15 that right?

16 A. No, I believe--

17 Q. Mr. Patton asked that?

18 A. Wasn't it that way?

19 MR. PATTON: Counsel, do you want me to
20 testify?

21 MR. CHUNTZ: No, it's all right.

22 Q. BY MR. CHUNTZ: Either you or Mr. Patton
23 asked your daughter to go check on the records about
24 the property?

25 A. Get a deed for the property, yes, when she

1 found out about that it had been done.

2 MR. CHUNTZ: We move to admit 15.

3 MR. PATTON: Your Honor, I want to make my
4 objection clear because I'm only objecting to the
5 admission of 15 if it's being admitted for the
6 purposes of what's stated in the letter. What's
7 stated in the letter is hearsay, and so therefore I'm
8 objecting to it being submitted for purposes of the
9 truthfulness of the letter.

10 However, if what he's submitting is to see
11 that my client was aware of the letter and had
12 received a copy of it, (inaudible) or at least seen a
13 copy, I'm not objecting to that. But for purposes of
14 the truthfulness of the letter itself, we object.

15 MR. CHUNTZ: I'm not offering it for the
16 subject matter of the letter.

17 THE COURT: Okay, it will be received.
18 (Exhibit No. 15 received into evidence)

19 Q. BY MR. CHUNTZ: During this whole period
20 when you and James and Andrea were working on
21 developing the property, you weren't contemplating
22 divorce then, were you?

23 A. I really can't say.

24 Q. You hadn't gone to see a lawyer about
25 getting a divorce, had you?

1 A. No.

2 Q. You were still working with Andrea and James
3 to get this property developed, weren't you?

4 A. I must have.

5 Q. That's what the documents seem to show,
6 don't they?

7 A. Yes. But I could begin to see what a mess I
8 was getting in.

9 Q. So you were beginning to see that you were
10 not going to be happy?

11 A. Yes, I was beginning to see that it wasn't
12 his land, it was my land, I had to pay the consequence
13 of what I gave him to do, and I paid the consequences
14 of it.

15 Q. So you weren't happy with the deal that you
16 entered into with him?

17 A. No, I wasn't.

18 Q. You wanted to get out of that?

19 A. Yes.

20 Q. But you still weren't looking to divorce
21 Andrea at that point, were you?

22 A. I don't know, there's been quite a few times
23 it's come up.

24 Q. Now you've got other real property -- real
25 estate -- in addition to the subject property here,

1 the marital home, don't you?

2 A. The marital home?

3 Q. Yeah, the place where you and Andrea lived.

4 A. Yes. No, I don't, no.

5 Q. You have some property in a place called
6 Aspen Hills?

7 A. No. What made you think I have property up
8 there? That was dropped many years ago.

9 Q. When was that dropped?

10 A. I don't know, but I sold it -- I went up
11 there and had that stopped a long time ago. When did
12 I buy it?

13 Q. Well, I know you had it at least back in
14 1986, and in your answers to interrogatories back in
15 August of 1997, you listed real property in Indianola.

16 A. No, that's not mine. I don't have nothing
17 up there.

18 Q. You don't have anything up there, either?

19 A. No, I don't.

20 Q. You did have property in Aspen Hills,
21 though?

22 A. No. I let that go a long time ago. If I
23 still own it, it's never been paid for.

24 Q. That would be a pretty good deal. I don't
25 know if you own it or not.

1 A. I don't own it.

2 Q. In 1996 and in 1997 Andrea didn't owe you
3 any money, did she?

4 A. No, I don't think so.

5 Q. You've never claimed that she's owed you any
6 money, have you?

7 A. No.

8 Q. You weren't demanding or insisting that --
9 in 1996 you weren't demanding her or insisting that
10 she give you back the half of the property that you
11 had deeded over to her, were you?

12 A. You mean the property that she owned?

13 Q. No, I'm talking about the farm, the subject
14 property. You weren't asking or demanding that she
15 give it back to you in 1996, were you?

16 A. I could have been, yes.

17 Q. You could have been?

18 A. I wanted her to sign it back, I don't know
19 what year it was.

20 Q. But you and she were trying to develop it in
21 1996?

22 A. No, it wasn't then, it was before then.

23 Q. You were aware in 1996 that if you died
24 before Andrea did, that she would get all of the
25 property and your kids wouldn't get any of it, weren't

1 you?

2 A. No, I wasn't.

3 Q. You weren't aware of that?

4 A. No. My understanding was that it would go
5 half.

6 Q. You hadn't talked with anybody about what
7 joint tenancy meant?

8 A. No. Joint tenancy, that would mean both of
9 us, wouldn't it?

10 Q. Did your daughter ever talk with you about
11 what would happen if you died, what would happen to
12 the property?

13 A. No.

14 Q. She never talked with you about it?

15 A. My daughter?

16 Q. Yes, your daughter, Phyllis.

17 A. She might have, I don't remember.

18 Q. You don't remember her ever talking with you
19 about getting the property taken out of joint tenancy
20 so that she could get half of the property?

21 A. No.

22 Q. That wasn't a concern of yours?

23 A. Well, no, I don't think it was, not right
24 then. When was this?

25 Q. 1996.

1 A. I can't remember.

2 Q. What do you remember about it?

3 A. Talking to her about it, the property.

4 Q. What do you remember about that? Did you
5 ever have a concern that Andrea would get all of the
6 property if you died first?

