

1999

# Wesley John Harlan v. Bonnie Kathleen Harlan : Brief of Appellee

Utah Court of Appeals

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Mary C. Corporan; Brian J. Gardner; Corporan & Williams; Attorneys for Appellant.

Clark B Allred; Clark. A McClellan; McKeachnie, Allred, McClellan & Trotter; Attorneys for Appellee.

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## Recommended Citation

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 ) 990011-CA  
 ) Priority No. 15  
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 ) v. )  
 )  
 ) BONNIE KATHLEEN HARLAN, )  
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 ) Respondent-Appellant. )

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BRIEF OF APPELLEE, WESLEY JOHN HARLAN

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Appeal from the Eighth Judicial District  
Court, Uintah County, State of Utah  
The Honorable John R. Anderson

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CLARK B ALLRED - 0055  
CLARK A. McCLELLAN - 6113  
McKEACHNIE, ALLRED,  
McCLELLAN & TROTTER, P.C.  
855 E 200 N (112-10)  
Roosevelt, Utah 84066  
Attorneys for Petitioner-  
Appellee  
Wesley John Harlan  
Telephone (435) 722-3928

MARY C. CORPORAN  
BRIAN J. GARDNER  
CORPORAN & WILLIAMS, P.C.  
808 East South Temple  
Salt Lake City, Utah 84102  
Attorneys for Respondent-Appellant  
Bonnie Kathleen Harlan  
Telephone (801) 328-1162

**FILED**

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Roosevelt, Utah 84066  
Attorneys for Petitioner-  
Appellee  
Wesley John Harlan  
Telephone (435) 722-3928

MARY C. CORPORAN  
BRIAN J. GARDNER  
CORPORAN & WILLIAMS, P.C.  
808 East South Temple  
Salt Lake City, Utah 84102  
Attorneys for Respondent-Appellant  
Bonnie Kathleen Harlan  
Telephone (801) 328-1162

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### STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction in this matter pursuant to Rules 3 and 4 of the Utah Rules of Appellate Procedure and Utah Code Ann. § 78-2a-3(2)h.

### STATEMENT OF ISSUE PRESENTED FOR REVIEW

1. Was it properly within the trial court's discretion to deny the Respondent/Appellant's Rule 60(b) motion for relief from judgment when the trial court had already considered and ruled on the issues raised in the Rule 60(b) motion before it signed the proposed Findings of Fact and Conclusions of Law submitted by Petitioner/Appellee?

2. Should the Appellee be awarded the attorney's fees he incurs on appeal?

### STANDARD OF REVIEW

The standard of review requires the Appellant to show that the denial of the Rule 60(b) motion was an abuse of discretion. Butters v. Jackson, 917 P.2d 87, 88 (Ut. Ct. App. 1996); Hart v. Salt Lake Com'n, 945 P.2d 125, 133 (Ut. Ct. App. 1997) and Surety Life Co. v. Rupp, 833 P.2d 366, 368 (Ut. Ct. App. 1992). The Appellant has the obligation to marshal all facts in support of the court's ruling on the Rule 60(b) motion and then show that the court abused its discretion.

## **DETERMINATIVE RULE**

Rule 60(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 part; (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 not 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."

## **STATEMENT OF THE CASE**

### **A. Nature of the Case.**

This is a divorce proceeding. The parties have three teen age children, T.100, owned an 80 acre farm on which a home is located and had a construction company which John Harlan, the Petitioner below and the Appellee on appeal (herein John), operated as a sole proprietorship. Trial was held on May 28,

1998. At the beginning of the trial the parties stipulated to and submitted appraisals of the value of the farm and the construction equipment.<sup>1</sup> Exhibits 1 and 2. The parties also stipulated that the Respondent below and Appellant on appeal (herein Bonnie) should have custody of the children. The main issues for trial were the amount of alimony, child support and whether there was goodwill/blue sky that should be included in valuing the construction equipment.

**B. Course of Proceedings and Disposition at the Trial Court.**

At trial both parties called several witnesses including Certified Public Accountants and a Certified Appraiser. The trial court then took the matter under advisement and entered its Ruling on June 10, 1998. Addendum 1. Bonnie's counsel submitted proposed Findings of Fact and Conclusions of Law. R. 117. John objected to the proposed Findings of Fact and Conclusions of Law and the Ruling pointing out that the court

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<sup>1</sup>The stipulations of the parties at the beginning of trial, the opening statements and much of John's testimony, including testimony regarding the debt secured by the construction equipment, is missing from the transcript prepared as the record on appeal. Counsel was informed by the court transcriber and the court clerk that the first tape of the proceeding had been misplaced and could not be located and therefore the first approximate hour of the trial was not included in the transcript. The appellant made no effort to prepare a statement as allowed by Rule 11(g) of the Utah Rules of Appellate Procedure. Therefore this court should presume the correctness of the actions by the trial court. Horton v. Gem State Mutual, 794 P.2d 847 (Utah Ct. App. 1990).

had miscalculated the amount of the debt secured by the construction equipment. John also requested clarification on how the retirement accounts were to be divided. R. 122, Addendum 2. The court had calculated debt of \$55,565.00 owed by the construction company. The \$55,565.00 was a number used by Bonnie's accountant based on outdated information. Exhibit 4, a bank printout of the construction company's debt as of the date of trial, was received which exhibit showed that the debt was actually \$74,737.95. Addendum 3. Bonnie's accountant, James Drollinger, during cross examination, agreed that he had missed a \$21,000.00 debt incurred when a track hoe was purchased in November 1997 and that the amount of debt set forth on Exhibit 4 was correct. T. 177. John submitted to the court his proposed Findings of Fact and Conclusions of Law which included the changes proposed in his Objections. R. 154. Addendum 5.

Bonnie also objected to the court's Ruling. R. 141, Addendum 4. She objected to the value placed on the construction company by the court, arguing the court should average the values submitted by both parties,<sup>2</sup> disputed the

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<sup>2</sup>Bonnie used the correct debt amount of \$74,738.00 in her calculation of the value of the business stating "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)". R. 140-141. Bonnie also attached to her Response to Ruling John's counsel's letter dated June 18, 1998 pointing out the

value of the piano and the IRA, argued there were seventeen items of property not mentioned at trial, disputed the value she had previously stipulated to on the farm, claiming no allowance was made for clean up, and complained about rulings made with regard to health insurance and life insurance. R. 141, Addendum 4.

