

1989

Walter James Howell v. Barbara Joyce Howell : Brief of Respondent

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

David S. Dolowitz, Michael S. Evans, M. Joy Douglas; Cohne, Rappaport and Segal, P.C.; Attorneys for Respondent.

Paul H. Liapis, Helen E. Christian, Kim M. Luhn; Gustin, Green, Stegall and Liapis; Attorneys for Defendant.

Recommended Citation

Brief of Respondent, *Howell v. Howell*, No. 890596 (Utah Court of Appeals, 1989).
https://digitalcommons.law.byu.edu/byu_ca1/2225

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

BRIEF

UTAH
DOCUMENT
KFU

56

.A

DOCKET NO. 890596-CA

IN THE COURT OF APPEALS
STATE OF UTAH

WALTER JAMES HOWELL,
Plaintiff/Respondent,

v.

BARBARA JOYCE HOWELL,
Defendant/Appellant.

BRIEF OF RESPONDENT

District Ct. No. D87-4343
Civil No. 890596-CA

Priority Class. 14b

APPEAL FROM THE DECREE OF DIVORCE
EXECUTED AND ENTERED BY THE
THIRD JUDICIAL DISTRICT COURT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH,
THE HONORABLE FRANK G. NOEL, PRESIDING.

DAVID S. DOLOWITZ (0899)
MICHAEL S. EVANS (1015)
M. JOY DOUGLAS (5384)
of and for
COHNE, RAPPAPORT & SEGAL, P.C.
Attorneys for Plaintiff/Respondent
525 East 100 South, Suite 500
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Telephone: (801) 532-2666

PAUL H. LIAPIS
HELEN E. CHRISTIAN
KIM M. LUHN
of and for
GUSTIN, GREEN, STEGALL & LIAPIS
Attorneys for Defendant/Appellant
Third Floor, New York Building
48 Post Office Place
Salt Lake City, UT 84101
Telephone: (801) 532-6996

FILED

APR 2 1990

IN THE COURT OF APPEALS
STATE OF UTAH

WALTER JAMES HOWELL,)	
)	
Plaintiff/Respondent,)	
)	
v.	)	BRIEF OF RESPONDENT
)	
BARBARA JOYCE HOWELL,)	
	)	District Ct. No. D87-4343
Defendant/Appellant.	)	Civil No. 890596-CA
)	
	)	Priority Class. 14b
)	

APPEAL FROM THE DECREE OF DIVORCE
EXECUTED AND ENTERED BY THE
THIRD JUDICIAL DISTRICT COURT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH,
THE HONORABLE FRANK G. NOEL, PRESIDING.

DAVID S. DOLOWITZ (0899)
MICHAEL S. EVANS (1015)
M. JOY DOUGLAS (5384)
of and for
COHNE, RAPPAPORT & SEGAL, P.C.
Attorneys for Plaintiff/Respondent
525 East 100 South, Suite 500
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Telephone: (801) 532-2666

PAUL H. LIAPIS
HELEN E. CHRISTIAN
KIM M. LUHN
of and for
GUSTIN, GREEN, STEGALL & LIAPIS
Attorneys for Defendant/Appellant
Third Floor, New York Building
48 Post Office Place
Salt Lake City, UT 84101
Telephone: (801) 532-6996

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
JURISDICTION	1
NATURE OF PROCEEDINGS	1
STATEMENT OF THE ISSUES.	2
DETERMINATIVE AUTHORITY.	2
STATEMENT OF THE CASE OF FACTS	2
SUMMARY OF ARGUMENTS	6
ARGUMENT	6
I. THE TRIAL COURT APPROPRIATELY DETERMINED THAT THE PARTIES' STANDARD OF LIVING SHOULD BE BASED UPON HUSBAND' S EARNINGS AT THE TIME OF SEPARATION IN 1986	6
II. THE TRIAL COURT AWARDED ALIMONY WITHIN THE BOUND AND DISCRETION AND STANDARDS OF ITS DISCRETION	11
III. THE TRIAL COURT PROPERLY REFUSED TO CONSIDER THEORETICAL TAX CONSEQUENCES FROM THE SALE OF THE CALIFORNIA HOME	15
CONCLUSION	17
CERTIFICATE OF SERVICE	19
ADDENDUM	20
I. FINDINGS OF FACT AND CONCLUSIONS OF LAW.	" A"
II. DECREE OF DIVORCE.	" B"
III. PERTINENT PAGES FROM TRANSCRIPT OF TRIAL PROCEEDINGS.	" C"

TABLE OF AUTHORITIES

PAGE

A. STATUTES:

Utah Code §30-3-5 (1989)	10
Utah Code §78-2a-3(2)(h) (1989)	1

B. RULES:

R. Utah Ct. App. 3, 4	1
---------------------------------	---

C. CASES:

<u>Alexander v. Alexander</u> , 737 P.2d 221 (Utah 1987).	16
<u>Anderson v. Anderson</u> , 757 P.2d 476 (Utah App. 1988)	10
<u>Bridenbaugh v. Bridenbaugh</u> , 786 P.2d 241 (Utah App. 1990)	8, 10
<u>Canning v. Canning</u> , 744 P.2d 325 (Utah App. 1987)	10
<u>Davis v. Davis</u> , 749 P.2d 647 (Utah 1988).	11
<u>Mortensen v. Mortensen</u> , 760 P.2d 304 (Utah 1988).	14
<u>Naranjo v. Naranjo</u> , 751 P.2d 1144 (Utah App. 1988).	12
<u>Newmeyer v. Newmeyer</u> , 745 P.2d 1276 (Utah 1987)	17
<u>Noble v. Noble</u> , 761 P.2d 1369 (Utah 1988)	14
<u>Paffel v. Paffel</u> , 732 P.2d 96 (Utah 1986)	10, 16
<u>Peck v. Peck</u> , 738 P.2d 1050 (Utah App. 1987)	10
<u>Sampinos v. Sampinos</u> , 750 P.2d 615 (Utah App. 1988)	11
<u>Savage v. Savage</u> , 658 P.2d 1201 (Utah 1983)	9
<u>Sinclair v. Sinclair</u> , 718 P.2d 396 (Utah 1986).	17

IN THE COURT OF APPEALS
STATE OF UTAH

WALTER JAMES HOWELL,)	
)	
Plaintiff/Respondent,)	
)	
v.	)	BRIEF OF RESPONDENT
)	
BARBARA JOYCE HOWELL,)	
	)	District Ct. No. D87-4343
Defendant/Appellant.	)	Civil No. 890596-CA
)	
	)	Priority Class. 14b
)	

JURISDICTION

Jurisdiction to consider this appeal is vested in the Utah Court of Appeals pursuant to R. Utah Ct. App. 3 and 4 and Utah Code §78-2a-3(2)(h)(1989).

NATURE OF PROCEEDINGS

This is an appeal from a Decree of Divorce executed by the Honorable Frank G. Noel, Third Judicial District Court, Salt Lake County, State of Utah, on May 12, 1989. Husband filed a motion to amend the judgment or for relief from the judgment which was denied by the trial court on August 31, 1989. Wife appeals those provisions of the Decree of Divorce awarding alimony in the sum of \$1,800.00 per month. She requests that this court vacate and remand the order dividing the net equity from the sale of the California residence with instructions that the trial court consider as an expense of sale potential capital gains tax consequences.

STATEMENT OF THE ISSUES

I. The trial court appropriately determined that the parties standard of living should be based upon plaintiff's earnings for those years immediately prior to and at the time of the parties' separation in 1986.

II. The trial court awarded alimony within the bounds and standards of its discretion which requires affirmation of its decision.

III. The trial court properly refused to consider theoretical capital gains tax consequences on the sale of the California property.

DETERMINATIVE AUTHORITY

The following provisions from the Utah Code are relevant to this case:

30-3-5. Disposition of property - Maintenance and health care parties and children - Court to have continuing jurisdiction - Custody and visitation-Termination of alimony - Nonmeritorious petition for modification. (1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, and parties.

STATEMENT OF THE CASE AND FACTS

Trial in this matter was held before the Honorable Frank G. Noel, Third Judicial District Court, Salt Lake County, State of Utah, on Thursday, December 22, 1988. The court heard and considered the testimony and exhibits of the parties. (Husband at T.28-61, 89-165; Wife at T.70-80, 206-241). The court also heard and considered testimony from a consulting actuary

regarding the value and distribution of husband's retirement benefits (T. 4-27); a rehabilitation, vocational and job placement specialist regarding wife's vocational aptitude and job placement opportunities (T. 62-70, 80-86); and a certified public accountant and financial planner regarding income and tax matters relating to the payment of alimony and child support (T. 165-183, 199, 202-204) and the tax consequences of a sale of the California home (T. 183-202).

The court took the matter under advisement and on January 19, 1989, rendered its decision (T. 244-254). The trial court awarded wife alimony in the sum of \$1,800.00 per month and child support in the sum of \$1,363.00; ordered husband to provide health, dental and life insurance until the children attained the age of 21 years and to pay one-half of all extraordinary expenses not covered by insurance; ordered husband to provide health insurance for the benefit of his wife and equally divided the substantial real and personal property acquired by the parties over the course of their marriage (T. 244-254).

The parties were married in Cushing, Oklahoma, on October 14, 1956 (T. 31, R. 264). Five children were born as issue of the marriage (T. 31), but at the time of trial, only one child, age 16, remained in the home (T. 31, R. 264).

The parties began experiencing dissatisfaction with each other and in 1981, husband filed for dissolution of the marriage (T. 41). The parties attempted reconciliation (T. 42), but divorce suits were again filed by husband in 1984 (T. 41) in 1986

(T. 41) and in 1987 (R. 2). Except for a brief weekend together in 1988 (T. 32, 44), the parties last resided together on November 22, 1986 (T. 42). Wife retained counsel in 1987 (T. 241) and began receiving alimony payments that same year (T. 46).

Husband began his pilot training prior to the marriage (T. 33) and began working for Western Airlines on October 30, 1957 (T. 38). Husband's income increased over the years, except between 1981 and 1986, when his income remained level due to Western Airlines' financial difficulties (T. 40-41). The parties also ran a business during this period of time (R. 217).

At the time of the parties' final separation in 1986, husband earned between \$5,500.00 and \$5,600.00 per month, and had been earning this sum for the last five years of the parties' marriage (T. 245-246). Husband paid temporary alimony to wife during the years 1987 and 1988 (T. 46). At the time of trial on December 22, 1988, husband earned \$10,120.00 per month (T. 45, 132). The trial court determined that the income level of \$5,500.00 per month reflected the living standard of the parties during the last five years of their marriage (R. 265); however, in setting alimony, the trial court determined husband's level of earning ability based upon his present income of \$10,000.00 per month (R. 265).

Wife in this case had taken approximately 30 hours of college courses in junior college and had also attended the University of Florida (T. 70-71). Throughout the marriage, wife was a homemaker and worked at various part-time jobs: as a piano

instructor (T.72, 210), child care attendant, (T.73), secretary (T.74, 76), salesperson (T.74-75, 210), switchboard operator (T.75, 210), and bookkeeper (T.76). Wife testified that she had not been able to secure full-time employment because she was unable to find work that would permit her to remain in the home with her sixteen-year-old son (R. 228-229).

An expert witness in rehabilitation, vocational evaluation and job placement testified that, based upon wife's testimony, she had available to her employment opportunities in the field of child care, teacher's aide, secretarial or clerical, and retail sales (T.62, 80-85). The expert witness testified that in her opinion, wife was capable of earning between \$7,200.00 and \$16,800.00 per year (T.82-85). The trial court found that wife earned, or is capable of earning, \$7,500.00 per year or \$625.00 per month (R.265). The trial court ordered husband to pay wife alimony in the sum of \$1,800.00 per month (R.278) and child support in the sum of \$1,363.00 per month (R.278).

The parties resided in a home in Camarillo, California until 1984 when they also purchased a home in Utah (R.266). At the time of trial, the home in California was leased to third-parties until September, 1989 (T.227). At trial, husband testified that he desired that the California home be sold and the parties divide equally the proceeds (T.58), for the reason that the sale would permit each party to purchase their own residences and take advantage of federal tax credits (T.103, 156-157), and because the upkeep on the California home was too expensive (T.157).

Wife testified that she desired to be awarded the California home because it was the family home (T.214, 223) and she believed the Utah home to be valued at \$140,000.00 (T.218). The trial court ordered that both homes be sold and that the net proceeds of each sale be divided equally between the parties (R.280, 281).

SUMMARY OF ARGUMENTS

The alimony award should be affirmed on the grounds that the trial court resolved that issue well within the bounds of its discretion after considering the financial condition and needs of the wife, her ability to provide sufficient income for herself and husband's ability to provide support. The tax issue raised in appellant's brief was not presented to the trial court and, consequently, should not be considered upon appeal.

ARGUMENT

I. THE TRIAL COURT APPROPRIATELY DETERMINED THAT THE 'PARTIES' STANDARD OF LIVING SHOULD BE BASED UPON HUSBAND'S EARNINGS FOR THOSE YEARS IMMEDIATELY PRIOR TO AND AT THE TIME OF SEPARATION IN 1986.