7 A. No, I didn't.

8 Q. You never worried about that?

9 A. Well, I signed it expecting that -- her name
10 on there expecting that she would only get half of it.

11 Q. And that was your intention, wasn't it?

12 A. Yes.

13 Q. I want to take a look at part of Exhibit 3
14 with you, your financial declaration. Let me show you
15 where I'm looking. You've indicated here that your
16 gross income from your employment is \$638, and that
17 your net income is \$410; is that right?

18 A. Yes, pretty close.

19 Q. And the amount that--

20 A. That's an average of the whole year.

21 Q. And the average of the deductions that are
22 coming out are listed down here, \$60 for federal and
23 state tax, right?

24 A. Just the state, the federal wasn't taken
25 out.

1 Q. There was nothing taken out?

2 A. Not at the school, no.

3 Q. \$35 per month for FICA, Social Security?

4 A. Yes, they take that out automatically.

5 Q. \$8 per month for--

6 A. This is medical insurance.

7 Q. That's the \$165.

8 A. That's Geneva.

9 Q. You're right. And then you have this \$105
10 that you've listed as a deduction, and that's
11 (inaudible)?

12 A. Yes.

13 Q. That's a savings account, isn't it?

14 A. Yes.

15 Q. You put that in every month?

16 A. Yes, they take it out, yes.

17 Q. And you're still taking that out every
18 month; is that right?

19 A. Yes.

20 Q. So really what comes out of this \$638 every
21 month for taxes are the \$103 that go to governments,
22 right, the \$60, the \$35 and the \$8?

23 A. Yes.

24 Q. And the rest just goes into an account --
25 the \$105 goes into an account for you; is that

1 correct?

2 A. Yes.

3 Q. It's \$105 to (inaudible), that goes to you?

4 A. Yes.

5 Q. So if we take that \$103 for taxes off of the
6 \$638, we're left with \$535 a month that you've got in
7 disposable income after taxes from your employment?

8 A. Wait, now I don't understand.

9 Q. Let me point it out.

10 A. All of these are taken out in taxes from
11 there down to--

12 Q. Well, (inaudible) isn't a tax, is it?

13 A. No, but there down to there.

14 Q. And \$165 for your medical insurance--

15 A. That's Geneva.

16 Q. That's for your medical, right?

17 A. Medical, yes.

18 Q. Taxes are \$60, \$35, and \$8?

19 A. Yes.

20 Q. Unless counsel corrects me, I believe that
21 adds up to \$103. If you subtract \$103 from the \$638
22 that should be \$535.

23 A. No. I'd be getting that much in cash? I
24 don't get that much.

25 Q. I know you don't because you put \$105 into

1 (inaudible) .

2 A. (inaudible) yes.

3 Q. So this was \$535, and then you told us that
4 this is \$329 for Geneva?

5 A. Yes.

6 Q. And that's because \$165 comes off of this
7 \$469, doesn't it?

8 A. Yes.

9 Q. And then you get \$769 from Social Security?

10 A. Yes.

11 Q. And my calculator tells me that those three
12 net amounts equal \$633 as disposable income that you
13 have every month. Does that seem right to you?

14 MR. PATTON: Your Honor, if I may interject,
15 I'm going to object just because of the nature of the
16 conversation. I think we indicated in my client's
17 direct testimony sometimes he has trouble, I think he
18 explained why he had Phyllis trying to fill it out,
19 because we had trouble with this and some of those
20 numbers.

21 I don't dispute, counsel, that in closing
22 argument you can say "This number, if my addition is
23 correct--" I think what he's asking my client to do,
24 my client probably can't do without a calculator, and
25 just physically can't answer the questions. I know

1 where (inaudible) is going, he has a right to answer
2 it, the numbers are what they are, we don't dispute
3 that. I think pursuing this is starting to reach the
4 point of harassment of my client simply because he
5 can't do the numbers in his head.

6 THE COURT: Sustained.

7 MR. CHUNTZ: That's all the questions I
8 have.

9 THE WITNESS: Can I ask you a question?

10 MR. CHUNTZ: Maybe after court is over, but
11 not at the present time.

12 THE COURT: Mr. Patton, do you have any
13 further inquiry of your client?

14 MR. PATTON: Yes, your Honor.

15 REDIRECT EXAMINATION

16 BY MR. PATTON:

17 Q. Mr. Bradford, these documents, the contract
18 with Mr. Mullen, the working up, the LEI, the
19 surveyors, et cetera, did you do that or did Mr.
20 Demitra do that?

21 A. He hired it done, yes.

22 Q. And these documents, did you prepare them or
23 did Mr. Demitra prepare them?

24 A. Jim.

25 Q. And he brought them to you and had you sign

1 them?

2 A. They billed -- whether they -- I got a note
3 from them or whether they told Andrea, and Andrea told
4 me that this is what I owe them, I don't know.

5 Q. And you were trying to say something about
6 Mr. Demita would get a percentage of the property if
7 the property was actually sold or actually -- and you
8 got cut off. What was your understanding of what
9 would happen?

10 A. That I would owe him 25 percent -- it says
11 on there on the document that I would owe him 25
12 percent of each lot; was that the way it read?

