

1999

Wesley John Harlan v. Bonnie Kathleen Harlan : Brief of Appellant

Utah Court of Appeals

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DOCKET NO. 990011-CA IN THE UTAH COURT OF APPEALS

WESLEY JOHN HARLAN,

Petitioner/Appellee,

vs.

BONNIE KATHLEEN HARLAN,

Respondent/Appellant.

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CASE NO. 990011 - CA

PRIORITY NO. 15

BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT AND ORDER OF THE
EIGHTH JUDICIAL DISTRICT COURT,
DUCHESNE COUNTY, STATE OF UTAH,
THE HONORABLE JOHN R. ANDERSON, PRESIDING

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FILED

Utah Court of Appeals

AUG 12 1999

Julia D'Alesandro
Clerk of the Court

IN THE UTAH COURT OF APPEALS

WESLEY JOHN HARLAN,

Petitioner/Appellee,

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IN THE UTAH COURT OF APPEALS

WESLEY JOHN HARLAN,	:	BRIEF OF APPELLANT
	:	
Petitioner/Appellee,	:	CASE NO. 990011 - CA
	:	
vs.	:	
	:	
BONNIE KATHLEEN HARLAN,	:	
	:	PRIORITY NO. 15
Respondent/Appellant.	:	
	:	

Appellant, BONNIE HARLAN, hereinafter "Ms. Harlan" or "Wife", submits the following Brief:

STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant Rules 3 and 4 of the UTAH RULES OF APPELLATE PROCEDURE and §78-2a-3(2)(h) UTAH CODE ANN. (1998).

STATEMENT OF ISSUES AND STANDARDS OF REVIEW

1. Did the trial court abuse its discretion in denying Wife's *pro se* Motion for Relief from Judgment or Order?

This Court will reverse a trial court's ruling on a motion under Rule 60(b) where there has been an abuse of discretion. Udy v. Udy, 893 P.2d 1097, 1099 (Utah App. 1995) (citing Larsen

v. Collina, 684 P.2d 52, 54 (Utah 1984). "A liberal standard for application of Rule 60(b) in divorce cases is justified by the doctrine of continuing jurisdiction that a divorce court has over its decrees. Clearly, a court should modify a prior decree when the interest of equity and fair dealing with the court and the opposing party so require." Boyce v. Boyce, 609 P.2d 928, 931 (Utah 1980). In addition, "[d]iscretion must be exercised in furtherance of justice and the court will incline toward granting relief in a doubtful case to the end that the party may have a hearing." Id. (quoting Warren v. Dixon Ranch Co., 260 P.2d 741, 742 (Utah 1953)).

DETERMINATIVE STATUTORY PROVISIONS

Wife submits that there are no statutory nor constitutional provisions completely determinative of the issues presented herein. However Rule 60 of the UTAH RULES OF CIVIL PROCEDURE is relevant to this appeal and is attached hereto as Addendum A.

STATEMENT OF THE CASE

A. NATURE OF THE CASE AND COURSE OF THE PROCEEDINGS AND DISPOSITION BELOW

This is an appeal from a final order of the Eighth Judicial District Court, in and for Duchesne County, State of Utah, the Honorable John R. Anderson presiding.

The trial court entered Findings of Fact and Conclusions of Law and a Decree of Divorce on August 19, 1998. (R. 153 and 160, Addendum B and C). Wife, *pro se*, filed a Motion for Relief from Judgment or Order on November 10, 1998. (R. 213, Addendum D). The trial court denied Wife's motion on December 28, 1998. (R. 228, Addendum E). Wife filed her Notice of Appeal of this order on January 4, 1999. (R. 240).

B. STATEMENT OF THE FACTS

The parties to this action were husband and wife, having been married on September 11, 1962. (R. 153). During the marriage, the parties purchased a mobile home on an 80-acre farm on the Myton Bench. (R. 112). At the time of the divorce, the home and real property was owned free and clear of all liens. (R. 112). The parties stipulated to a fair market value of this home of \$157,000. (R. 112).

The parties also accrued numerous pieces of farm equipment, a piano, a camp trailer, as well as an interest in a time-shared condo in Park City. (R. 111). The parties also accrued interests in their respective IRA accounts. Specifically, the Wife had accrued \$524.00, and the Husband had accrued \$14,700.00. (R. 111). In addition, during the

marriage, the parties accrued an interest in a limited liability company known as John Harlan Excavation. (R. 111). Husband filed a complaint for divorce on August 19, 1997. (R. 6). This matter went to trial on May 28, 1998, and the trial court took the matter under advisement. (R. 154). The lower court entered a ruling on June 16, 1998. (R. 112, Addendum F). With regard to the value of the limited liability company, the trial court stated that:

The Court, based upon a totality of the evidence, from an examination of the exhibits adduced and from the record determines that the value of the business is \$195,735 and makes the following findings to support that conclusion:

1. The equipment as per the appraisal which was set forth in Petitioner's Exhibit Two (2) showed a reasonable value of the equipment and machinery at \$234,100. The parties stipulated to the introduction of the exhibit and it appears to be reasonable. There is testimony that a welder that was part of the equipment had a value of \$2,200 which was not included in that appraisal. The Court has also, from reviewing the photographs of the equipment and having an analysis of the financial statement which is tendered and received into evidence as Exhibit Six (6), has determined there should be additional values for supplies and parts of \$2,000 and additional tools and inventory of gravel in the amount of \$2,000. Added to that should be accounts receivable of \$9,000 and the cash at the time of trial of \$3,000. Deduct liens payable to Zion's First National Bank of \$55,565 without the addition of any value that would be attached to the business for good will as per Sorensen v. Sorensen, 839 P.2d 774 (Utah 1992), the company has a value of \$195,735 and the Petitioner has in his possession a camp trailer

with a value of \$2,000. **Assets were reviewed in order to provide a fairly equal distribution as follows:**

2. The equipment, machinery, tools, inventory and assets of the business, including the camp trailer with a value of \$2,000, will be retained by the Petitioner; having a total value of \$197,735.

ASSET EQUALIZATION

3. The valuation of the real estate, farm equipment, four-wheel drive all-terrain vehicle, piano and time share, total \$176,000, will be awarded to the Respondent.

4. The net difference in the IRA Accounts, \$14,176 plus \$5,000 which is the value of a reasonable automobile, are awarded to the Respondent in addition. (R. 110-111) (emphasis added).

Therefore, according to the lower court's Ruling, the lower court awarded Husband \$195,735 of the marital estate and Wife \$195,176¹, very close to an equal distribution. The lower court directed Mr. Hunt, counsel for Wife, to prepare the appropriate findings and decree based on this ruling. (R. 107).

Wife submitted the requested documents on July 29, 1998. (R. 117). The proposed findings and decree, in relevant part awarded Husband \$197,735 (in the form of the business and camp trailer) and the Wife the marital residence and property (\$176,000) and the sum of \$19,176 for

¹ \$176,000 + \$14,176 + \$5,000 = \$195,176

the differential in Husband's IRA account and the \$5,000 for a reasonable automobile, and her premarital property. (R. 180-181). This is the exact division set forth in the lower court's Ruling.

On July 31, 1998, Husband filed his objections to the proposed findings and decree because he did not agree with the trial court's valuation of the business and because he would rather do a tax free IRA transfer, rather than pay the IRA differential in cash. (R. 120-122). On August 18, 1998, Husband requested a ruling from the trial court on his objections to Wife's proposed findings and decree. (R. 143). One day later, on August 19, 1998, the court entered the Findings of fact and Conclusions of Law and Decree of Divorce which were submitted by Husband on or about July 28, 1998. (R. 166). At this time, the parties had also both moved for an order to show cause in which the parties raised issues concerning medical costs, timeshare maintenance costs, the payment of the automobile costs and attorney's fees award made to the Wife in the decree, and various other claims. (R. 178). The parties reached a stipulation which was entered on the record and included in the Order resolving these issues. (R. 178, Addendum G). Neither

party raised issues concerning the changes from the ruling to the findings and decree submitted by the Husband in the respective order to show causes and these issues were neither discussed nor stipulated to at any time. (R. 178, a transcript of this hearing can be found at R. 320 as well, Minute Entry, R. 175).

On October 16, 1998, counsel for Wife entered his withdrawal. (R. 181). Wife, *pro se*, filed a "Motion for Relief from Judgment or Order" on November 10, 1998. (R. 213). In this motion, Wife clearly pointed out the changes from what the trial court stated in its ruling to what Husband submitted as his proposed findings and decree which the court eventually signed. (R. 212). Wife sought relief from the "inconsistent declarations of judgment" with regards to the valuation of the business and the payment of the \$19,176 for the difference in the IRAs and for the purchase of a reasonable car. (R. 212).

Husband responded to this motion with his "Memorandum in Opposition to Motion for Relief from Judgment or Order" on November 27, 1998. (R. 220, Addendum H). In this memorandum, Husband argued that Wife's motion should be denied because: (1) she did not set forth specific grounds

for Rule 60 relief; (2) the issues raised in the motion were already considered by the trial court; (3) the parties entered a stipulation resolving the issues raised at the Order to Show Cause hearing; and (4) the trial court's decision was accurate and should not be set aside. (R. 216 - 220). Wife then filed a reply, *pro se*, to this memorandum on December 3, 1998. (R. 226, Addendum I).

The trial court entered a Ruling on Wife's Rule 60 motion on December 10, 1998. (R. 228, Addendum J). The trial court denied the motion "for the reasons set forth in Petitioner's Memorandum in Opposition," and specifically because the "Court finds no compelling reason to set aside the decree." (R. 228). This Order was entered on December 28, 1998. (R. 234).

Wife filed her Notice of Appeal of this Order on January 4, 1999. (R. 240).

SUMMARY OF THE ARGUMENT

The trial court abused its discretion by denying Wife's *pro se* motion for relief from judgment or order. The discrepancies from the trial court's order to the decree entered by the court can only be explained by mistake, inadvertence, surprise or excusable neglect. The Ruling

from the trial court was stated in clear language and supported by the court's findings. Husband did not file any objection to this Ruling. A hearing was not held to determine why the trial court should modify its Ruling. However, while Wife submitted findings and a decree, pursuant to the court's direction, which mirrored the court's Ruling, the court signed the findings and decree submitted by Husband, even though Husband's findings and decree modified the trial court's Ruling to the substantial prejudice of Wife.

Rule 60(b) allows for a judgment or decree to be set aside for the aforementioned reasons, or where the interests of equity, fairness and justice so require. The trial court should have granted Wife's motion for relief from judgment or granted a hearing to determine the issues raised therein.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING WIFE'S PRO SE MOTION FOR RELIEF FROM JUDGMENT OR ORDER.

"[T]he 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 . . . mistake, inadvertence, surprise, or excusable neglect . . . or for any other reason justifying relief from the operation of the

judgment." UTAH R. CIV. PRO. 60(b). The trial court is granted broad discretion on ruling on a motion for relief from judgment under Rule 60(b). See Birch v. Birch, 771 P.2d 1114 (Utah App. 1989); Katz v. Pierce, 732 P.2d 92 (Utah 1986); Russell v. Martell, 681 P.2d 1193, 1194 (Utah 1984). However, the trial court, in exercising its discretion, must consider all of the relevant factors in granting or denying a motion under Rule 60(b).

The allowance of a vacation of judgment is a creature of equity designed to relieve against harshness of enforcing a judgment, which may occur through procedural difficulties, the wrongs of the opposing party, or misfortunes which prevent the presentation of a claim or defense. Rule 60(b) of the Utah Rules of Civil Procedure outlines the situations wherein a party may be relieved from a final judgment, among which is mistake, inadvertence, surprise, or excusable neglect claimed here by appellant. Equity considers factors which may be irrelevant in actions at law, such as unfairness of a party's conduct, his delay in bringing or continuing the action, the hardship in granting or denying relief. Warren v. Dixon Ranch Co., 260 P.2d 741, 742 (Utah 1953).