Wife seeks alimony based upon husband's earnings in 1988, instead of the standard of living shared by the parties during the time that they lived together between 1981 and 1986 (Appellant's Brief at 13). The principle thrust of appellant's argument is that the parties agreed to accept reduced income between 1981 and 1986, based upon a promise by Western Airlines that husband's income would substantially increase upon the completion of a Delta Airlines takeover (Appellant's Brief at

13; (T.216-217). However, no evidence was offered at trial to support wife's allegations that the parties had agreed in 1981 to a delayed compensation arrangement with husband's employer.

Husband testified that his income remained level between 1981 and 1986 because Western Airlines was attempting to remain a viable company (T.40-41). His pay was never reduced, he just received no increase (T.114-115). Neither husband nor wife testified that in 1981 they anticipated a merger between Western Airlines and Delta Airlines which would result in substantial benefits to them. Wife introduced no evidence in support of her assertion because none exists.

Furthermore, wife did not reconcile the inconsistency in her claim that the parties made a conscious decision to delay present benefits in 1981 with the fact that the two were apparently not getting along during this period of time and had separated on numerous occasions. The parties began experiencing dissatisfaction with their marriage in 1981, and husband filed for dissolution of the marriage (T.41). An attempt was made to reconcile their differences, but divorce suits were again filed by husband in 1984 (T.41), in 1986 (T.42) and in 1987 (R.2). Except for a brief weekend together in 1988 (T.32, 44), the parties last resided together on November 22, 1986 (T.42). Wife retained counsel in 1987 (T.241) and pursuant to court order began receiving alimony payments that same year (T.46). In short, the parties' knowledge of a final "pay off" following the "lean years" when husband earned over \$5,000.00 per month comes

now in retrospect.

At the conclusion of trial in this matter, the trial court awarded wife alimony in the sum of \$1,800.00 per month (R.278). The trial court's findings in support of its judgment were as follows:

5. At the time of the separation of the parties, the plaintiff was earning between \$5,500.00 per month and \$5,600.00 per month and had been earning this sum for five years prior to this time. After separation, the plaintiff filed an action for divorce which he dismissed at trial; that after a two-day attempted reconciliation, he filed this action.

6. The court believes the income level of \$5,500.00 reflects the income level and living standards of the parties during the last five years of their lives together.

7. The plaintiff earns, from his present employment, a salary of \$10,000.00 per month. The court has determined in setting alimony that while \$5,500.00 per month represents the living standards of the parties in the last five years of the marriage, when the parties resided together, the ability of the plaintiff to pay alimony is based upon his present income of \$10,000.00 per month.

(R. 265).

The standard of review by this court of the decision of the trial court is succinctly stated in Bridenbaugh v Bridenbaugh, 786 P.2d 241 (Utah App 1990)

Trial courts have considerable discretion in determining the amount of alimony appropriate in a given case, and will be upheld unless a clear and prejudicial abuse of discretion is shown.

Bridenbaugh, 786 P.2d at 242 (citations omitted).

Wife argues that the trial court misapplied the law in that the court failed to consider the standard of living the parties would have enjoyed "had the marriage continued" as mandated by Savage v. Savage, 658 P.2d 1201 (Utah 1983) (Appellant's Brief at 15). First, wife misreads Savage. In Savage, the Utah Supreme Court affirmed the trial court's alimony and child support award on the grounds that the amounts awarded by the trial court were consistent with the parties' past standard of living and the benefits they had previously enjoyed during the marriage. Savage, 658 P.2d at 1205. The language cited by wife, in this case, imposing upon the trial court an obligation to consider the standard of living "had the marriage continued" is dictum and must not form the basis of reversal of the trial court's decision in this case.

Second, if this court were to impose upon trial courts an obligation to set the standard of living at a level proportionate to that which the parties would have enjoyed "had the marriage continued," this would necessarily require the trial court to speculate about a host of possible increases or decreases in wealth that could befall a family within its lifetime and would create an impossible task for the trial court in attempting to establish a baseline for future modification purposes.

Third, the logical extension of wife's interpretation of Savage would result in periodic and automatic increases or decreases in alimony. Such interpretation is inconsistent with

Utah statutory provisions which empower the trial court with continuing jurisdiction to impose such orders as are equitable in relation to the parties. See Utah Code §30-3-5 (1989).

Fourth, the "fundamental purpose of alimony 'is to enable the receiving spouse to maintain as nearly as possible the standard of living enjoyed during the marriage and to prevent the spouse from becoming a public charge.'" Bridenbaugh, 786 P.2d at 242 (quoting Paffel v. Paffel, 732 P.2d at 100). Future events or changes in income should not be used to retroactively adjust application of this standard as articulated by this court and the Utah Supreme Court.

Finally, wife argues that had the trial court set the standard of living of the parties at the time of trial in 1988, the trial court would have acted consistently with the requirement that marital assets are valued as of the time of trial (Appellant's Brief at 15-16). However, the issue is the standard for setting alimony, not division of property. In any event, while wife has correctly stated the general rule, this court has declared that, under appropriate circumstances, assets may be valued at an earlier date. See, e.g., Anderson v. Anderson, 757 P.2d 476, 479 (Utah App. 1988); Peck v. Peck, 738 P.2d 1050 (Utah App. 1987).

The trial court has wide discretion in distributing the income and properties of the parties in an equitable fashion and is not required to operate within a rigid compartment of time. Cf. Canning v. Canning, 744 P.2d 325, 327-329 (Utah App. 1987).

(The Utah Court of Appeals affirmed the allocation of assets and liabilities of the parties which took into account the on-again off-again relationship of the parties in fashioning relief); see also Sampinos v. Sampinos 750 P.2d 615, 618 (Utah App. 1988) (Trial court has broad discretion in the division of property regardless of the source or time of acquisition).

In this case, the trial court determined that:

With regard to alimony, the court has attempted to apply the law of the State of Utah, and that is to equalize the standard of living of the parties, and to maintain that standard at a level at which it existed during the marriage. The court is of the opinion that that level of standard of living experienced by the parties during their marriage, is best represented by the standard of living that they enjoyed at the time of the separation of the parties during the 1986 period of time.

(T.245-246). Wife has not demonstrated that the trial court's order misapplied the law or abused its discretion. Consequently, the decision of the trial court must be affirmed.

II. THE TRIAL COURT AWARDED ALIMONY WITHIN THE BOUNDS AND STANDARDS OF ITS DISCRETION.

The trial court is accorded broad discretion in awarding alimony. Davis v. Davis, 749 P.2d 647, 649 (Utah 1988). Its decision will not be disturbed provided that the trial court considered:

(1) the financial condition and needs of the party seeking alimony; (2) that party's ability to produce a sufficient income for him-or herself; and (3) the ability of the other party to provide support. Failure to analyze the parties' circumstances in the light of these three factors constitutes an abuse of discretion. As long as the "trial

court exercises its discretion within the bounds and under that standards we have set and has supported its decision with adequate findings and conclusions, we will not disturb its rulings."

Naranjo v. Naranjo, 751 P.2d 1144, 1147 (Utah App. 1988)
(citations omitted).

Wife argues on appeal that the trial court failed to consider her needs, her inability to meet those needs and her husband's ability to pay substantial sums of alimony (Appellant's Brief at 8).

The first factor to be considered is wife's financial condition and needs. The trial court awarded wife a portion of husband's retirement benefits with Western Airlines and Delta (R.279); a portion of husband's military retirement benefits (R.279); an IRA account in the amount of \$10,397.00 (R.279); one-half of the substantial net proceeds from the sale of real properties located in California, Utah and Texas (R.280-282); her bank accounts (R.282); substantial personal property (R.282-283) and \$7,500.00 in attorney's fees (R.284). In addition, she was awarded child support in the sum of \$1,363.00 per month (R.278); assistance with the children's medical, dental, orthodontic and eye care expenses (R.279-280) and assistance with her own health expenses (R.280). Finally, husband was ordered to maintain life insurance for the benefit of the children until they obtain the age of 21 years or marry (R.280).

Wife testified at the time of trial in December, 1988, that her monthly living expenses totaled \$5,021.00 (T.233), although

her financial declaration filed with the court in September, 1988, listed monthly expenses of only \$4,464.62 (R.122). Wife's expenses included numerous debts which she incurred subsequent to the parties' separation to various credit card and department store accounts (T.236); banks (T.234); third-parties (T.235); and also included her assumption that she would continue to incur monthly mortgage expenses of \$1,500.00 per month from the real property located in Utah (T.229), unless she moved into the more expensive California home (T.229). Wife submitted no evidence of her anticipated expenses in the event that she moved to California.

The trial court ordered the sale of the homes in California and Utah (R. 280-281), thereby necessarily eliminating many of the monthly expenses forming the basis of wife's request for \$4,000.00 in alimony.

The second factor to be considered is wife's ability to produce a sufficient income for herself. Wife testified that the reason that she could not secure full-time employment was because she felt that she needed to be at home with her sixteen-year-old son (R.228-229). Throughout the marriage, wife worked at various part-time jobs: as a piano instructor (T.72, 210), child care attendant (T.73), secretary (T.74,76), salesperson (T.74-75, 210), switchboard operator (T.75, 210) and bookkeeper (T.76). She had taken approximately 30 hours of college courses in junior college and had also attended the University of Florida (T.70-71).

An expert witness in rehabilitation, vocational education and job placement testified that based upon wife's testimony, wife had available to her employment positions in the field of child care, teacher's aide, secretarial or clerical, or retail (T. 62, 80-85). The expert witness testified that, in her opinion, wife was capable of earning between \$7,200.00 and \$16,800.00 per year (T. 82-85). The trial court found that wife earned, or is capable of earning, \$7,500.00 per year or \$625.00 per month. (R. 265).

The third factor that must be considered by the trial court is the ability of the other party to provide support. The alimony award in this case was based upon husband's income at the time of trial (R. 265).

Husband testified at trial that he believed that wife was not entitled to alimony for the reason that the parties had accumulated substantial assets that would generate adequate income to meet wife's monthly expenses (T. 116). Husband supported his argument with his trial brief which relied upon Mortensen v. Mortensen, 760 P.2d 304 (Utah 1988) for the proposition that an award of sufficient income-producing property, or property capable of producing income, should be considered in eliminating or reducing the need for alimony (R. 175-178). His position is also supported by Noble v. Noble, 761 P.2d 1369, 1373 (Utah 1988) where the Utah Supreme Court held that issues of alimony and property division are not entirely separable and the trial court may consider the property division

as well as the relative earning capabilities of the parties.

Husband's proposition was rejected by the trial court as well as wife's request that she be awarded alimony in the sum of \$3,500.00 per month (T.212). Instead, the trial court awarded wife \$1,800.00 per month alimony, which when combined with husband's child support obligation, is approximately one-third of husband's present salary, leaving one-third for husband and one-third for the Internal Revenue Service and State Tax Commission.

Wife has made no showing sufficient to rebut the presumption that the trial court consider the parties' financial condition and needs, expenses and income. She has merely disagreed with the court's conclusion. Accordingly, the decision of the trial court must be affirmed.

III. THE TRIAL COURT PROPERLY REFUSED TO CONSIDER
THEORETICAL TAX CONSEQUENCES FROM THE SALE OF
THE CALIFORNIA HOME.

Wife's final claim of error is that the trial court abused its discretion by failing to consider, as an expense of sale, the capital gains tax consequences on the sale of the California home prior to equal distribution of the property (Appellant's Brief at 1, 16). At trial, the parties discussed the issue of capital gains treatment on the sale of the California home, but wife's position was that she should be awarded the California home in which to live (T.214) and that the home should not be sold (T.215-216). At no time did wife request that the trial court consider the tax consequences as an expense of sale, or in the alternative, adjust the division of the net equity to compensate

wife for her alleged disparate ability to pay (T. at 183-186, 196, 197, 200-202), even though the trial court inquired of counsel after having rendered its judgment from the bench whether any matters were overlooked (T.251). Having failed to raise this issue at trial, wife is precluded from raising this issue on appeal. Paffel v. Paffel, 732 P.2d 96, 99 (Utah 1986).

Even if wife's objection to the sale of the California property could be construed as a request that husband pay all or a substantial portion of any capital gain consequences from the sale, wife is not entitled to the relief she now seeks on the grounds that the trial court properly refused to speculate about the hypothetical tax consequences resulting from the sale of the California property. See Alexander v. Alexander, 737 P.2d 221, 224 (Utah 1987) (Trial court did not abuse its discretion in refusing to adjust the market value of a retirement account in anticipation of future tax liability).

The value of the California property, for the purpose of determining the ultimate tax liability of the parties, was not determinable at trial because the property was leased to third-parties and was unavailable for sale until October, 1989, almost one year later (T.212). Wife's expert witness testified that he estimated the present value of any tax liability to be \$23,400.00, which sum was based upon a hypothetical profit of \$260,000.00 (T.201). Also assumed in the hypothetical profit figure was the time of sale and percentage of discount rate (T.202). The amount of capital gains tax liability was made more

uncertain by the fact that the parties may be able defer all of part of the gain by investing the proceeds from the sale of the California property into new residences. Int. Rev. Code §1034. Wife's expert witness testified that it would be possible, although difficult, that the parties could qualify for exclusion under section 1034 and section 121 of the Internal Revenue Code (T.185, 196-197, 198-199).