The court, after reviewing the objections and the proposed findings of fact and conclusions of law submitted by each party, agreed with John and on August 19, 1998 signed the Findings of Fact and Conclusions of Law and Decree submitted by him. Addendums 5 and 6.

On September 24, 1998 at an Order to Show Cause hearing, the parties agreed to exchange deeds, set a date for payment of attorney fees and the \$5,000.00 awarded to Bonnie and a time for John to remove from the farm personal items awarded him by the court. R. 175. The parties then exchanged deeds, Bonnie was paid \$10,000.00 as ordered, the retirement accounts were divided and the personal property and other items Bonnie wanted removed from the farm were removed.<sup>3</sup> Bonnie's attorney, Hollis Hunt then withdrew as counsel.

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error in the debt calculation and requesting that it be corrected when the Findings of Fact were prepared. R. 134, Addendum 4.

<sup>3</sup> Bonnie also sold the farm and moved to Idaho with the children.

On November 10, 1998, Bonnie filed a pro se Motion for Relief From Judgement or Order citing Rule 60(b) of the Utah Rules of Civil Procedure. R. 213 Bonnie again objected to the manner in which the obligation regarding health insurance was phrased in the Decree (the language in the Decree is as required by Utah Code Ann. 78-45-7.15), the division of the IRA Accounts which the court had adjusted from its Ruling based on the fact the debt on the business was \$20,000.00 more than in the calculations used by the court in its Ruling, and the valuation of the construction business arguing again that the court should average the values used by the respective parties.

The court denied the motion finding that the court had already ruled on the issues raised therein and that the motion was without merit. The court further ordered Bonnie to pay John's legal fees incurred in responding to the motion. R. 234. Bonnie appeals from the ruling denying her Rule 60(b) motion.

#### **STATEMENT OF FACTS**

The parties were married September 11, 1962. During the marriage they acquired a farm on which the family home is located. John had worked in the construction industry and during the last few years of the marriage he purchased some construction equipment (back hoe and truck) and started

operating a construction business which he called John Harlan Excavation. That business was operated as a sole proprietorship until November 1997 at which time, he organized a limited liability company for the construction business. T. 73, 77-79.

John had the home and farm appraised and the construction equipment appraised. At the beginning of the trial the parties marked those appraisals as Exhibits 1 and 2 and stipulated to the values in those appraisals. T. 27 The farm and home were appraised at \$157,000.00. Exhibit 1. The construction equipment appraised for \$234,100.00. Exhibit 2.

Bonnie called James Drollinger, a certified public accountant, to testify about the income produced by the construction business and also to support her claim that the court should include blue sky in the valuation of the company. The court declined to recognize Mr. Drollinger as an expert for valuation purposes. T. 137, 139-141. Mr. Drollinger, in his analysis of the construction business records, relied on out of date information that the debt of the business was \$55,565.00. The information relied on by Mr. Drollinger did not include the purchase of a track hoe in November 1997 with a resulting debt of \$21,000.00 which track hoe was included in the \$234,100.00 equipment appraisal. Exhibit 2. Both Mr Drollinger, on cross examination, and Bonnie in her objections.

to the court acknowledged that the correct debt amount as of the date of trial was as set forth on Exhibit 4 of \$74,737.95. T. 177.

John called a certified appraiser, Dale Cameron, to testify regarding the valuation of the construction company. T. 195-196. His opinion was that the company was worth the value of its assets; that a one man construction company had no good will that could be valued. T. 216.

Mr. Drollinger also relied on a Financial Statement prepared in November 1997 when the track hoe was purchased. Exhibit 6. The testimony was that the Financial Statement was prepared by a banker who recommended that John be liberal in stating the value of their assets, to assist in obtaining the loan. T. 49-51. The statement's cash amount was money in accounts set up for and awarded to the children and the IRAs. T.222 The Financial Statement also overvalued the house, furniture and vehicle that was awarded to Bonnie. The construction equipment on the Financial Statement was valued at \$225,000.00 slightly less than the value at trial but did not include the track hoe. The court gave little weight to the Financial Statement ruling that "sometimes financial statements that are given to banks for internal purposes are not totally accurate. That's life. I understand that. They're often exaggerated ..." T. 242.

The court in its Ruling stated that it intended to equalize the value of assets awarded to each party. The court, based on the prior requests of the parties, awarded the home and farm to Bonnie and the construction business to John. The Ruling stated that the value of assets awarded to Bonnie was the appraised value of the home and farm of \$157,000, farm equipment valued at \$2,500.00, a four wheel vehicle valued at \$2,500.00, a piano valued at \$2,000.00, and the Park City time share valued at \$12,000.00 for a total of \$176,000.00. Addendum 1.

The court valued the construction business by using the agreed equipment appraisal of \$234,100.00 and adding \$2,000.00 for supplies, \$2,000.00 for additional tools and inventory, \$9,000.00 for accounts receivable, \$3,000.00 cash at the time of trial, \$2,200.00 for a welder and deducting the erroneous amount of \$55,565.00 as debt for a value of \$195,735.00.<sup>4</sup> The court added \$2,000.00 for a camp trailer in John's possession and ruled that the total awarded to John was \$197,735.00. The court, to equalize the difference between \$197,735.00 and \$176,000.00 directed that the net difference between the parties' IRA accounts of \$14,176.00 and an additional \$5,000.00 be awarded to Bonnie. The court also awarded Bonnie

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<sup>4</sup>This calculation was in error. The correct amount is \$196,735.00.

\$1,000.00 per month alimony and child support and \$5,000.00 to be applied to her attorney's fees and costs. Addendum 1.

John, in his objections to the Ruling and Bonnie's proposed Findings of Fact, reminded the court that it was undisputed that the debt on the construction company was \$74,737.95, that the court had received Exhibit 4 setting forth the debt as of the date of trial and that Bonnie's CPA, Mr. Drollinger had agreed that he had not included the \$20,000.00 debt on the track hoe when he used the \$55,565.00 in his calculation. John also requested the court to clarify the ruling on how the IRA was to be distributed arguing that it should be a tax-free transfer rather than requiring a distribution resulting in taxes and penalties and to recalculate its equalization of the IRA accounts using the correct debt amount. Addendum 2.