The trial court is granted a very liberal standard for granting relief under Rule 60(b) in regards to divorce cases. See Boyce v. Boyce, 609 P.2d 928 (Utah 1980). "A liberal standard for application of Rule 60(b) in divorce cases is justified by the doctrine of continuing jurisdiction that a divorce court has over its decrees. Clearly, a court should modify a prior decree when the interest of equity and fair dealing with the court and the opposing party so require." Id.

at 931. In addition, "[d]iscretion must be exercised in furtherance of justice and the court will incline toward granting relief in a doubtful case to the end that the party may have a hearing." Id. (quoting Warren, 260 P.2d at 743 (citation omitted)).

In Boyce, the wife moved to set aside a decree of divorce based on the allegations that she had obtained material and relevant information regarding the property in the marital estate, husband was guilty of fraud, misrepresentation or misconduct during the divorce proceeding, and that the stipulation was entered under duress. Id. at 929. The trial court ruled that the wife had failed to state any grounds for which the decree could be set aside under Rule 60(b). Id. at 930. Wife then moved the trial court to modify the decree and to allow further discovery. Id. These motions were denied as well. Id.

Wife then appealed the trial court's denial of her motion to set aside the judgment. Id. Wife alleged that husband had committed fraud on the court and on her in representing his net worth as \$200,000 in April of 1978. Id. To support the allegations of fraud, Wife relied on husband's loan application filed in May of 1978 where he claimed his net worth was \$1,154,690.10. Id. The final findings and decree were entered on June 22, 1978. Id. at 929.

The Utah Supreme Court reversed the trial court's denial of wife's motion to set aside judgment because "[a]lthough the trial court displayed great patience in dealing with this case, we cannot avoid the conclusion, on the basis of the contentions before this Court, that **an injustice may have been perpetrated** by defendant's actions. **Accordingly, we are compelled** to the conclusion that the trial judge abused his discretion in not allowing plaintiff a hearing under Rule 60(b)." Id. at 931-32 (emphasis added). It is clear from this language that, where allegations in a Rule 60(b) motion are raised which **may** constitute an injustice, the trial court must at least hold a hearing on these issues.

In the present case, the Wife moved the court to set aside the decree because the decree and findings signed by the court, and drafted by the Husband, were drastically different from the Ruling entered by the trial court. It is very clear from the Ruling that the trial court's intent was to award nearly equal shares of the marital estate to each party.

In the Ruling, the trial court awarded the Husband the closely held business, valued at \$195,735, and a camp trailer valued at \$2,000. Therefore the Husband received \$197,735 from the marital estate. The Ruling awarded the Wife the marital residence and property, the farm equipment, piano, time share condo interest, and an all terrain vehicle, all valued at

\$176,000, and the net difference in the IRA Accounts, \$14,176 plus \$5,000 for the purchase of a reasonable automobile. This totals \$195,176, or \$2,559 less than what was awarded to the Husband.

Wife, as requested by the trial court, submitted findings and a decree which mirrored the court's Ruling in this regard. Husband objected and submitted his own findings and decree which completely modified the valuation of the business. Specifically, where the Ruling plainly states that "[t]he Court, based upon a totality of the evidence, from an examination of the exhibits adduced and from the record determines that the value of the business is \$195,735 and makes the following findings to support that conclusion" The trial court then went on to enter the findings to support this valuation, and specifically found that the value of the business should be offset by \$55,565 for the liens payable to Zion's First National Bank. The findings submitted by the Husband, and not reviewed at any hearing, materially changed the trial court's Ruling.

The findings submitted by Husband state that "[b]ased on the evidence received by the Court, the Court determines the value of that business to be \$177,562.05." This figure is \$18,172.95 less than the figure which the trial court determined to be the value of the business.

The Ruling states, in item 4, that "[t]he net difference in

the IRA Accounts, \$14,176 plus \$5,000 which is the value of a reasonable automobile, are awarded to the [Wife] in addition." Again, the findings and decree grossly modify this Ruling of the trial court without a hearing on the issues. The decree submitted by Husband states that the Wife "is awarded her IRA and \$7,088.00 of the [Husband's] IRA accounts to equalize those accounts." This diminishes the amount that the trial court determined in its Ruling that the Wife should be awarded from the Husband's IRA by \$7,088.²

In addition, the trial court clearly stated in its Ruling that the Husband "will be ordered to maintain medical insurance for the benefit of the children and the parties are ordered to share any medical expense not covered by insurance, 50/50." This Ruling of the trial court was also modified by the Husband in the Decree which states that:

The [Husband] is responsible to obtain and maintain medical insurance for the minor children as long as it can be acquired at a reasonable cost. Each party is ordered to pay equally the out-of-pocket costs for the premium actually incurred by the parent for the children's portion of the insurance. Each party is further ordered to pay equally all reasonable and necessary uninsured medical expenses, including deductibles and copayments incurred for the minor children, actually paid.

Therefore, where the trial court clearly ruled that the Husband was to maintain insurance for the children and the parties would

² Please note that the \$5,000 figure for a reasonable car was retained from the Ruling in the Decree.

equally split the uninsured medical costs, the Husband's Decree modified this, without a hearing, to require the Wife to pay an equal share of premium costs in addition to the equal share of the uninsured expenses, and modified the Ruling to only require the Husband to maintain insurance for the children "as long as it can be acquired at a reasonable cost."

The aforementioned reductions of the award to Wife made in the trial court's Ruling as compared to the decree and findings submitted by Husband greatly prejudice the Wife. This prejudice is even more apparent when considered in light that even where the business was valued at \$195,735 as the trial court did in its Ruling, this figure is much smaller than the calculation made by James Drollinger,³ Wife's CPA expert witness, or the figure which Husband used in his certified personal financial statement which was completed on November 24, 1997. This financial statement was admitted as Respondent's Exhibit 6 at trial, and is attached hereto as Addendum K.

In this statement, Husband represented, warranted and certified that his net worth was \$485,527. Of this amount, the house and real property was valued at \$185,000. This

³ \$279,262 net value.

leaves approximately \$300,000 of net worth not including the house or property awarded to the Wife. The statement clearly states that Husband valued his equipment, welder, tools, gravel and other inventory and the camp trailer awarded to him at \$247,000.

Wife clearly raised these mistakes, surprises, inadvertencies, excusable neglect or possible fraud on the trial court in her *pro se* motion to set aside the judgment. In addition, the issues raised in the *pro se* motion certainly allege an adequate "reason justifying relief from the operation of the judgment" under Rule 60(b). No hearing was held on Wife's *pro se* motion. The trial court denied her motion because: (1) the issues raised in the motion had all been previously heard by the trial court; (2) the court had heard substantial evidence regarding the value of the business; (3) the Wife had the chance to include evidence on any assets at trial; and for the reasons raised in Husband's Memorandum in Opposition to Motion for Relief from Judgment. (Order, R. 234). The reasons to deny Wife's motion raised in Husband's memorandum were because: (1) the motion failed to set forth the requisite grounds to set aside a judgment; (2) the issues raised in the motion were addressed when the parties submitted their respective findings and decree; (3) the parties stipulated at the Order to Show Cause

hearing that they had resolved the remaining issues before the trial court; (4) the trial court's decision is accurate and should not be set aside. (R. 220)

As many of these issues are intertwined some are addressed together. First, the issues raised in Wife's *pro se* motion had not been addressed by the trial court since the trial and the court's Ruling. The Ruling used clear and precise language and reasoning in valuing the marital estate and dividing it nearly equally. The arbitrary modification of this division was never addressed or argued. Wife, as requested, submitted the findings and a decree which mirrored the Ruling of the court. Husband, while not objecting or responding to the trial court's Ruling, objected to Wife's findings and decree. Husband then submitted his own findings and decree which substantially altered the court's Ruling. Wife filed a *pro se* Response on August 12, 1998. (R. 141). No hearing was held on the issues raised in the Wife's proposed findings and decree, or Husband's objection or in the *pro se* response filed by the Wife.

Second, it is undisputed that the trial court heard substantial testimony and received evidence as to the

valuation of the business. After hearing all of this testimony and considering all of the evidence, the trial court entered it's Ruling which unequivocally values the business at \$195,735. No further testimony was given. No further evidence was admitted. However, the value of the business was modified by the findings submitted by the Husband to \$177,562.05. Certainly at least a hearing should be held to determine why the carefully calculated and supported value of the business as clearly stated in the trial court's Ruling was modified by nearly \$20,000 by the findings submitted by Husband.

Third, as to the modifications in the valuation of the business, the IRA award and the change in the payment of the premium for the children, the issue of evidence which should have been submitted at trial is irrelevant. Sufficient evidence was submitted at trial to support the trial court's Ruling and the award made by the trial court in its Ruling, while the issues and evidence was fresh, should not be arbitrarily modified without a hearing as to why the modifications should be made.

Fourth, as stated above, Wife's *pro se* motion clearly raises adequate grounds to set aside the judgment. Without

some record to determine why the trial court's Ruling was modified so drastically in the findings and decree, certainly the issues of mistake, inadvertence, excusable neglect, or surprise are raised. In addition, in light of the substantial discounted valuation, and the substantial prejudice to Wife caused by this valuation, entered by the trial court in its Ruling (and even more so in the Findings) as compared to the valuation done by Mr. Drollinger, or as certified by Husband in his financial statement, Wife's motion alleges an adequate reason justifying relief from the operation of the decree which would further prejudice her.

Fifth, the parties did not stipulate to any of these issues at the Order to Show Cause hearing. The order to show cause only dealt with the issues raised therein.⁴ The only issues that the parties stipulated to resolve were the issues "raised in [Husband's] Order to Show Cause and [Wife's] Counterclaim" (R. 178). The modifications made to the Ruling by the decree and findings were not stipulated to, included in any order, or addressed at the hearing. (Transcript of

⁴ Medical cost reimbursement, time share maintenance costs, timing of the payments due from Husband for the automobile replacement and attorney's fees award, removal of personal property, and the waiver and release of the other claims "raised in [Husband's] Order to Show Cause and [Wife's] Counterclaim" (R. 178).

Hearing on Order to Show Cause, R. 320).

The final reason for the denial of Wife's *pro se* was that "the trial court's decision is accurate and should not be set aside." The trial court's Ruling valued the business at \$195,735. The findings entered by the court valued the business at \$177,562.05. The Ruling clearly awarded Wife \$14,176 from Husband's IRA. The decree awarded Wife only \$7,088 from Husband's IRA. Without any record as to why these modifications were made and no opportunity to have a hearing on the changes, it is not clear which decision by the trial court is accurate.

The Utah Supreme Court clearly held that where the evidence supports allegations that an injustice may have occurred at the trial level "we are compelled to the conclusion that the trial judge abused his discretion in not allowing [the movant] a hearing under Rule 60(b)." Boyce, at 931-32. In addition, "[d]iscretion must be exercised in furtherance of justice and the court will incline toward granting relief in a doubtful case to the end that the party may have a hearing." Id. At 931 (quoting Warren, 260 P.2d at 743 (citation omitted)). In the present case, the changes from the trial court's well-reasoned and supported Ruling to the findings and decree can only be explained by mistake, inadvertence, surprise or excusable

neglect. These changes substantially prejudiced Wife and created an unjust and unfair result requiring that the decree be set aside.

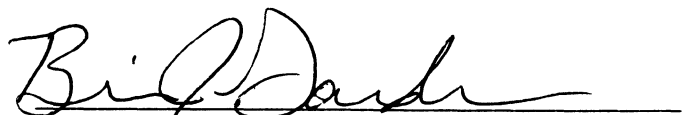
CONCLUSION

For the foregoing reasons, the Wife respectfully requests that this Court reverse the trial court's dismissal of Wife's Motion for Relief from Judgment and remand the matter with directions to the trial court to set aside the decree. A decree should enter in conformity with the actual ruling of the trial court.

Respondent requests her costs incurred in this appeal pursuant to Rule 34 UTAH RULES OF APPELLATE PROCEDURE.

RESPECTFULLY SUBMITTED this 12 day of AUGUST, 1999.

CORPORON & WILLIAMS, PC



BRIAN J. GARDNER

MARY C. CORPORON

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that two (2) true and correct copies of the foregoing BRIEF OF APPELLANT were mailed, first class, postage prepaid, to:

CLARK B. ALLRED
MCKEACHNIE, ALLRED & MCCLELLAN
855 East 200 North (112-10)
Roosevelt, Utah 84066

on this 12 day of AUGUST, 1999.