Finally, wife argues that the trial court's distribution is rendered inequitable because her share of the equity in the California property will be diminished by her potential capital gains tax liability (Appellant's Brief at 21). This argument carries with it an assumption that the State of Utah requires and equal, not equitable, distribution of marital assets. However, Utah "law contemplates a fair and equitable, not an equal division" of the marital debts and assets. Sinclair v. Sinclair, 718 P.2d 396, 398 (Utah 1986); see also Newmeyer v. Newmeyer, 745 P.2d 1276, 1277 (Utah 1987).

The trial court, in its broad discretion, has awarded wife approximately one-half of the marital assets and support income and insurance benefits in excess of \$3,100.00 per month. It is fair and equitable that if any capital gain tax liability is imposed, that each party bear their own expense.

CONCLUSION

The trial court resolved the alimony issue well within the limits of its discretion. All areas of mandated inquiry were reviewed and appropriate findings were made. The alimony award

should be affirmed and the tax issue, having never been presented to the trial court, should be rejected. If the tax issue is considered, the trial court appropriately resolved it. The trial court should be affirmed and husband should be awarded the costs and attorney fees incurred in defending this appeal.

RESPECTFULLY SUBMITTED THIS 2nd ^{April} DAY OF ~~MARCH~~, 1990.



David S. Dolowitz
Attorney for Plaintiff/Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of ^{April} ~~March~~, 1990, a true and accurate copy of the foregoing Brief was caused to be mailed, first class, postage fully prepaid, in the United States mail, to the following:

Paul H. Liapis
Helen E. Christian
Kim M. Luhn
GUSTIN, GREEN, STEGALL & LIAPIS
Attorneys for Defendant/Appellant
Third Floor, New York Building
48 Post Office Place
Salt Lake City, UT 84101



David S. Dolowitz

DAVID S. DOLOWITZ (0899)
of and for
COHNE, RAPPAPORT & SEGAL
Attorneys for Plaintiff
525 East 100 South, Suite 500
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Telephone: (801) 532-2666

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

WALTER JAMES HOWELL,)	
	)	FINDINGS OF FACT AND
Plaintiff,	)	CONCLUSIONS OF LAW
)	
v.)	
)	
BARBARA JOYCE HOWELL,	)	Civil No. D87-4343
	)	Judge Frank Noel
Defendant.)	

* * * * *

The above-entitled matter came before the court for trial on Thursday, the 22nd day of December, 1988, the Honorable Frank G. Noel presiding. The plaintiff was present in person and represented by counsel, David S. Dolowitz and John Mason. The defendant was present in person and represented by counsel, Paul H. Liapis. The court heard and considered the testimony of the parties, received exhibits into evidence and determined to take the matter under advisement. Thereafter, being advised in the premises, the

court announced its decision in open court on the 19th day of January, 1989. The plaintiff then submitted proposed Findings of Fact and Conclusions of Law and Decree to the court, provisions to which defendant objected. Those objections were heard and resolved before the court on April 27, 1989. Accordingly, the court now makes and enters the following as its

FINDINGS OF FACT

1. The defendant was a resident of Salt Lake County, State of Utah, when this action was filed and had been so for more than three months immediately prior thereto.

2. The parties are husband and wife, having been married on October 14, 1956, in Cushing, Oklahoma.

3. Irreconcilable differences arose between the parties which they attempted to reconcile, but were unable to do so.

4. There were five (5) children born as issue of this marriage; four (4) are emancipated. Both of the parties agreed that care, custody and control of the one (1) remaining minor child of the parties, Sean Daniel Howell, born August 21, 1972, age 16, should be awarded to the defendant, subject to reasonable rights of visitation in the plaintiff. The defendant is a fit and proper parent to be awarded the care, custody and control of the minor child of the parties.

5. At the time of the separation of the parties, the plaintiff was earning between \$5,500.00 per month and \$5,600.00 per month and had been earning this sum for five years prior to this time. After separation, the plaintiff filed an action for divorce which he dismissed at trial; that after a two-day attempted reconciliation, he filed this action.

6. The court believes the income level of \$5,500.00 reflects the income level and living standards of the parties during the last five years of their lives together.

7. The plaintiff earns, from his present employment, a salary of \$10,000.00 per month. The court has determined in setting alimony that while \$5,500.00 per month represents the living standards of the parties in the last 5 years of the marriage, when the parties resided together, the ability of the plaintiff to pay alimony is based upon his present income of \$10,000.00 per month.

8. The defendant earns, or is capable of earning, \$7,500.00 per year, or \$625.00 per month. At the time of trial, defendant was employed with Casual Furniture on a part-time basis earning a gross income of \$649.80 per month, although that employment was scheduled to end on December 31, 1988 and she had not yet secured replacement employment.

9. Application of the Child Support Guidelines

adopted by the courts of the State of Utah would require the payment of child support from the plaintiff to the defendant in the sum of \$1,363.00 per month based upon plaintiff's income of \$10,000.00 per month until Sean attains the age of 18 and graduates from high school with his regularly-scheduled graduating class.

10. The plaintiff filed separate tax returns in 1986 and 1987 and the defendant has not filed tax returns for those years.

11. The parties acquired, during the course of their marriage, a home and real property located in California, to-wit: 1767 Calle Rocas, Camarillo, California, which was the primary residence of the parties prior to their move to Utah in 1984; a home and real property located in Utah, to-wit: 8241 Top of the World Drive, Salt Lake City, Utah; seven (7) lots in the state of Texas; interests in a series of pension plans maintained by the employer of the plaintiff, to-wit: Western Airlines and Delta Airlines, (these plans are the Western Airlines Plan A, the Western Airlines Plan B, the Western Airlines Plan D, the Delta Plan and the Delta Savings Plan); and an interest in a military retirement plan, part of which was earned prior to the marriage; three IRA accounts, one in the name of the plaintiff for \$7,546.57, a second in the name of the plaintiff in the sum of \$4,196.43 and one in

the name of the defendant for \$10,397.00; bank accounts at Western Federal Credit Union, Ranier Bank, Valley Bank, Mt. West Savings, and Camarillo Community Bank; 8.6023 shares of Delta stock; stock in Continental Power Co.; furniture, fixtures, furnishings and appliances; five guns; an IBM computer and software; a 1977 Buick automobile; a 1987 Ford truck and camper; a 1980 Datsun 280Z; a 1978 ski boat; a 1982 fold boat and motor; several pieces of ivory; and a 35mm camera.

12. The plaintiff testified that the precise term of the military retirement plan is being re-examined by the United States Navy, as plaintiff was in the Naval Reserve prior to going on active duty and this period of time should have been included in the plan calculations but had not, as of the date of trial, and this determination had been appealed and was being reviewed by the Navy.

13. After separation of the parties, the plaintiff withdrew \$33,000.00 from a retirement fund which was expended to pay for marital debts of the parties, to-wit: \$16,000.00 to repay a loan \$3,400.00 on the VISA account; \$12,500.00 to pay income taxes; \$1,000.00 on their daughter's wedding; and \$600.00 to refinance the parties' home.

14. The parties acquired various debts which remain unpaid, to-wit:

Tracy Collins Bank
Camarillo Community Bank
Defendant's Personal Loan (attorney's fees)
Camarillo Bank VISA
Nordstroms
Weinstocks
ZCMI
Western Federal Credit Union
Western Federal Credit Union for camper
Security Pacific Solar Loan
Valley Bank VISA
State of California taxes.

15. The plaintiff has two life insurance policies, one with Delta Airlines for \$100,000.00 and one with Beneficial Life Insurance for \$100,000.00.

16. The defendant employed counsel to represent her in this matter and does not have a ready source of assets from which she can pay for the services which she has secured.

17. The plaintiff has available, through his employment, health and dental insurance and will maintain health and dental insurance for Walter and Sean as long as it is available through his employment.

From the foregoing Findings of Fact, the court now makes and enters the following

CONCLUSIONS OF LAW

1. This court has jurisdiction over the parties and subject matter of this action.

2. Each of the parties should be awarded a Decree of Divorce, terminating the marriage between them on the grounds of irreconcilable differences.

3. Care, custody and control of the minor child of the parties, Sean Howell, should be awarded to the defendant, subject to reasonable rights of visitation in the plaintiff.

4. The plaintiff should be ordered to pay child support to the defendant for Sean in the amount of \$1,363.00 per month until Sean is 18 and graduated from high school with his regularly-scheduled class. Payments should be made on the 20th of each month.

5. The income exemption for Sean should be awarded to the defendant.

6. The plaintiff should be ordered to pay alimony to the defendant based upon the standard of living enjoyed by the parties at the time of their separation in 1986. Accordingly, he should pay her \$1,800.00 per month, one-half on the 5th of each month; one-half on the 20th of each month until such time as she dies, remarries, cohabits with a man to whom she is not married, or further order of the court.

7. The parties should divide the retirement plan benefits acquired by them during the course of their marriage at the value determined by this court on December 22, 1988, by appropriate qualified domestic relations order, that is, the Western Airlines Plan A, Plan B, and Plan D, and the Delta Savings Plan and Delta Plan, which should be effected by separate orders to implement the provision of the Decree of

Divorce.

8. The military retirement plan of the parties, once finally valued and the period of service set, should be divided by application of the Woodward formula. The plaintiff should keep the defendant advised as to the progress of this inquiry and the actions and decisions of the United States Navy.

9. Plaintiff should be awarded the IRA in his name at Merrill Lynch in the amount of \$7,546.57 and the IRA at the Western Federal Credit Union of \$4,196.43, and the defendant should be awarded her IRA in the amount of \$10,397.00.

10. The plaintiff should be ordered to maintain the health and dental insurance that is available to him through his employment on both Sean and his older brother, Walter, so long as that insurance is available to him through the age of 21. Each of the parties should pay one-half of any extraordinary medical, dental, orthodontic or eyecare expense which is not covered by insurance.

11. The plaintiff has available to him life insurance in the sum of \$100,000.00. He should be required to maintain Matthew and Sean as beneficiaries of that policy until they attain the age of 21 years or are married. After that occurs, he shall be free to name whomever he wishes as beneficiary of that insurance. To assist the children in assuring this

coverage, the plaintiff should provide them with the policy number and name of the insurance company.

12. The plaintiff should be ordered to cooperate with the defendant in making available to her all health insurance benefits for which she can qualify under the COBRA provisions of the Internal Revenue Code.

13. The home and real property in California, at 1767 Calle Rocas, Camarillo, California, should be sold for the best possible price and at the earliest possible time. The net proceeds of sale divided equally between the parties. There is presently a debt due to the State of California for taxes. If it is determined that those are property taxes, they should be paid from the proceeds of sale of this property prior to division of the proceeds of sale. If it is determined that those are taxes for any other reason, the plaintiff should assume and pay those taxes and hold the defendant harmless therefrom. The plaintiff should be responsible for the sale of the California home, and should keep the defendant fully advised as to that transaction, and the defendant should take all actions necessary to effect sale.

14. The home and real property in Utah should be placed for sale at the best possible price and sold at the earliest possible date. The plaintiff should pay the

mortgage for the months of February, March and April, 1989, and if the January house payment has not been made, he should make that payment. Thereafter, the defendant shall be responsible for those payments if the home is not sold. The defendant shall be responsible for this sale and shall keep the plaintiff advised as to that transaction and the parties shall divide equally the net proceeds of sale.

15. The 8.6023 shares of Delta stock and Continental Power Stock should be awarded to the plaintiff.

16. The parties should sell one of the seven lots in Texas and divide the net proceeds of sale between them. Each should be awarded three of the remaining lots.

17. Each of the parties have accumulated savings accounts in their own names and they should be awarded those savings, to-wit: the plaintiff should be awarded the Western Federal Credit Union account; the Ranier Bank account; and the Valley Bank account, while the defendant should be awarded the Mountain West Savings account and the Camarillo Community Bank account.

18. The insurance proceeds for the 1977 Buick should be awarded to the defendant who should also be awarded the 1980 Datsun 280Z.

19. The 1987 Ford truck and camper should be awarded to the plaintiff.

20. The 1969 Ford automobile should be awarded to Matthew.

21. The 1978 ski boat should be awarded to the defendant.

22. The 1982 fold boat and engine should be awarded to the plaintiff.

23. Each of the parties should be awarded the furnishings, fixtures, furniture and appliances in their own possession with the exception of the IBM computer and computer software in the plaintiff's possession which should be awarded to the defendant and the 35mm camera which should be awarded to the plaintiff.

24. Each of the parties should be awarded one-half of the ivory collection.

25. Each of the parties should be ordered to make available family photographs in their possession to the other for copying. The photographs should be divided fairly between them.

26. The plaintiff has accounted for the \$33,000.00 he removed from the retirement to the satisfaction of the court and no order is entered in regard to those funds which the court believes are appropriately resolved in the division of the marital estate as set forth above.

27. Each of the parties should be ordered to assume

and pay the debts in their own name with the exception of the mortgage provisions set forth above, which, restated, are that the plaintiff should pay the mortgage on the California home and may use the rent received from the California home until its sale. The plaintiff should pay the mortgage payments on the Utah home for February, March, and April, 1989, and the January payment, if that has not been paid. Thereafter, the defendant should be responsible for payment of that debt.

The plaintiff should pay the debts due and owing to:

- a. Weyerhauser Mortgage (Calif. home);
- b. Western Federal Credit Union (pick-up);
- c. Western Federal Credit Union (camper);
- d. Security Pacific solar loan;
- e. Valley Bank VISA;
- f. State of California taxes.