The court agreed that the amount of the debt set forth in its Ruling was incorrect and then applied the correct debt amount and then awarded John the construction business at a value of \$177,562.05. Finding of Fact 5. The result was that the assets awarded to John had a value of \$179,562.05 compared to Bonnies' assets of \$176,000.00 and the \$5,000.00 giving her \$181,000.00 in assets. The Court therefore ordered that the IRA accounts be divided equally. The end result is that

Bonnie received approximately \$1,500.00 more in assets than did John.

#### **SUMMARY OF ARGUMENT**

There is no mistake, inadvertence, surprise or excusable neglect. The court did not abuse its discretion when it denied Bonnie's motion raising the same issues that the court had ruled on some three months earlier.

Bonnie's Rule 60(b) motion was without merit and the court acted properly when it awarded John his legal fees. John should also be awarded his legal fees incurred on appeal.

#### **ARGUMENT**

**I. BONNIE FAILS TO MARSHAL THE FACTS THAT SUPPORT THE COURT'S RULING DENYING THE RULE 60(B) MOTION AND IN FACT BONNIE, WHILE ALLEGING SURPRISE, FAILS TO INFORM THE COURT OF THE REASONS THE COURT'S FINDINGS OF FACT DIFFER FROM THE RULING AND THAT SHE AGREED THAT THE COURT ERRED IN THE DEBT CALCULATION IN THE RULING.**

Bonnie claims the court abused its discretion when it denied her Rule 60(b) motion. On appeal the general requirement is that one must marshal the facts in the record that support the court's ruling and then show the court abused its discretion. Bonnie failed to marshal the facts and failed to inform this Court of the reasons for the differences between the court's Ruling and the Findings of Fact and Conclusions of Law. She also failed to inform this Court of her objection's to the court's Ruling where she agreed that

there were errors in the addition and debt calculations in the Ruling and where she argued the same issues she now argues on appeal.

**II. THE COURT MADE TWO ERRORS IN ITS INITIAL RULING IN THE CALCULATION OF THE VALUE OF THE ASSETS AWARDED TO JOHN. THE COURT MADE AN ADDITION ERROR AND USED THE WRONG AMOUNT OF DEBT ON THE CONSTRUCTION BUSINESS. THOSE ERRORS WERE CORRECTED IN THE FINDINGS OF FACT AND RESULTED IN A DIFFERENT DIVISION OF THE RETIREMENT BENEFITS THAN THAT SET FORTH IN THE INITIAL RULING.**

Rule 60(b) sets forth specific reasons for which a motion for relief from judgment may be granted. A Rule 60(b) motion requires the moving party to identify the reasons relied on and to prove those reasons. Kettner v. Snow, 375 P.2d 28,30 (Ut. 1962); Larsen v. Collina, 684 P.2d 52,54 (Ut. Ct. App. 1984). A Rule 60(b) motion should not be granted when it will work an injustice on the opposing party. Chrysler v. Chrysler, 303 P.2d 995 (Ut. 1956), and Boyce v Boyce 609 P.2d 928, 931 (Ut. Ct. App. 1980). Bonnie's Rule 60(b) motion cited none of the reasons required by Rule 60(b) and did not prove or even allege any of the required reasons. Rather her motion was a re-hash of the argument she had made when she objected to the trial court's Ruling. Bonnie also did not file her Rule 60(b) motion until after the assets were divided, the monies borrowed by John and paid as ordered and after she was in the process of selling the farm.

Bonnie's brief now claims that the grounds for her motion

are mistake, inadvertence, surprise or excusable neglect. See Petitioner's Brief at Page 9. Bonnie argues in her brief that the mistake, inadvertence, surprise, or excusable neglect is based on the following: 1) the changing of the amount awarded to John in the Ruling from \$197,735.00 to \$179,562.00 in the Findings of Fact; 2) the Decree requiring Bonnie to pay one half of the medical insurance premiums for the children's insurance; and 3) the division of the retirement benefits in the Findings of Fact and Conclusions of Law and the Decree which was different than in the court's Ruling.

Bonnie ignores her fundamental obligation to marshal the facts that support the court's Ruling by failing to inform the court why there are differences between the Ruling and the Findings of Fact and Conclusions of Law and the Decree. Bonnie fails to inform the Court that these same issues were raised by both parties when they filed objections to the Ruling and the proposed Findings of Fact and Conclusions of Law submitted by both parties. Bonnie also fails to inform the Court that she and her accountant agreed that the debt amount in the Ruling was not correct. She further fails to inform the Court that using the correct debt amount was the reason for the difference in the value placed on the business in the Ruling and that found in the Findings of Fact and Conclusions of Law and the reason for the change in the division of the

IRA accounts. Finally, she fails to inform the Court that the law requires each party to pay one-half of the children's insurance premiums.

**A. Valuation Error**

The trial court in valuing the construction company in its Ruling used \$55,565.00 as the amount of debt. The correct amount of debt was \$74,737.00. Exhibit 4. Although Bonnie feigns surprise in her brief and claims not to understand how the Court reached different values in the Ruling and the Findings of Fact and Decree, it is not reasonably disputed that the mistake as to the amount of the debt is the difference in the value of the assets awarded to John as set forth in the Ruling and the value in the Findings of Fact coupled with an addition error in the Ruling. The court intended to equalize the assets awarded to parties. As a result of the approximately \$20,000.00 change based on the correct debt amount, the court adjusted the distribution of the retirement accounts. These issues were presented to the court when the court signed its Findings of Fact and Conclusions of Law on August 19, 1998.

**B. Insurance Premium.**

The initial Ruling required John to maintain medical insurance for the benefit of the children with each party to pay equally any medical expense not covered by insurance. The

decree signed by the court, consistent with Utah Code Ann. §78-45-7.15 provides that John was to obtain and maintain medical insurance with each party to pay equally all out of pocket costs for the premium and one half of all other uninsured medical expenses. Addendum 6 paragraph 8. Bonnie claims that this language in the findings and decree was a surprise, inadvertence or mistake. Appellant's brief pages 14-15. She fails to inform the Court that the provisions in the Decree are made to comply with the requirements of Utah Code Ann. §78-45-7.15 and merely fleshed out the summary statement in the court's Ruling. As to the premium, Utah Code Ann. §78-45-7.15(3) states "[t]he order shall require each party to share equally the out-of-pocket costs to the premium actually paid by a parent for the children's portion of insurance" (emphasis added). To have ignored the statutory requirements and done as Bonnie argues would have been reversible error.