Bill Dard

ADDENDUM A

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. (Amended effective April 1, 1998.)

Advisory Committee Note. — The 1998 amendment eliminates as grounds for a motion the following: "(4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defendant has failed to appear in said action." This basis for a motion is not found in the federal rule. The committee concluded the clause was ambiguous and possibly in con-

flict with rules permitting service by means other than personal service.

Amendment Notes. — The 1998 amendment deleted the former fourth ground for a motion in Subdivision (b), as described in the Advisory Committee Note above, and renumbered the grounds accordingly.

Compiler's Notes. — This rule is similar to Rule 60, F.R.C.P.

NOTES TO DECISIONS

"Any other reason justifying relief."

- Default judgment.
- Impossibility of compliance with order.
- Incompetent counsel.
- Lack of due process.
- Merits of case.
- Mistake or inadvertence.
- Mutual mistake.
- Real party in interest.
- Refund of fine after dismissal.
- Appeals.
- Clerical mistakes.
- Computation of damages.
- Correction after appeal.
- Date of judgment.
- Void judgment.
- Estate record.
- Inherent power of courts.
- Intent of court and parties.
- Judicial error distinguished.
- Order prepared by counsel.

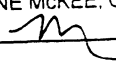
— Predating of new trial motion.

- Court's discretion.
- Default judgment.
- Effect of set-aside judgment.
- Admissions.
- Federal law.
- Form of motion.
- Fraud.
- Burden of proof.
- Divorce action.
- Independent action.
- Constitutionality of taxes.
- Divorce decree.
- Fraud or duress.
- Motion distinguished.
- Invalid summons.
- Amendment without notice.
- Inequity of prospective application.
- Jurisdiction.
- Mistake, inadvertence, surprise or excusable neglect.

ADDENDUM B

FILED
DISTRICT COURT
DUCHESNE COUNTY UTAH

AUG 19 1998

JOANNE MCKEE, CLERK
BY  DEPUTY

CLARK B ALLRED - 0055
CLARK A. McCLELLAN - 6113
McKEACHNIE, ALLRED & McCLELLAN, P.C.
Attorneys for Petitioner
855 East 200 North (112-10)
Roosevelt, Utah 84066
Telephone: (435) 722-3928

IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY
STATE OF UTAH, ROOSEVELT DEPARTMENT

WESLEY JOHN HARLAN, JR.,)	
)	
Plaintiff,	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
vs.)	
)	
BONNIE KATHLEEN HARLAN,	)	Civil No. 974000100 DA
)	
Defendant.	)	Judge: John R. Anderson

The above captioned matter came before the Court for trial on May 28, 1998. The Petitioner was present with his attorney Clark B Allred. The Respondent was present with her attorney Hollis S. Hunt. Testimony and documentary evidence was received by the Court. The Court also received argument from counsel and took the matter under advisement. The Court after having reviewed the testimony, Exhibits and case law presented by counsel entered its

Ruling on June 16, 1998. Based thereon the Court enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The parties were husband and wife, having married September 11, 1962. The parties resided in Duchesne County, Utah and the Respondent had been a resident of Duchesne County for more than three months prior to the filing of the complaint for divorce. The parties have been separated for a substantial period of time and the court believes the differences between the parties is not reconcilable.

2. The parties are the parents of three children as issue of this marriage, Amber born September 11, 1981, Kalene born August 6, 1983 and Jason born March 11, 1985. The custody of the children was not an issue in this case.

3. The parties are the owners of an 80-acre farm with a mobile home which farm is located on Myton Bench. That home and property is free and clear of all liens and encumbrances. The parties stipulated to the Court receiving an appraisal (exhibit 1)

which set the value of the farm at \$157,000.00. The appraisal included the value of the irrigation system and wheel lines. The parties also stipulated to the value.

4. The parties also have farm equipment with a value of \$2,500.00, an all terrain four wheel vehicle having a value of \$2,500.00, a piano having a value of \$2,000.00, and a time share Condominium in Park City, Utah with a value of \$12,000.00.

5. The parties also are the owners of a limited liability company known as John Harlan Excavation, which is a construction business owning several pieces of construction equipment. Based on the evidence received by the Court, the Court determines the value of that business to be \$177,562.05. The Court determines that value as follows:

A. The parties stipulated to the Court receiving an appraisal regarding the equipment which set the value of the equipment and machinery of the business at \$234,100.00. (exhibit 2)

B. There is a welder which was not included in the appraisal, which welder has a value of \$2,200.00.

C. The Court in reviewing the photographs of the equipment and reviewing the financial statement, exhibit six and other information provided, determines that the value for supplies and parts is \$2,000.00, the value of tools and gravel inventory is \$2,000.00, that there are accounts receivable in the amount of \$9,000.00 and cash at the time of trial in the amount of \$3,000.00 which are assets of the business.

D. The business is subject to debts at Zions First National Bank in the amount of \$74,737.95. exhibit four.

E. The business is basically a sole proprietorship dependant on the skill, reputation and work of the Petitioner. There is no good will independent of the future earning ability of the Petitioner. If the Petitioner were to die or no longer operate the business the value would only be the value of the equipment accounts, inventory and cash. See Sorensen vs Sorensen, 839 P.2d 774 (Utah 1992).

6. The Petitioner also has a camp trailer in his possession that has a value of \$2,000.00.

7. The Petitioner has an IRA having a value of \$14,700.00 and the Respondent's IRA has a value of \$524.00.

8. From the accounting testimony and the exhibits it appears that the debts owed to Zions First National Bank are fairly short term and the payments are structured to reduce that debt at a rapidly declining balance. This shows good judgement on the part of the parties to decrease their debt, but also increases the potential income attributable to the Petitioner.

9. Based on the evidence received the Petitioner has ability and does generate \$4,000.00 gross income per month before taxes. This amount includes \$700.00 per month that he receives in benefit from the business, including use of a company truck, gasoline, meals and insurance. These items benefit the Petitioner even though they are business deductions.

10. The Respondent worked at Bow Valley for two or three years but has not worked for some period of time and does not currently have full time employment but the Court believes that she is capable of finding full time employment, capable of training and

upgrading her skills to at least find a minimum wage job at 40 hours per week.

11. The Respondent has contributed to the rapid payoff of the debt and acquisition of business assets and has sacrificed to a certain extent with regard to her demands for improvement on the family home. Because the Respondent is and has been frugal in her needs she should not be punished for her conservative habits in determining alimony and she is in need of an equalization of income.

12. Because of the rapid pay-off of the indebtedness of the company equipment, the fast depreciation being applied, the Petitioner's active participation in the company and its earning record the Petitioner has the ability to produce enough income to provide for spousal support.

13. This has been a 30-year marriage and alimony is appropriate in this case.

14. The Petitioner will get a tax benefit from the alimony payments and in addition, will benefit from claiming the minor children as dependents for income tax calculations.

15. The Respondent filed a 1997 tax return claiming the exemptions for the children without significant taxable income. Therefore, the Respondent should be ordered to file an amended return deleting the claim to the exemptions so that the Petitioner may claim the exemptions for the children in 1997. The Petitioner will have the greater need and benefit for the exemption in the future.

16. The Respondent has incurred attorney fees, accounting fees and costs. The Court believes that she should be reimbursed for part of the attorney fees and costs she has incurred in the amount of \$5000.00 which amount the court believes is a reasonable amount.

Conclusions of Law

1. The parties are entitled to a Decree of Divorce the same to become final upon signing and entry.

2. The Respondent is entitled to the award of custody of the children with the Petitioner having reasonable rights of visitation which at a minimum shall be as set forth in the state guidelines.

3. A fair and equitable division of the parties' assets will be to award the construction business including the equipment, machinery, tools, inventory, cash and assets of that business together with the camp trailer to the Petitioner, which assets have a total value of \$179,562.00 and to award to the Respondent the home and real estate, the farm equipment, the four wheel drive all terrain vehicle, piano, and the time share having a value of \$176,000.00.

4. The net difference in the parties IRAs should be distributed to the Respondent so that both parties have equal

values. In addition the Petitioner should pay the Respondent the sum of \$5000.00 so that she can acquire a suitable automobile.

5. The Court in determining child support will set the Petitioner's gross income at \$4,000.00 per month and the Respondent's income at minimum wage (\$893.00) and will use the child support table to determine the amount of child support.

6. Based on the length of the marriage and the income and expenses of the parties the Petitioner should be ordered to pay the Respondent the sum of \$1000.00 per month as alimony.

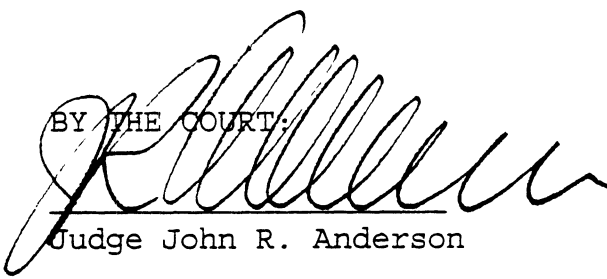
7. The Petitioner having the majority of the income should be awarded the tax exemptions for the children. In addition the Respondent should be ordered to file an amended return for 1997 so that the Petitioner can claim the children on his tax return for 1997.

8. The Petitioner should be ordered to provide medical insurance for the benefit of the children with the parties ordered to share all non covered medical expenses on an equal basis.

9. The Petitioner should be ordered to pay the Respondent the sum of \$5000.00 as partial reimbursement for attorney fees and costs.

DATED this 19 day of ^{aug}~~July~~, 1998.

BY THE COURT:


Judge John R. Anderson

MAILING CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF DUCHESNE)

Cheree Brotherson, being duly sworn, says:

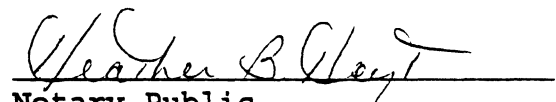
That she is employed in the office of **McKEACHNIE, ALLRED & McCLELLAN, P.C.**, Clark B Allred attorney for Plaintiff, herein; that she served the attached **FINDINGS OF FACT AND CONCLUSIONS OF LAW**, upon Defendant by placing a true and correct copy thereon in an envelope addressed to:

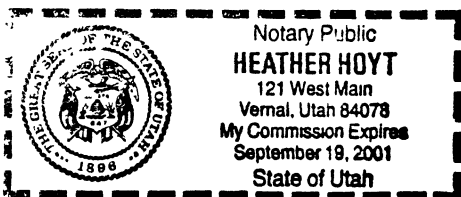
Mr. Hollis S. Hunt
ATTORNEY AT LAW
392 East 12300 South, Suite A
Draper, Utah 84020

and delivered the same, sealed, first class postage prepaid thereon, in the United States mail at Roosevelt, Utah, on the 28th day of July, 1998.


Cheree Brotherson

Subscribed and sworn to before me this 28th day of July, 1998.


Notary Public



ADDENDUM C

FILED
DISTRICT COURT
DUCHESNE COUNTY, UTAH

AUG 19 1998

JOANNE MCKEE, CLERK
BY DEPUTY

CLARK B. ALLRED - 0055
CLARK A. McCLELLAN - 6113
McKEACHNIE, ALLRED & McCLELLAN, P.C.
Attorneys for Petitioner
855 East 200 North (112-10)
Roosevelt, Utah 84066
Telephone: (435) 722-3928

IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY

STATE OF UTAH, ROOSEVELT DEPARTMENT

WESLEY JOHN HARLAN, JR.,)	
	)	DECREE OF DIVORCE
Petitioner,)	
)	
vs.)	
)	
BONNIE KATHLEEN HARLAN,)	
	)	Civil No. 974000100 DA
Respondent.	)	Judge John R. Anderson

Pursuant to the Findings of Fact and Conclusions of Law made
in this matter,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Petitioner is awarded a decree of divorce from the
Respondent, the same to become final upon signing and entry.

2. Respondent is awarded custody of the parties minor
children subject to the Petitioner having reasonable rights of
visitation with the children which at a minimum shall be as set

forth in the State guidelines.