The defendant should pay the debts due and owing to:

- a. Lincoln Mortgage (Utah home);
- b. Tracy Collins Bank;
- c. Camarillo Community Bank;
- d. Personal loan (attorney fees);
- e. Camarillo Bank VISA;
- f. Nordstroms;
- g. Weinstocks;
- h. ZCMI.

28. The parties should consult with an accountant regarding the filing of amended joint 1986 and 1987 tax returns. If these can be filed and the parties save money and secure a refund in excess of the \$2,500.00 that has been received by the plaintiff, they should do so and divide all refunds received in excess of the \$2,500.00 which has already

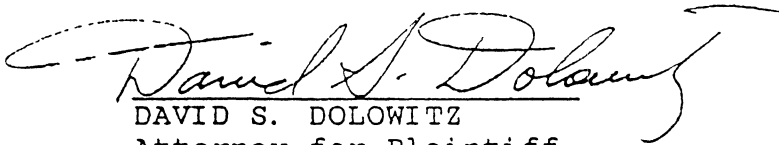
been received by the plaintiff.

29. The plaintiff should be ordered to pay on behalf of the defendant the sum of \$7,500.00 to assist her in the payment of her attorney fees within thirty (30) days from entry of the Decree of Divorce.

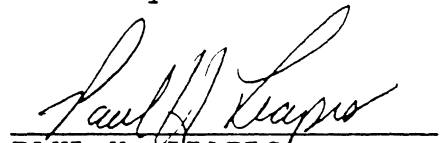
DATED this ____ day of _____, 1989.

FRANK G. NOEL
District Court Judge

APPROVED AS REFLECTING
THE RULING OF THE COURT:



DAVID S. DOLOWITZ
Attorney for Plaintiff



PAUL H. LIAPIS
Attorney for Defendant

Delivery
CERTIFICATE OF MAILING

I hereby certify that I caused to be *delivered* mailed a true copy of the above and foregoing Findings of Fact and Conclusions of Law, this 28 day of April, 1989, to:

Mr. Paul Liapis
Attorney at Law
48 Post Office Place, Third Floor
Salt Lake City, Utah 84101

David S. Dolowitz

DAVID S. DOLOWITZ

FILED DISTRICT COURT
Third Judicial District

MAY 12 1989

DAVID S. DOLOWITZ (0899)
of and for
COHNE, RAPPAPORT & SEGAL
Attorneys for Plaintiff
525 East 100 South, Suite 500
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Telephone: (801) 532-2666

SALT LAKE COUNTY
by Pat Jones
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

WALTER JAMES HOWELL,)	
	)	DECREE OF DIVORCE
Plaintiff,)	
)	
v.)	
)	
BARBARA JOYCE HOWELL,	)	Civil No. D87-4343
	)	Judge Frank Noel
Defendant.)	

* * * * *

The above-entitled matter came before the court for trial on Thursday, the 22nd day of December, 1988, the Honorable Frank G. Noel presiding. The plaintiff was present in person and represented by counsel, David S. Dolowitz and John Mason. The defendant was present in person and represented by counsel, Paul H. Liapis. The court heard and considered the testimony of the parties, received exhibits into evidence and determined to take the matter under advisement. Thereafter, being advised in the premises, the

court announced its decision in open court on the 19th day of January, 1989. The plaintiff then submitted proposed Findings of Fact, Conclusions of Law and Decree to the court, provisions of which the defendant then objected. Those objections were heard and resolved before the court on April 27, 1989. Accordingly, the court, having made and entered its Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This court has jurisdiction over the parties and subject matter of this action.

2. Each of the parties is awarded a Decree of Divorce, terminating their marriage.

3. Care, custody and control of the minor child of the parties, Sean Howell, is awarded to the defendant, subject to reasonable rights of visitation in the plaintiff.

4. The plaintiff is ordered to pay child support to the defendant for Sean in the amount of \$1,363.00 per month on the 20th of each month until Sean is 18 and graduates from high school with his regularly-scheduled class.

5. The income exemption for Sean is awarded to the defendant.

6. The plaintiff is ordered to pay alimony to the defendant in the sum of \$1,800.00 per month, one-half on the 5th of each month; one-half on the 20th of each month until

such time as she dies, remarries, cohabits with a man to whom she is not married, or further order of the court.

7. The parties shall divide the retirement plan benefits, valued as of December 22, 1988, acquired by them during the course of their marriage by appropriate qualified domestic relations order, that is, the Western Airlines Plan A, Plan B, and Plan D, and the Delta Savings Plan and Delta Plan, which shall be effected by separate orders to implement the provision of the Decree of Divorce.

8. The military retirement plan of the parties, once finally valued and the period of service set, shall be divided by application of the Woodward formula. The plaintiff shall keep the defendant advised as to the progress of this inquiry and the actions and decisions of the United States Navy.

9. Plaintiff is awarded the IRA in his name at Merrill Lynch in the amount of \$7,546.57 and the IRA at the Western Federal Credit Union in the amount of \$4,196.43, and the defendant is awarded her IRA in the amount of \$10,397.00.

10. The plaintiff is ordered to maintain the health and dental insurance that is available to him through his employment on both Sean and his older brother, Walter, through the age of 21, so long as that insurance is available to him. Each of the parties shall pay one-half of any extra-

ordinary medical, dental, orthodontic or eyecare expense which is not covered by insurance.

11. The plaintiff has available to him life insurance in the sum of \$100,000.00. He shall maintain Matthew and Sean as beneficiaries of that policy until they attain the age of 21 years or are married. After that occurs, he shall be free to name whomever he wishes as beneficiary of that insurance. To assist the children in assuring this coverage, the plaintiff shall provide them with the policy number and name of the insurance company.

12. The plaintiff should be ordered to cooperate with the defendant in making available to her all health insurance benefits for which she can qualify under the COBRA provisions of the Internal Revenue Code.

13. The home and real property in California, at 1767 Calle Rocas, Camarillo, California, legally described as:

LOT 44, TRACT NO. 1359, in the County of Ventura, State of California, as per Map recorded in Book 35, Page 59 of Maps, in the office of the County Recorder of said county,

shall be sold for the best possible price and at the earliest possible time. The net proceeds of sale shall be divided equally between the parties. There is presently a debt due to the State of California for taxes. If it is determined that those are property taxes, they shall be paid from the

proceeds of sale of this property prior to division of the proceeds of sale. If it is determined that those are taxes for any other reason, the plaintiff shall assume and pay those taxes and hold the defendant harmless therefrom. The plaintiff shall be responsible for the sale of the California home, and should keep the defendant fully advised as to that transaction, and the defendant should take all actions necessary to effect the sale.

14. The home and real property in Utah, at 8241 Top of the World Drive, Salt Lake City, Utah, and the adjacent lot, legally described as:

(House) LOT 18, TOP OF THE WORLD #3 SUBDIVISION;

(Lot) BEG S 84 FT FR NE COR LOT 17, TOP OF THE
WORLD #3 SUBDIVISION; S 84 FT; E 100 FT;
W 100 FT TO BEG. 0.2 AC M OR L;

shall be placed for sale at the best possible price and sold at the earliest possible date. The plaintiff shall pay the mortgage for the months of February, March and April, 1989, and if the January house payment has not been made, he shall make that payment. Thereafter, the defendant shall be responsible for those payments if the home is not sold. The defendant shall be responsible for this sale and shall keep the plaintiff advised as to that transaction and the parties shall divide equally the net proceeds of sale.

15. The 8.6023 shares of Delta stock and Continental

Power Stock are awarded to the plaintiff.

16. The parties shall sell one of the seven lots in Texas and divide the net proceeds of sale between them. Each is awarded three of the remaining lots.

17. Each of the parties has accumulated savings accounts in their own names and they are awarded those savings, to-wit: the plaintiff is awarded the Western Federal Credit Union account; the Ranier Bank account; and the Valley Bank account, while the defendant is awarded the Mountain West Savings account and the Camarillo Community Bank account.

18. The insurance proceeds for the 1977 Buick are awarded to the defendant who is also awarded the 1980 Datsun 280Z.

19. The 1987 Ford truck and camper are awarded to the plaintiff.

20. The 1969 Ford automobile is awarded to Matthew.

21. The 1978 ski boat is awarded to the defendant.

22. The 1982 fold boat and engine are awarded to the plaintiff.

23. Each of the parties is awarded the furnishings, fixtures, furniture and appliances in their own possession with the exception of the IBM computer and computer software in the plaintiff's possession which are awarded to the

defendant and the 35mm camera which is awarded to the plaintiff.

24. Each of the parties is awarded one-half of the ivory collection.

25. Each of the parties is ordered to make available family photographs in their possession to the other for copying. The photographs are to be divided fairly between them.

26. The plaintiff has accounted for the \$33,000.00 he removed from the retirement to the satisfaction of the court and no order is entered in regard to those funds which the court believes are appropriately resolved in the division of the marital estate as set forth above.

27. Each of the parties is ordered to assume and pay the debts in their own name with the exception of the mortgage provisions set forth above, which, restated, are that the plaintiff shall pay the mortgage on the California home and may use the rent received from the California home until its sale. The plaintiff shall pay the mortgage payments on the Utah home for February, March, and April, 1989, and the January payment, if that has not been paid. Thereafter, the defendant shall be responsible for payment of that debt. The plaintiff shall pay the debts due and owing to:

- a. Weyerhaeuser Mortgage (Calif. home);
- b. Western Federal Credit Union (pick-up);

- c. Western Federal Credit Union (camper);
- d. Security Pacific solar loan;
- e. Valley Bank VISA;
- f. State of California taxes.


and the defendant shall pay the debts due and owing to:

- a. Lincoln Mortgage (Utah home);
- b. Tracy Collins Bank;
- c. Camarillo Community Bank;
- d. Personal loan (attorney fees);
- e. Camarillo Bank VISA;
- f. Nordstroms;
- g. Weinstocks;
- h. ZCMI.

28. The parties are ordered to consult with an accountant regarding the filing of amended joint 1986 and 1987 tax returns. If these can be filed and the parties save money and secure a refund in excess of the \$2,500.00 that has been received by the plaintiff, they shall do so and divide all refunds received in excess of the \$2,500.00 which has already been received by the plaintiff.

29. The plaintiff is ordered to pay on behalf of the defendant the sum of \$7,500.00 to assist her in the payment of her attorney fees within thirty (30) days from entry of the Decree of Divorce.

DATED this 12 day of May, 1989.

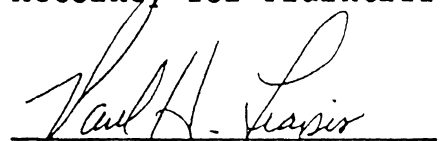

FRANK G. NOEL
District Court Judge

I CERTIFY THAT THIS IS A TRUE COPY OF AN
ORIGINAL DOCUMENT ON FILE IN THE THIRD
DISTRICT COURT, SALT LAKE COUNTY, STATE OF
UTAH
DATE May 17, 1989
Pat Jones
DEPUTY COURT CLERK

APPROVED AS REFLECTING
THE RULING OF THE COURT:



DAVID S. DOLOWITZ
Attorney for Plaintiff



PAUL H. LIAPIS
Attorney for Defendant

1 A. I DO.

2 Q. YOU HAVE NOT LIVED WITH YOUR WIFE SINCE FILING
3 THAT FIRST DIVORCE ACTION?

4 A. THAT'S TRUE.

5 Q. YOU INDICATED THERE WERE MAYBE TWO DAYS --

6 A. THAT IS CORRECT.

7 Q. -- THAT YOU TRIED BETWEEN THE TWO ACTIONS?

8 A. THAT'S CORRECT.

9 Q. DO YOU BELIEVE THE DIFFERENCES BETWEEN YOU ARE
10 IRRECONCILABLE?

11 A. I DO.

12 Q. COULD YOU DESCRIBE BRIEFLY, AND NOT IN INFINITE
13 DETAIL, THE DIFFERENCES BETWEEN YOU THAT YOU BELIEVE ARE
14 IRRECONCILABLE?

15 A. OVER THE YEARS OF OUR MARRIAGE I FELT LIKE I'VE
16 BEEN SHAMED IN FRONT OF MY CHILDREN WHEN I WAS REFUSED ANY
17 KIND OF CONTROL WITH THEM. AND I FELT AS IF I WAS THERE AS
18 SOMEONE TO PROVIDE AN INCOME. AND BEING AN AVIATOR ALL MY
19 LIFE, I HAD NOT BEEN HOME THAT MUCH, AND FOUND MYSELF IN A
20 POSITION WHERE I WOULD ASK THAT THINGS BE DONE AND THE
21 CHILDREN FOLLOW CERTAIN RESTRICTIONS. AND I FELT THAT
22 WASN'T BEING HANDLED PROPERLY. I WAS BEING REBUKED IN
23 FRONT OF MY CHILDREN; THEREFORE, I FELT LIKE THEY LOST ALL
24 RESPECT FOR ME.

25 Q. DID YOU TRY TO WORK OUT THOSE PROBLEMS?

1 RELATIVE TO THE INCOME EARNED BETWEEN 1968 AND THE PRESENT,
2 OVER THE LAST 20 YEARS OF YOUR MARRIAGE?

3 A. YES, SIR.

4 Q. YOU HAVE IN HERE IN COURT TODAY, THE RECORDS
5 FROM THE COMPANY SHOWING WHAT YOU'VE BEEN PAID IN EACH OF
6 THOSE YEARS?