**C. Division of Retirement Benefits.**

Bonnie, while claiming surprise about how the division of retirement benefits in the Decree differed from the Ruling, again fails to inform the Court that the difference was a result of the court correcting the debt owed on the business. The court stated it intended to equalize the amounts awarded to each party. As a result, the Ruling gave Bonnie a larger

share of the IRAs. When the correct debt amount was included then the farm, house and other items awarded to Bonnie had almost the same value as the construction business and assets awarded to John. The court, therefore, had no reason to make an adjustment of the retirement account and divided the retirement benefits equally. See Conclusions of Law 3 and 4.

**D. Bonnie's Reliance on Boyce v. Boyce is Misplaced.**

Bonnie's reliance on Boyce v. Boyce supra is misplaced. There the court stated that the trial court abused its discretion by not granting a Rule 60(b) motion when the moving party had proven fraud in the obtaining of the decree. Boyce is factually significantly different from this case. In Boyce the parties had stipulated to the terms of the divorce. Thereafter, it became apparent that the defendant had misrepresented and not disclosed the value of the assets of the family prior to the stipulation and the decree and that the plaintiff had relied on the false information provided by the defendant. Thus, in Boyce the moving party made a showing of fraud, which under Rule 60(b) is one of the reasons recognized for reopening the case.

In this case, there are no issues of fraud. To the contrary, the issue as to value of the business and other assets was fully explored and litigated. In fact two CPAs and a certified appraiser were called and an appraisal of the

construction equipment and the farm and home were received as stipulated exhibits. The Court made a decision based on the evidence. Bonnie had the opportunity and did present her position to the trial court. There is no fraud claimed in this case and there was no surprise, mistake inadvertence or excusable neglect.

**III. JOHN WAS AWARDED HIS FEES INCURRED IN DEFENDING AGAINST THE RULE 60(b) MOTION BY THE TRIAL COURT BECAUSE THE MOTION WAS WITHOUT MERIT. THIS APPEAL IS WITHOUT MERIT AND IS FRIVOLOUS. JOHN SHOULD BE AWARDED HIS FEES INCURRED BOTH BECAUSE HE WAS AWARDED FEES BY THE TRIAL COURT AND PURSUANT TO RULE 33 OF THE RULES OF APPELLATE PROCEDURE.**

The general rule is that when a party is awarded legal fees at the trial court and prevails on appeal that party is entitled to be awarded the fees incurred on appeal. Childs v Childs 967 P.2d 942, 947 (Ut. Ct. App. 1998). John was awarded the fees he incurred opposing the Rule 60(b) motion by the trial court. The court found that the motion was without merit. R. 234, Addendum 7 and 8. This Court should remand this case to the trial court with instructions to award John the fees and costs he has incurred on appeal.

Rule 33 of the Rules of Appellate Procedure also provides that this Court may award fees and costs if the appeal is frivolous. A frivolous appeal is one "not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law." Rule 33(b); Pennington v Allstate Ins. Co. 1998 WL 842273 (Ut. 1998) and Debry v Cascade Enterprises 935 P.2d 499 (Ut. 1997)

(awarding fees under Rule 33 when the appellant had not been forthright and had attempted to manufacture appealable issues).

Bonnie's Rule 60(b) motion was a rehash of her objections to the court's Ruling. The motion relied on none of the reasons required by Rule 60(b) U.R.C.P. The appeal again reargues the same issues and while claiming surprise, inadvertence or excusable neglect fails to inform this Court of the reasons for the differences between the amount awarded to each party in the Ruling and the Findings of Fact and Conclusions of Law and the Decree, fails to inform this Court of the objection by Bonnie to the court's Ruling that addressed these issues, and fails to even attach as an addendum both parties' objections to the Ruling. It is not in good faith to feign surprise while hiding the facts rather than marshaling the facts.

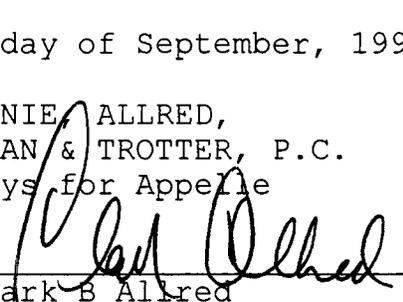
#### CONCLUSION

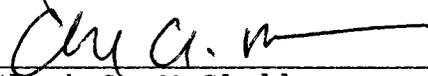
It is respectfully requested that the court sustain the order of the trial court denying Bonnie's Motion for Relief From Judgement or Order and award John the attorneys fees and costs he has incurred on appeal.

Respectfully submitted this 8 day of September, 1999.

McKEACHNIE, ALLRED,  
McCLELLAN & TROTTER, P.C.  
Attorneys for Appellee

By:

  
Clark B. Allred

  
Clark A. McClellan

MAILING CERTIFICATE

Clark B Allred, attorney for Petitioner, certifies that he served the attached BRIEF OF APPELLEE, WESLEY JOHN HARLAN, upon counsel by placing two true and correct copies thereon in an envelope addressed to:

MARY C. CORPORON  
BRIAN J. GARDNER  
ATTORNEYS FOR APPELLANT  
CORPORON & WILLIAMS, P.C.  
808 EAST SOUTH TEMPLE  
SALT LAKE CITY UT 84104

and deposited the same, sealed, with first class postage prepaid thereon, in the United States mail at Vernal, Utah, on the 8 day of September, 1999.

  
Clark B Allred

# ADDENDUM

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

FILED  
DISTRICT COURT  
DUCHESNE COUNTY UTAH  
JUN 15 1998  
BY JOANNE MCKEE CLERK  
DEPUTY

---

WESLEY JOHN HARLAN, JR.,

Petitioner,

vs

BONNIE KATHLEEN HARLAN,

Respondent.

)  
)  
)  
)

RULING

CASE NO: 974000100 DA

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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:**

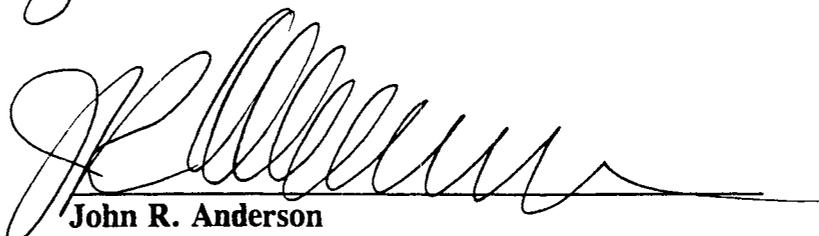
11. The Court will not award any accounting fees to either party, but will reward the Respondent \$5,000 for her total attorney fees.

