

1998

Vicki L. Stratton v. David E. Stratton : Brief of Appellant

Utah Court of Appeals

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**UTAH COURT OF APPEALS
BRIEF**

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981822

IN THE UTAH COURT OF APPEALS

VICKI L. STRATTON,

Appellant,

vs.

Case No. 981822-CA

DAVID E. STRATTON,

Priority 15

Appellee.

BRIEF OF THE APPELLANT

On appeal from the Third Judicial District Court
for Salt Lake County, State of Utah
Honorable Frank G. Noel, District Court Judge Presiding

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ORAL ARGUMENT REQUESTED

FILED

Utah Court of Appeals

MAR 08 1999

Julia D'Alesandro
Clerk of the Court

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STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction over this matter pursuant to Utah Code Annotated section 78-2a-3(2)(i) (1953, as amended) as an Appeal from a final order denying Petitioner's Motion to Set Aside Decree of Divorce, Findings of Fact and Conclusions of Law in the Third Judicial District Court.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

1. Whether it is an abuse of discretion for a trial court to refuse to set aside a Decree of Divorce pursuant to Rule 60(b) when, after a settlement agreement is signed, but prior to the entry of the Decree, and prior to any trial of the matter, a party discovers, and brings to the attention of the court, new evidence pertaining to marital assets of the parties, where the property settlement agreement purported to equitably divide the marital assets and upon which the Decree was based. The trial court is afforded broad discretion in ruling on a motion for relief from judgment under Utah R. Civ. P. 60(b), and its determination will not be disturbed absent an abuse of discretion. Birch v. Birch, 771 P.2d 1114, 1117 (Utah Ct. App. 1989).

2. Whether it is an abuse of discretion for a trial court to refuse to set aside a Decree of Divorce based upon a Stipulation that was signed under a mistake of fact due to the non-moving party's overt failure to disclose relevant information prior to the preparation and signing of the Stipulation. Parties are bound by their stipulations unless relieved therefrom by the court, which has the power to set aside a stipulation entered into inadvertently or for justifiable cause. Klein v. Klein, 544 P.2d 472 (Utah 1975); First of Denver Mortgage Investors v. C.N. Zundel and Assocs., 600 P.2d 521 (Utah 1979).

3. Whether it is an abuse of discretion for a trial court to refuse to set aside a Decree of Divorce pursuant to Rule 60(b) when the Decree was entered based upon a Stipulation, after one of the parties to the Stipulation repudiates the agreement and communicates the repudiation to her counsel and to the Respondent's counsel prior to the entry of the Decree. A trial court has discretion in determining whether a movant has shown "mistake, inadvertence, surprise, or excusable neglect," and the appellate court will reverse the ruling of the trial court only upon a showing of abuse of discretion. Ostler v. Buhler, 957 P.2d 205, 206 (Utah 1998)(citing Utah R. Civ. P. 60(b); Larsen v. Collina, 684 P.2d 52, 54 (Utah 1984)).

STATEMENT OF THE CASE

This is an appeal from the denial of Petitioner's Motion to Set Aside a Decree of Divorce that was entered pursuant to a Stipulation of the parties. Based upon the information available to her at the time, Petitioner entered into a Stipulation. Petitioner discovered after she signed the stipulation that Respondent had not in fact fully disclosed all assets, and that Respondent had likely hidden assets during the parties' marriage. Petitioner learned the information regarding hidden marital assets subsequent to the date she signed the Stipulation, but prior to the entry of the Decree of Divorce. Petitioner sought other legal advice and based upon that advice informed her attorney that she repudiated her agreement to the Stipulation. Petitioner's attorney informed Respondent's attorney that Petitioner repudiated the agreement. Other legal counsel informed Respondent's attorney that Petitioner repudiated her agreement. A copy of a letter from Petitioner to her attorney in which she indicated that she repudiated the agreement was sent to Respondent's attorney. Subsequent to learning that Petitioner repudiated her consent to the Stipulation, Respondent's attorney nevertheless caused the Stipulation, the Decree of Divorce, and the Findings of Fact and Conclusions of Law to be filed with the District Court and failed to advise the court of his knowledge of Petitioner's repudiation. The Decree was entered on the 19th day of May, 1998. On the 1st day of June, 1998, Petitioner moved the Court to set aside the Decree of Divorce and Findings of Fact and Conclusions of Law claiming that she had been provided wrong or incomplete information by Respondent and her counsel, and upon her discovery of the new information she had immediately repudiated her agreement. In support of her Motion to Set Aside, Petitioner offered an Affidavit by a person with actual knowledge that Respondent had acquired assets during the marriage that he had hidden from Petitioner and failed to disclose during the pending divorce litigation. The trial court denied Petitioner's Motion to

Set Aside Decree of Divorce, Findings of Fact and Conclusions of Law and to Void Stipulation.

This is Petitioner's appeal from the final judgment of the trial court denying Petitioner's Rule 60(b) Motion.

STATEMENT OF FACTS

1. Appellant in this matter, Mrs. Stratton, was Petitioner below.
2. On June 10, 1988 the parties to this action were married and filed for divorce on February 6, 1996. (Rec. 01-07). Prior to the parties' marriage, they entered into an antenuptial agreement. (Rec. 75-80).
3. On March 11, 1996, Mrs. Stratton served upon Mr. Stratton Petitioner's first set of interrogatories and request for production of documents. (Rec. 37). On April 15, 1996, Mr. Stratton served upon Mrs. Stratton Respondent's first set of interrogatories and request for production of documents. (Rec. 38).
4. On July 9, 1996, pursuant to a temporary Order entered by the Court Mr. Stratton, Appellee in this matter and Respondent below, was ordered to pay \$400.00 per month as and for temporary alimony. (Rec. 27; 39-41).
5. On September 9, 1996, Mrs. Stratton filed a Motion to Compel Mr. Stratton to answer the outstanding discovery that was served on him in March, 1996. (Rec. 42). A hearing on the Motion to Compel was held November 29, 1996 at which, Mr. Stratton's default was entered and the Motion to Compel granted. (Rec. 55; 58-59).
6. On December 13, 1996, Mr. Stratton served his answers to Mrs. Stratton's first set of interrogatories and request for production of documents. (Rec. 56).
7. On April 30, 1997, Daniel Darger entered his appearance as attorney of record for Mrs. Stratton. (Rec. 60).
8. On October 23, 1997 Mrs. Stratton's motion to void and annul antenuptial agreement and award suit money (Rec. 128-129) was heard by the Commissioner . The Commissioner recommended, and it became the order of the court, that the issue of the validity

of the antenuptial was a trial issue. The Commissioner reserved the issue for the trial court. (Rec. 140; 144-145).