7 A. THAT IS CORRECT.

8 Q. YOU HAVE GONE THROUGH -- I'VE HANDED YOU A
9 DOCUMENT THAT'S BEEN MARKED AS EXHIBIT 2-P. DOES THAT
10 REFLECT YOUR EARNINGS BETWEEN 1968 AND 1988, WITH THE
11 EXCEPTION OF THE DECEMBER 1988 PAYMENT?

12 A. THAT HAS NOT BEEN RECEIVED.

13 Q. I WANT TO DRAW YOUR ATTENTION PARTICULARLY TO
14 THE YEARS 1982, '83, '84, '85 AND '86. THOSE SHOW THE
15 INCOME AS BEING ALMOST EXACTLY THE SAME FOR THOSE YEARS?

16 A. AS A MATTER OF FACT, STARTING 1981.

17 Q. FOR WHOM WERE YOU WORKING IN THOSE YEARS?

18 A. WESTERN AIRLINES, PRIMARILY. THE LAST TWO
19 YEARS THERE WOULD BE A TRANSITION TO DELTA.

20 Q. AND I NOTICE THAT THERE IS A DROP, THAT IN
21 1982 -- THAT YOUR INCOME GOES UP IN '78, UP IN '79, UP IN
22 '80, AND THEN DROPS TO THE LEVEL THAT IT STAYS PRETTY MUCH
23 BETWEEN 1981 AND 1986. WHAT HAPPENED IN THOSE YEARS THAT
24 IT STAYS IN SUCH A NARROW RANGE?

25 A. WESTERN AIRLINES WAS GOING THROUGH FINANCIAL

1 PROBLEMS. IN ORDER TO MAINTAIN A VIABLE COMPANY THEY ASKED
2 THE PILOTS TO TAKE A PAY CUT.

3 Q. NOW, TURNING TO YOUR TIME LINE, AGAIN, EXHIBIT
4 17, I SEE THAT IN THAT SAME PERIOD OF TIME YOU FILED FOR
5 DIVORCE, DISMISSED IT, MOVE WITH THE FAMILY TO UTAH AND
6 FILE AN ACTION, FIRST ACTION IN '84, THEN ANOTHER IN '86,
7 AND DIVORCE ACTIONS MOVING IN AND OUT. WHAT IS GOING ON
8 BETWEEN YOU AND YOUR WIFE IN TERMS OF -- PARTICULARLY THE
9 MOVE TO UTAH?

10 A. AS YOU SEE, THE FIRST DIVORCE ACTION WAS FILED
11 IN 1981. PRIOR TO THAT TIME IS WHEN OUR CHILDREN HAD GROWN
12 UP AND WERE NOW TEENAGERS. THE PROBLEMS HAD BECOME ACUTE
13 AS TEENAGER PROBLEMS ARE, HAVING LOST WHAT I FELT WAS
14 CONTROL OF MY FAMILY AND NOT BEING ABLE TO GET THEM TO
15 CONFORM TO WHAT I THOUGHT WAS REASONABLE GUIDELINES AS FAR
16 AS THE WAY THEY LIVED AND THE WAY THEY BEHAVED.

17 Q. IN 1980 THERE'S AN ENTRY HERE FROM JUDY
18 MONTGOMERY. WHO IS THAT?

19 A. SHE IS A FLIGHT ATTENDANT FOR -- AT THAT
20 TIME, WESTERN AIRLINES.

21 Q. YOU'VE ENTERED INTO AN EMOTIONAL RELATIONSHIP
22 WITH HER?

23 A. I HAVE.

24 Q. HAS THAT HAD ANY IMPACT ON THE MARRIAGE?

25 A. I DON'T THINK SO.

1 Q. DID IT HAVE ANY IMPACT ON YOUR SATISFACTION
2 WITH THE MARRIAGE RELATIONSHIP?

3 A. NO. I WAS COMPLETELY DISSATISFIED WITH THE
4 MARRIAGE PRIOR TO EVER MEETING HER.

5 Q. DESPITE THAT, YOU STILL -- THE TIME LINE
6 INDICATES THAT YOU ENTERED INTO EFFORTS OF COUNSELING,
7 MOVED THE FAMILY, TOOK A NUMBER OF EFFORTS TO TRY TO PULL
8 THINGS TOGETHER?

9 A. THAT'S TRUE. AND THIS HAPPENED BEFORE I EVER
10 MET MISS MONTGOMERY.

11 Q. NOW YOUR INCOME THROUGHOUT THIS ENTIRE PERIOD
12 OF TIME REALLY STAYED VERY LEVEL?

13 A. YES.

14 Q. IT STARTS RISING AGAIN IN 1987. WERE YOU
15 RESIDING WITH YOUR WIFE IN 1987?

16 A. I WAS NOT.

17 Q. HAD YOU RESIDED WITH HER IN 1986?

18 A. NO -- WELL, UNTIL NOVEMBER 22ND, I BELIEVE, OF
19 '86; YES, NOVEMBER 22ND.

20 Q. IN TERMS OF STANDARD OF LIVING, WOULD YOU SAY
21 YOU'VE ESTABLISHED ANY KIND OF STANDARD OF LIVING BETWEEN
22 1981 AND '86, BASED UPON YOUR INCOME?

23 A. YES.

24 Q. WAS THAT THE INCOME THAT YOU USED WHEN YOU
25 BOUGHT THE HOUSE AT TOP OF THE WORLD DRIVE?

1 THE LIVING STANDARD THAT YOU ENJOYED WHEN YOU WERE LIVING
2 TOGETHER WAS THAT WHICH WAS BASED UPON THE YEARS 1981 TO
3 1986?

4 A. I THINK THAT'S REASONABLE, YES.

5 Q. THE ONLY RESIDING TOGETHER YOU DID IN 1987 OR
6 '88 -- AS YOU INDICATED, TWO DAYS -- YOU THINK WAS AFTER
7 THE DISMISSAL OF THE OTHER DIVORCE ACTION?

8 A. I THINK IT WAS TWO AND A HALF DAYS, YES.

9 Q. WE WOULD OFFER EXHIBIT 2-P.
10 THE COURT: ANY OBJECTION?

11 MR. LIAPIS: NO.

12 THE COURT: IT WILL BE RECEIVED.

13 Q. (BY MR. DOLOWITZ) NOW, YOU HAVE RECEIVED A
14 NUMBER OF PAY RAISES, I GUESS SINCE WESTERN MERGED WITH
15 DELTA?

16 A. THE PAY RAISES BEGAN WHEN THE PILOT UNION
17 NEGOTIATED OUR CONTRACT WITH WESTERN AIRLINES JUST PRIOR TO
18 THE MERGER.

19 Q. THE MONEY THAT YOU'RE RECEIVING, AND I'M GOING
20 TO ROUND NUMBERS UP, LOOKING AT THE DIFFERENCE BETWEEN
21 EXHIBIT 2 AND WHAT I SPELL OUT, AND THE TYPES OF MONTHLY
22 INCOME SHOWN ON THERE, HAS CREATED NOW TO THE POINT WHERE
23 YOU'RE RECEIVING CLOSE TO DOUBLE WHAT YOU WERE RECEIVING IN
24 1986?

25 A. YES, SIR.

1 MR. DOLOWITZ: WE WOULD OFFER EXHIBIT 6 FOR
2 ILLUSTRATIVE PURPOSES.

3 MR. LIAPIS: NO OBJECTION.

4 THE COURT: #6 WILL BE RECEIVED.

5 Q. (BY MR. DOLOWITZ) AND THERE'S A FEDERAL TAX
6 WITHHELD -- HAVE YOU WORKED WITH YOUR ACCOUNTANTS SO YOU
7 KNOW THAT IS AN APPROPRIATE AMOUNT TO BE WITHHELD AND PAY
8 YOUR TAXES?

9 A. I'VE HAD THE SAME ACCOUNTANT SEVERAL YEARS AND
10 I THINK HE'S DETERMINED IT TO BE THAT MUCH. I THINK THAT
11 AMOUNT ALLOWED FOR THE ALIMONY PAYMENT THAT I WAS MAKING.

12 Q. YOU'VE BEEN MAKING ALIMONY PAYMENTS IN 1987 AND
13 '88, PURSUANT TO THIS COURT ORDER?

14 A. YES, SIR.

15 Q. AND THEN THERE WAS A PRIOR COURT ORDER?

16 A. ALIMONY PAYMENTS BEGAN IN DECEMBER OF 1987,
17 TEMPORARY ALIMONY.

18 Q. FICA IS WITHHELD ON THE FIRST \$39,000?

19 A. YES, SIR.

20 Q. THIS SAYS FAMILY CARE SAVINGS PLAN. WHAT IS
21 THAT?

22 A. I THINK ONE OF THE EXHIBITS WE HAD EARLIER, IT
23 SHOWS A DELTA SAVINGS PLAN.

24 Q. IT'S ON EXHIBIT 1 AND EXHIBIT 5, THERE'S
25 SOMETHING CALLED DELTA SAVINGS PLAN?

1 DIRECT EXAMINATION

2 BY MR. DOLOWITZ:

3 Q. WOULD YOU PLEASE STATE YOUR FULL NAME AND
4 PRESENT PROFESSIONAL ADDRESS.

5 A. YES. MY NAME IS CONNIE ROMBOY. I'M WITH THE
6 CAREER GUIDANCE CENTER, 449 EAST 21ST SOUTH.

7 Q. ARE YOU PRESENTLY PRACTICING A PROFESSION, MISS
8 ROMBOY?

9 A. YES, I AM.

10 Q. WHAT IS THAT?

11 A. I AM THE EXECUTIVE DIRECTOR OF THE CAREER
12 GUIDANCE CENTER. WE ARE A BUSINESS THAT SPECIALIZES IN
13 REHABILITATION, VOCATIONAL EVALUATION AND JOB PLACEMENT.

14 Q. HOW LONG HAVE YOU BEEN ENGAGED IN THAT WORK?

15 A. SINCE 1971. I STARTED WITH THE STATE OF UTAH
16 IN 71, WORKED WITH THEM FOR SIX YEARS. IN 1976 MY HUSBAND
17 AND I OPENED THE CAREER GUIDANCE CENTER.

18 Q. COULD YOU DESCRIBE YOUR EDUCATION THAT PRECEDED
19 YOUR GOING INTO THAT BUSINESS?

20 A. IN 1968, I GRADUATED FROM THE UNIVERSITY OF
21 UTAH WITH A DEGREE IN SOCIOLOGY. IN 1971, AFTER I WAS
22 EMPLOYED WITH THE STATE OF UTAH, I WENT BACK TO SCHOOL AT
23 THE UNIVERSITY OF UTAH, STUDYING EDUCATIONAL PSYCHOLOGY AND
24 I HAVE APPROXIMATELY 60 CREDIT HOURS OF POST-GRADUATE WORK.

25 Q. HAVE YOU ATTAINED AN ADVANCED DEGREE IN THAT

1 MR. DOLOWITZ: I WOULD ASK MISS ROMBOY TO STEP
2 DOWN FOR A MOMENT. I WOULD CALL MRS. BARBARA HOWELL.

3 THE COURT: MRS. HOWELL, WOULD YOU COME
4 FORWARD, PLEASE.

5

6 BARBARA JOYCE CLOPTON HOWELL
7 CALLED AS A WITNESS HEREIN, HAVING BEEN DULY
8 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

9

10 DIRECT EXAMINATION

11 BY MR. DOLOWITZ:

12 Q. PLEASE STATE YOUR FULL NAME AND PRESENT
13 ADDRESS.

14 A. BARBARA JOYCE CLOPTON HOWELL, 8241 TOP OF THE
15 WORLD DRIVE; SALT LAKE CITY.

16 Q. YOU'RE THE DEFENDANT IN THIS MATTER?

17 A. YES, I AM.

18 Q. WOULD YOU PLEASE DESCRIBE YOUR EDUCATION?

19 A. I GRADUATED FROM HIGH SCHOOL IN 1956. AND
20 SINCE THAT TIME I'VE TAKEN VARIOUS COLLEGE COURSES WHICH
21 HAVE PROBABLY ACCUMULATED CLOSE TO 30 HOURS.

22 Q. THAT WAS JUNIOR COLLEGE. YOU ALSO ATTENDED THE
23 UNIVERSITY OF FLORIDA?

24 A. THAT WAS WHEN I LIVED IN CUBA.

25 Q. IS IT MOORE PARK COLLEGE?

1 GIRL.

2 Q. WHAT RESPONSIBILITIES DID YOU CARRY OUT FOR
3 KELLY?

4 A. I WAS A DEMONSTRATOR IN A SUPERMARKET ON TWO OF
5 THE ASSIGNMENTS THAT I HAD. AND I PERFORMED SOME TYPING
6 TASKS AT ANOTHER ONE.