13 Q. What was your understanding? I'm not asking
14 you what it read, I'm asking what your understanding
15 of it was.

16 A. That he would end up with a lot of money.

17 Q. If it was developed?

18 A. Yes.

19 Q. Did you expect that he would get half the
20 property from Andrea and get an additional 25 percent?

21 A. Yes, that's the way I figured it.

22 Q. No, no, no. Mr. Bradford, listen to what
23 I'm saying. At any of the time that you signed that
24 25 percent contract that you were trying to develop,
25 did you know that Andrea had already deeded over half

1 the property to him?

2 A. Now when was this, what year?

3 Q. 1996. Counsel asked you about trying to
4 develop the property in 1996 and early 1997. Do you
5 remember those conversations that he talked about?

6 A. No, I don't really.

7 Q. Do you remember counsel asking you about you
8 and Mr. Demita and Andrea trying to develop the
9 property from 1996 and in the first part of 1997?

10 A. Yes.

11 Q. During the period of time that you and Mr.
12 Demita and Andrea were trying to develop the property,
13 were you aware of the fact that Andrea had already
14 deeded one-half of the property to Mr. Demita?

15 A. No. Now this had happened -- when was this,
16 August of 1996 that this happened, that she had--

17 Q. Well, I can't answer those.

18 A. Okay, but it was early--

19 Q. When did you find out that Andrea had
20 deeded--

21 A. When she had gone to the county to get a
22 copy of the deed.

23 Q. And who is "she" went to get a copy?

24 A. That's Phyllis, my daughter.

25 Q. So that would have been about the same time

1 you saw the letter from Spanish Fork; is that right?

2 A. Oh, the one from Comstock?

3 Q. Yes.

4 A. I never did see it, she took it right over
5 to you, I believe. I don't remember seeing it.

6 Q. The Comstock letter appears to be dated May
7 5, 1997. About the time Phyllis got this letter, is
8 that about the same time you found out that Andrea had
9 deeded the property?

10 A. It must have been, because that was in --
11 now what date was that? I'm getting -- it was in
12 August, wasn't it, that she had taken her son over
13 there and did that?

14 Q. Well, the document speaks for itself. I
15 can't answer your questions. When you were dealing
16 with Mr. Demita concerning the development of the
17 property, were you trying to deal with him in any
18 dishonest way?

19 A. No.

20 Q. When you deeded the property to Andrea, and
21 when you were doing those things with Andrea, when you
22 deeded it in both of your names, did you believe that
23 you and Andrea would continue to be married?

24 A. Yes.

25 MR. PATTON: Thank you, no further

1 questions.

2 MR. CHUNTZ: Nothing further, your Honor.

3 THE COURT: You may step down. Let's take a
4 short break.

5 (Short recess taken)

6 MR. PATTON: (Court already in session when
7 recorder was turned on) Ms. Penner, who is here. I
8 have primarily brought her, your Honor, to explain why
9 my client didn't do so well explaining his numbers on
10 his financial declaration.

11 If she were called to testify she would
12 testify that in fact sometimes her dad doesn't do real
13 well with numbers, that she tried to assist him with
14 the financial declaration concerning what his income
15 sources were, and that some of the figures that we
16 gave in Exhibit 3 were actually figures that she and I
17 came up with working together, and to the best of her
18 information we believe they're correct. I don't think
19 counsel wants me to do anything other than just
20 proffer that, and he can cross examine her if he
21 wants. Is that correct, counsel?

22 MR. CHUNTZ: Yeah, I don't have a problem
23 with that, and I'm not going to cross examine her.

24 THE COURT: All right, I'll accept the
25 proffer.

1 MR. PATTON: With that, your Honor, we would
2 rest.

3 THE COURT: Mr. Chuntz?

4 MR. CHUNTZ: I call Andrea Bradford back to
5 the stand.

6 THE COURT: I just remind you that you're
7 still under oath.

8 ANDREA BRADFORD

9 having been first duly sworn,

10 testifies as follows:

11 DIRECT EXAMINATION

12 BY MR. CHUNTZ:

13 Q. Mrs. Bradford, you've already stated your
14 name for the record. What is your birthdate?

15 A. January 1, 1933.

16 Q. How old are you now?

17 A. Sixty-five.

18 Q. You've heard George testify. I believe his
19 age is--

20 A. Sixty-three.

21 Q. Are you presently employed outside of the
22 home?

23 A. No.

24 Q. Have you worked outside of the home during
25 the marriage?

1 A. Yes.

2 Q. When you first married Mr. Bradford, what
3 were you doing while George was at work?

4 A. The first year and a half or so he was going
5 full-time to work and full-time to school, and he came
6 home about 1 in the morning and left again about 7 in
7 the morning. So the rest of the time I was taking
8 care of everything that needed to be taken care of
9 with the house and the farm and the property all
10 around the house there, the shed and everything, and
11 all the people that would come and go, and the back.