9. On December 4, 1997, Mrs. Stratton served her second request for production of documents on Mr. Stratton. (Rec. 143).

10. On March 1, 1998, Mr. Stratton served his answers to Mrs. Stratton's second request for production of documents. (Rec. 153).

11. As of March, 1998, Mr. Stratton was in arrears for temporary alimony in the amount of \$1,400.00. (Rec. 156-157). Accordingly, counsel for Mrs. Stratton filed a Motion to Enforce Temporary Order of Support (Rec. 154-155) which was scheduled for hearing before the Commissioner on May 28, 1998. (Rec. 158-159).

12. On April 30, 1998, Mrs. Stratton executed a Stipulation and Property Settlement Agreement. (Rec. 160-163). On May 1, 1998, Mr. Stratton executed the same document. (Rec. 163).

13. Shortly after signing the Stipulation, Mrs. Stratton learned that Mr. Stratton had not made full disclosure of all assets acquired during the marriage. (Rec. 234).

14. On May 13, 1998, Mrs. Stratton sought advice from different counsel, Richard Leedy. (Rec. 217). On that same day Mrs. Stratton spoke to Mr. Darger and indicated to him that she did not want the stipulation to be effective and repudiated her agreement thereto. (Rec. 217; 222; 234-235). On May 13, 1998, Mrs. Stratton prepared and was delivered to Mr. Darger with a copy to Mr. Falk, counsel for Mr. Stratton, a written notice of her repudiation of the Stipulation and Property Settlement Agreement. (Rec. 206).

15. Based upon Mrs. Stratton's expressed desire to repudiate the stipulation, Mr. Leedy placed a telephone call to Mr. Falk to so inform him on May 13, 1998. (Rec. 217-218).

Mr. Darger, based upon Mrs. Stratton's expressed desire to repudiate the stipulation, also called Mr. Falk to inform him that Mrs. Stratton had repudiated her stipulation and sent a follow up letter. (Rec. 222-223).

16. On May 14, 1998, Mr. Stratton's counsel filed with the District Court the Notice to Submit for Decision (Rec. 172-173), the Affidavit of Jurisdiction and Grounds (Rec. 169-171), and a copy of the Stipulation and Property Settlement Agreement (Rec. 164-168)..

17. On May 18, 1998, a Withdrawal of Counsel for Petitioner was filed with the District Court. (Rec. 174-175).

18. On May 19, 1998, the Findings of Fact and Conclusions of Law (Rec. 176-179) and the Decree of Divorce (Rec. 180-182) were signed by the District Court Judge and filed and entered by the District Court.

19. On May 21, 1998, Mrs. Stratton's new counsel entered his appearance. (Rec. 183-184).

20. On May 28, 1998, the Commissioner recommended that the hearing on Petitioner's Motion to Enforce Temporary Order be continued without date. (Rec. 185).

21. On June 1, 1998, Mrs. Stratton filed a Motion pursuant to Rule 60(b) of the Utah Rules of Civil Procedure to set aside the Decree of Divorce, Findings of Fact and Conclusions of Law. (Rec. 186-240). Mrs. Stratton also filed her sworn affidavit stating that subsequent to the signing of the Stipulation she learned that substantial properties that were acquired during the parties' marriage had been hidden from her and not disclosed prior to the signing of the Stipulation. (Rec. 197; 234). Mrs. Stratton moved that the Decree be set aside because its entry was based upon the parties' Stipulation that Mrs. Stratton had repudiated on May 13, 1998. (Rec. 193).

22. Mr. Stratton's counsel responded to Mrs. Stratton's Motion denying that Mr. Darger had indicated that Mrs. Stratton had repudiated the Stipulation. (Rec. 252). Counsel further alleged that Mrs. Stratton's allegations as to hidden assets were "vague and nebulous" and without specificity. (Rec. 255).

23. On July 10, 1998, counsel for both parties argued the Rule 60(b) Motion before the Honorable Judge Frank Noel. (Rec. 516). No transcript resulted from that hearing despite the fact that the courtroom was equipped with video equipment. (Addendum 2, Certificate that no transcript exists). Oral argument was cut short due to a bomb threat at the courthouse. Mrs. Stratton was given no opportunity to present rebuttal evidence or argument. (Rec. 535). The Court, after being notified to evacuate the building, did not continue the matter, but took the matter under advisement. (Rec. 516).

24. On July 17, 1998, the Court issued a Minute Entry ruling denying Mrs. Stratton's Rule 60(b) Motion. (Rec. 517-519). The Court indicated that Mrs. Stratton's allegations as to Mr. Stratton's failure to disclose additional information at the time Mrs. Stratton signed the Stipulation was insufficient because she failed to disclose the identify of the informant who provided her with the information and failed to adequately identify the nature of the information. (Rec. 517-518).

25. Based upon the Court's Minute Entry ruling, on August 4, 1998 Mrs. Stratton filed the Affidavit of Sherry Epperson who stated under oath that she had actual knowledge that Mr. Stratton received marital property consisting of parcels of real property that had not been disclosed to Mrs. Stratton and that Mr. Stratton also had an executive bonus plan that accrued during the marriage that had a substantial cash value. (Rec. 526-528). Mrs. Stratton filed a

Motion for Rehearing concurrently with the affidavit of Ms. Epperson. In support of Mrs. Stratton motion for a rehearing on her Rule (b) Motion to Set Aside the Decree of Divorce, Findings of Fact and Conclusions of Law, (Rec. 531-537), Mrs. Stratton stated that the reason she had not earlier disclosed the identity of the witness was that Ms. Epperson had a fear of retaliation from Mr. Stratton and her other former business partners. (Rec. 533).