3. The Petitioner is awarded the construction business including the equipment, machinery, tools, inventory, cash and assets of the business and the camp trailer and the personal property in his possession.

4. The Respondent is awarded the home and real estate, farm equipment, four wheel drive all terrain vehicle, piano, and the Park City condo time share, furniture and personal property in her possession.

5. The Petitioner is awarded his IRA account less the amount awarded to the Respondent.

6. The Respondent is awarded her IRA and \$7,088.00 of the Petitioner's IRA accounts to equalize those accounts. The Petitioner is ordered to pay the Respondent the sum of \$5,000.00 for the Respondent to acquire an automobile.

7. The Petitioner is ordered to pay the Respondent the sum of \$986.12 per month as child support (see attached worksheet). The child support award shall be reduced by 50% for each child for time periods in which the Petitioner has the children for extended

visitation under this decree for at least 25 or any 30 consecutive days. Child support shall be paid for each child until that child reaches age 18 or graduates from high school which ever occurs last.

8. The Petitioner is responsible to obtain and maintain medical insurance for the minor children as long as it can be acquired at a reasonable cost. Each party is ordered to pay equally the out-of-pocket costs for the premium actually incurred by the parent for the children's portion of insurance. Each party is further ordered to pay equally all reasonable and necessary uninsured medical expenses, including deductibles and copayments incurred for the minor children, and actually paid. When either party has insurance, they are ordered to provide verification of the coverage to the other party, and when a party incurs medical expenses, they are ordered to provide written verification of the cost of payment of those expenses to the other party within thirty (30) days.

9. The Petitioner is ordered to pay the Respondent the sum of \$1,000.00 per month as alimony until the Respondent remarries

cohabitates or for a time period equal to the length of the marriage which ever event occurs first.

10. The Petitioner is ordered to pay the Respondent the sum of \$5,000.00 as partial reimbursement for the attorney fees and costs she incurred and Judgment is entered for that amount.

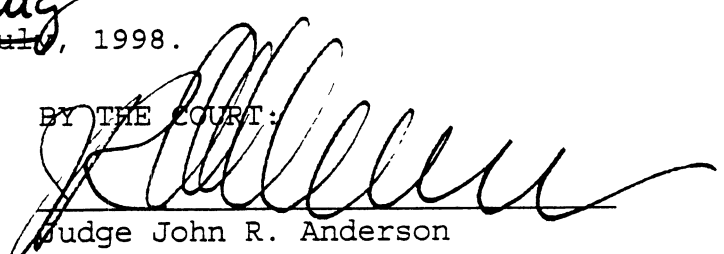
11. The Petitioner is awarded the tax exemptions for the minor children.

12. The Respondent is ordered to file an amended 1997 tax return and to not claim the children as exemptions but to allow the Petitioner to claim the children as tax exemptions for 1997. Petitioner is awarded the tax exemptions for the children in future years.

13. The parties are order to sign and deliver the documents necessary to carry out the terms of this decree.

DATED this 19 day of ^{aug}~~July~~, 1998.

BY THE COURT:


Judge John R. Anderson

MAILING CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF DUCHESNE)

Cheree Brotherson, being duly sworn, says:

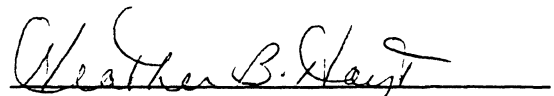
That she is employed in the office of **McKEACHNIE, ALLRED & McCLELLAN, P.C.**, Clark B Allred attorney for Plaintiff, herein; that she served the attached **DECREE OF DIVORCE**, upon Defendant by placing a true and correct copy thereon in an envelope addressed to:

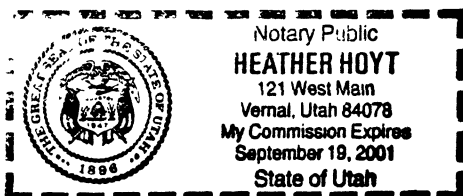
Mr. Hollis S. Hunt
ATTORNEY AT LAW
392 East 12300 South, Suite A
Draper, Utah 84020

and delivered the same, sealed, first class postage prepaid thereon, in the United States mail at Roosevelt, Utah, on the 28th day of July, 1998.


Cheree Brotherson

Subscribed and sworn to before me this 28th day of July, 1998.


Notary Public



IN THE EIGHTH DISTRICT COURT
DUCHESNE COUNTY, STATE OF UTAH

WESLEY JOHN HARLAN, JR.	)	CHILD SUPPORT OBLIGATION WORKSHEET
	)	(SOLE CUSTODY AND PATERNITY)
VS.)	
)	
BONNIE KATHLEEN HARLAN	)	Civil No. 974000100 DA

CSUPPORT Software Licensed to
McKeachnie & Allred, P. C.

	MOTHER	FATHER	COMBINED
1. Enter the # of natural and adopted children of this mother and father for whom support is to be awarded.	////////// //////////	////////// //////////	3
2a. Enter the father's and mother's gross monthly income. Refer to Instructions for definition of income.	\$ 893.00	\$ 4,000.00	////////// ////////// //////////
2b. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case).	- .00	- .00	////////// //////////
2c. Enter previously ordered child support. (Do not enter obligations ordered for the children in Line 1).	- .00	- .00	////////// //////////
2d. OPTIONAL: Enter the amount from Line 12 of the Children in Present Home Worksheet for either parent.	- .00	- .00	////////// //////////
3. Subtract Lines 2b, 2c, and 2d from 2a. This is the Adjusted Gross Income for child support purposes.	\$ 893.00	\$ 4,000.00	\$ 4,893.00
4. Take the COMBINED figure in Line 3 and the number of children in Line 1 to the Support Table. Find the Base Combined Support Obligation. Enter it here	////////// ////////// //////////	////////// ////////// //////////	\$ 1,207.00
5. Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	18.3 %	81.7 %	////////// //////////
6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$ 220.88	\$ 986.12	////////// //////////

7. BASE CHILD SUPPORT AWARD: Bring down the amount in Line 6 for the Obligor Parent or enter the amount from the Low Income Table.	\$ 986.12
--	-----------

8. Which parent is the obligor? () Mother **KX)** Father
9. Is the support award ordered different from the guideline amount in Line 7?
- KX)** Yes () No If YES, enter the amount ordered: \$ 687.00
10. What were the reasons stated by the Court for the deviation?
- () property settlement
- () excessive debts of the marriage
- () absence of need of the custodial parent
- () other:

ADDENDUM D

NOV 10 1998

JOANNE McKEE, CLERK
BY _____ DEPUTY

BONNIE K. HARLAN
P.O. 513
Roosevelt, Utah 84066

November 10, 1998

IN THE EIGHTH JUDICIAL COURT IN AND FOR
DUCHESNE COUNTY, STATE OF UTAH, ROOSEVELT DEPARTMENT

WESLEY JOHN HARLAN, JR.,	)	MOTION FOR RELIEF FROM
Petitioner,	)	JUDGEMENT OR ORDER
)	
vs	)	JUDGE JOHN R. ANDERSON
)	
BONNIE K. HARLAN,	)	CASE NO. 974000100DA
Respondent.)	
)	

Pursuant to UTAH RULES OF CIVIL PROCEDURE, Rule 60(b), Respondent Bonnie K. Harlan hereby enters this Motion for relief of judgement with respect to the following items as stated in the DECREE OF DIVORCE signed by Judge John R. Anderson dated August 19, 1998.

Copies of the RULING signed by Judge John R. Anderson dated June 10, 1998, the DECREE OF DIVORCE SIGNED by Judge John R. Anderson dated August 19, 1998, and FINDINGS OF FACT AND CONCLUSIONS OF LAW signed by Judge John R. Anderson dated August 19, 1998 are attached. Also attached is a copy of URCP Rule 60(b).

1. Item 4. on page 3 of the RULING states: "The net difference in the IRA Accounts, \$14,176 plus \$5,000 which is the value of a reasonable automobile, are awarded to the Respondent in addition."

Item 6. on page 2 of the DECREE OF DIVORCE states: "The Respondent is awarded her IRA and \$7,088.00 of the Petitioner's IRA accounts to equalize those accounts. The Petitioner is ordered to pay the Respondent the sum of \$5,000.00 for the Respondent to acquire an automobile.

Item 5. on page 2 of the DECREE OF DIVORCE states: "The Petitioner is awarded his IRA account less the amount awarded to the Respondent."

Relief for the Respondent from these inconsistent declarations of judgement is sought by making the final award to the Respondent as stated clearly in Item 4. of the RULING: "The net difference in the IRA Accounts, \$14,176 plus \$5,000 which is the value of a reasonable automobile, are awarded to the Respondent in addition."

2. Item 10. on page 5 of the RULING states in part: "The Petitioner will be ordered to maintain medical insurance for the benefit of the children and the parties are ordered to share any medical expense not covered by insurance, 50/50. Also, Mr. Allred in his FINDINGS OF FACT AND CONCLUSIONS OF LAW in Item 8 on page 9 thereof states: "The Petitioner should be ordered to provide medical insurance for the benefit of the children with the parties ordered to share all non covered medical expenses on an equal basis."

Item 8. on page 3 of the DECREE OF DIVORCE states: "The Petitioner is responsible to obtain and maintain medical insurance for the minor children as long as it can be acquired at a reasonable cost. Each party

is ordered to pay equally the out-of-pocket costs for the premium actually incurred by the parent for the children's portion of insurance. ..."

Relief for the Respondent from these contradictory statements is sought by declaring as final the provision in Item 10 on page 5 of the RULING which states: "The Petitioner will be ordered to maintain medical insurance for the benefit of the children and the parties are ordered to share any medical expense not covered by insurance, 50/50."

NOTE: The Respondent was present at the hearing on May 28, 1998. The provisions in the RULING were apparently based upon that hearing (See first two paragraphs of the RULING). RESPONDENT was NOT present at any subsequent hearing or consultation in this matter until a hearing in Roosevelt, Utah September 24, 1998 on an Order To Show Cause filed by Petitioner's attorney Allred. Subsequent to the hearing on May 28, 1998 Respondent's legal counsel has been less than satisfactory. Hence, Respondent had no input or opportunity of rebuttal to any provisions of the DECREE OF DIVORCE or the FINDINGS OF FACT AND CONCLUSIONS OF LAW which were apparently prepared and submitted by Mr. Allred, Attorney for the Petitioner. Therefore Relief for Respondent is properly sought under the provisions of URCP Rule 60(b).

Respondent also presents a Motion for relief from judgements and orders which were based upon evaluations of the family business as follows:

3. PETITIONER'S Exhibit #6, Personal Financial Statement of W. John Harlan as of November 24, 1997 for Zion's First National Bank as signed by W. John Harlan shows total assets of \$572,000.00; Liabilities totaling \$86,473.00 yielding a net worth of \$485,527.00. The net worth amount

included Real Estate evaluated at \$185,000.00. Thus the net worth of W. John Harlan according to his own financial statement excluding the real estate (which the court awarded to his spouse) was \$300,527.00.

The value of Petitioner's business was carefully and accurately evaluated by a Certified Public Accountant, James Drollinger as \$342,000.00. This amount did not include accounts receivable of \$9,000.00 and cash on hand of \$3,000.00 (see RULING page 3. lines 4 & 5). Thus the total value of the business was \$354,000.00. The RULING at page 3. line 6 states that liens payable to Zion's First National Bank totaled \$55,565.00. However, a letter from Allred states that the total debts of the business is \$74,738.00 (it is assumed that this amount includes all outstanding liens against the business). Thus the net worth of the business according to James Drollinger, C.P.A., and Attorney Allred's statement of total debt of the business becomes \$279,262.00.

The RULING at page 3, line 8 states that the company has a value of \$196,735.00 after a correction of an arithmetical error and based, supposedly, upon Allred, Cameron, Baker evaluations.

At least seventeen (17) major items of equipment belonging to the business were not listed in the Petitioner's equipment inventory and which are not included in the "additional tools and inventory gravel". Respondent is aware of this equipment. She was secretary and bookkeeper for the business for many years.