7 Q. HAVE YOU WORKED WITH A PROCESSOR?

8 A. YES.

9 Q. WITH WHAT WORD PROCESSORS HAVE YOU WORKED?

10 A. WITH THE I.B.M. P.C. THAT WE HAD IN OUR HOME,
11 AND A SMITH CORONA, WHICH IS COMPATIBLE TO THE I.B.M.

12 MR. DOLOWITZ: I HAVE NO FURTHER QUESTIONS.

13 Q. (BY MR. DOLOWITZ) WHAT IS YOUR TYPING SPEED,
14 DO YOU KNOW?

15 A. I THINK IT'S 50 W.P.M.

16 Q. WERE YOU ALSO THE COMPANY SECRETARY FOR YOUR
17 LANDSCAPING COMPANY BETWEEN 1978 AND 1981?

18 A. YES, I WAS.

19 Q. DID YOU DO ALL THE BOOK WORK?

20 A. I DID WORK UP FOR QUARTERLY REPORTS.

21 Q. DID YOU DO THE PAYROLL?

22 A. YES.

23 Q. TAX REPORTS?

24 A. UP TO THE QUARTER REPORTS, YES.

25 Q. AND WHAT WAS THE SIZE OF THAT BUSINESS, WHAT

1 DEVELOPMENT AT MOORE PARK COLLEGE.

2 Q. THAT WAS PART OF THE 30 HOURS?

3 A. YES.

4 Q. ARE YOU CERTIFIED IN THAT AREA?

5 A. NO, I'M NOT.

6 Q. YOU INDICATED THAT THE FURNITURE STORE IS
7 CLOSING. WHY ARE THEY DOING THAT?

8 A. THEY'RE GOING OUT OF BUSINESS AFTER 13 YEARS.
9 THEY'VE DECIDED TO SELL THE BUILDING AND GO OUT OF
10 BUSINESS.

11 MR. LIAPIS: THAT'S ALL.

12 MR. DOLOWITZ: I HAVE NOTHING FURTHER OF THIS
13 WITNESS. I WOULD RE-CALL CONNIE ROMBOY.

14 THE COURT: MISS ROMBOY.

15 (PREVIOUSLY SWORN)

16

17 CONTINUED DIRECT EXAMINATION

18 BY MR. DOLOWITZ:

19 Q. MISS ROMBOY, YOU HAVE BEEN PRESENT DURING THE
20 TESTIMONY OF MRS. HOWELL?

21 A. YES, SIR, I HAVE.

22 Q. YOU'VE HEARD HER TESTIFY ABOUT HER EDUCATION
23 AND JOB EXPERIENCE?

24 A. YES, I HAVE.

25 Q. HOW DID THAT COMPARE -- WERE THERE ANY

1 DIFFERENCES IN TERMS OF THE OPINION THAT YOU'VE FORMULATED
2 FROM THE INFORMATION YOU RECITED YOU'VE BEEN GIVEN BEFORE
3 SHE TESTIFIED, AND THAT OPINION AFTER SHE TESTIFIED?

4 A. THERE'S NOT SUBSTANTIAL CHANGES EXCEPT THAT I
5 DO BELIEVE, BASED UPON HER TESTIMONY, THAT SHE HAS MORE
6 CLERIAL SKILLS OR A BETTER FOUNDATION IN CLERIAL SKILLS
7 THAN I HAD ORIGINALLY THOUGHT.

8 Q. BASED UPON THAT, DO YOU HAVE AN OPINION AS TO
9 THE POSITIONS WHICH ARE AVAILABLE TO HER IN THIS AREA AT
10 WHICH SHE COULD WORK?

11 A. YES. AND I HAVE THOSE DIVIDED INTO SEVERAL
12 CATEGORIES. AS YOU ASKED ME FOR -- WOULD YOU LIKE ME TO
13 JUST RUN THROUGH THOSE?

14 Q. YES.

15 MR. LIAPIS: I'LL FORMULATE AN OBJECTION AT
16 THIS SORT OF SPECULATION. THE TESTIMONY IS SHE DOES NOT
17 WORK IN THOSE AREAS. WHAT THE WITNESS WOULD BE TESTIFYING
18 TO WOULD BE SPECULATIVE IN NATURE, CONTRARY TO THE FACTS
19 WHICH WOULD BE ESTABLISHED WHEN FULL TESTIMONY IS PRESENTED
20 BY MRS. HOWELL. THE AREAS I WAS NOT GOING INTO, SUCH AS
21 THE REASON FOR WORKING, NOT WORKING, NEED TO WORK, INCOMES
22 AND SO FORTH, IT'S SPECULATIVE.

23 MR. DOLOWITZ: I BELIEVE, YOUR HONOR, THAT
24 EXPERT OPINION IS NOT SPECULATIVE, IT'S BEEN DETERMINED TO
25 HAVE SUFFICIENT INDICIA OF CREDIBILITY, AND AN EXPERT IS

1 ALLOWED TO TESTIFY FOR SOMEONE WHO HAS NOT BEEN ABLE TO
2 TESTIFY. AND IF THERE'S A QUESTION ABOUT WHETHER MRS.
3 ROMBOY IS AN EXPERT, I THINK SHE IS. I'VE ESTABLISHED HER
4 CREDENTIALS AND SHE'S ESTABLISHED THAT BEFORE TRIBUNALS,
5 ADMINISTRATIVE AND OFFICIAL, THAT SHE IS AN EXPERT, BASED
6 UPON THAT FOUNDATION AND HAS TESTIFIED AS AN EXPERT AND MAY
7 DO SO IN THIS INSTANCE.

8 THE COURT: MR. LIAPIS.

9 MR. LIAPIS: WHAT I'M TRYING TO GET TO IS THAT
10 THERE IS -- THAT THE SPECULATIVE PART OF THIS IS THAT,
11 NUMBER ONE, THERE'S A NEED FOR THE DEFENDANT TO WORK;
12 NUMBER TWO, THERE'S A DESIRE; NUMBER THREE, THAT ALIMONY,
13 FOR INSTANCE, THAT WOULD BE PAID, SHOULD BE PAID UNDER THE
14 CASE LAW, WOULD BE MORE THAN SUFFICIENT. NONE OF THOSE
15 HAVE BEEN ADDRESSED.

16 THE COURT: THE QUESTION, I BELIEVE, SIMPLY
17 GOES MORE TO HER QUALIFICATIONS.

18 MR. DOLOWITZ: AS I UNDERSTAND THE OBJECTION.
19 BECAUSE IF YOU'RE DEALING WITH A QUESTION OF RELEVANCY, I'M
20 PREPARED TO ARGUE THAT THE TEST IS OR PARTICULAR AREA OF
21 FOCUS THIS EVIDENCE IS OFFERED FOR IN DETERMINING ALIMONY,
22 IS THE ABILITY OF A POTENTIAL ALIMONY RECIPIENT TO PROVIDE
23 INCOME FOR THEMSELVES.

24 THE COURT: I THINK THE QUESTION IS VERY
25 NARROW. I'M GOING TO CONSIDER IT TO BE VERY NARROW. OF

1 COURSE, ALL OF THESE OTHER FACTORS WILL HAVE TO BE TAKEN
2 INTO CONSIDERATION BY THE COURT, BUT I THINK I'LL ALLOW THE
3 WITNESS TO ANSWER THAT QUESTION. OVERRULED.

4 THE WITNESS: OKAY, ONCE AGAIN, BASED UPON MY
5 PREPARATION FOR THIS CASE, I TOOK A LOOK AT SEVERAL
6 DIFFERENT JOB CATEGORIES, BASED PRIMARILY UPON THIS
7 INDIVIDUAL'S PAST WORK EXPERIENCE. IF WE WERE TO CONSIDER
8 THE AREA OF A CHILD CARE WORKER SOLELY, STATEWIDE AVERAGE
9 FOR THAT PARTICULAR JOB AS AN ENTRY LEVEL WAGE IS \$3.45 AN
10 HOUR. IF AN INDIVIDUAL WORKED FULL-TIME AT THAT, THAT
11 WOULD RESULT IN INCOME OF APPROXIMATELY \$7,200.00 A YEAR.

12 IN THE CURRENT YEAR, 1988, THERE WERE 106
13 OPENINGS, AT LEAST THAT WENT THROUGH JOB SERVICE.

14 DAY CARE ATTENDANTS WORKING IN SCHOOL
15 DISTRICTS, OFTEN CALLED A TEACHERS AIDE, PAYS \$4.69 AN
16 HOUR. THOSE ARE USUALLY NINE MONTH CONTRACTS, WOULD BE
17 APPROXIMATELY \$7,700.00, \$7,700.00 A YEAR.

18 DAY CARE ATTENDANTS WORKING IN INSTITUTIONS
19 SUCH AS AMERICAN FORK, Y.M.C.A., SO ON, THE WAGE IS \$4.71.
20 AND THE YEARLY WAGE WOULD BE 9,000, APPROXIMATELY
21 \$9,800.00. FOR OPENINGS IN THE SCHOOL, AGAIN IN THE YEAR
22 OF 1988, WE HAD 72 LISTED WITH JOB SERVICE AND OTHER ,
23 INSTITUTIONS 31.

24 IN TERMS OF THE SECRETARIAL AREA, ORIGINALLY, I
25 HAD TAKEN A LOOK AT AN INDIVIDUAL WHO ABSOLUTELY HAD VERY

1 MARGINAL SECRETARIAL SKILLS THAT WOULD HAVE TO START AT A
2 BASICALLY UNSKILLED CLERIAL JOB. WE WOULD CALL THAT A
3 GENERAL CLERK. I HAVE THOSE AT 4.11 AN HOUR. THAT WOULD
4 RESULT IN AN ANNUAL INCOME OF APPROXIMATELY \$8,500.00. AND
5 THERE WAS 1,180 OPENINGS LISTED WITH JOB SERVICE.

6 JUST AS AN ENTRY LEVEL SECRETARY, WHICH AGAIN
7 AS I MENTIONED BEFORE, BASED UPON THE TESTIMONY I HEARD, I
8 THINK IT SEEMS TO BE MORE REALISTIC FOR THIS INDIVIDUAL
9 THAN I HAD ORIGINALLY THOUGHT. THE AVERAGE STATEWIDE
10 SALARY IS \$5.89 ENTRY LEVEL, AND THAT WOULD RESULT IN
11 APPROXIMATELY \$12,200.00 A YEAR. LAST YEAR THERE WERE 866
12 OPENINGS LISTED WITH JOB SERVICE.

13 THE AREA OF FURNITURE SALES IS SOMEWHAT MORE
14 DIFFICULT TO QUANTIFY. BASED UPON THE LABOR MARKET
15 ANALYSIS THAT I DID, YOU'VE GOT A MINIMUM OF BETWEEN A
16 THOUSAND, \$1,400 A MONTH THAT A LOWER PRODUCING SALESPERSON
17 WORKING BASICALLY ON COMMISSION WOULD BE EXPECTED TO
18 PRODUCE. AND OF COURSE AT THE HIGH END THERE IS NO LIMIT.

19 I THINK ONE POSSIBLE DRAWBACK WITH THE FURNITURE
20 SALES, HOWEVER, IS THAT EVERY COMPANY I CONTACTED SAID THAT
21 IF THEY HAD ONE OR TWO TURNOVERS A YEAR, ONE OR TWO
22 OPENINGS, THEY WOULD CONSIDER THAT A LARGE TURNOVER. SO I
23 THINK THAT'S A DIFFICULT FIELD TO BREAK IN WITH A COMPANY
24 WHERE THE EARNING POTENTIAL IS GREAT. BUT ONCE AGAIN AT
25 THE LOWER LEVEL YOU WERE DEALING WITH ANYWHERE FROM A

1 THOUSAND TO \$1,400 A MONTH, BASED UPON THE WORK EXPERIENCE.

2 I ALSO THINK THERE WERE SEVERAL OTHER POSITIONS

3 THAT AN INDIVIDUAL WITH THIS BACKGROUND COULD CONSIDER;

4 THAT BEING A SALESCLERK IN THE RETAIL INDUSTRY. THAT

5 CURRENTLY STATEWIDE IS PAYING \$3.73 AN HOUR. THAT WOULD

6 RESULT IN AN ANNUAL INCOME OF APPROXIMATELY \$7,700.00.

7 LAST YEAR THERE WERE 401 OPENINGS LISTED LAST YEAR WITH JOB

8 SERVICE. A JOB AS A CASHIER CHECKER, WHICH IS I THINK

9 ANOTHER REALISTIC OPTION, COULD BE ANOTHER POSSIBLE CHOICE,

10 WAS AT \$3.75 AN HOUR. THAT RESULTED IN AN ANNUAL INCOME OF

11 APPROXIMATELY \$7,800.00. THERE WERE 1,504 OPENINGS LAST

12 YEAR, AGAIN ACCORDING TO JOB SERVICE. THE UNSKILLED JOB OF

13 CASHIER CURRENTLY IS PAYING STATEWIDE AN AVERAGE OF \$4.05

14 AN HOUR. THAT WOULD RESULT IN AN ANNUAL INCOME OF

15 APPROXIMATELY \$8,400.00, AND LAST YEAR, AGAIN, JOB SERVICE

16 LISTED 308 OPENINGS.

17 MR. DOLOWITZ: I HAVE NO FURTHER QUESTIONS,

18 YOUR HONOR.

19 THE COURT: MR. LIAPIS?

20

21 CROSS-EXAMINATION

22 BY MR. LIAPIS:

23 Q. WOULD YOU DEFINE SOME TERMS FOR US. IF YOU SAY

24 "106 OPENINGS", WHAT DOES THAT MEAN?