26. Mr. Stratton responded (Rec. 547-550) but did not dispute the information set forth in the Affidavit of Sherry Epperson, arguing instead that Mrs. Stratton failed to carry her burden under Rule 60(b) showing that by due diligence she could not have discovered the information in time to move for a new trial and failed to show that there would be a different result. (Rec. 554-557)

27. On September 30, 1998, Judge Noel issued a Minute Entry ruling denying Mrs. Stratton's Motion for a Rehearing and instructing Mr. Stratton's counsel to resubmit the prepared Order. (Rec. 561).

28. On November 13, 1998, Judge Noel signed the Order Denying Motion to Set Aside Decree, Findings of Fact and Conclusions of Law and to Void Stipulation. (Rec. 563-565).

29. On December 9, 1998, Mrs. Stratton filed a Notice of Appeal. (Rec. 575-576).

STATUTORY PROVISIONS

Utah Rules of Civil Procedure, Rule 59; 60 (Addendum 3)

SUMMARY OF ARGUMENT

The trial court abused its discretion in refusing to set aside the Decree of Divorce pursuant to Utah Rules of Civil Procedure Rule 60(b) based upon newly discovered evidence. Rule 60(b) sets forth that a judgment can be set aside “upon motion and upon such terms as are just” when a party discovers new evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b). Rule 59(b) allows a court to grant a motion for new trial when a party discovers new, material evidence that could not have been discovered through “reasonable diligence” in time to present at trial. No trial occurred in this matter because of the execution of the Stipulation and Property Settlement Agreement. Mrs. Stratton justifiably relied upon Mr. Stratton’s responses to her formal discovery requests in the divorce litigation. Mrs. Stratton entered into the Stipulation and Property Settlement Agreement based upon that knowledge and information. Mrs. Stratton had no reason to know and did not know that Ms. Epperson had any additional information until Ms. Epperson volunteered the information to Mrs. Stratton. Upon learning that certain marital property had not been disclosed by Mr. Stratton, Mrs. Stratton immediately repudiated her agreement to the Stipulation in writing as the Stipulation did not deal with all of the marital property. Mrs. Stratton acted in a reasonably timely fashion in bringing the newly discovered evidence to the attention of the court.

The trial court abused its discretion in refusing to set aside the Decree of Divorce based upon the parties’ stipulation to a distribution of marital property when the court was promptly advised of newly discovered evidence showing that the information upon which the stipulation was based was incomplete or inaccurate. The court has discretion to set aside the stipulation and the Decree upon which it was based when information is presented in a timely fashion and where setting aside the order would lead to a different result. A stipulation to resolve a lawsuit

constitutes a waiver of rights. In order to have an enforceable stipulation the waiver of rights must be a knowing waiver. Mrs. Stratton would not have signed the Stipulation as prepared had she known that Mr. Stratton had acquired parcels of real property and a large retirement account during the marriage that he failed to disclose. The result to Mrs. Stratton would be different had she possessed complete and accurate knowledge and information regarding the nature and extent of all of the marital assets.

The trial court has broad discretion in ruling on a motion for relief from judgment, and its determination will not be disturbed absent a showing of abuse of that discretion. It was an abuse of the trial court's discretion to refuse to set aside the Decree of Divorce because Mrs. Stratton had not initially identified the person from whom she learned that assets had not been disclosed and/or had not sufficiently identified the secreted marital assets, and further abused its discretion in refusing a rehearing of the issue when a sworn affidavit was filed with the court which disclosed the identify of the informant and specific information regarding the secreted marital assets.

A trial court abuses its discretion when it makes an error in law that is detrimental to a party. In this case, the trial court erroneously concluded that the stipulation upon which the Decree was based could not be overturned because of an antenuptial agreement. The validity and applicability of the antenuptial agreement was an issue pending before the court. It was an error in law to conclude that the antenuptial agreement would preclude an equitable division of the marital property newly discovered by Mrs. Stratton because Mrs. Stratton had waived her claims regarding the validity and applicability of the antenuptial agreement in the Stipulation and Property Settlement Agreement. Although the law favors stipulations and sets forth that parties should be bound by their agreements unless relieved therefrom by the court, in certain cases a

court has the ability to set aside a stipulation that was voluntarily entered. A trial court can set aside a stipulation on a legal or equitable basis. Where Mr. Stratton failed to disclose the existence of the property acquired during the marriage the court should equitably void the Stipulation and allow Mrs. Stratton to present her evidence.

The trial court abused its discretion in refusing to set aside the Decree of Divorce pursuant to Rule 60(b) on the basis of mistake, inadvertence, surprise, or excusable neglect. The Stipulation that was signed by the parties was based upon disclosures made by Mr. Stratton during the divorce proceedings. Mrs. Stratton signed a Stipulation and consented to the entry of the Decree based upon that Stipulation. Subsequent to her signing, but prior to the entry of the Decree, Mrs. Stratton was surprised to learn that Mr. Stratton had not in fact disclosed all assets that were acquired during the parties' marriage, and the assets that were not disclosed were substantial. Mrs. Stratton, individually and through others, immediately communicated with Mr. Stratton's counsel to indicate that she repudiated her agreement to the Stipulation, and when the Decree had been entered, immediately moved the Court to grant her Rule 60(b) relief therefrom. It was an abuse of the trial court's discretion to refuse to set aside the Decree of Divorce to allow Mrs. Stratton to assert the newly discovered evidence based upon mistake, inadvertence, surprise, or excusable neglect.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO SET ASIDE THE DECREE OF DIVORCE

A. Petitioner Timely Presented the New Evidence to the Trial Court

1. In order to prevail on a Motion for Relief pursuant to RRule 60(b)(2) of the Utah Rules of Civil Procedure, the moving party must show that there has been newly discovered

evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59, and that such evidence was of sufficient substance that there would be a reasonable likelihood of a different result. Utah R. Civ. P. Rule 60(b)(2); Kettner v. Snow, 375 P.2d 28, 30 (Utah 1962).