12 Q. And were you taking care of--

13 A. I was taking care of his mother and father,
14 and also at that time his daughter was living with us
15 with her new baby, and I was taking care of all of the
16 cleaning and all of the shopping and the bills and the
17 mail and everything that needed to be--

18 Q. How much time did you spend taking care of
19 Mr. Bradford's parents every day on average?

20 A. It would average out to be about four hours
21 a day doing laundry--

22 Q. How many years did you do this?

23 A. Pardon?

24 Q. How many years did you do this?

25 A. Since I got married in 1985 until they died.

1 Q. When did they die; do you recall?

2 A. One died in -- I can't remember the exact
3 year, I can't remember the years that they died, but
4 it was at least eight or nine years.

5 Q. Did you take employment outside of the home
6 during the marriage?

7 A. Whenever I felt that I could have a little
8 opening to -- would be okay for me to leave long
9 enough to earn some money, yes.

10 Q. How much time did you work outside of the
11 home during the marriage?

12 A. Not very often because there was too many
13 needs to be done at the household.

14 Q. Can you average out either the total amount
15 of time that you worked outside of the home during the
16 marriage, or maybe an average per year, something like
17 that if you can?

18 A. About maybe in one year I would go in and
19 out during that year maybe about three months of work.

20 Q. Have you ever worked more than three months
21 in a year's time since you were married to George?

22 A. I don't remember, I don't think so.

23 Q. Were most years less than three months?

24 A. Yes.

25 Q. Have you worked outside the home in the last

1 few years?

2 A. Nothing at all, none at all. I was too busy
3 working on the developing. It was a lot of work in
4 the back, the clean-up.

5 Q. You had a job -- you used to go to temporary
6 services to get employment?

7 A. Yes, I did.

8 Q. And what happened with those temporary
9 services, what did they tell you?

10 A. Well, I only could qualify for production
11 work, and by doing production I acquired -- started to
12 get carpal tunnel in my wrist, so that's another
13 reason I needed to work just sporadically so I
14 wouldn't ruin my wrist.

15 Q. Was that why you were let go from your last
16 job was because of the carpal tunnel?

17 A. Yes, and also because they said that not
18 to -- they had my name on their computer at SOS -- not
19 to send me back to certain companies that told them
20 not to send me into their company to work.

21 Q. Did they tell you why they didn't want you
22 back?

23 A. That I couldn't focus as well. I needed
24 to -- I couldn't focus to do the job.

25 Q. Mrs. Bradford, do you recognize this as your

1 financial declaration?

2 A. Yes, I do.

3 Q. I assisted you in filling this out?

4 A. Yes.

5 Q. The document on page 1 shows that you get
6 Social Security of \$416 per month?

7 A. Yes.

8 Q. You've indicated that's gone up a little
9 bit?

10 A. Now I only get \$387 because now -- since
11 that time I turned 65 on January 1st of this year, so
12 now they take out \$43.

13 Q. If you'll turn to page 2, we've calculated
14 you're taking home from your Social Security, your
15 check is actually \$372 a month?

16 A. Yes.

17 Q. You've got debts that are listed there, one
18 to Dr. Lynn Richards?

19 A. Yes.

20 Q. And one to another dentist?

21 A. Yes.

22 Q. Do you remember who the other dentist is?

23 A. Dr. Kent Turner.

24 Q. And you are paying on those?

25 A. No, I was waiting to see who is going to

1 pay, because it's under George's -- at that time I was
2 married to George, and he was billed for the bill.

3 Q. And these debts are -- these doctors are
4 being patient with you?

5 A. Pardon?

6 Q. These doctors are being patient with you
7 right now?

8 A. Yes, they are.

9 Q. If you'll turn the page and look at No. 6
10 where it lists all of your expenses, you've had a
11 chance to review all of these expenses after we
12 prepared the document; is that correct?

13 A. Yes.

14 Q. And it would be your testimony that these
15 are the amounts that you are currently having to
16 spend, with exception of the rent money and utilities?

17 A. Yes.

18 Q. And you're not paying any rent because
19 you're living in the marital home?

20 A. That's right.

21 Q. And you're not paying any utilities because
22 Mr. Bradford was ordered to pay the utilities?

23 A. That's right.

24 Q. So once this divorce is over and you're
25 living in your own place, or Mr. Bradford is no longer

1 living with you, you expect that you'll have to pay
2 utilities in the amount of \$120 a month?

3 A. Yes.

4 Q. So your monthly expenses without any rent --
5 paying any rent at all is still going to be \$1150 per
6 month?

7 A. Yes.

8 Q. And you have available to you \$372?

9 A. Yes.

10 Q. Are you requesting that Mr. Bradford
11 continue paying you alimony?

12 A. Yes.

13 Q. Are you requesting that that alimony be in
14 the amount of \$600 per month?

15 A. Yes.

16 Q. There's been testimony that Mr. Bradford
17 deeded over the marital residence joint tenancy
18 interest to you in 1989; is that correct?

19 A. Yes, that's correct.

20 Q. Did Mr. Bradford ever tell you why he did
21 this?

22 A. A few times.

23 Q. What did he tell you?

24 A. That I love you, that's why -- and I want to
25 take care of you, I want you to have half.

1 Q. And you deeded your half of the property to
2 James in 1996?

3 A. Yes.

4 Q. You've heard testimony here today about the
5 bank accounts and retirement accounts and life
6 insurance cash values that are in George's name.

7 A. Yes.

8 Q. Are you asking for half of the value of all
9 of those assets?

10 A. Yes, I am.

11 Q. If the Court decides that your deeding the
12 property to James was okay, are you asking for any
13 portion of Mr. Bradford's half of the property?