These seventeen items are:

- a. Pickup truck, 1995 Chevrolet $\frac{1}{2}$ ton, 4WD, extended cab
- b. Pickup truck, 1984 GMC $\frac{3}{4}$ ton, 4WD

- c. Computer System
- d. Safety breathing apparatus (Air tanks, controller, and masks)
- e. Engineer's Level, Tripod, and Level Rod. Wild.
- f. Xerox 5309 Copier
- g. Toxic gas detector (Saf T Mate LEL/02)
- h. Propane portable space heater outfit. (Salamander)
- I. Metal storage building, (dog house)
- j. Semi van trailer used for storage (approx 40 foot) 1967 American Van
- k. Two 5000 gal. storage tanks
- l. Cellular telephones (at least 4)
- m. Compactor
- n. High pressure washer-cleaner
- o. Two (2) "5th Wheel" Slides
- p. Various lengths and sizes of CMP Culverts
- q. Conveyor belt frames and idlers

This list does not include the supplies and parts called for in the Ruling at page 3, line 3.

To summarize:

W. John Harlan's estimated value of his business	\$300,527.00
James Drollinger & Atty. Allred estimate	\$279,262.00
The RULING, page 3, line 8 estimate	\$196,735.00
The FINDINGS OF FACT Item 5. page 3 estimate	\$177,562.00

The FINDINGS OF FACT estimate is grossly in error because the Respondent did not stipulate to the appraisal regarding the equipment which set the value of the equipment and machinery of the business at \$234,100.00. Furthermore this estimate did not include the value of at least the seventeen (17) major items of equipment listed above.

Respondent seeks Relief from this mistake in estimating the value of the business by eliminating the highest and lowest estimates and averaging the two intermediate estimates: to obtain \$237,998.50 as the value to be used in recalculating equalization of assets as follows:

To Wesley John Harlan, Jr., Petitioner

Average value of business	\$237,998.00
Camp Trailer	2,000.00
John's IRA	<u>14,700.00</u>
Total John's Assets	<u>\$254,698.50</u>

To Bonnie Kathleen Harlan, Respondent

Appraised Farm Value	\$157,000.00
Farm Equipment	2,500.00
ATV	2,500.00
Piano	2,000.00
Park City Condos	12,000.00
Bonnie's IRA	<u>524.00</u>
Total Bonnie's Assets	<u>\$176,524.00</u>

John's total assets exceeds Bonnie's total assets by \$78,174.50

Therefore to equalize the assets Petitioner will pay Respondent \$39,087.25.

To date, November 3, 1998, Petitioner has paid Respondent \$17,088.25 of this amount. This includes \$5,000.00 each for court awarded car allowance and partial reimbursement of attorney's fees plus one-half of the difference of the IRA accounts which was "rolled over" from John's account to Bonnie's account.

Thus the outstanding balance due to Bonnie from John to "equalize the values of the assets" is \$21, 999. 25.

Respectfully,

Bonnie K. Harlan

Bonnie K. Harlan

Date Nov 10, 1998

APPROVED BY THE COURT THIS ____ DAY OF _____ 1998

Judge JOHN R. ANDERSON

CERTIFICATE OF SERVICE

I, Bonnie K. Harlan, do hereby certify that on the 10th day of November 1998 I have personally hand delivered to the Clerk of the EIGHTH JUDICIAL COURT for Duchesne County in the City of Roosevelt, Utah a true copy of a Motion for Relief from Judgement of Order: Case No. 974000100DA. I, Bonnie K. Harlan, do also certify that I have this 10 day of November 1998, placed in the United States Mail, first class, postage prepaid copies of a Motion for Relief from Judgement or Order, Case No. 974000100DA addressed to the following:

Clark B. Allred, Attorney for Petitioner
855 East 200 North (112-10)
Roosevelt, Utah 84066

Wesley John Harlan, Petitioner
P. O. Box 1011
Vernal, Utah 84078

Bonnie K. Harlan

ADDENDUM E

FILED
DISTRICT COURT
DUCHESNE COUNTY, UTAH

DEC 28 1998

BY JOANNE MCKEE CLERK
DEPUTY

CLARK B ALLRED - 0055
CLARK A. McCLELLAN - 6113
McKEACHNIE, ALLRED, McCLELLAN & TROTTER, P.C.
Attorneys for Petitioner
855 East 200 North (112-10)
Roosevelt, Utah 84066
Telephone: (435) 722-3928

IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY

STATE OF UTAH, ROOSEVELT DEPARTMENT

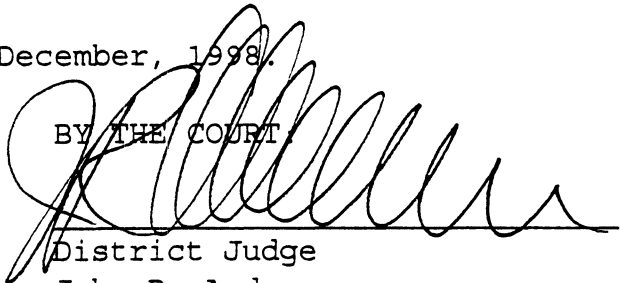
WESLEY JOHN HARLAN,	)	ORDER
)	
Petitioner,)	
)	
vs.)	
)	
BONNIE KATHLEEN HARLAN,)	
	)	Civil No. 974000100 DA
Respondent.	)	Judge John R. Anderson

The above captioned matter came before the Court pursuant to the Respondent's Motion for Relief From Judgment or Order. The Court has reviewed the prior proceedings of this case and the Memoranda filed by the parties. The issues raised by the Respondent have all been previously heard by the Court and a decision entered by the Court. The Court heard substantial evidence regarding the business assets and values. If Respondent did not include all assets at trial the court will not reopen the

case at this late date and such is not a basis for setting aside the Decree. The Court further finds that the Respondent's motion is without merit as the Court has already ruled on those issues. For the reason stated herein and in the Petitioner's Memorandum the Court denies the motion and Orders the Respondent to pay the Petitioner's fees incurred in responding to this motion in the amount of \$240.00, as set forth in the affidavit submitted with this order.

DATED this 22 day of December, 1998.

BY THE COURT


District Judge
John R. Anderson

c:\wp51\text\harlan\order

MAILING CERTIFICATE


STATE OF UTAH)
) ss.
COUNTY OF DUCHESNE)

Cheree Brotherson, being duly sworn, says:

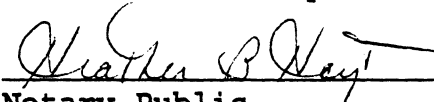
That she is employed in the office of McKEACHNIE, ALLRED & McCLELLAN, P.C., Clark B Allred attorney for Plaintiff, herein; that she served the attached ORDER, upon Defendant by placing a true and correct copy thereon in an envelope addressed to:

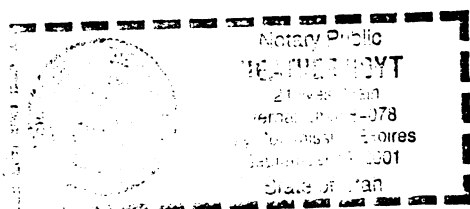
Bonnie K. Harlan
P O Box 513
Roosevelt, Utah 84066

and delivered the same, sealed, first class postage prepaid thereon, in the United States mail at Roosevelt, Utah, on the 18th day of December, 1998.


Cheree Brotherson

Subscribed and sworn to before me this 18th day of December, 1998.


Notary Public



ADDENDUM F

IN THE EIGHTH JUDICIAL DISTRICT COURT IN AND FOR
DUCHESNE COUNTY, ROOSEVELT DEPARTMENT

FILED
DISTRICT COURT
DUCHESNE COUNTY, UTAH
JUN 16 1998
BY JOANNE MCKEE, CLERK
DEPUTY

WESLEY JOHN HARLAN, JR.,

Petitioner,

vs

BONNIE KATHLEEN HARLAN,

Respondent.

)

)

)

)

RULING

CASE NO: 974000100 DA

The above-captioned matter having come on regularly for Trial before the undersigned sitting regularly in Duchesne, May 28, 1998. The parties appearing in person and through counsel, Clark B. Allred representing Petitioner and Hollis S. Hunt, appearing for the Respondent.

Evidence was adduced, argument having been made and the Court having taken the matter under advisement, now having fully considered the matter, the Court make the following Findings and Fact and Conclusions of Law and Decision:

The parties were married September 11, 1968. They have three children as issue of the marriage; Amber, born September 11, 1981, Kaylene, born August 6, 1983 and Jason, born March 11, 1985.

NON-BUSINESS MARITAL ASSET VALUES:

The parties are the owners of a mobile home on an 80-acre farm on the Myton Bench. The home and real property is free and clear of liens. The parties stipulated to

an appraised value of \$157,000. The appraisal apparently includes the value of the irrigation system and wheel lines. In addition, there is farm equipment having a value of \$2,500, an all terrain four-wheel vehicle having a value of \$2,500, a piano in the home having a value of \$2,000 and a time-share condo in Park City which the record supports a value of \$12,000. The parties also have an interest in equipment and a limited liability company known as John Harlan Excavation. John Harlan also owns a camp trailer valued at \$2,000. John has a cash IRA Account of \$14,700. Bonnie's IRA Account is \$524. One of the primary issues of the case is the valuation of the small business. The Respondent provided testimony from James Drollinger who was retained to appraise the business. The Petitioner submitted case law and support from Dale Cameron to the effect that the on-going or good-will value of a small business which depended solely upon the efforts of the proprietor should be determined on a net book value basis; that is, without any addition for good will or blue sky.

BUSINESS VALUE:

The Court, based upon a totality of the evidence, from an examination of the exhibits adduced and from the record determines that the value of the business is \$195,735 and makes the following findings to support that conclusion:

1. The equipment as per the appraisal which was set forth in Petitioner's Exhibit Two (2) showed a reasonable value of the equipment and machinery at \$234,100. The parties stipulated to the introduction of the exhibit and it appears to be reasonable. There is testimony that a welder that was part of the equipment had a value of \$2,200 which was not included in that appraisal. The Court has also, from reviewing the

photographs of the equipment and having an analysis of the financial statement which is tendered and received into evidence as Exhibit Six (6), has determined there should be additional values for supplies and parts of \$2,000 and additional tools and inventory of gravel in the amount of \$2,000. Added to that should be accounts receivable of \$9,000 and cash at the time of trial of \$3,000. Deduct liens payable to Zion's First National Bank of \$55,565 without the addition of any value that would be attached to the business for good will as per Sorensen vs. Sorensen, 839 P.2d 774 (Utah 1992), the company has a value of \$195,735 and the Petitioner has in his possession a camp trailer with a value of \$2,000. Assets were reviewed in order to provide a fairly equal distribution as follows:

2. The equipment, machinery, tools, inventory and assets of the business, including the camp trailer with a value of \$2,000, will be retained by the Petitioner; having the total value of \$197,735.

ASSET EQUALIZATION:

3. The valuation of the real estate, farm equipment, four-wheel drive all-terrain vehicle, piano and the time share, total \$176,000, will be awarded to the Respondent.

4. The net difference in the IRA Accounts, \$14,176 plus \$5,000 which is the value of a reasonable automobile, are awarded to the Respondent in addition.

PARTIES INCOME ANALYSIS:

5. The Court will observe from the accounting testimony and examination of the exhibits, the business payments to reduce the debt at Zion's First National Bank as business assets are over a fairly short term; evidencing the rapidly declining balance. This shows good judgment on the part of both parties, but would also increase the

Court's subjective analysis of income factor attributable to the Petitioner.

6. The Petitioner, from the evidence adduced and support of the record, can generate \$4,000 per month before taxes. This amount assumes at least a \$700 per month benefit or advantage from the small business. For example, private use of the company truck, meals, gasoline, insurance, etc. Those items are actually to the benefit of the Petitioner because they are expenses through the business and represent tax-free income to the Petitioner.

7. There is testimony in the record that the Respondent worked for Bow Valley Petroleum for two or three years. Although she testified she was not current on marketable skills, the Court would expect her to find full-time employment and for purposes of alimony and child support, will assume that she is at least capable of training and upgrading skills so as to find a minimum wage job at 40 hours per week.