**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 10<sup>th</sup> day of June, 1998.

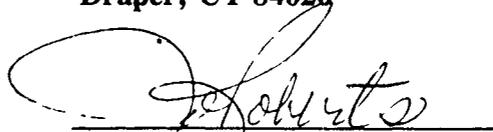
  
John R. Anderson  
District Court Judge

**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 II



not the \$800.00 put in the documents by the Respondent (See paragraph four of the proposed Decree).

2. The amount of the debt attributed to the business is not correct. The amount of \$55,565.00 set forth in the Court's Ruling and in paragraph seven of the proposed findings, omits the debt for the track hoe. Exhibit 4 sets forth all of the debts from Zions Bank which debts total \$74,737.95. The \$55,565.00 number was set forth by Mr. Drollinger. He did not include the debt for the track hoe and he admitted that he had unintentionally omitted the debt on the track hoe. Mr. Drollinger then agreed that since the track hoe was included in the business and its value included in the appraisal of the equipment, that the debt should be included. If the Court desires, the Petitioner will order that portion of the transcript, clarifying that testimony. All assets subject to the \$74,737.95 debt are included in the business and were valued in the appraisal. If the fair market value of the equipment is included the debt associated with that equipment must also be included. The Findings should be amended to show the correct amount of the debt, and the findings should also be adjusted as to the value of the

business by deducting that additional debt from the value of the business.

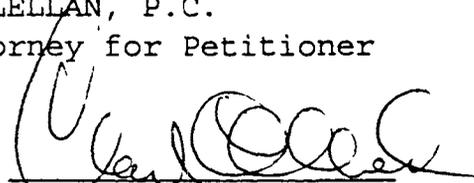
3. The proposed Findings at paragraph ten and other related provisions regarding the allocation of the IRA accounts need to be amended. The way they are written by the Respondent would indicate that the Petitioner has an obligation to pay cash. What the Court Ruled was that those accounts should be equalized, and that should be accomplished by an appropriate Order transferring part of the Petitioner's IRA to the Respondent's IRA in a tax-free transfer. To require the Petitioner to pay cash, rather than a tax free transfer from one IRA to the other, will result in a significant tax burden and financial burden to the Petitioner. Furthermore, once the correct amount of the debt is included in the evaluation of the business, corresponding adjustments should be made in the allocation of the IRA accounts.

It is respectfully requested that the Court approve and sign the proposed Findings of Fact and Conclusions of Law and Decree submitted by the Petitioner or the alternative, the Court Order the above corrections made to the Respondent's proposed documents.

DATED this 30th day of July, 1998.

McKEACHNIE, ALLRED &  
McCLELLAN, P.C.  
Attorney 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\object

# ADDENDUM III

156803 HARLAN, JOHN ORIGINATION DATE 04-30-90

9010 ORG AMT 23,600.00 NOTE DT 07-01-93 INT RATE 10.06000 IN CNTR 0001 RPT HIARC 1 0001 COLL CD 7020
CUR BAL 3,017.06 INT BEG 07-01-93 PER DIEM 84310 OFFCR 11550 RPT HIARC 2 0001 FRB CD 501
AVAIL 11,802.11 MAT DATE 08-25-98 PRIN PMT 765.19 DIV 0002 RPT HIARC 3 0001 CLASS 50
INT OWE 22.30 P DUE DT 05-25-98 ESC TAX .00 REGION 0006 RPT HIARC 4 0001 LEDGER 20
IBNP 25.09 I DUE DT 00-00-00 ESC INS .00 REV CD M BILL DYS P-25/1-00 SIC CODE 16230
PBNP 740.10 P PST DT 00-00-00 PD IBNP .00 IPS 0 EST MAT 08-25-98 PURP CD 30
DUE INT 25.09 I PST DT 00-00-00 PD PBNP .00 PPS 3 ALT NA/GRP ID N- NOTE TYP 2-N
DUE PRN 765.19 PD-TO-DT 04-25-98 ASIF-BAL 99.00 AMORT IND 0 SUB NOTICE HOLD/CLOSE 0 / 0
PARTIAL .00 BKDT LMT 02-20-98 PMT APP/PRIORITY 2/230001 CALC 1 LEAD/NOTICE 12-2 PAY MODE 3
LATE-CHRG BAL .00 LATE-CHG IND LATE-CHG Y ASSESS #1 30 ASSESS #2 1 TIMES DELINQ 30 DAYS DELINQ 291
PR CD/REL /+ .0000 CEILING 99.999 FLOOR 00.000 SAVE AS-IF BALANCE REMRK DT 00-00-00
TIER CD / COMP CD 0/ LAST ACT 04-24-98 REMKS PREPAYMENT PENALTY MON TR DT 04-24-98 NX RT DT N/A
LAST-DOC-DATE 08-19-95 LST-I-BG 08-19-95 NON MON ACT DT 07-30-97

9011 ORG AMT 65,398.75 NOTE DT 09-08-94 INT RATE 9.06000 IN CNTR 0001 RPT HIARC 1 0001 COLL CD 9000
CUR BAL 20,053.60 INT BEG 09-08-94 PER DIEM 5,04682 OFFCR 11550 RPT HIARC 2 0001 FRB CD 505
AVAIL .00 MAT DATE 09-15-92 PRIN PMT 1,365.93 DIV 0002 RPT HIARC 3 0001 CLASS 50
INT OWE 186.40 P DUE DT 06-15-98 ESC TAX .00 REGION 0006 RPT HIARC 4 0001 LEDGER 20
IBNP 151.07 I DUE DT 00-00-00 ESC INS .00 REV CD M BILL DYS P-15/1-00 SIC CODE 16230
PBNP 1,214.86 P PST DT 05-15-98 PD IBNP 151.07 IPS 0 EST MAT 09-15-99 PURP CD 30
DUE INT 151.07 I PST DT 00-00-00 PD PBNP .00 PPS 3 ALT NA/GRP ID N- NOTE TYP 3-0A
DUE PRN 2,731.86 PD-TO-DT 04-16-98 ASIF-BAL .00 AMORT IND 0 SUB NOTICE HOLD/CLOSE 0 / 0
PARTIAL .00 BKDT LMT 02-21-98 PMT APP/PRIORITY 2/230001 CALC 1 LEAD/NOTICE 12-2 PAY MODE 3
LATE-CHRG BAL .00 LATE-CHG IND LATE-CHG Y ASSESS #1 30 ASSESS #2 1 TIMES DELINQ 33 DAYS DELINQ 196
PR CD/REL /+ .0000 CEILING 99.999 FLOOR 00.000 SAVE AS-IF BALANCE REMRK DT 00-00-00
TIER CD / COMP CD 0/ LAST ACT 04-23-98 REMKS PREPAYMENT PENALTY MON TR DT 04-27-98 NX RT DT N/A
LAST-DOC-DATE 09-08-94 LST-I-BG 09-08-94 NON MON ACT DT 07-30-97