2. The reference to a ten (10) day time limitation within Rule 60(b)(2) requires a party to show why, through due diligence, she could not discover the evidence in time to move for a new trial pursuant to Rule 59. Rule 59 sets forth that a motion for a new trial must be presented to the court within 10 days of the trial, and the moving party must show why, through reasonable diligence, she could not discover the evidence in time to present the evidence at trial. See Utah R. Civ. P. Rule 60(b); 59. There was no trial in this matter thus the ten (10) day limitation inapplicable.

3. Rule 60(b) provides that a party may be relieved from a final judgment, order or proceeding under such terms as are just if, within a reasonable time, a party so moves the court. The “within a reasonable time” limitation pertains to reasons based upon mistake, inadvertence, surprise, or excusable neglect as well as reasons based upon newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).

4. Mrs. Stratton sought relief within a reasonable time. Mrs. Stratton included within her Rule 60(b) Motion the allegation that subsequent to the signing of the Stipulation she discovered that Mr. Stratton failed to disclose to her all the assets acquired during the marriage. (Rec. 197-199). She stated that she became informed of secreted marital property after April 30, 1998 when she signed the Stipulation and Property Settlement Agreement. She claims she communicated her repudiation of the Stipulation and Property Settlement Agreement on May 13, 1998 to her counsel who advised Mr. Stratton’s counsel, and also that another attorney from

whom she had sought legal advice, had, at her request, telephoned Mr. Stratton's counsel on May 13, 1998 to inform him of Mrs. Stratton's repudiation of the Stipulation and Property Settlement Agreement. Despite this actual notice, on May 14, 1998 Mr. Stratton's counsel rushed to file the Stipulation and Property Settlement Agreement with the court, who, on May 19, 1998, without notice of Mrs. Stratton's repudiation, signed the Decree of Divorce which incorporated and approved the terms of the Stipulation and Property Settlement Agreement signed by the parties. Mrs. Stratton then filed her Rule 60(b) Motion with the court on June 1, 1998.

5. Mrs. Stratton exercised due diligence to discover marital assets during the litigation of the divorce. Mrs. Stratton's Motion to void and annul antenuptial agreement filed October 23, 1997 (Rec. 128-129) was based upon her discovery that Mr. Stratton had not fully disclosed all of his assets at that time. Mrs. Stratton conducted formal discovery in the divorce proceedings. Mr. Stratton did not reveal to Mrs. Stratton through formal discovery that during their marriage he had acquired an interest in an executive bonus plan and parcels of real property. Based upon the answers to discovery provided under oath by Mr. Stratton, Mrs. Stratton signed the Stipulation and Property Settlement Agreement. Upon learning shortly thereafter that other assets had in fact been acquired, Mrs. Stratton immediately repudiated the Stipulation and Property Settlement Agreement.

B. Petitioner Properly Set Forth that She Discovered New Evidence that Would Affect the Result

1. Newly discovered evidence is sufficient grounds for the trial court to set aside a judgment

6. The moving party has the burden to show that the newly discovered evidence was of sufficient substance that there would be a reasonable likelihood of a different result. Utah R. Civ. P. Rule 60(b)(2); Kettner, 375 P.2d at 30. Mrs. Stratton proffered to the trial court that she discovered new evidence in the form of a witness who informed her that she had information that Mr. Stratton acquired assets during the marriage that were not disclosed to Mrs. Stratton. (Rec. 555). Mr. Stratton argued that because Mrs. Stratton failed to identify the witness prior to the initial hearing, the trial court should not consider such information. (Rec. 555-556). No transcript of the hearing is available. A bomb threat to the courthouse cut the proceedings short and rather than continuing the matter for completion of arguments the court took the matter under advisement.

7. The minute entry from the trial court denying Mrs. Stratton's Motion for Rehearing does not set forth any findings of fact. (Rec. 561) The trial court could have based its decision to deny the motion on Mr. Stratton's argument that failure to identify the witness during the Motion to Set Aside proceedings was fatal to Mrs. Stratton's claim. (Rec. 517-518). The trial court determined that because the informant and the information had not been adequately identified by Mrs. Stratton, there was insufficient basis to overturn the Stipulation.

8. Mrs. Stratton filed with the court the sworn affidavit of the informant that specifically identified the property, (Rec. 526-528), along with a Motion for Rehearing (Rec. 531-537), setting forth the reasons why the identity of the informant had not been disclosed earlier.

9. A trial court is afforded broad discretion in ruling on a motion for relief from judgment under Rule 60(b), and its determination will not be disturbed absent an abuse of discretion. Birch v. Birch, 771 P.2d 1114, 1117 (Utah Ct. App. 1989). A trial court's discretion is entitled to a presumption of validity. Ruhsam v. Ruhsam, 742 P.2d 123, 124 (Utah Ct. App. 1987). In order to overcome the presumption of validity, and to show that the trial court abused its discretion, the moving party must show that the trial court misunderstood or misapplied the law and that misunderstanding or misapplication resulted in substantial and prejudicial error, or that a serious inequity has resulted so as to manifest a clear abuse of discretion. Id. (citing Pope v. Pope, 589 P.2d 752, 753 (Utah 1978)).