25 A. THAT MEANS EMPLOYERS THAT WOULD CALL IN AT JOB

1 A. YES.

2 Q. AND SHE SUFFERED ALONG WITH YOU, GOING THROUGH
3 THAT PERIOD IN THE PAY CUTS, DIDN'T SHE?

4 A. YES.

5 Q. AS A RESULT OF THAT, WESTERN FINANCIALLY TURNED
6 THEMSELVES AROUND AND WERE SUBSEQUENTLY ACQUIRED BY DELTA,
7 CORRECT?

8 A. CORRECT.

9 Q. AND AS A RESULT OF THAT MERGER YOU ARE NOW
10 RECEIVING GREATER SUMS BY WAY OF COMPENSATION AS A PILOT
11 THAN YOU HAD BEEN WITH WESTERN?

12 A. THAT'S CORRECT.

13 Q. AND IS IT YOUR TESTIMONY, SIR, YOU WANT MRS.
14 HOWELL NOW NOT TO SHARE IN THAT BENEFIT THAT YOU CAME
15 THROUGH?

16 A. THOSE BENEFITS DIDN'T EXIST WHILE I WAS LIVING
17 WITH MRS. HOWELL.

18 Q. SO YOUR ANSWER IS, YES, YOU DON'T WANT HER TO
19 SHARE?

20 A. NO.

21 Q. BUT SHE SHARED WITH YOU WHEN THE TIMES WERE
22 LEAN; IS THAT CORRECT?

23 A. IF YOU'LL LOOK AND SEE, THE REDUCTION FOR THOSE
24 LAST FIVE OR SIX YEARS -- IN OTHER WORDS, WHAT THAT
25 ACTUALLY MEANT WAS THERE WAS REALLY NO INCREASE IN PAY

1 WHILE THE COST OF LIVING WAS GOING UP.

2 Q. SIR, YOUR EXHIBIT 3 -- EXCUSE ME, NOT 3, YOUR
3 EXHIBIT THAT LISTED THE INCOMES FAILED TO INCLUDE IN THAT
4 ANY INCOME FOR THE RENTAL OF THE CALIFORNIA HOME,
5 DIVIDENDS, SO OTHER INCOME YOU DIDN'T INCLUDE THAT IN THAT
6 EXHIBIT, DID YOU?

7 A. THOSE WERE WESTERN AND DELTA PAY STUBS.

8 Q. ONLY?

9 A. YES.

10 Q. AND YOU DID HAVE EXTRA INCOME FOR THE YEARS
11 '85, '86, AND '84, FOR THAT MATTER, DIDN'T YOU?

12 A. '84, I DON'T BELIEVE WE DID, BECAUSE THE HOUSE
13 WASN'T RENTED. I'D HAVE TO LOOK AT THE RECORDS. BUT
14 WHATEVER THE RENTAL WAS, THAT WAS NOT INCLUDED.

15 Q. YOU HAVE DIVIDEND INCOME, DID YOU NOT?

16 A. I DON'T KNOW.

17 Q. AND YOU HAD INTEREST INCOME?

18 A. I WOULD HAVE TO LOOK AT MY INCOME TAX -- FOR
19 WHAT?

20 Q. DURING THE YEAR '85.

21 A. NO.

22 Q. YOU HAD NO INTEREST INCOME, NO SAVINGS UPON
23 WHICH INTEREST WAS EARNED?

24 A. IN '85?

25 Q. YES.

1 A. THE ONLY THING WOULD BE MERRILL LYNCH. I WOULD
2 HAVE TO LOOK AT THOSE RECORDS. YOU COULD FIND OUT FROM MY
3 INCOME TAX. I MIGHT ADD IN THOSE YEARS, BECAUSE OF THE
4 HIGH COST OF LIVING IN THAT HOUSE, IT WAS HARD TO HAVE
5 MONEY LEFT. THERE WAS REALLY NOT MUCH MONEY.

6 Q. SIR, IT'S YOUR POSITION HERE BEFORE THIS COURT,
7 YOU FEEL THAT EVERYTHING SHOULD BE SOLD AND THE CASH
8 GENERATED SHOULD BE USED TO SUPPORT MRS. HOWELL; DID I
9 STATE THAT APPROPRIATELY?

10 A. WOULD YOU REPEAT THAT, PLEASE.

11 Q. YOU INDICATED YOU DID NOT WANT TO PAY ALIMONY,
12 CORRECT?

13 A. THAT'S CORRECT.

14 Q. AND THE REASON FOR THAT WAS THAT IF THE ASSETS
15 WERE SOLD, THAT WOULD GENERATE ENOUGH MONIES THAT WOULD
16 REPLACE THE ALIMONY TO SUPPORT MRS. HOWELL; IS THAT
17 CORRECT?

18 A. THAT'S CORRECT.

19 Q. YOU WOULD LIKEWISE RECEIVE THE SAME AMOUNT OF
20 CASH FROM THE LIQUIDATION OF THOSE ASSETS; WOULD YOU NOT?

21 A. IF THEY WERE DIVIDED EQUALLY.

22 Q. THEN YOU WOULD ON TOP OF THAT HAVE YOUR SALARY?

23 A. YES.

24 Q. DO YOU THINK THAT'S FAIR, YOU TO HAVE YOUR
25 SALARY PLUS HALF THE CASH FROM THE ASSETS, AND MRS. HOWELL

1 A. YES. MR. HOWELL WOULD RECEIVE THE TAX BENEFIT
2 AS I'VE STATED, UNDER EITHER SCENARIO, 33 CENTS OF EVERY
3 DOLLAR HE PAID IN ALIMONY WOULD BE A REDUCTION OF INCOME
4 TAXES.

5 Q. WHAT WOULD BE MRS. HOWELL'S BENEFIT?

6 A. MRS. HOWELL WOULD RECEIVE THE INCOME AND IT
7 WOULD BE SUBJECT TO INCOME TAX AT APPROXIMATELY 28%.

8 Q. RATHER THAN 33 THAT MR. HOWELL PAYS?

9 A. YES.

10 Q. I TAKE IT IF THE ALIMONY WERE NOT PAID, HE
11 WOULDN'T HAVE THAT TYPE OF DEDUCTION?

12 A. CORRECT.

13 Q. AND HE WOULD BE PAYING MORE IN FEDERAL TAXES?

14 A. YES.

15 Q. IS IT THEN FAIR TO ASSUME IF EITHER OF THESE
16 APPROACHES WERE ADOPTED BY THE COURT, WHAT WOULD HAVE BEEN
17 FEDERAL TAX DOLLARS WOULD AID AND ASSIST IN PAYMENT OF THE
18 ALIMONY?

19 A. YES, A PORTION OF IT.

20 Q. SIR, WERE YOU ALSO ASKED TO EXAMINE THE
21 PROBABILITY OF THE SALE OF THE CALIFORNIA HOME AND THE TAX
22 CONSEQUENCES THAT WOULD HAVE?

23 A. YES, I WAS.

24 Q. WOULD YOU STATE, SIR, WHAT YOUR UNDERSTANDING
25 OF THE CALIFORNIA HOME IS AT THE PRESENT TIME, AS TO

1 OCCUPANCY.

2 A. THAT IT'S RENTED.

3 Q. AND DO YOU KNOW HOW LONG IT'S BEEN RENTED?

4 A. I WAS TOLD FOR APPROXIMATELY FIVE YEARS.

5 Q. IF IT WERE FOUR YEARS, WOULD THAT MAKE ANY
6 DIFFERENCE?

7 A. NO.

8 Q. SIR, CAN THE PARTIES AT THE PRESENT TIME --
9 I'LL PUT IT THIS WAY: ASSUME, IF YOU WOULD, SIR, THAT
10 NEITHER PARTY HAS LIVED IN THE HOME FOR FOUR YEARS, IT'S
11 BEEN RENTED FOR FOUR YEARS AND THE PARTIES WOULD LIKE TO
12 SELL THE HOME. DO THEY QUALIFY AT THIS TIME FOR THE
13 CAPITAL FREE EXCLUSION UNDER THAT ASSUMPTION?

14 A. THERE IS --

15 MR. DOLOWITZ: YOUR HONOR, IF THIS IS COMING IN
16 AS HIS OPINION, AS OPPOSED TO ABSOLUTE DEFINITE FACT, I
17 HAVE NO OBJECTION.

18 THE COURT: THIS IS HIS OPINION?

19 MR. LIAPIS: YES, THAT'S WHY I SAID ASSUMPTION.

20 THE WITNESS: SECTION 1034 OF THE INTERNAL
21 REVENUE CODE ALLOWS A HOME OWNER TO ROLL OVER ANY GAIN THEY
22 HAVE IN THEIR PRINCIPAL RESIDENCE, INTO A NEW HOME, AND NOT
23 PAY INCOME TAX ON IT. ONE OF THE PROVISIONS OF THAT
24 SECTION IS THAT THE GAIN ON THE OLD HOME THAT WAS SOLD, AND
25 SUBSEQUENTLY ROLLED OVER INTO A NEW HOME, IS IT WAS THE

1 PRIMARY RESIDENCE. AND ACCORDING TO THE REGULATIONS, THE
2 INTERNAL REVENUE SERVICE LOOKS AT THE FACTS AND
3 CIRCUMSTANCES IN DETERMINING WHAT IS THE PRIMARY RESIDENCE.

4 I DON'T THINK THAT IT'S POSSIBLE TO CONCLUDE
5 AFFIRMATIVELY THAT THE CALIFORNIA HOME WOULD BE THEIR
6 PRIMARY RESIDENCE UNLESS MR. AND MRS. HOWELL COULD PROVE
7 THAT IT WAS ALWAYS THEIR INTENT TO RETURN TO CALIFORNIA AND
8 TO LIVE IN THAT HOME AND THE MOVE TO SALT LAKE WAS
9 TEMPORARY, AND A NUMBER OF THINGS IN LINE WITH THAT, THEN
10 IT WOULD BE POSSIBLE THAT THAT COULD BE CONSIDERED A
11 PRIMARY RESIDENCE.

12 THE INTERNAL REVENUE SERVICE MAY WELL TAKE THE
13 POSITION IF THE RETURN WERE AUDITED, WHEN THE HOME WAS
14 SOLD, THAT THAT WAS NOT THEIR PRIMARY RESIDENCE BECAUSE
15 THEY MOVED TO SALT LAKE CITY BECAUSE THEY PURCHASED ANOTHER
16 HOME HERE AND ABANDONED THAT AS THEIR PRIMARY RESIDENCE.
17 SO I THINK IT WOULD BE VERY DIFFICULT TO SAY THAT YOU COULD
18 USE THE PROVISIONS OF SECTION 1034 TO ROLL OVER ANY GAIN.

19 Q, (BY MR. LIAPIS) WOULD THE FACT THEY RENTED IT
20 HAVE ANY CONSEQUENCES, ASSUMING IF THEY HAD RENTED IT?

21 A. IT WOULD IMPACT THAT DECISION. IT WOULDN'T BE
22 CONCLUSIVE. I THINK UNDER THE FACTS AND CIRCUMSTANCES, IT
23 WOULD BE -- IT WOULD BE THE TAXPAYER'S BURDEN TO PROVE THAT
24 WAS ALWAYS THEIR PRIMARY RESIDENCE, AND THAT THEY ALWAYS
25 INTENDED TO MOVE BACK THERE AND THEY WERE FORCED TO MOVE TO

1 SALT LAKE FOR WORK-RELATED REASONS OR OTHER PERSONAL
2 REASONS. THE BURDEN OF PROOF WOULD BE UPON THEM.

3 Q. LET'S ASSUME ONE FURTHER THING. ASSUME THAT
4 THE PARTIES WERE SEPARATED FOR TWO YEARS, WITH ONE SPOUSE
5 LIVING IN ANOTHER STATE, OTHER THAN WHERE THE HOME STATE
6 WAS LOCATED IN CALIFORNIA, WOULD THAT FURTHER COMPLICATE
7 IT, IN YOUR OPINION?

8 A. I THINK IT WOULD IN THAT IT WOULD GIVE
9 AMMUNITION TO THE IRS TO SAY THERE WAS NEVER INTENT TO MOVE
10 BACK TO THAT HOME AS A PRIMARY RESIDENCE BECAUSE OF THE
11 MARITAL DIFFICULTIES.

12 Q. REFERRING NOW TO THE AGE 55 EXCLUSION FROM ANY
13 CAPITAL GAINS TAXES, DO YOU KNOW THE SECTION THAT IS
14 INVOLVED WITH THAT?

15 A. YES, I DO, INTERNAL REVENUE CODE SECTION 121.

16 Q. WHAT DOES THAT REQUIRE BY WAY OF FACTS TO
17 JUSTIFY, TO TAKE THE EXCLUSION OF CAPITAL GAINS?

18 A. IT REQUIRES, IF I CAN READ FROM THE CODE
19 SECTION, SECTION 121 A-1, REQUIRES THAT THE TAXPAYER HAS
20 ATTAINED THE AGE OF 55 BEFORE THE DATE OF SUCH SALE OR
21 EXCHANGE, AND CODE SECTION -- INTERNAL REVENUE CODE SECTION
22 121 A-2, DURING THE FIVE YEAR PERIOD ENDING ON THE DATE OF
23 SALE OR EXCHANGE, SUCH PROPERTY HAS BEEN OWNED AND USED BY
24 THE TAXPAYER AS HIS PRINCIPAL RESIDENCE FOR THE PERIODS
25 AGGREGATING THREE YEARS OR MORE.