14 A. Absolutely no.

15 Q. If the Court decides that you should not
16 have deeded the property to James, do you want the
17 Court to allow you to live in the home with your
18 grandson and James?

19 A. Yes.

20 Q. If the Court decides that you should not
21 have deeded the property to James, do you believe that
22 you should be entitled to your half of the property?

23 A. Yes.

24 MR. CHUNTZ: That's all I have, your Honor.

25 THE COURT: Anything further?

1 MR. PATTON: Yes, your Honor.

2 CROSS EXAMINATION

3 BY MR. PATTON:

4 Q. Mrs. Bradford, if the Court decides that Mr.
5 Demita owns half the property -- in other words he
6 owns half and George owns half, if I'm correct, you're
7 stating you agree that you don't own half of George's
8 half; is that right? In other words, if it belongs to
9 Mr. Demita and Mr. Bradford, you don't own any portion
10 of Mr. Bradford's; is that correct?

11 A. That's correct.

12 Q. Do you own any part of Mr. Demita's if the
13 Court says that?

14 A. We're family.

15 Q. Which means what?

16 A. That we take care of each other.

17 Q. So if the Court were to give half of this
18 property -- determine that half of it belongs to Mr.
19 Demita, you believe that Mr. Demita would take care of
20 you?

21 A. If I needed it, if I needed caring.

22 Q. If the Court determined that Mr. Demita
23 could purchase Mr. Bradford's interest out of the
24 property, in other words he gets to purchase the
25 property from Mr. Bradford and not Mr. Bradford from

1 Mr. Demita, would Mr. Demita continue to allow you to
2 live there?

3 A. If I asked him, yes.

4 Q. And if you continued to live there you
5 wouldn't have the \$600 a month rent or mortgage
6 payment, would you?

7 A. No.

8 Q. And on your financial declaration that you
9 listed what your income is, you didn't list the \$150
10 that Mr. Demita gives you for child care, did you?

11 A. It's not my child, though.

12 Q. But wasn't your testimony this morning that
13 he pays you \$150 a month to watch his child?

14 A. And I use it on his child, but it has
15 nothing to do with my needs, though. That's just a
16 child's needs being met, but my needs aren't met.

17 Q. Can you tell the Court how long you've had
18 this carpal tunnel problem?

19 A. The last two years I haven't had it because
20 I haven't gone to work because of that mostly. I
21 didn't want to expound on it, you know, make it worse.

22 Q. So you haven't done anything in the last two
23 years to make that worse?

24 A. Except for the work I did around the
25 property. I've hurt myself different times working on

1 the property like a man.

2 Q. But you were able to work around the
3 property like a man, then?

4 A. Well, at my own pace. At the factories they
5 make you keep up with an assembly line, and then that
6 aggravates the carpal tunnel where you can't stop and
7 rest it. Days I didn't do things -- I didn't work
8 every day like a man at the property, just when my
9 health and strength would allow it.

10 Q. Do you have problems focusing? I mean there
11 was some comment about you had trouble focusing. Do
12 you agree you have trouble focusing?

13 A. Yes.

14 Q. Andrea -- is it Andrea or Andréa?

15 A. It doesn't matter.

16 Q. If the Court concludes that Mr. Demita owns
17 half the property and that Mr. Bradford owns half the
18 property, he says that deed's valid, it's upheld, but
19 then he decides that--

20 A. Who's "he?"

21 Q. The judge. But then the judge decides or
22 rules that it was a dissipation, that you didn't have
23 any right to transfer the property away -- in other
24 words what I'm saying is he says the deed is valid,
25 Mr. Demita owns the property or owns half of it, but

1 then he rules "Mrs. Bradford, you didn't have any
2 right to transfer it, therefore you shouldn't have
3 done that, and you owe Mr. Bradford half the value of
4 that land," you would owe Mr. Bradford \$60,000 or
5 \$70,000 minimum, wouldn't you?

6 MR. CHUNTZ: Objection, I think it's calling
7 for a legal conclusion. He's giving argument and
8 asking her to--

9 THE COURT: Where are you headed with this,
10 counsel?

11 MR. PATTON: Your Honor, what I'm trying to
12 establish is really that she doesn't have \$60,000 or
13 \$70,000 worth of assets to pay my client, and that's
14 clearly relevant because it goes to the issue of
15 solvency, and it's one of the possibilities that this
16 Court can issue a ruling on.

17 This Court can conclude that the deed is
18 valid, but it was a dissipation of assets, and as such
19 therefore she has to pay that back to the marital
20 estate, and at even the lowest figure I can come up
21 with, taking out costs of sale, taking out having to
22 repair the tanks, et cetera, she would still owe the
23 marital estate \$60,000 to \$70,000. If you want me to
24 ask it that way, I'll withdraw that question and say,
25 "Do you have \$60,000 or \$70,000 worth of assets you

1 could pay the marital estate?"

2 MR. CHUNTZ: And I would say asked and
3 answered. If that's the question and that's where
4 he's going with it, he put her through that whole
5 rigamorole on direct examination when he had her up on
6 the stand, and asked about every piece of property she
7 had and how much value it was and -- he already knows
8 the answer.