10. All assets acquired by the parties during marriage must be considered by the trial court when making an equitable distribution. Jefferies v. Jefferies, 895 P.2d 835, 837 (Utah Ct. App. 1995). The right to receive money in the future is an economic resource that is subject to equitable distribution by a divorce court. Woodward v. Woodward, 656 P.2d 431, 432 (Utah 1982). In Woodward, the Utah Supreme Court set forth that retirement benefits that are accrued during a marriage are marital property and "the court must at least consider those benefits in making an equitable distribution of the marital assets." Id. Mrs. Stratton stated that during the marriage, Mr. Stratton acquired an interest in an executive bonus plan funded through an insurance company. (Rec. 527). Mrs. Stratton set forth that during the marriage, Mr. Stratton acquired parcels of real property. (Rec. 527). The Stipulation of the parties does not reflect any division, or even consideration, of the executive bonus plan or the real property in making a distribution of the marital assets. The Findings of Fact do not reflect that such property exists. Mr. Stratton did not deny that during the marriage he acquired an interest in an executive bonus plan and parcels of real property. The trial court abused its discretion when it failed to apply the

law as set forth in Woodward and Jefferies by failing to consider all the marital assets acquired during the marriage prior to affirming the division of the marital property. The failure of the trial court to consider all marital property acquired during the marriage in making an equitable distribution constitutes an abuse of discretion because it was a misapplication of the law. See Rahsam, 742 P.2d at 124.

11. The refusal of the trial court to consider the newly discovered evidence that Mr. Stratton failed to disclose assets acquired during the parties' marriage caused substantial prejudice to Mrs. Stratton. See id. According to Sherry Epperson, Mr. Stratton acquired parcels of real property and an interest in an executive bonus plan during the marriage that were not disclosed to Mrs. Stratton prior to her signing the Stipulation. (Rec. 526-527). Although Ms. Epperson did not know the exact value of Mr. Stratton's interest in the executive bonus plan, she believed that it was substantial, and likely worth at least as much as hers. (Rec. 527). Ms. Epperson provided documentation showing that her executive bonus plan was worth in excess of \$85,000.00 (Rec. 529-530). The trial court failed to take into consideration the executive bonus plan in making a property distribution and failed to take into consideration the parcels of real property acquired by Mr. Stratton that were not disclosed to Mrs. Stratton or the trial court. Depending on the actual value of the executive bonus plan, and the proportion thereof that was acquired during the marriage, Mrs. Stratton would be entitled to a proportional share of that plan. See Woodward, 656 P.2d at 432. The value of the real property could be substantial as well. The failure of the trial court to consider all marital property thus causing substantial prejudice to Mrs. Stratton constitutes an abuse of discretion and the judgment below should be reversed.

2. The Stipulation was voidable

12. The Decree of Divorce was entered on the basis of a Stipulation and Property Agreement signed by the parties. Rule 60(b) requires the movant to show that she would be entitled to a different result than the provided by the Decree. Mrs. Stratton, therefore, had the burden below to show that the evidence that she discovered would be sufficient to allow her to prevail on a motion to void the Stipulation.

13. Parties are bound by their stipulations unless relieved therefrom by the court, which has the power to set aside a stipulation entered into inadvertently or for justifiable cause. Klein v. Klein, 544 P.2d 472, 476 (Utah 1975); First of Denver Mortgage Investors v. C.N. Zundel and Assocs., 600 P.2d 521 (Utah 1979). When a decree is based upon a property settlement that was negotiated by the parties and sanctioned by the court, equity must take the parties' agreement into consideration in an analysis of whether or not to set aside the stipulation. A trial court can set aside a stipulation on a legal or equitable basis. Dove v. Cude, 710 P.2d 170, 171 (Utah 1985) (citing Klein, 544 at 476. Equity is not available to reinstate rights that have voluntarily been contracted away simply because one has come to regret the bargain made. Birch v. Birch, 771 P.2d 1114, 1116 (Utah Ct. App. 1989)(citing Land v. Land, 605 P.2d 1248, 1250 (Utah 1980)).

14. Mrs. Stratton did not move to void the Stipulation of the parties simply because she regretted the bargain made. Mrs. Stratton moved to void the Stipulation on the basis that she signed the Stipulation based upon certain information that turned out to be incorrect or incomplete. To support her motion, Mrs. Stratton provided the trial court with specific information as to the lack of disclosure by Mr. Stratton. A stipulation to a property settlement in

a divorce action must be treated as a contract that protects and waives certain rights and obligations. In order to have a valid waiver there must be an existing right, benefit, or advantage, a knowledge of its existence, and an intention to relinquish it. Soter's Inc., v. Deseret Federal Savings & Loan Ass'n, 857 P.2d 935, 939-40 (Utah 1993). Mrs. Stratton had an existing right, benefit, or advantage in the form of a marital interest in the parcels of real property and the executive bonus plan acquired by Mr. Stratton during the parties' marriage. Mrs. Stratton, however, did not have knowledge of the existence of that interest, nor an intention to relinquish that interest at the time she signed the Stipulation. As set forth in Soter's, the central question to most waiver cases is the intent to relinquish a known right. Id. at 940. Mrs. Stratton put forth to the trial court evidence that at the time she signed the Stipulation she did not know of the property obtained by Mr. Stratton during the marriage. Mrs. Stratton's allegation that she did not know of the property raises the issue of whether she could have intended to relinquish her rights to that property.

15. The question of intentional relinquishment of a right is fact dependent. Id. The trial court considered Mrs. Stratton's allegations as to hidden assets but determined that because she "failed to indicate who provided her with this information or where she obtained the information, or even what the nature of the information is[,] [and] there are no specifics whatsoever as to what assets were hidden, what fraud was committed, etc., . . . that that is not sufficient basis to overturn the settlement agreement." (Rec. 517-518; 567). Subsequent to the trial court's denial of her Motion, Mrs. Stratton sought a rehearing and submitted the Affidavit of Ms. Epperson who indicated that she had the information from her own knowledge, that the information was that Mr. Stratton had acquired certain assets during the marriage that were not disclosed along with the nature of those assets:--real property and an executive bonus plan. Mrs.

Stratton's motion for rehearing was based upon the information provided to the trial court and the failure of the trial court to address the issue that complete disclosure of marital property had not been made prior to the signing of the Stipulation. The trial court abused its discretion by refusing the rehearing and determining that the failure to disclose material information prior to the signing of the Stipulation was not a sufficient basis upon which to overturn a settlement agreement.