9012 ORG AMT 78,650.00 NOTE DT 01-27-95 INT RATE 10.88000 IN CNTR 0001 RPT HIARC 1 0001 COLL CD 7020
CUR BAL 32,465.33 INT BEG 01-27-95 PER DIEM 9,81174 OFFCR 11550 RPT HIARC 2 0001 FRB CD 501
AVAIL .00 MAT DATE 01-25-00 PRIN PMT 1,710.20 DIV 0002 RPT HIARC 3 0001 CLASS 50
INT OWE 264.50 P DUE DT 05-25-98 ESC TAX .00 REGION 0006 RPT HIARC 4 0001 LEDGER 20
IBNP 293.93 I DUE DT 00-00-00 ESC INS .00 REV CD M BILL DYS P-25/1-00 SIC CODE 16230
PBNP 1,416.27 P PST DT 00-00-00 PD IBNP .00 IPS 0 EST MAT 01-25-00 PURP CD 30
DUE INT 293.93 I PST DT 00-00-00 PD PBNP .00 PPS 3 ALT NA/GRP ID N- NOTE TYP 3-0A
DUE PRN 1,710.20 PD-TO-DT 04-25-98 ASIF-BAL 782.00 AMORT IND 0 SUB NOTICE HOLD/CLOSE 0 / 0
PARTIAL .00 BKDT LMT 02-20-98 PMT APP/PRIORITY 2/230001 CALC 1 LEAD/NOTICE 12-2 PAY MODE 3
LATE-CHRG BAL .00 LATE-CHG IND LATE-CHG Y ASSESS #1 30 ASSESS #2 1 TIMES DELINQ 27 DAYS DELINQ 118
PR CD/REL /+ .0000 CEILING 99.999 FLOOR 00.000 SAVE AS-IF BALANCE REMRK DT 00-00-00
TIER CD / COMP CD 0/ LAST ACT 04-24-98 REMKS PREPAYMENT PENALTY MON TR DT 04-24-98 NX RT DT N/A
LAST-DOC-DATE 01-27-95 LST-I-BG 01-27-95 NON MON ACT DT 07-30-97

156803 HARLAN, JOHN CONTINUED

CLL36042 BANK 001 RPT BR 0027 ZIONS FIRST NATIONAL BANK 05/21/98 PAGE 57
DAILY TRIAL BALANCE (LONG) 05-21-98 TO 05-22-98
(DECENTRALIZED)

156803 HARLAN, JOHN CONTINUED

9013 ORG AMT 21,434.00 NOTE DT 01-09-98 INT RATE 7.00000 IN CNTR 0001 RPT HIARC 1 0001 COLL CD 7020
CUR BAL 19,201.96 INT BEG 01-09-98 PER DIEM 3,73371 OFFCR 11550 RPT HIARC 2 0001 FRB CD 501
AVAIL .00 MAT DATE 12-25-00 PRIN PMT 660.86 DIV 0002 RPT HIARC 3 0001 CLASS 50
INT OWE 100.71 P DUE DT 05-25-98 ESC TAX .00 REGION 0006 RPT HIARC 4 0001 LEDGER 20
IBNP 111.91 I DUE DT 00-00-00 ESC INS .00 REV CD M BILL DYS P-25/1-00 SIC CODE 16230
PBNP 548.95 P PST DT 00-00-00 PD IBNP .00 IPS 0 EST MAT 12-25-00 PURP CD 30
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DUE PRN 660.86 PD-TO-DT 04-25-98 ASIF-BAL 214.00 AMORT IND 0 SUB NOTICE HOLD/CLOSE 0 / 0
PARTIAL .00 BKDT LMT 02-20-98 PMT APP/PRIORITY 2/230001 CALC 1 LEAD/NOTICE 12-2 PAY MODE 3
LATE-CHRG BAL .00 LATE-CHG IND LATE-CHG Y ASSESS #1 30 ASSESS #2 1 TIMES DELINQ 30 DAYS DELINQ 22
PR CD/REL /+ .0000 CEILING 99.999 FLOOR 00.000 SAVE AS-IF BALANCE REMRK DT 12-26-98
TIER CD / COMP CD 0/ LAST ACT 04-24-98 REMKS CHANGE TO 10.25% P&I PAYMENTS TO \$683.13 MON TR DT 04-24-98 NX RT DT N/A
LAST-DOC-DATE 01-09-98 LST-I-BG 01-09-98 NON MON ACT DT 01-13-98

156803 HARLAN, JOHN TOTAL OUTSTANDING 74,737.95 TOTAL INT OWING 574.17 NO DELQ 33 DYS DELQ 291

PLAINTIFF'S EXHIBIT
EXHIBIT NO. 14
CASE NO. 97-1111-1
DATE REC'D
IN EVIDENCE
CLERK

# ADDENDUM IV



includes all outstanding liens against the business). Thus the net worth of the business according to James Drollinger, C.P.A., and Atty. Allred's statement of total debt of the business is \$279,262.00.

Mr. Hollis Hunt, Defendant's Attorney, hired Mr. James Drollinger, C.P.A., to evaluate the business. The Defendant was billed \$3,000.00 by Mr. Drollinger for his C.P.A. services. Thus Defendant's evaluation of the business was performed by strictly professional personnel i.e. a Licensed Attorney and a Certified Public Accountant.

In contrast to the Defendant's Professional evaluation, the Petitioner's business evaluation apparently was performed by a Mr. Dale Cameron whose professional qualifications are unclear to the Defendant and a Mr. Gary Baker of Track II Equipment Company, Grand Junction, Colorado, an acquaintance of the Petitioner.