9 MR. PATTON: Are you stipulating she
10 doesn't?

11 THE COURT: Overruled, go ahead.

12 Q. BY MR. PATTON: Andrea Bradford, do you have
13 \$60,000 or \$70,000 worth of assets that you could pay
14 back to the marital estate if that's what the Court
15 orders you to do?

16 A. Personally, no, but I possibly -- definitely
17 could get it.

18 Q. From where?

19 A. That is my business.

20 MR. PATTON: Your Honor, I'm going to ask
21 you that you instruct her to answer.

22 THE COURT: Please answer the question,
23 ma'am.

24 THE WITNESS: I have family.

25 Q. BY MR. PATTON: So you would get that money

1 from the family?

2 A. Yes.

3 Q. So you don't personally have those assets?

4 A. No.

5 MR. PATTON: No further questions.

6 THE COURT: Anything further?

7 MR. CHUNTZ: Nothing further, your Honor.

8 THE COURT: You may step down.

9 MR. CHUNTZ: Your Honor, could we have a
10 five minute recess? I want to call Mr. Demita, but he
11 needs to call his son.

12 THE COURT: That's fine.

13 (Short recess taken)

14 THE COURT: Come forward and be sworn.

15 COURT CLERK: You do solemnly swear that the
16 testimony you are about to give in this case now
17 pending before the Court will be the truth, the whole
18 truth, and nothing but the truth, so help you God?

19 THE WITNESS: Yes.

20 JAMES DEMITA

21 having been first duly sworn,

22 testifies as follows:

23 DIRECT EXAMINATION

24 BY MR. CHUNTZ:

25 Q. Please state your name for the record.

1 A. James A. Demita.

2 Q. And where do you reside?

3 A. 1100 South Main in Spanish Fork.

4 Q. Who do you reside there with?

5 A. My mother and step-father and my son.

6 Q. You've heard testimony that your mother
7 deeded you by quit claim deed all of her interest in
8 the property where you reside; is that correct?

9 A. Correct.

10 Q. And that was in August of 1996?

11 A. Yes.

12 Q. Were you involved -- did you discuss this
13 transfer of the property with your mother prior to its
14 being deeded?

15 A. Yes, most of the discussion was with you and
16 my mother, but I discussed it with her as well.

17 Q. Did you have a concern about what would
18 happen to her share of the property if she died before
19 Mr. Bradford?

20 A. Yes, actually both sides of that coin
21 because my mother didn't necessarily know if it was
22 great to -- if Mr. Bradford were to die first then she
23 would get it all, and she thought it would be more
24 fair just to make sure both sides got half with how it
25 stood, you know, Mr. Bradford got half, she got half,

1 so she just wanted to make sure that both sides of the
2 family got their half instead of one getting it all
3 and the other nothing.

4 Q. You heard my questions and Mr. Bradford's
5 answers about developing the subject property.

6 A. Yes.

7 Q. How long had he and you been talking about
8 doing that, say before August of 1996?

9 A. How many months before?

10 Q. Yes.

11 A. We initially started in approximately
12 December of 1995, late December of 1995.

13 Q. And then you went through assisting in
14 getting these contracts drawn up and entered into?

15 A. Well, I didn't draw the contracts up, I
16 called around and tried to find people (inaudible)
17 selling the land to be developed, I contacted
18 different developers and saw if any of them would be
19 interested in purchasing it, and then Mr. Mullen and
20 Mr. Gardner had their attorney, I'm assuming --
21 actually Mr. Mullen's an attorney, from what I
22 understand.

23 Anyway, they provided the documents and then
24 I had a friend that used an attorney up at Snow,
25 Christensen, and Martineau in Salt Lake and he agreed

1 to look over the documents just in George and my
2 mother's behalf, just to see if there was any problem
3 with it or whatever, and he said they looked fine, so
4 then they signed them.

5 Q. As the property now exists, can it be
6 divided into two equal parts in a partition?

7 A. I don't think so.

8 Q. Why not?

9 A. Well, it's unique, it's got the river on one
10 side and then you've got city ground on the other and
11 then you have the house, so I don't really know how
12 you could do it equitably, especially with the house
13 on it.

14 Q. Are you asking the Court to award the
15 property be sold pursuant to the partition statute?

16 A. Yes.

17 Q. Are you willing to buy Mr. Bradford's share
18 of the property for half of its appraised value?

19 A. Yes.

20 MR. CHUNTZ: That's all the questions I
21 have.

22 Q. BY MR. CHUNTZ: Let me ask you another
23 question. If the property was placed on the market
24 pursuant to the partition statute, would you be
25 willing to take half of the higher amount if it would

1 sell for more than the appraised value?

2 A. Why don't you just say that one more time.

3 Q. If the property was put up for sale pursuant
4 to the statute, and a buyer was willing to pay more
5 than what it's been appraised for, would you be
6 satisfied in taking your half?

7 A. Sure. I'd prefer to keep it, obviously,
8 because my son has been living there and I've been
9 living there and my mom lives there.

10 Q. So if somebody was willing to offer more
11 than \$180,000 for the property, would you be willing
12 to try to match that offer?

13 A. Yeah, I would try to do that because like I
14 said, I would like to keep my son -- you know, we've
15 been living there for awhile now and just keep things
16 stable.