3. The Antenuptial agreement did not preclude the trial court from distributing the property that was discovered

16. Mrs. Stratton would be entitled to a different outcome if the Decree were set aside. Mrs. Stratton had a pending issue before the trial court regarding the validity of the antenuptial agreement. The antenuptial, even if valid, was not applicable to assets acquired by the parties during the marriage. It was not established that the antenuptial would be applicable to newly discovered property acquired by Mr. Stratton during the marriage.

17. The trial court recognized that Mrs. Stratton had previously asserted that the antenuptial was voidable on the basis that Mr. Stratton had failed to disclose material information at the time the antenuptial was signed. (Rec. 517). The trial court made the specific finding that Mrs. Stratton must have contemplated waiving her assertion of the validity of the antenuptial at the time she signed the Stipulation. Mrs. Stratton contemplated that she was giving up her right to dispute the validity of the antenuptial by virtue of her signing the Stipulation. However, at the time Mrs. Stratton signed the Stipulation, she was unaware of the existence of the other property acquired by Mr. Stratton during their marriage.

18. The antenuptial executed by the parties set forth that certain property was separate property of that party and subsequent to the marriage, would remain separate property of that

party. The antenuptial does not disclose as part of Mr. Stratton's property, a retirement plan or parcels of real property. These assets were acquired during the marriage and would not be subject to the provisions of the antenuptial unless Mr. Stratton could show that they are directly traceable to his separate property. (Rec. 286-287). There was no judicial determination that the assets acquired during the marriage were directly traceable to Mr. Stratton's separate property. The reason there was no judicial determination is that Mr. Stratton failed to disclose to Mrs. Stratton that he acquired those properties. At the time Mrs. Stratton executed the Stipulation, she understood that she had a right to dispute the validity of the antenuptial. The Commissioner specifically reserved the issue of the validity of the antenuptial for the trial court.

C. Petitioner Alleged Sufficient Grounds to Set Aside the Decree on the Basis of Mistake, Inadvertence, Surprise, or Excusable Neglect

19. The trial court abused its discretion in refusing to set aside the Decree of Divorce pursuant to Rule 60(b) on the basis of mistake, inadvertence, surprise, or excusable neglect. The Stipulation that was signed by the parties was based upon the disclosures made by Mr. Stratton during the divorce proceedings. Mrs. Stratton signed a Stipulation and consented to the entry of the Decree. Subsequent to her signing, but prior to the entry of the Decree, Mrs. Stratton learned that Mr. Stratton had not in fact disclosed all assets that were acquired during the parties' marriage, and the assets that were not disclosed were substantial. Mrs. Stratton, individually and through others, communicated with Mr. Stratton's counsel to indicate that she repudiated her agreement to the Stipulation. Subsequent to receiving information that Mrs. Stratton repudiated her consent, Mr. Stratton's counsel proceeded to submit to the court for signature the Stipulation, the Decree, and the Findings of Fact. It was an abuse of the trial court's discretion to refuse to set aside the Decree of Divorce to allow Mrs. Stratton to assert the newly discovered evidence in

setting aside the Stipulation. The Decree based upon the Stipulation, the agreement thereto having been withdrawn, was not then based upon consent because the consent of Mrs. Stratton had been withdrawn prior to the entry of the Decree. As such, it was an abuse of discretion for the trial court to refuse to set aside the Decree to allow Mrs. Stratton to assert her defenses to the Stipulation.

CONCLUSION

The denial of Mrs. Stratton's Motion to Set Aside Decree of Divorce, Findings of Fact and Conclusions of Law, and to Void Stipulation should be reversed. The trial court abused its discretion in refusing to set aside the Decree when presented with evidence that Mr. Stratton had failed to disclose assets acquired during the marriage. The evidence presented to the trial court was sufficient to allow Mrs. Stratton to obtain a different result than that contained in the Decree. Mrs. Stratton alleged sufficient grounds to void the Stipulation on the grounds that there had not been full disclosure and as such, she could not have knowingly waived her rights.

The trial court abused its discretion by erroneously concluding that the Stipulation could not be overturned because of the applicability of the antenuptial agreement. The erroneous conclusion of law resulted in substantial prejudice to Mrs. Stratton.

The trial court abused its discretion by refusing to set aside the Decree of Divorce that was entered on the basis of a Stipulation that was signed without full disclosure and was repudiated prior to the entry of the Decree. The trial court had the equitable power to set aside the Decree and allow Mrs. Stratton to move to void the stipulation.

Based upon the foregoing, Mrs. Stratton respectfully requests the decision of the trial court be reversed and this matter reinstated in the Third District Court to allow her to proceed on

her motion to void the Stipulation and to void the antenuptial, and to allow this matter to proceed to trial.

RESPECTFULLY SUBMITTED this 8TH day of April, 1999.

RICHMAN & RICHMAN, L.L.C.

BART J. JOHNSEN

GLEN M. RICHMAN

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 8TH day of April, 1999, two true and correct copies of the foregoing BRIEF FOR THE APPELLANT were mailed, first class postage pre-paid to:

Frank J. Falk, Esq.
869 East 4500 South, #222
Salt Lake City, Utah 84107

BART J. JOHNSEN

ADDENDUM

EXHIBIT

DESCRIPTION

1. **Final Order of the Court**
2. **Certificate that no Transcript Exists**
3. **Utah Rules of Civil Procedure, Rule 59, 60**

ADDENDUM

Exhibit 1, Order on Motion to Set Aside Decree, Findings of Fact and Conclusions of Law, and
to Void Stipulation

Frank J. Falk (6538)
Attorney for Respondent
869 East 4500 South #222
Salt Lake City, Utah 84107
(801) 265-1538

FILED DISTRICT COURT
Third Judicial District
NOV 13 1998
By
SALT LAKE COUNTY
Deputy Clerk

**IN THE THIRD DISTRICT COURT IN AND FOR SALT LAKE COUNTY,
DIVISION 1, STATE OF UTAH**

VICKI L. STRATTON,

Petitioner,

vs.