8. Again, the evidence shows that the Respondent has contributed to the rapid pay-off of debt and acquisition of business assets and has sacrificed to a certain extent with regard to her demands for improvement of the family home.

ALIMONY:

9. The Court in analyzing factors and determining alimony will find that the recipient spouse, or the Respondent, is and has been, frugal in her needs. She should not be punished for her conservative habits and is in true need of an equalization of income. Her ability, based on her age, and her marketable skills, does not provide much more than the minimum wage earning capability at this time. Because of the rapid pay-off of the indebtedness on the company equipment, the fast depreciation being applied, and

Petitioner's active participation in the company and its earning record would indicate that the Petitioner in this case has the ability to produce enough income to provide for spousal support. These factors taken together with the almost 30-year marriage would make alimony or spousal support to the recipient appropriate in this case. The Court finds that a reasonable amount based upon all the factors in consideration and supported by the record, would be \$1,000 per month. The Petitioner will have the tax benefit of a deduction for the alimony paid and the Court will assume that the Petitioner should also claim the minor children as dependants for income tax calculations and in all fairness to create a tax-neutral situation, the Court will allow the Petitioner to claim the children as dependants for his return for 1997 and will order that the spouse or Respondent to file an amended return enabling him to do so.

CHILD SUPPORT:

10. Child support will be calculated from the tables recognizing a minimum wage income to the Respondent and a gross income figure for the Petitioner of \$4,000 per month. The Petitioner will be ordered to maintain medical insurance for the benefit of the children and the parties are ordered to share any medical expense not covered by insurance, 50/50.

ATTORNEY FEES AND COSTS:

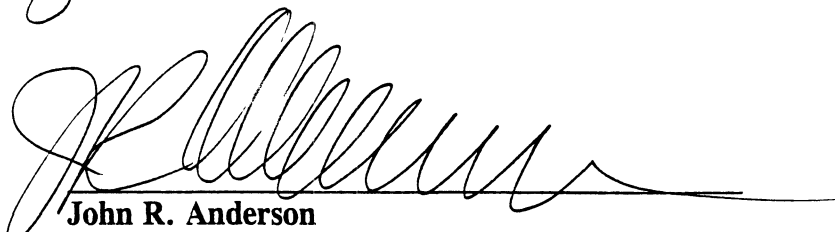
11. The Court will not award any accounting fees to either party, but will reward the Respondent \$5,000 for her total attorney fees.

MISCELLANEOUS:

12. The Court has not discussed matters which were stipulated to in the record,

such as child custody and visitation but will simply note that those matters should be included in the formal Findings and Fact and Decree. The Court will direct Mr. Hunt, attorney for the Respondent, to prepare appropriate Findings, Conclusions and Decree based upon the Court's Ruling; submit the same to Mr. Allred for approval and finalization by the Court.

Dated this 10th day of June, 1998.

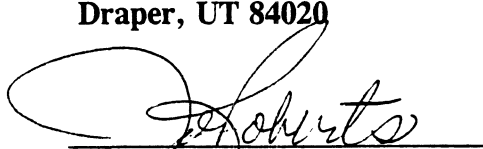

John R. Anderson
District Court Judge

CERTIFICATE OF MAILING

I do hereby certify that on this 16 day of June, 1998, I hand-delivered or mailed, postage prepaid, the foregoing Ruling to the following parties:

Clark B. Allred
Attorney for Petitioner
855 East 200 North (112.10)
Roosevelt, UT 84066

Hollis S. Hunt
Attorney for Respondent
392 East 12300 South Suite A
Draper, UT 84020


Clerk

ADDENDUM G

FILED
DISTRICT COURT
DUCHESNE COUNTY, UTAH

OCT - 8 1998

JOANNE MCKEE, CLERK
BY  DEPUTY

HOLLIS S. HUNT - #1587
Attorney for Respondent
392 East 12300 South, Suite A
Draper, Utah 84020
Telephone: (801) 495-3500

IN THE EIGHTH DISTRICT COURT, DUCHESNE COUNTY

STATE OF UTAH, ROOSEVELT DEPARTMENT

WESLEY JOHN HARLAN, JR.,)	
)	
Petitioner,	)	ORDER ON PETITIONER'S AND
	)	RESPONDENT'S ORDERS TO
vs.	)	SHOW CAUSE
)	
	)	Civil No. 974000100DA
BONNIE KATHLEEN HARLAN,)	
)	
Respondent.	)	Judge John R. Anderson
)	

The Petitioner's and Respondent's respective Orders to Show Cause came on for hearing before the above-entitled Court on September 24, 1998, before the Honorable John R. Anderson, Judge of the above-entitled Court. The Petitioner was present and represented by and through his attorney, Clark B. Allred, and the Respondent was present and represented by and through her attorney, Hollis S. Hunt. At the time of the hearing, the parties entered into the record a stipulation and agreement to resolve their differences, the terms and conditions of which are reflected below in this Order.

Based upon the stipulation, the Court now makes the following;

IT IS HEREBY ORDERED:

1. **Medical Reimbursement.** The Petitioner, Wesley John Harlan, Jr., shall pay to the Respondent, Bonnie Kathleen Harlan, the sum of \$409.92 for his share of medical costs paid by the Respondent for the benefit and use of the minor children of the parties.
2. **Timeshare Maintenance Costs.** The Petitioner shall pay to the Respondent the sum of \$228.62 for his portion of the timeshare maintenance expenses that were incurred prior to the time of the Decree of Divorce.
3. **Automobile Replacement.** The Petitioner shall pay to the Respondent the sum of \$5,000.00 for the automobile replacement cost required by the Decree of Divorce of August 20, 1998.
4. **Respondent's Attorney's Fees.** The Petitioner shall pay to the Respondent the sum of \$5,000.00 for the benefit and use of the Respondent's attorney as required in the Decree of Divorce of August 20, 1998.
5. **Payment Due Date.** All sums above totaling \$10,638.54 shall be paid by the Petitioner to the Respondent within (2) weeks from the date of this hearing on or before October 8, 1998.

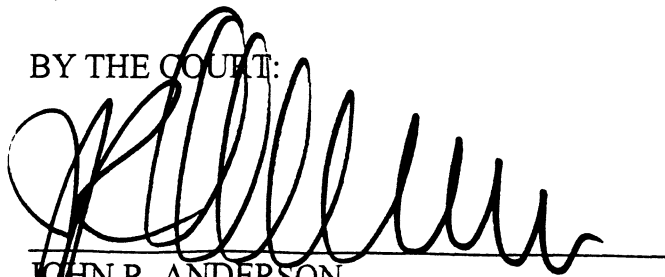
6. **Removal of Personal Property.** The Petitioner shall remove from the marital residence and property distributed to the Respondent in the Decree of Divorce of August 20, 1998, all personal property and various materials and equipment associated with his excavation business, which shall include but not be limited to a 40' semi-van, barrels of miscellaneous chemicals and compounds, scrap metal, trash, asphalt, concrete and trees from various excavation jobs.

7. **Release and Waiver of Respective Claims.** The additional claims alleged in the Petitioner's Order to Show Cause and in the Respondent's Counterclaim are hereby waived and released by the parties with the exception of the Order of the Court stated above.

8. **Attorney's Fees.** Each party shall bear their own respective attorney's fees that have been incurred in bringing these Orders to Show Cause and the hearing of September 24, 1998.

DATED this 2nd day of October, 1998.

BY THE COURT:



JOHN R. ANDERSON
District Court Judge

Divorce\Harlan Order on Order to Show Cause

ADDENDUM H

FILED
DISTRICT COURT
DUCHESNE COUNTY, UTAH
NOV 27 1998
BY JOANNE MCKEE CLERK
TKS DEPUTY

CLARK B ALLRED - 0055
CLARK A. McCLELLAN - 6113
McKEACHNIE, ALLRED & McCLELLAN, P.C.
Attorneys for Petitioner
855 East 200 North (112-10)
Roosevelt, Utah 84066
Telephone: (435) 722-3928

IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY

STATE OF UTAH, ROOSEVELT UTAH

WESLEY JOHN HARLAN, JR.,)	
)	
Petitioner,	)	MEMORANDUM IN OPPOSITION
	)	TO MOTION FOR RELIEF FROM
vs.	)	JUDGMENT OR ORDER
)	
BONNIE KATHLEEN HARLAN,	)	Civil No. 974000100 DA
	)	Judge John R. Anderson
Respondent.)	

The Petitioner submits the following Memorandum In Opposition
To the Respondent's Motion For Relief From Judgment or Order.

PRIOR PROCEEDINGS

The trial in this case was held on May 28, 1998. The Court
submitted its Ruling on June 10, 1998. Both parties submitted
proposed Findings of Fact and Conclusions of Law and Decree of
Divorce. Objections were submitted regarding the Respondent's
procedure of calculating the IRA account, the evaluations of the

construction equipment, business and debts. The Court, on August 19, 1998 approved the Findings of Fact and Conclusions of Law and Decree of Divorce, submitted by the Petitioner and signed those documents.

On September 24, 1998, the parties appeared at an Order To Show Cause hearing and after a discussion between the parties and their counsel, the parties submitted a stipulation and a proposed Order to the Court, which the parties agreed resolved all remaining issues between the parties. Shortly thereafter, Respondent's counsel withdrew.

Respondent has now filed a document entitled Motion for Relief from Judgment or Order in which she complains about the manner in which the IRA was divided, the medical insurance provisions and the manner in which the construction equipment was valued.

LAW

The Respondent's Motion claims to be brought under Rule 60(b). Rule 60(b) requires that there be specific grounds set forth in the motion. Not one of the seven specific grounds required by Rule 60(b) is cited by Respondent as a basis for her Motion. The moving

party, in addition to identifying the grounds for the motion, has the burden to prove those grounds. Kettner v. Snow 375 P.2d 28 (Ut. App. 1962). The court in deciding a motion under Rule 60(b) generally does not look at the merits but first looks at whether the moving party has proven the grounds alleged in her Motion, Larsen v. Collins 684 P.2d 52 (Ut. App. 1984).

DISCUSSION

The Respondent's Motion should be denied for the following reasons:

1. The Motion sets forth none of the grounds required under Rule 60(b), in fact the Motion does not even claim to rely on any of the grounds under Rule 60(b). Furthermore, the Respondent has not set forth any facts that would support or prove one of the grounds required under Rule 60(b).

2. The issues complained of by the Respondent were raised by the parties when they submitted their respective Findings of Fact and Conclusions of Law and Decree of Divorce and Objections. The Court has already ruled on these matters when the Court signed the

Findings of Fact and Conclusions of Law and Decree submitted by the Petitioner.

3. The parties, at the Order To Show Cause hearing in September 1998, agreed that the stipulation and the order presented to the Court at that time resolved all remaining issues before the Court.

4. The Court's decision is accurate and should not be set aside. The Court's Decree equally divided the retirement benefits between the parties as the Court ordered. The Petitioner has had the accounts equalized at the bank. The difference between the parties respective IRA's was \$14,000.00 which amount was divided equally at the bank so each party has the same amount in their IRA. The Respondent, however, wanted the entire \$14,000.00 difference added to her IRA. The Court has already denied that request.

The provisions in the Decree on medical insurance are consistent with State law and with the Court's Ruling. The Petitioner is not sure what the Respondent's complaint is on the medical insurance.

The continued argument by Respondent regarding the evaluation of equipment and construction business has already been ruled on by the Court. The Court received stipulated expert evaluations regarding the equipment and the business, received testimony from the parties' regarding the assets of the business, cash flows, etc. Based on that evidence the Court entered its ruling regarding the value of the equipment and the construction business. That business value was not as high as the Respondent wanted, nor as low as the Petitioner requested. In fact the Petitioner may not be able to continue with the business due to the amounts he was ordered to pay the lack of income received by the business. The Court has already ruled and there is no basis to set aside that ruling. To adopt the Respondent's argument to take everybody's evaluations, throw out the high and low and average the rest would be improper.