17 MR. CHUNTZ: Thank you.

18 CROSS EXAMINATION

19 BY MR. PATTON:

20 Q. Mr. Demita, you're indicating that you would
21 like to do that and buy my client out. Where are you
22 employed?

23 A. Pardon me?

24 Q. Where are you employed?

25 A. Well, I do independent consulting for a

1 computer store here in town. I'm working with other
2 developers right now since I gained experience in
3 developing land, and working with different projects
4 in the valley right now, then I do a public community
5 service, I write a column in the -- a weekly column in
6 the newspaper.

7 Q. And from all these different things that you
8 do, how much money did you earn last year?

9 A. Well, last year I was developing with Mr.
10 Bradford so I didn't earn very much.

11 Q. How much did you earn?

12 A. Less than \$3,500.

13 Q. So all of last year you earned less than
14 \$3,500?

15 A. Yes and no.

16 Q. How much did you earn in the tax year 1996?

17 A. I'm sorry, I thought you said 1996. You
18 said 1995?

19 Q. No, last year was 1997.

20 A. Right, so what are you asking?

21 Q. Last year was 1997.

22 A. Right.

23 Q. How much did you earn in 1997?

24 A. Less than \$3,500.

25 Q. How much did you earn in 1996?

1 A. I was working on land still, so it was less
2 than \$3,500.

3 Q. And how much in 1995?

4 A. Well, I was in school.

5 Q. Which law school was it?

6 A. In Oregon.

7 Q. What was the name of the law school?

8 A. Will (inaudible).

9 Q. When this development discussion was going
10 on, I believe your testimony was you were the one who
11 was talking with the attorneys?

12 A. I don't know what you mean by talking to the
13 attorneys. Mr. Mullen is an attorney, one of the
14 developers, and I spoke with him, yes.

15 Q. I believe you spoke with somebody at
16 Martineau in Salt Lake?

17 A. Yes, some firm up in Salt Lake. My buddy
18 that I met in law school said his family uses this guy
19 and he would be willing to take a look at it for free
20 and see how it looked, so I asked Mr. Bradford --
21 well, actually he didn't say free, he said a small
22 fee, whatever his hourly fee is. So then I told Mr.
23 Bradford and my mother and they said, "Yeah, go ahead
24 and have him look at it." When I got up there he
25 didn't charge, he just said, "It looks fine," and he

1 didn't charge.

2 Q. So when you were going to do that you
3 discussed that with your mother and Mr. Bradford?

4 A. Yes.

5 Q. Because they were involved with it and you
6 wanted to be fair with them; is that right?

7 A. Well, I just told them everything that was
8 going on.

9 Q. So you tried to be sure that they knew
10 everything that was going on?

11 A. At that point yes, definitely.

12 Q. Are you the individual who prepared the quit
13 claim deed that was signed by Andrea Bradford?

14 A. I'm not sure if you mean prepared, I signed
15 in the part where it was \$10 -- the handwritten part I
16 did. I didn't notarize it or I didn't sign her
17 signature or anything. I just did the handwritten
18 part that you can see on there.

19 MR. PATTON: May I approach the witness?

20 THE COURT: You may.

21 Q. BY MR. PATTON: I'm going to show you my
22 copy of Exhibit 1.

23 A. Okay.

24 Q. I'm going to show you what's been marked
25 Plaintiff's Exhibit No. 16 for identification and ask

1 you if you recognize that.

2 A. Yes, I do.

3 Q. I'm going to ask you to take this yellow
4 highlighter and I want you to highlight--

5 THE COURT: Plaintiff's 16, this is
6 Plaintiff's 1.

7 MR. PATTON: Well, we're making a new--

8 THE WITNESS: This says Plaintiff's 1, just
9 so you know. I'm sorry, I thought you were saying P-1
10 here (inaudible) 16, sorry.

11 THE COURT: Do you want to take this one?

12 MR. PATTON: We have another copy -- no,
13 we're not using Plaintiff's 1, we're now using
14 Plaintiff's 16.

15 THE COURT: What's the difference?

16 MR. PATTON: (inaudible) mark it.

17 THE COURT: Make sure that's--

18 COURT CLERK: I think we're using
19 (inaudible).

20 MR. PATTON: Yes, we are, this is the new
21 one.

22 THE COURT: Right, so that one--

23 MR. PATTON: That's 1.

24 THE COURT: You lost me, why do we have two
25 of the same deed?

1 MR. PATTON: Because this one will be
2 different in just a second. This one will look
3 different than that one in just a second. That's the
4 one I'm going to have him mark.

5 MR. CHUNTZ: If he's going to mark it I
6 suppose it's okay.

7 THE COURT: Go ahead.

8 Q. BY MR. PATTON: Will you highlight in yellow
9 those portions that you printed in that document?

10 A. Sure.

11 (Witness marks document)

12 Q. BY MR. PATTON: So those portions you've
13 highlighted on Plaintiff's Exhibit No. 16 for
14 identification are the portions that you wrote in?

15 A. Yes.

16 Q. Now the legal description of the property,
17 although it's typed, it actually looks like it's been
18 xeroxed on there; is that correct?