DAVID E. STRATTON,

Respondent.

**ORDER ON MOTION
TO SET ASIDE DECREE,
FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AND TO VOID STIPULATION**

Case No. 964900538 DA

**Judge Frank Noel
Commissioner Lisa A. Jones**

THIS MATTER came regularly before the Court on Petitioner's Motion to Set Aside Decree, Findings of Fact and Conclusions of Law and To Void Stipulation. Petitioner was personally present and represented by her attorney of record, Glen M. Richman. The Defendant was personally present and represented by his attorney of record, Frank J. Falk. The Court read the parties pleadings on file with the Court and heard arguments of counsel for each of the parties. The Court having been fully apprised of the premises herein, it now makes the following

FINDINGS

1. The Petitioner first attacked the Antenuptial Agreement on the basis that Respondent failed to disclose information at the time the Antenuptial Agreement was entered into.

2. The Court notes that prior to the Stipulation in this case the Motion was made by Petitioner to Set Aside the Antenuptial Agreement on the same grounds, i.e., that the Respondent had failed to disclose material information.

3. The Court finds that Petitioner's claims with respect to the Antenuptial Agreement and the alleged failure to disclose material information must have been contemplated by the Petitioner at the time the Stipulation to settle this matter was entered in to.

4. Petitioner next claims that new evidence has come to her attentions suggesting that the Respondent has committed fraud and misrepresentation and has failed to disclose certain additional information that she did not know about at the time she entered into the Stipulation.

5. Petitioner has failed to indicate who provided her with this information.

6. Petitioner has failed to indicate where she obtained the information.

7. Petitioner has failed to indicate even what the nature of the information is.

8. Petitioner failed to provide the Court with any specifics whatsoever as to what assets were hidden or what fraud was committed.

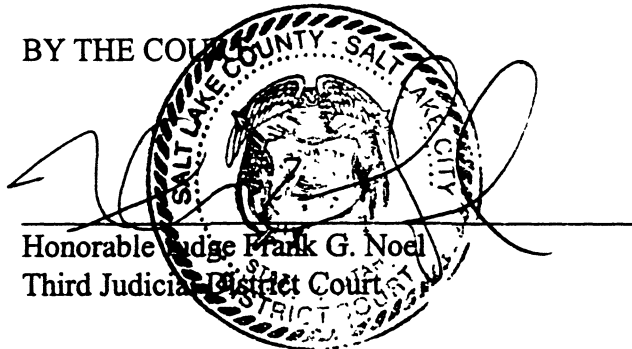
9. The Court is of the opinion that there is not sufficient basis upon which to overturn the settlement agreement.

Based on the foregoing Findings the Court now enters the following

Petitioner's Motion to Set Aside Decree, Findings of Fact and Conclusions of Law and
To Void Stipulation is denied.


DATED AND SIGNED this 13 day of Nov, 1998.

BY THE COURT



HONORABLE JUDGE FRANK G. NOEL
THIRD JUDICIAL DISTRICT COURT

Approved as to form:


Glen M. Richman
Attorney for Petitioner

ORDER

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ADDENDUM

Exhibit 2, Certificate that no Transcript Exists

IN THE UTAH COURT OF APPEALS

VICKI L. STRATTON,

Appellant,

vs.

Case No. 981822-CA

DAVID E. STRATTON,

Priority 15

Appellee.

CERTIFICATE THAT TRANSCRIPT DOES NOT EXIST

On appeal from the Third Judicial District Court
for Salt Lake County, State of Utah
Honorable Frank G. Noel, District Court Judge Presiding

Counsel for Appellee:
Frank J. Falk, Esq.
869 East 4500 South, #222
Salt Lake City, Utah 84107

Counsel for Appellant:
Glen M. Richman, Esq. (2752)
Bart J. Johnsen, Esq. (7068)
RICHMAN & RICHMAN, L.L.C.
60 South 600 East, Suite 100
Salt Lake City, Utah 84102

STATE OF UTAH :
 :ss.
COUNTY OF SALT LAKE :

Bunny Neuenschwander, being first duly sworn under her oath, deposes and states as follows:

1. Affiant is over the age of 18 years and the matters stated herein are of Affiant's personal knowledge, except those items stated upon information and belief, and as to those items, Affiant believes them to be true.
2. Affiant has searched the records of the Third District Court and has determined that no transcript or video exists for the hearing before the Honorable Frank G. Noel on the 10th day of July, 1998.

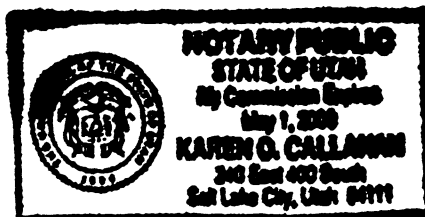
DATED this 2nd day of February, 1999.

Bunny Neuenschwander
BUNNY NEUENSCHWANDER

SUBSCRIBED AND SWORN to before me this ____ day of February, 1999.

Karen O. Callaway
NOTARY PUBLIC
Residing at Salt Lake City, Utah

My Commission Expires:
May 1, 2000



CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of February, 1999, a true and correct copies of the foregoing **CERTIFICATE THAT TRANSCRIPT DOES NOT EXIST** was mailed, first class postage pre-paid to:

Frank J. Falk, Esq.
869 East 4500 South, #222
Salt Lake City, Utah 84107

Leora Loy

ADDENDUM

Exhibit 3. Utah Rules of Civil Procedure, Rule 59; Rule 60

presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Rule 57. Declaratory judgments.

The procedure for obtaining a declaratory judgment pursuant to Chapter 33 of Title 78, U.C.A. 1953, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Rule 58A. Entry.

(a) *Judgment upon the verdict of a jury.* Unless the court otherwise directs and subject to the provisions of Rule 54(b), judgment upon the verdict of a jury shall be forthwith signed by the clerk and filed. If there is a special verdict or a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49, the court shall direct the appropriate judgment which shall be forthwith signed by the clerk and filed.