If the evaluators for both the Petitioner and the Defendant have equal experience and education in appraisals and evaluations, then each evaluation should be given equal weight and the arithmetic average of the evaluations used as the net worth of the business.

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.

The average of these two evaluations: \$279,262.00 and \$196,735.00 is \$237,998.50.

NOTE: Item 2. below lists seventeen (17) major items of equipment belonging to the business which were not listed in the Petitioner's business equipment inventory and which are not included in the "additional tools and inventory gravel". Defendant has personal knowledge of this equipment. She was secretary and Bookkeeper for the business for many years.

See attached copies of letters.

2. Defendants's best knowledge and remembrance does not recall that defendant did in fact stipulate to Petitioner's Exhibit Two. On or about July 13, 1998 Defendant requested and received a copy of Petitioner's business equipment inventory and appraisal from her attorney's office. Several major items belonging to the Plaintiff's business were not included in this business equipment inventory which is presumed to be the same one presented at the hearing on May 28, 1998 and referenced in the Court's Ruling. The following equipment was not listed in that inventory:

- 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. 5000 gal. storage tank
- l. Cellular telephones (at least 4)
- m. Compactor
- n. High pressure washer-cleaner
- o. Two (2) "5<sup>th</sup> 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.

3. A 1983 Kawasaki motorcycle in the Plaintiff's possession was awarded to the defendant. The defendant does not ride the motorcycle, does not want the motorcycle, and has no need for it.

4. The piano which the court evaluated as \$2000.00 was evaluated by a professional piano tuner as worth \$1200.00.

5. The present value of Plaintiff's IRA should be revised to its current status.

6. In the Ruling under Asset Equalization, Item 3, the Court awarded the valuation of the real estate to the Respondent. However, no allowance was made for the cleanup of the accumulation of the Petitioner's "junk" which encumbers between one and two acres of the real estate. This "junk" includes, but is not limited to, many drums and containers with chemical substances from "hazardous clean up" jobs which were done by the Petitioner, miscellaneous tanks, large heavy metal bins, concrete debris, excess excavation dirt, electrical control panels, one large electric motor, many small pieces of scrap metal, tires, batteries, pipe and tubing, etc. The Respondent respectfully requests the Court to require the Petitioner to clean up this mess and restore the area to its original agricultural condition immediately or at least within 10 days after the closing of the transaction conveying the real estate to the Respondent. In addition, all expenses for accomplishing the clean up shall be the responsibility of the Petitioner and in no manner

whatsoever shall such clean up be cause for a lien against the real estate or a cloud against the title of the property.

7. Reserved for a statement from a Federal Income Tax Consultant regarding a proper method for equalizing the Federal Income Tax burden on the parties.  
(See Attached)

8. To the Defendant's best knowledge the current Health and Accident Insurance Policy for which the Petitioner is responsible to maintain and pay for, in accordance with the Court's Ruling, for the benefit of the children is inadequate. To date the Petitioner is in arrears in his responsibility for one half of the childrens' medical expenses not covered by insurance.

9. Petitioner will keep in force a valid Life Insurance Policy of sufficient value to protect Defendant's Alimony and awarded Child Support in the event of Petitioner's untimely decease. Petitioner's current Life Insurance policy will be examined within 30 days of the final Decree in this instant matter by a competent Insurance Agent to determine the sufficiency of the Petitioner's current policy.

#### 10. DISTRIBUTION OF ASSETS

To Wesley John Harlan, Jr., Petitioner

Average value of Business	
from Item 1.	\$237,998.50
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	\$176,524.00
Court award toward Atty. Fees	5,000.00
Court award car allowance	5,000.00
Court award IRA	\$ 14,176.00
Total for Bonnie	<u>\$200,700.00</u>

John's total exceeds Bonnie's total by \$53,998.50

Therefore to equalize the assets Petitioner will pay Respondent \$26,999.25 in addition to the court awarded Attorney fee allowance, car allowance, and IRA.

11. CUSTODY. Respondent-Defendant, Mrs. Bonnie Kathleen Harlan, was assured that custody of the three children was not an issue. Defendant was awarded sole custody of the three children with the Petitioner having the usual visitation privileges.

Respectfully submitted by

*Mrs. Bonnie Kathleen Harlan*

Mrs. Bonnie Kathleen Harlan, Respondent

Dated this 12 day of August 1998.

# HUNT & RUDD

---

HOLLIS S. HUNT, P.C.  
LEE RUDD, P.C.

ATTORNEYS AND COUNSELLORS AT LAW  
AN ASSOCIATION OF  
PROFESSIONAL CORPORATIONS  
392 EAST 12300 SOUTH, SUITE A  
DRAPER, UTAH 84020

TELEPHONE: (801) 495-3500  
FACSIMILE: (801) 495-1877

May 15, 1998

VIA FACSIMILE (435) 722-3920

Clark B. Allred  
McKeachnie & Allred, P.C.  
855 East 200 North (112-10)  
Roosevelt, Utah 84066

Re: Harlan v. Harlan  
Civil No. 974000100DA

Dear Clark:

Please find enclosed with this letter an asset distribution sheet which is proposed by way of settlement in this matter with additional comments about compensating for the difference in asset distribution. The basis of the distribution is the valuation of Harlan Construction, LLC, based upon income tax returns which the accounting firm of Drollinger & Judd would testify to which is the amount of \$342,000.00 in value of the business and that is without any information as to cash and receivables which Mr. Harlan has. In addition thereto, we have additional information from various banks and other institutions which would justify the valuation of his business.

Having said all of that, it is my intent to try to find something that would be fair and equitable. Mr. Harlan is obviously uncomfortable about having an ex-wife as an owner of the business and so we would distribute the business to him and have some compensation package going to her so that she could survive without being involved in his business. That will explain the rather serious obligation under the alimony provision.

Should you have questions or concerns in regard to this exhibit, please call me as I am more than willing to try to discuss this matter to find a solution without the necessity of

trial. However, both myself and the CPAs are prepared to go on the 28<sup>th</sup> should the necessity require it. I look forward to hearing from you at your earliest convenience.