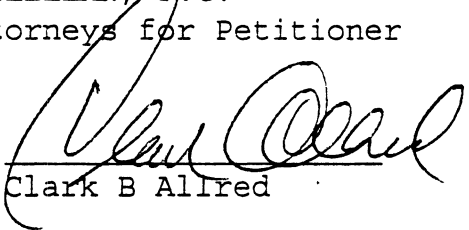
WHEREFORE, it is respectfully requested that the Court deny the Motion and that the Respondent be required to pay the attorney fees incurred by the Petitioner as a result of the merit less

nature of this Motion since the issues involved have already been resolved by the Court.

DATED this 25th day of November, 1998.

McKEACHNIE, ALLRED &
McCLELLAN, P.C.
Attorneys for Petitioner

BY:

A handwritten signature in black ink, appearing to read "Clark B. Allred", written over a horizontal line.

Clark B Allred

c:\wp51\text\harlan\memo

MAILING CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF DUCHESNE)

Cheree Brotherson, being duly sworn, says:

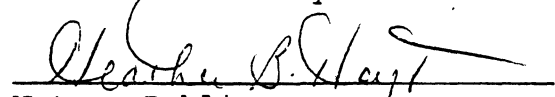
That she is employed in the office of McKEACHNIE, ALLRED & McCLELLAN, P.C., Clark B Allred attorney for Plaintiff, herein; that she served the attached MEMORANDUM IN OPPOSITION TO MOTION FOR RELIEF FROM JUDGMENT OR ORDER, upon Defendant by placing a true and correct copy thereon in an envelope addressed to:

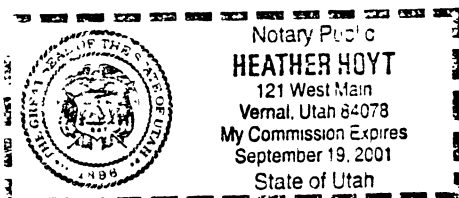
Bonnie K. Harlan
P O Box 513
Roosevelt, Utah 84066

and delivered the same, sealed, first class postage prepaid thereon, in the United States mail at Roosevelt, Utah, on the 25th day of November, 1998.


Cheree Brotherson

Subscribed and sworn to before me this 25th day of November, 1998.


Notary Public



ADDENDUM I

DEC - 3 1998

BONNIE K. HARLAN
P. O. BOX 513
ROOSEVELT, UTAH 84066

JOANNE MCKEE, CLERK
BY 905 DEPUTY

IN THE EIGHTH JUDICIAL COURT IN AND FOR
DUCHESNE COUNTY, STATE OF UTAH, ROOSEVELT DEPARTMENT

WESLEY JOHN HARLAN, JR.,	)	RESPONDENT'S REPLY TO PETITIONER'S
Petitioner,	)	MEMORANDUM IN OPPOSITION TO
	)	MOTION FOR RELIEF FROM
	)	JUDGEMENT OR ORDER
vs)	
	)	JUDGE JOHN R. ANDERSON
BONNIE K. HARLAN,)	
Respondent.	)	CASE NO. 974000100DA
)	

Respondent at this time being without legal counsel respectfully presents this document to the Court for its consideration. References in this reply refer to Mr. Allred's MEMORANDUM IN OPPOSITION TO MOTION FOR RELIEF FROM JUDGEMENT OR ORDER.

Line: 2,3,4,-- (third Sentence) The Court ordered Mr. Hunt, attorney for Respondent, to prepare Findings of Fact and Conclusions of Law and Decree of Divorce. However, Mr. Allred also prepared a set of these documents and submitted them to the Court.

Fourth Sentence: The Court's RULING awarded the net difference of the Petitioner's and Respondent's IRAs to the Respondent. (\$14,176.00) Respondent made no objection to this decision of the Court on this item. With respect to the evaluation of the business, The Respondent's retained professional appraisal of the value of the business was apparently disregarded by the Court and Respondent's Counsel made no attempt to have the Respondent's professional appraisal given at least equal consideration with the Petitioner's submitted business evaluation. The matter of the IRAs and the matter of the Business Evaluation are two separate and distinct items and properly should not be considered as a single item as has been attempted by Mr. Allred in his reply to Respondent's Motion for Relief From Judgement or Order.

Fifth sentence: The signing of the Findings of Fact, Conclusions of Law, and Final Decree of Divorce on August 19, 1998 was performed without any opportunity for the Respondent to appear in person and present objections.

Second Paragraph: In connection with the September 24, 1998 hearing on the Order to Show Cause as brought by Petitioner's Counsel, Mr. Allred, no consideration was given to the items for which the Respondent has filed a Motion for Relief. In conference the Parties to the Divorce action discussed the matters properly called for in the Order to Show Cause and agreements were entered into for those items. Respondent in no way was agreeing to a resolution of the three items which the Respondent seeks to resolve in the Motion for Relief from Judgement or Order. (On or about October 14, 1998 Respondent terminated the services of Mr. Hunt.)

Third paragraph: As provided in the URCP Rule 60 (b), Respondent seeks relief from Judgement or Orders which have a grossly adverse effect upon her life. Respondent is not making a separate complaint on these three items: the entire Divorce is a bitter complaint in which these three items are an integral part.

First paragraph under the caption: LAW: Respondent is not an attorney. However, Respondent is capable of reading and understanding (analyzing) the written English language. Utah Rule of Civil Procedure 60 (b) plainly states seven (7) reasons for which a court may in the furtherance of justice relieve a party or his legal representative from a final judgement, or order, or proceeding. Reason (1): mistake, inadvertence, surprise, or excusable neglect; Item 1 of Respondent's Motion for Relief (RMR) clearly shows that between the RULING and the DECREE OF DIVORCE, at least one of these four things occurred. Item 2 of RMR clearly shows the same thing. Thus for Items 1 and 2 of RMR it is clear beyond any reasonable doubt that from the writing in the documents themselves as evidence, the existence of the reasons for granting the RMR is conclusively proved.

For RMR 3, in addition to reasons listed in (1) of URCP Rule 60 (b), Reasons (3) exist: note the seventeen listed items which were not included in the business inventory! This is at least misrepresentation, if not possible fraud. The Petitioner, himself, estimated his total assets as \$572,000.00 as of November 24, 1997. After deducting the outstanding indebtedness of the business and the real estate value (which was awarded to the Respondent) the net worth of the Petitioner's business was \$300,527.00. These amounts are based upon the exhibits which were presented during the initial hearing on May 28, 1998 in this matter.

In the first item of the DISCUSSION section of the Allred Memorandum the inference is made that the Respondent failed to set forth "grounds for relief". This is absurd. The respondent accepted the principle that the

moral conduct of the Petitioner could not be put into issue but the issue of the suit was the equal distribution of the marital assets of the parties. That the distribution of the marital assets of the parties was not equal is clearly shown in RMR. The factual evidence which clearly leads to the proof of the unequal distribution of the marital assets is presented in the RMR along with other documents the Respondent has filed with the court. To wit: Financial statements, CPA appraisals, Bank statements, Equipment inventories, etc.

With respect to the second item in the DISCUSSION, it is the Respondent's understanding that the FINDINGS OF FACT, CONCLUSIONS OF LAW, and the DECREE OF DIVORCE are based upon the Court's RULING. The Petitioner did make complaints about the RULING. The Respondent's Attorney did not file objections on his client's behalf, and hence Respondent had to submit her own objections. Upon submitting the "Respondent's RESPONSE TO THE RULING" the Respondent was told by the Senior Clerk of the Eighth Judicial District Court, Duchesne County, Roosevelt, Utah, that the Court would not look at the document, at a later date the Respondent's Attorney said the same thing. He stated that all paper work had to go through the Attorney. Therefore it can be safely assumed that the Court did not acknowledge the Respondent's objections and hence she had no defense against the complaint (objections) against the RULING as filed by Mr. Allred for the Petitioner.

True, the court has ruled on many of the matters in this case, but the ruling was by one human being, not by a jury of proper selection. The judgement of one man is certainly not infallible. Therefore relief is properly provided for this possibility in the Utah Rules of Civil Procedure, and it is well within the rights and privileges of the Respondent to avail herself of these provisions.

In Discussion Item 3, Mr. Allred would like to persuade the court that the issues which he brought before the court in his Order to Show Cause were the only points of disagreement remaining between the parties. The parties did reach agreement on the items which Mr. Allred brought before the court at that time. (Let it be known that the Petitioner has not as yet completed all the items which he agreed to accomplish within a 30 day period following the OSC hearing on September 24, 1998.) The three unresolved issues in the matter were not discussed in court nor in conference on September 24, 1998. And the Method for resolving these three issues chosen by the Respondent is the filing of a Motion for Relief of Judgement or Order as provided in the URCP Rule 60 (b).

Mr. Allred's statement in the fourth item of his discussion: "The court's decision is accurate and should not be set aside" is no doubt in accordance with his view point as the legal counsel for the Petitioner. However, since

Mr. Allred was probably the principal author of the Findings of Fact, Conclusions of Law, and Decree of Divorce he could hardly take any other view point. But there are two sides to this matter. The position of the Respondent is required to be heard and given equal consideration with that of the Petitioner. Mr. Allred asserts that the court equally divided the retirement benefits according to its order. Now the court's position was that the marital assets of the parties should be equally divided, not just the retirement benefits. The court's Ruling stated: "The net difference in the IRA accounts, \$14,176.00 plus \$5,000.00 which is the value of a reasonable automobile, are awarded to the Respondent in addition." This was no doubt done to equalize the distribution of the marital assets. The court's Ruling with respect to the medical insurance for the benefit of the children was changed in the Decree of Divorce further disrupting the attempt in the Ruling to equalize the distribution of the marital assets. This change was certainly at least a mistake and as such is rectifiable under the provisions of URCP Rule 60 (b).

Mr. Allred further asserts that there is no basis for the court to set aside the ruling on the value of the business. This assertion is contrary to the actual facts in the matter. There exist at least four separate and distinct estimates of the value of the business. These are estimates. Not a single one of the four is an absolutely true value of worth of the business beyond any reasonable doubt! The manner in which the highest and lowest estimates were calculated show them to be the least reliable of the four. And therefore should be eliminated. The middle two estimates were each calculated by professional experts in the financial business. At least one of these two estimates was calculated by a Certified Public Accountant. Since there is absolutely no certainty that either one of these two "middle" estimates is an exact value, to the nearest dollar or even one hundred dollars, and since each were made by assumably, equally competent professionals, then the logically best estimate is the arithmetic average of the two equally reliable estimates. To arbitrarily accept the lowest of the two estimates as the value of the business for the purposes of calculating the value of the marital assets, which are then to be divided equally between the two parties, is scientifically illogical and philosophically absurd.

THEREFORE Mr. Allred's request that the court deny Respondent's MOTION FOR RELIEF FROM JUDGEMENT OR ORDER is without any basis in fact and his request for the court's denial of the Motion should itself be denied.

The Respondent hereby respectfully requests the Court to deny Mr. Allred's request to the court that the Respondent be required to pay the attorney fees incurred by the Petitioner as a result of the "merit less nature of this MOTION since the issues involved have already been resolved by the Court".

The evidence herein presented is sufficient to prove the validity of Respondent's MOTION FOR RELIEF and thus the MOTION is not of a "merit less nature" as contended by Mr. Allred. Also, if the issues involved had not already been resolved by the Court, then there would be no basis for a MOTION FOR RELIEF FROM JUDGEMENT OR ORDER.

Respectfully,

Bonnie K. Harlan
Bonnie K. Harlan

Date 12-3-98

CERTIFICATE OF SERVICE

I, Bonnie K. Harlan, do hereby certify that on the 3th day of December 1998 I have personally hand delivered to the Clerk of the EIGHTH JUDICIAL COURT for Duchesne County in the City of Roosevelt, Utah a true copy of a RESPONDENT'S REPLY TO PETITIONER'S MEMORANDUM IN OPPOSITION TO MOTION FOR RELIEF FROM JUDGEMENT OR ORDER: Case No. 974000100DA. I, Bonnie K. Harlan, do also certify that I have this 3 day of December 1998, placed in the United States Mail, first class, postage prepaid copies of a Motion for Relief from Judgement or Order, Case No. 974000100DA addressed to the following:

Clark B. Allred, Attorney for Petitioner
855 East 200 North (112-10)
Roosevelt, Utah 84066

Bonnie K. Harlan

ADDENDUM J

DEC 10 1998

JOANNE MCKEE, CLERK
BY DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT IN AND FOR DUCHESNE COUNTY,
STATE OF UTAH, ROOSEVELT DEPARTMENT

WESLEY JOHN HARLAN, JR.,)	
Petitioner,	)	R U L I N G
vs.	)	Case No: 974000100DA
BONNIE K. HARLAN,)	
Respondent.)	