(b) *Judgment in other cases.* Except as provided in Subdivision (a) hereof and Subdivision (b)(1) of Rule 55, all judgments shall be signed by the judge and filed with the clerk.

(c) *When judgment entered; notation in register of actions and judgment docket.* A judgment is complete and shall be deemed entered for all purposes, except the creation of a lien on real property, when the same is signed and filed as herein above provided. The clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket.

(d) *Notice of signing or entry of judgment.* A copy of the signed judgment shall be promptly served by the party preparing it in the manner provided in Rule 5. The time for filing a notice of appeal is not affected by the requirement of this provision.

(e) *Judgment after death of a party.* If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may nevertheless be rendered thereon.

(f) *Judgment by confession.* Whenever a judgment by confession is authorized by statute, the party seeking the same must file with the clerk of the court in which the judgment is to be entered a statement, verified by the defendant, to the following effect:

(1) If the judgment to be confessed is for money due or to become due, it shall concisely state the claim and that the sum confessed therefor is justly due or to become due;

(2) If the judgment to be confessed is for the purpose of securing the plaintiff against a contingent liability, it must state concisely the claim and that the sum confessed therefor does not exceed the same;

(3) It must authorize the entry of judgment for a specified sum.

The clerk shall thereupon endorse upon the statement, and enter in the judgment docket, a judgment of the court for the amount confessed, with costs of entry, if any.

Rule 58B. Satisfaction of judgment.

(a) *Satisfaction by owner or attorney.* A judgment may be satisfied, in whole or in part, as to any or all of the judgment

debtors, by the owner thereof, or by the attorney of record of the judgment creditor where no assignment of the judgment has been filed and such attorney executes such satisfaction within eight years after the entry of the judgment, in the following manner: (1) by written instrument, duly acknowledged by such owner or attorney; or (2) by acknowledgment of such satisfaction signed by the owner or attorney and entered on the docket of the judgment in the county where first docketed, with the date affixed and witnessed by the clerk. Every satisfaction of a part of the judgment, or as to one or more of the judgment debtors, shall state the amount paid thereon or for the release of such debtors, naming them.

(b) *Satisfaction by order of court.* When a judgment shall have been fully paid and not satisfied of record, or when the satisfaction of judgment shall have been lost, the court in which such judgment was recovered may, upon motion and satisfactory proof, authorize the attorney of the judgment creditor to satisfy the same, or may enter an order declaring the same satisfied and direct satisfaction to be entered upon the docket.

(c) *Entry by clerk.* Upon receipt of a satisfaction of judgment, duly executed and acknowledged, the clerk shall file the same with the papers in the case, and enter it on the register of actions. He shall also enter a brief statement of the substance thereof, including the amount paid, on the margin of the judgment docket, with the date of filing of such satisfaction.

(d) *Effect of satisfaction.* When a judgment shall have been satisfied, in whole or in part, or as to any judgment debtor, and such satisfaction entered upon the docket by the clerk, such judgment shall, to the extent of such satisfaction, be discharged and cease to be a lien. In case of partial satisfaction, if any execution shall thereafter be issued on the judgment, such execution shall be endorsed with a memorandum of such partial satisfaction and shall direct the officer to collect only the residue thereof, or to collect only from the judgment debtors remaining liable thereon.

(e) *Filing transcript of satisfaction in other counties.* When any satisfaction of a judgment shall have been entered on the judgment docket of the county where such judgment was first docketed, a certified transcript of satisfaction, or a certificate by the clerk showing such satisfaction, may be filed with the clerk of the district court in any other county where the judgment may have been docketed. Thereupon a similar entry in the judgment docket shall be made by the clerk of such court; and such entry shall have the same effect as in the county where the same was originally entered.

Rule 59. New trials; amendments of judgment.

(a) *Grounds.* Subject to the provisions of Rule 61, a new trial may be granted to all or any of the parties and on all or part of the issues, for any of the following causes; provided, however, that on a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial.

(2) Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by resort to a determination by chance or as a result of bribery, such misconduct may be proved by the affidavit of any one of the jurors.

(3) Accident or surprise, which ordinary prudence could not have guarded against.

(4) Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

(5) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice.

(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

(7) Error in law.

(b) *Time for motion.* A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

(c) *Affidavits; time for filing.* When the application for a new trial is made under Subdivision (a)(1), (2), (3), or (4), it shall be supported by affidavit. Whenever a motion for a new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits. The time within which the affidavits or opposing affidavits shall be served may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) *On initiative of court.* Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds therefor.

(e) *Motion to alter or amend a judgment.* A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

Rule 60. Relief from judgment or order.

(a) *Clerical mistakes.* Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) *Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.* On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), or (3), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 61. Harmless error.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in

anything done or omitted by the court or by any of the parties, is ground for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 62. Stay of proceedings to enforce a judgment.

(a) *Stay upon entry of judgment.* Execution or other proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.

(b) *Stay on motion for new trial or for judgment.* In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) *Injunction pending appeal.* When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of the adverse party.

(d) *Stay upon appeal.* When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the court.

(e) *Stay in favor of the state, or agency thereof.* When an appeal is taken by the United States, the state of Utah, or an officer or agency of either, or by direction of any department of either, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) *Stay in quo warranto proceedings.* Where the defendant is adjudged guilty of usurping, intruding into or unlawfully holding public office, civil or military, within this state, the execution of the judgment shall not be stayed on an appeal.

(g) *Power of appellate court not limited.* The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings or to suspend, modify, restore, or grant an injunction, or extraordinary relief or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) *Stay of judgment upon multiple claims.* When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(i) *Form of supersedeas bond; deposit in lieu of bond; waiver of bond; jurisdiction over sureties to be set forth in undertaking.*

(1) A supersedeas bond given under Subdivision (d) may be either a commercial bond having a surety authorized to transact insurance business under Title 31A, or a personal bond having one or more sureties who are residents of Utah