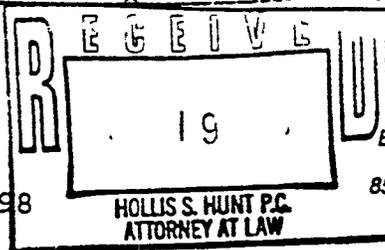
Sincerely,

  
HOLLIS S. HUNT  
Attorney at Law

HSH:js

Enclosure

cc: Bonnie Harlan



June 18, 1998

121 West Main Street  
Vernal, Utah 84078  
435-789-4908  
Fax # 789-4918  
E-mail: mca@ubtanet.com

855 East 200 North (112-10)  
Roosevelt, Utah 84066  
435-722-3928  
Fax # 722-3920  
E-mail: clarka@ubtanet.com

Reply to:

Roosevelt

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

RE: Harlan v. Harlan

Dear Mr. Hunt:

I received the Court's Ruling, in the above referenced matter. We noticed a couple of mistakes that we think could be easily corrected, before you prepare the Findings and Decree. I thought I would bring those to your attention.

First, the Court appears to have made an error on the math. If my math is correct, the business would have a value of \$196,735. Also the Court in determining the debt of the business, did not include the debt acquired last fall on the track hoe, even though that piece of equipment is included in the valuation. The Court, it seems, used the number that Mr. Drollinger used. Mr. Drollinger admitted that he failed to include that debt but admitted it should be included since the asset was included. The total debt, including the track hoe debt, from last November, is \$74,737.95, as set forth on Exhibit 4.

We suggest that those errors be corrected, and then we make an adjustment in the IRA to equalize the assets received by the

Hollis S. Hunt  
June 18, 1998  
Page 2

parties. If these changes are acceptable, you can put them in the proposed Findings and Decree. If not, let me know and I will ask the Court to correct those errors.

Very truly yours,

McKEACHNIE, ALLRED &  
McCLELLAN, P.C.

*Clark B Allred*

Clark B. Allred *by HH*

CBA/hbh  
xc: John Harlan

*Mark Hicken, CPA  
91 North Main  
Roosevelt, Utah 84066  
435-722-3810*

August 11, 1998

To Whom It May Concern:

I was requested by Bonnie Harlan to review the effects on her tax return of allowing John Harlan to claim their three children.

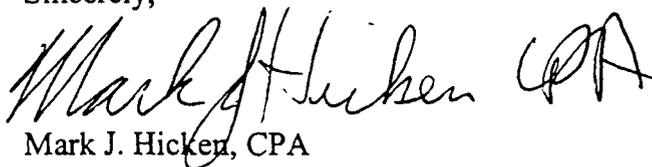
In 1997 Bonnie's tax effect would be zero (0) if John was given the three (3) children.

If Bonnie receives \$12,000 in alimony in 1998, as well as succeeding years, her tax liability would be \$400.00 to the IRS, and \$100 to the State of Utah if John was given the three (3) children. Bonnie would need the exemptions of two (2) children to reduce her tax liability to zero (0). As Bonnie becomes gainfully employed, the exemptions will be more important.

Bonnie is not entitled to any Earned Income Credit as most low-income people are, because she has no earned income and is currently unemployed.

If I can answer further questions or be of assistance in any way, feel free to contact me.

Sincerely,

  
Mark J. Hicken, CPA

Enclosure

# ADDENDUM V



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.



# ADDENDUM VI

FILED  
DISTRICT COURT  
DUCHESNE COUNTY UTAH

AUG 19 1998

BY Joanne McKee CLERK  
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.

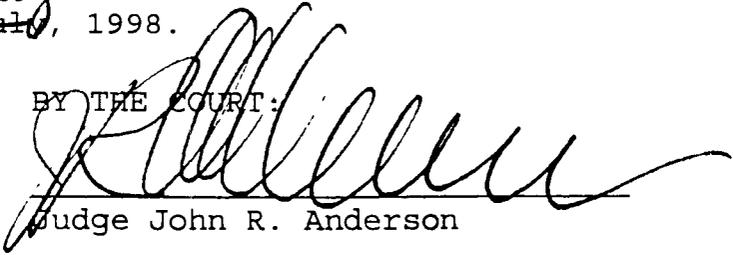
11. The Petitioner is awarded the tax exemptions for the minor children.

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 <sup>aug</sup>~~July~~, 1998.

BY THE COURT:

  
Judge John R. Anderson

IN THE EIGHTH DISTRICT COURT  
 DUCHESNE COUNTY, STATE OF UTAH

WESLEY JOHN HARLAN, JR.  vs.  BONNIE KATHLEEN HARLAN	) ) ) ) ) )	CHILD SUPPORT OBLIGATION WORKSHEET (SOLE CUSTODY AND PATERNITY)  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 %	////////// //////////
5. 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
--	-----------

Which parent is the obligor?    ( ) Mother    **KX**) Father

Is the support award ordered different from the guideline amount in Line 7?

**KX**) Yes    ( ) No    If YES, enter the amount ordered: \$ 687.00

) 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 VII

DEC 10 1998

BY JOANNE MCKEE, CLERK  
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, )

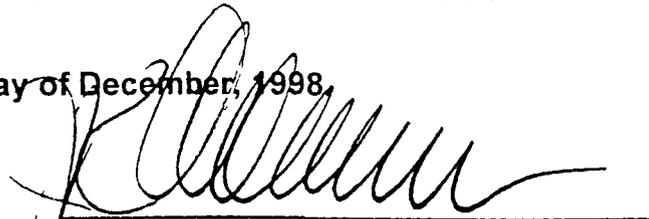
Respondent. )

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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 8<sup>th</sup> day of December, 1998,



\_\_\_\_\_  
Judge John R. Anderson

# ADDENDUM VIII

FILED  
DISTRICT COURT  
DUCHESNE COUNTY, UTAH

DEC 23 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

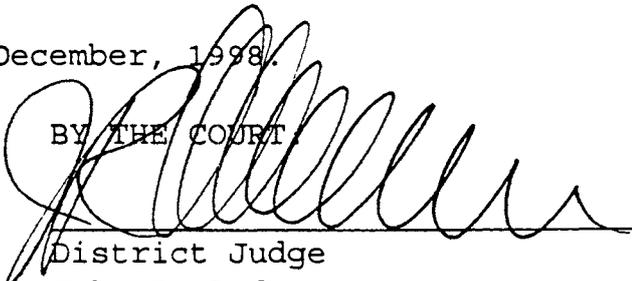
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The above captioned matter came before the Court pursuant to the Respondent's Motion for Relief From Judgment or Order. The Court has reviewed the prior proceedings of this case and the Memoranda filed by the parties. The issues raised by the Respondent 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