The Court has reviewed the combined Motion For Relief From Judgement or Order, Argument Memorandum, the Petitioners Memorandum in Opposition and the Respondents reply. After due consideration the Respondents Motion for Relief From Judgement or Order is denied. The motion is denied for the reasons set forth in Petitioners Memorandum in Opposition. The issues have been evaluated and previously decided by the Court and the Court finds there is no compelling reason to set aside the decree. The business assets that appeared in the record were included by the Court. The business assets that were not included in the record were not. The Court did consider and evaluate all reasonable business assets that it could deduce from the record. The petitioner in this case will be awarded attorney's fees.

Petitioner is to prepare an order and submit an affidavit of fees.

Dated this 8th day of December, 1998.

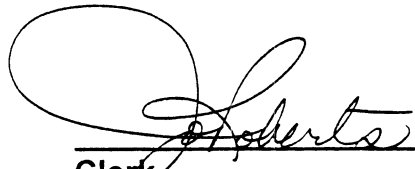

Judge John R. Anderson

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing, postage prepaid, to the following parties on the 10 day of December, 1998.

McKeachnie, Allred & McClellan, P.C.
Attorney for Petitioner
855 East 200 North (112-10)
Roosevelt, UT 84066

Bonnie K. Harlan
Respondent
P.O. Box 513
Roosevelt, UT 84066


Clerk

ADDENDUM K

PERSONAL FINANCIAL STATEMENT CONFIDENTIAL

PLAINTIFF'S EXHIBIT
EXHIBIT NO 6
CASE NO 15
DATE REC'D
IN EVIDENCE 11/24/97
CLERK _____

TO Zions First National Bank/Zions Mortgage Company, hereafter the "Lender"

IMPORTANT Read these directions before completing this statement

If you are applying for individual credit in your own name and are relying on your own income, or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections 1, 3, 4, 5, and 6.

If you are applying for joint credit with another person, complete all Sections and provide information in Section 2 about the joint applicant. If appropriate the joint applicant may complete a separate personal financial statement and the applications may be submitted together.

Alimony, child support, or separate maintenance income, **NEED NOT BE REVEALED** if you do not wish to have it considered as a basis for repaying this obligation. If you are applying for individual credit, but are relying in part on income from one of the following; alimony, child support, or separate maintenance, or on the income or assets of another person as a basis for repayment of the credit requested, complete all Section. Provide information in Section 2 about the person whose alimony, support or maintenance payments or income or assets of which you are relying.

If this statement relates to your guaranty of indebtedness of other person(s), firm(s), or corporation(s), complete Sections 2, 3, 4, 5, and 6.

Section 1 - Individual Information (type or print)		Section 2 - Co-Borrower/Guarantor (type or print)	
Name <u>W. John Harker</u>		Name <u>_____</u>	
Address <u>_____</u>		Address <u>_____</u>	
City, State and Zip <u>_____</u>		City, State and Zip <u>_____</u>	
How long at Present Address? <u>_____</u> Yrs. <u>_____</u> Months		How long at Present Address? <u>_____</u> Yrs. <u>_____</u> Months	
Social Security No./Tax ID <u>521-48-5946</u>	Date of Birth <u>5-7-97</u>	Social Security No./Tax ID <u>_____</u>	Date of Birth <u>_____</u>
Position or occupation <u>_____</u>		Position or occupation <u>_____</u>	
Business Name <u>_____</u>		Business Name <u>_____</u>	
Business Address <u>_____</u>		Business Address <u>_____</u>	
City, State and Zip <u>_____</u>		City, State and Zip <u>_____</u>	
Length of employment <u>_____</u>		Length of employment <u>_____</u>	
Res Phone <u>_____</u>	Bus Phone <u>823-6448</u>	Res Phone <u>_____</u>	Bus Phone <u>_____</u>
Name of Nearest Relative <u>_____</u>		Name of Nearest Relative <u>_____</u>	
Address of Nearest Relative <u>_____</u>		Address of Nearest Relative <u>_____</u>	
Phone of Nearest Relative () <u>_____</u>		Phone of Nearest Relative () <u>_____</u>	

Section 3 - Statement of Financial Condition as of 11/24/97

ASSETS	In Dollars	LIABILITIES	Original Balance	Present Balance	Monthly Payment
1 Cash in Financial Inst.-See Sch. G	<u>25,000</u>	Notes payable to Banks & Fin. Inst.			
2 U.S. Gov't & marketable securities-See Sch. A.	<u>45,000</u>	Due to Broker			
3 Non-Marketable/Restricted Sec.-See Sch. B		Amounts payable to others-secured			
4 Accounts, loans, and notes receivable	<u>45,000</u>	Amounts payable to others-unsecured			
5 Real Estate-See Sch. C	<u>185,000</u>	Real Estate Mortgages payable-See Sch. C			
6 Automobiles	<u>40,000</u>	Unpaid income tax			
7 Other personal property	<u>30,000</u>	Other unpaid taxes and interest			
8 Cash Surrender val. life ins.-See Sch. D		Life Insurance Policy Loans			
9 Loans Receivable		Accounts and bills due			
10 Other Assets (Itemize Sch. F if Applicable)		Other debts (car, credit cards, etc. itemize)			
11 <u>EDWIP</u>	<u>225,000</u>	<u>ZIONS 9010</u>		<u>5,910</u>	<u>765.19</u>
12 <u>Welder + Tools</u>	<u>8,000</u>	<u>ZIONS 9011</u>		<u>24,800</u>	<u>1,365.93</u>
13 <u>Grand INV</u>	<u>7,000</u>	<u>ZIONS 9012</u>		<u>37,983</u>	<u>1,710.20</u>
14 <u>Other INV</u>	<u>3,000</u>	<u>ZIONS ID</u>		<u>17,780</u>	<u>492.93</u>
15 <u>Comp TR</u>	<u>4,000</u>				
16		Total Liabilities/Monthly Payments	XXXXXXXXXX	<u>86,473</u>	
17		Net Worth	XXXXXXXXXX	<u>495,527</u>	XXXXXXXXXX
18 Total Assets	<u>570,000</u>	Total Liabilities and Net Worth	XXXXXXXXXX		XXXXXXXXXX

Section 5 - Source of Income	Borrower	Co-Borrower	Section 6 - Contingent Liabilities	Estimated Amounts
Base Salary per annum	\$		Contingent Liabilities as endorser	Yes <input type="checkbox"/> No <input type="checkbox"/>
Bonus and Commissions	\$		Co-maker or guarantor?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Dividends and Interest Income	\$		On Lease? On Contract?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Real Estate Income (Net)	\$		Involved in pending legal actions?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Other Income - Itemize	\$		Other special debt or circumstances	Yes <input type="checkbox"/> No <input type="checkbox"/>
Partnership (attach Income Stmt.)	\$		Contested Income Tax Liens?	Yes <input type="checkbox"/> No <input type="checkbox"/>

Income from alimony, child support or maintenance payments **NEED NOT BE REVEALED**. However, only the income listed on this credit statement will be considered in determining your credit-worthiness. If alimony, child support or maintenance income is disclosed here, credit information concerning the payor may be required to determine the extent that such payments are likely to be consistently made.

Type of Income	Monthly Amount
Alimony	\$ _____
Child Support	\$ _____
Maintenance	\$ _____

Name of Payor _____

Debt to Income _____ %

Are you obligated to pay alimony, child support or maintenance? Yes ☐ No ☐

Total Contingent Liabilities _____

Are any debts past due? Yes ☐ No ☐

Have you ever had any auto, furniture or other property repossessed? Yes ☐ No ☐

Have you filed Bankruptcy? Yes ☐ No ☐

Have you applied for a loan at any Financial Institution in the last six months? Yes ☐ No ☐

If any of the above are yes, please explain:

SECTION 4 - SCHEDULES TO FINANCIAL STATEMENT

Schedule A - US Gov't & Marketable Securities

Number of Shares or Face Value of Bonds	Description	In Name of	Are These Registered Pledged/held by Other?	Market Value	Source of Value
Total*					*to line 2 section 3

Schedule B - Securities (Non-Marketable, Restricted, Margin Act., Controlled, or held by Broker)

Number of Shares	Description	In Name of	Are These Registered Pledged/held by Other?	Value	Source of Value
Total*					*to line 3 section 3

Schedule C - Residences and Other Real Estate Including Equities (Partially or Wholly Owned)

Address and Type of Property	Title in Name of	% of Ownership	Date Acquired	Cost	Market Value	Mortgage Amount	Monthly Payment	With Whom	Annual Taxes	Annual Insur.
Totals*										*to line 5 section 3

Schedule D - Life Insurance Carried, Including Group Insurance

Name of Insurance Company	Owner of Policy	Beneficiary and Relationship	Face Amount	Policy Loans	Cash Value
Totals*					*to line 6 section 3

Schedule E - Bank and Other Institutional Borrowings

Name and Address of Creditor	Original Loan Line Amount	Date of Loan	Maturity Date	Unsecured or Secured (List Collateral)	Amount Owed	Payment Schedule
Total*						*to line 1 section 3

Schedule F - Business Ventures/Partnerships

Name/Add Any Bus You are Part /Pnn	Your Position/Title in the Business	Your % Ownership	Net Worth Business Listed in Section 3	Total Assets of Business	Line of Business and Years in Bus	Tax ID Number

Schedule G - Cash in Banks, Credit Unions, Savings & Loans, Etc.

Firm	Branch	Account Number	Type	Amount
Total				
to line 1 section 3				

The information contained in the statement is provided to induce the Lender to extend or to continue the extension of credit to the undersigned or to others upon the guaranty of the undersigned. The undersigned acknowledge and understand that the Lender is relying on the information provided herein in deciding to grant or continue credit or to accept a guaranty thereof. Each of the undersigned represents, warrants and certifies that the information provided herein is true, correct and complete. Each of the undersigned agrees to notify the Lender immediately and in writing of any change in name, address, or employment and of any material adverse change (1) in any of the information contained in the statement or (2) in the financial condition of any of the undersigned or (3) in the ability of any of the undersigned to perform its (or the) obligations to the Lender. In the absence of such notice or a new and full written statement, this should be considered as a continuing statement and substantially correct. The Lender is authorized to make all inquiries deemed necessary to verify the accuracy of the information contained herein, and to determine the credit-worthiness of the undersigned. Each of the undersigned authorizes the Lender to answer questions about the Lender credit experience with the undersigned.

Signature (Individual) John H. Harkins Date Signed 24 NOV. 1997
Signature Co-Borrower/Guarantor _____ Date Signed _____ 19____

TELECOPIER COVER SHEET

DATE: May 15, 1998

This transmission totals (7) page(s) including this cover sheet.

TO:

NAME: Hollis Hunt

FIRM: _____

CITY: _____

TELECOPIER NO: () 495-1877

FROM:

NAME: Jami Hogge
DEPT: Legal Services, (801) 524-4801

FIRM: ZIONS FIRST NATIONAL BANK
Gateway Tower East - 5th Floor
10 E. South Temple St.
Salt Lake City, UT 84133

FAX NO: (801) 524-4726

REFERENCE: Subpoena Research - Wesley John Harlan Jr.

COMMENT: Per our conversation earlier, attached are the Financial Statements for Mr. Harlan. I will send the other documents to you through regular mail. Again, I am sorry for the delay in getting these to you.

PLEASE NOTE: The information contained in this facsimile transmission is intended to be sent only to the stated recipient of the transmission. If the reader of this message is not the intended recipient or the intended recipient's agent, you are hereby notified that any dissemination, distribution or copying of the information contained in this facsimile transmission is prohibited. You are further asked to notify us of the error as soon as possible at the telephone number shown above and to return the facsimile documents to us immediately by mail at the address shown above. Thank you for your cooperation.