19 A. I believe so. The actual -- LEI, I think,
20 is the one that provided the document.

21 Q. LEI provided this document?

22 A. Yeah, because they had it on file, so they
23 said -- I don't know if they copied it or what they
24 did to it, but they said, "Here's the document," and
25 then I hand wrote the part you see that's in

1 handwriting, and then we went to the bank and an
2 individual at Zion's Bank notarized it.

3 Q. When you say "we" you mean you and your mom?

4 A. Yes.

5 MR. PATTON: Your Honor, we would submit
6 Plaintiff's Exhibit No. 16 as Plaintiff's Exhibit No.
7 16.

8 THE COURT: Any objection?

9 MR. CHUNTZ: No objection.

10 THE COURT: Sixteen will be received.

11 (Exhibit No. 16 received into evidence)

12 Q. BY MR. PATTON: I'm curious, Mr. Demita, if
13 you had the document and you talked with Mr. Chuntz
14 with your mom, or if you spoke with Mr. Chuntz and
15 then you went and got the document, the quit claim
16 deed, which occurred first?

17 A. I didn't get the quit claim deed for some
18 time after they discussed different options that she
19 had before her.

20 Q. My question is what was that some time, a
21 week, two weeks?

22 A. No, it was a few months.

23 Q. A few months?

24 A. Yeah, a few months.

25 Q. So when she spoke to Mr. Chuntz about her

1 options on estate planning, that was several months
2 before August?

3 A. Well, I didn't say several, I said a few.

4 Q. So it was a few months before August?

5 A. It was in about April, I believe.

6 Q. So that was in about April, and the quit
7 claim deed was signed in August?

8 A. Yes.

9 Q. What was the urgency to sign the quit claim
10 deed in August if you had known about it since April?

11 A. There is no urgency.

12 Q. Was there any particular reason it wasn't
13 typed, and it was handwritten instead of being typed?

14 A. I didn't have a typewriter.

15 Q. In August when the quit claim deed was
16 prepared, how long after you got it from these people
17 that you said had it and it was signed?

18 A. Not too long, I can't remember exactly.

19 Q. A day, a week?

20 A. It was probably in the duration of a week or
21 less.

22 Q. My question is it's been since April, you
23 get this document evidently right at the end of July
24 or the first part of August, was there any
25 conversations between you and your mom at or about

1 that time as to why it had to be done then and not
2 later or not earlier?

3 A. Like I said, I don't know what you mean by
4 "had to be done." We never -- it didn't necessarily
5 have to be done. That was just part of what she was
6 discussing, and they said you can do a trust or you
7 can quit claim it, and it's quicker, you don't have to
8 have all the added fees and all that other stuff, and
9 so there's no particular magical number about that
10 date. That's just when it got signed.

11 Q. The quit claim deed, the talking with the
12 attorneys, the talking with LEI, et cetera, the reason
13 that was done -- and I don't want to be rude to your
14 mom and I don't want to be rude to Mr. Bradford, but
15 it's fair for me to assume that they're not very
16 sophisticated people in terms of those type of
17 business dealings; isn't that true?

18 A. I can't make a characterization like that.

19 Q. Is it fair to say that you're more
20 sophisticated than they are?

21 A. I'm not going to say I'm better than
22 somebody, okay? I'm not going to say I'm more
23 sophisticated or I'm smarter than somebody else. I
24 think everybody has a relative range of normality.

25 Q. You have graduated from college?

1 A. Yes. That doesn't mean you're smarter.

2 Q. I agree. And I don't know if you finished
3 law school, but you at least had some training at law
4 school?

5 A. Sure.

6 Q. I believe your previous testimony was when
7 you were dealing with Mr. Bradford and your mom and
8 doing these types of things, you were trying to be as
9 open and honest with them as you could and keep them
10 informed?

11 A. Yes, absolutely.

12 Q. But you didn't inform Mr. Bradford that she
13 had signed that quit claim deed, did you?

14 A. We discussed it the whole time. I mean we
15 knew right when we went in, we said, "Okay, we're
16 going to develop the property, where's the money going
17 to go when they get the money?" And they said, "Well,
18 it's only fair half goes to his side and half goes to
19 the other."

20 Q. My question is when the quit claim deed was
21 signed did you tell Mr. Bradford it had been signed?

22 A. Not in so many words, no.

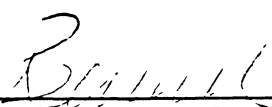
23 MR. PATTON: Thank you.

24 (End of partial transcript)

1 REPORTER'S CERTIFICATE

2
3 STATE OF UTAH)

4)

5 COUNTY OF UTAH)
67 I, Beverly Lowe, a Notary Public in and for the
8 State of Utah, do hereby certify:9 That the foregoing proceedings were transcribed
under my direction from the electronic tape recording
made of these proceedings.10 That this transcript is full, true, and correct
and contains all of the evidence, all of the
11 objections of Counsel and rulings of the Court and all
matters to which the same relate which were audible
through said tape recording.12 I further certify that I am not interested in the
outcome thereof.13 That certain parties were not identified in the
record, and therefore the name associated with the
14 statement may not be the correct name as to the
speaker.15
16 WITNESS MY HAND AND SEAL this 8th day of
December 1998.17 My commission expires:
18 February 24, 200019 
NOTARY PUBLIC
residing in Utah County