1 SO IT WOULD REQUIRE THAT THE TAXPAYER BE AGE 55
2 AND THEY OCCUPY AND USE THE HOME THREE OF THE PREVIOUS FIVE
3 YEARS.

4 Q. SIR, TO YOUR KNOWLEDGE HAS THERE BEEN A JOINT
5 TAX FILING FOR 1987 FOR THE PARTIES?

6 A. TO MY KNOWLEDGE, THE RETURN THAT I HAVE SEEN IS
7 MR. HOWELL'S RETURN FILED SEPARATELY.

8 Q. AND YOU'VE SEEN THAT '87 RETURN?

9 A. YES, I HAVE.

10 Q. TO YOUR KNOWLEDGE HAS MRS. HOWELL FILED A
11 RETURN?

12 A. TO MY KNOWLEDGE SHE HAS NOT FILED A RETURN FOR
13 '87.

14 Q. WOULD THERE BE ANY BENEFIT FOR THE COURT TO
15 REQUIRE THE PLAINTIFF AND DEFENDANT TO FILE A JOINT '87
16 RETURN, AT LEAST IN LOOKING AT THAT BY WAY OF A REFUND?

17 A. FOR THE FEDERAL RETURN, THE RATES WOULD BE
18 BETTER IF THEY FILED A JOINT RETURN. FOR THE STATE RETURN,
19 MR. HOWELL LIVES IN THE STATE OF WASHINGTON WHICH DOES NOT
20 HAVE AN INCOME TAX. THE STATE OF UTAH HAS AN INCOME TAX.
21 I HAVE NOT RESEARCHED THAT, BUT, THERE COULD BE ADDITIONAL
22 TAX LIABILITY IN THE STATE OF UTAH.

23 Q. IN YOUR OPINION, SIR, WOULD IT BE SOMETHING
24 THAT THE COURT -- THAT THE PARTIES COULD BENEFIT FROM BY A
25 JOINT RETURN?

1 A. YES. I THINK IT SHOULD AT LEAST BE SOMETHING
2 THAT SHOULD BE EXAMINED TO SEE IF THERE'S A TAX SAVINGS
3 THAT MERIT FILING JOINT RETURNS.

4 Q. MR. HOWELL'S '87 RETURN RESULTED IN A \$2,500.00
5 REFUND, HASN'T IT?

6 A. YES, IT HAS.

7 MR. LIAPIS: THANK YOU.

8 THE COURT: MR. DOLOWITZ.

9

10 CROSS-EXAMINATION

11 BY MR. DOLOWITZ:

12 Q. MR. PAPANIKOLAS, 23 AND 24 WERE PREPARED BY
13 YOU, YOU SAID BASED UPON THE INFORMATION CONTAINED IN THE
14 PRE-MERGER AGREEMENT, WHICH FOR COURT PURPOSES HAS BEEN
15 MARKED AS EXHIBIT 22, CORRECT?

16 A. YES.

17 Q. IF THAT WERE IN THE PROCESS OF BEING
18 RENEGOTIATED AND THE RATES TURNED OUT TO BE DIFFERENT THAN
19 THOSE THAT ARE SPELLED OUT IN THAT, THAT WOULD IN EFFECT
20 NEGATE THE CALCULATIONS SET OUT IN 23 AND 24?

21 A. IT WOULD CHANGE WHATEVER AMOUNT THE INCOME
22 CHANGES, THEN IT WOULD CHANGE THOSE CALCULATIONS, YES.

23 Q. SO WHERE WAGES HAD BEEN CALCULATED IN ONE CASE
24 AT 110,000, AND EXHIBIT 24 FOR 121, AND 131 IN EXHIBIT 23,
25 IF EXHIBIT 22 IS RENEGOTIATED AND THERE'S A CHANGE, THOSE

1 NUMBERS, PARTICULARLY THE NUMBERS IN EXHIBIT 23, WOULD NOT
2 BE VALID NUMBERS, WOULD THEY?

3 A. YES, THEY WOULD CHANGE.

4 Q. AND IF THE PILOT THAT YOU'RE CALCULATING -- DID
5 YOU ADJUST IN PREPARATION OF EXHIBIT 23, DID YOU MAKE ANY
6 ADJUSTMENT OFF OF THE SCHEDULE IF A PILOT IS FLYING RESERVE
7 AS OPPOSED TO FLYING ANY OTHER STATUS, LET'S SAY CONTRACT
8 STATUS AS SET FORTH IN EXHIBIT 22?

9 A. WHAT I DID WAS I TOOK THE MONTHLY WAGE, WHICH
10 IS STATED ON THE 21 YEAR LEVEL OF EXPERIENCE FROM THAT
11 SCHEDULE, AND COMPUTED IT OUT ON AN ANNUALIZED BASIS. IF
12 THAT DOES NOT TAKE INTO ACCOUNT THE RESERVE, THEN I DID
13 NOT.

14 Q. THEN IT WOULD BE OFF, WHATEVER THE RESERVE
15 WOULD BE?

16 A. YES. WAGES ARE COMPUTED DIFFERENTLY FROM THAT
17 ON RESERVE, YES.

18 Q. AND IF WAGES ARE CALCULATED BY USING A SET
19 NUMBER OF HOURS ON THE TABLE YOU USED, AND A DIFFERENT
20 NUMBER OF HOURS WERE FLOWN, WOULD THERE BE VARIATIONS IN
21 THE WAGES AS YOU SET THEM OUT, IN PARTICULAR, 23?

22 A. AS I UNDERSTAND IT, YES. IF THE WAGE AMOUNT IS
23 DIFFERENT THAN WHAT I HAVE PROJECTED, YEAH, BECAUSE OF
24 THOSE VARIABLES, THEN THE COMPUTATION WOULD BE DIFFERENT.

25 Q. WHEN YOU CALCULATED THE TAXES FOR MR. HOWELL AS

1 Q. WHERE DID YOU GET \$640.00 A MONTH?

2 A. I WAS PROVIDED THAT BY MR. LIAPIS, WHAT SHE HAS

3 EARNED, WHAT SHE HAS BEEN EARNING.

4 Q. WHAT IF SHE WERE EARNING \$1,400 A MONTH?

5 A. THEN SHE WOULD HAVE A GREATER TAKE-HOME PAY AND

6 IT WOULD CHANGE THE COMPUTATION.

7 Q. OR EVEN A THOUSAND DOLLARS A MONTH?

8 A. SAME THING.

9 Q. YOU'VE ASSUMED SOME INCREASE IN HER EARNINGS.

10 IT LOOKS LIKE \$400 INCREASE. WHAT WAS THE BASIS FOR THAT

11 INCREASE?

12 A. JUST ASSUMING THAT MOST EMPLOYEES HAVE SOME

13 INCREASE FROM ONE YEAR TO THE NEXT.

14 Q. SO THAT IS JUST BASED UPON AN ASSUMPTION?

15 A. YES, INFLATION ASSUMPTION.

16 Q. NOW, YOU'VE ALSO INDICATED THAT THE SELL OF THE

17 CALIFORNIA HOME WOULD NOT QUALIFY UNDER SECTION 1034.

18 WOULD YOU AGREE THAT DIFFERENT TAX ADVISORS MIGHT COME TO

19 DIFFERENT OPINIONS ON THAT QUESTION?

20 A. I'VE STATED IT MAY NOT QUALIFY. I THINK THERE

21 ARE VERY GOOD GROUNDS THAT IT MAY NOT QUALIFY, BUT IT IS

22 NOT A CLEAR BLACK AND WHITE ISSUE. AND ANOTHER ADVISOR --

23 I DON'T BELIEVE THAT ANOTHER ADVISOR WOULD GUARANTEE THAT

24 IT WOULD PASS THE MUSTARD OF AN IRS REVIEW.

25 Q. CAN YOU GUARANTEE IT WOULD NOT?

1 A. NO.

2 Q. SO IT'S SOMETHING THAT TWO CAPABLE TAX ADVISORS

3 COULD DISAGREE ON?

4 A. I DON'T THINK THAT THEY COULD DISAGREE IN THAT

5 THEY COULD SAY IT IS NOT A BLACK AND WHITE ISSUE AND THERE

6 IS A RISK BY TAKING THAT POSITION.

7 Q. ONE MIGHT ASSUME YOU COULD TRY IT AND ONE WOULD

8 SAY DON'T TRY IT?

9 A. IT WOULD BE MY ADVICE, AS LONG AS THE PARTIES

10 ARE FULLY AWARE OF THE RISKS INVOLVED, BACK TAXES INTEREST

11 AND PENALTIES, AT THAT POINT THEN THEY WOULD HAVE TO MAKE

12 THE FINAL JUDGMENT. IT WOULD BE MY OPINION, BASED UPON

13 WHAT I KNOW, THAT THERE ARE MORE CHANCES OF IT NOT

14 SUCCEEDING IN THAT YOU WOULD QUALIFY TO ROLL OVER AGAIN.

15 Q. WOULD YOU SIGN THE TAX RETURN IF YOUR CLIENT

16 ELECTED TO GO AHEAD AND TRY IT?

17 A. I WOULD.

18 Q. NOW LET US ASSUME --

19 A. WITH THE UNDERSTANDING THEY UNDERSTAND MY

20 POSITION ON IT, AND THE POSSIBLE RESULTING PENALTIES.

21 Q. LET US ASSUME ONE WAY OR ANOTHER THE HOME IS

22 SOLD, WHETHER THERE'S A ROLLOVER OR NOT. THAT WILL FREE UP

23 SOME CASH?

24 A. CORRECT.

25 Q. FOR THE HYPOTHETICAL I'M GOING TO GIVE YOU,

1 ASSUME IT WOULD FREE UP \$260,000.00 IN CASH.

2 A. OKAY.

3 Q. IF THE PARTIES EACH HAVE \$130,000, THEY WOULD
4 HAVE TO PAY SOME TAXES ON THAT. WE ASSUME THERE'S A GAIN
5 ON THE HOUSE. AND IF THEY'RE SUCCESSFUL IN THEIR ROLL
6 OVER, THEN THEY DON'T HAVE TO PAY TAXES. BUT IF THEY ARE
7 UNSUCCESSFUL, THEY PAY TAXES. ARE EACH OF THEM FREE THEN
8 TO GO BUY A NEW HOUSE?

9 A. YES, THEY ARE.

10 Q. AND THEY WILL BE HOLDING 100 TO \$130,000 IN
11 CASH TO GO BUY THAT HOUSE?

12 A. OKAY, IF THE PROCEEDS ARE SPLIT EQUALLY.

13 Q. SO IF THEY OWN THAT HOUSE THEN FOR -- YOU SAID
14 THE PERIOD WAS FIVE YEARS FOR SECTION 121?

15 A. YES. BUT THEY MUST OCCUPY IT FOR THREE TO FIVE
16 YEARS.

17 Q. BUT IF THEY THEN HAVE THAT MONEY AND WERE ABLE
18 TO BUY A HOUSE AND IT GOES UP -- LET'S ASSUME EITHER ONE --
19 IN THE FIRST HYPOTHETICAL IT GOES UP IN VALUE, AND THEY'RE
20 ABLE TO GET MORE THAN THE 130 OUT, WOULD THEY BE ABLE TO
21 SHOULDER THAT UNDER 121?

22 A. YES, THEY WOULD.

23 Q. AND IF THEY ARE SUCCESSFUL IN DEFERRING A GAIN
24 UNDER 1034, WOULD THEY THEN, IF THEY GO OUT AND BUY A NEW
25 HOUSE, BE ABLE TO DEFER IT, ASSUMING THEY THEN MEET THE

1 REQUIREMENTS OF 121?

2 A. YES, THEY WOULD.

3 MR. DOLOWITZ: I HAVE NO FURTHER QUESTIONS.

4 THE COURT: MR. LIAPIS.

5

6 REDIRECT-EXAMINATION

7 BY MR. LIAPIS:

8 Q. MARK, IN EITHER SENSE, WHETHER THE COURT WERE
9 TO ADOPT THE OCTOBER 15, 1988 PAYROLL SCHEDULE AND THE
10 INCOME THEREIN, OR THE CONTRACT PROVIDING THE INCREASES
11 THAT IS IN EXHIBIT 22, AS OPPOSED TO THE DEFENDANT'S
12 INCOME, IS THERE A SUBSTANTIAL BENEFIT BY THE PAYMENT OF
13 ALIMONY WITH THE SAVINGS OF TAXES?

14 A. YES, THERE IS. FOR EVERY DOLLAR PAID, 33 CENTS
15 WILL SAVE TAXES.

16 Q. AND IF ANY OF THE FIGURES THAT WERE QUOTED BY
17 MR. DOLOWITZ, SUCH AS IF THE CHILD SUPPORT WERE \$1,360.00
18 RATHER THAN \$500, AND THAT FIGURE WAS PLACED INTO YOUR
19 COMPUTATION, WOULD THERE STILL BE A SUBSTANTIAL TAX SAVINGS
20 TO THE PARTIES BY THE PAYMENT OF ALIMONY?

21 A. YES, THERE WOULD.

22 Q. AND WITH REGARDS TO THE LATTER QUESTION MR.
23 DOLOWITZ ASKED YOU AS TO THE ROLL OVER, IS THERE A LIMIT --
24 EXCUSE ME, THE EXCLUSION, IS THERE A LIMIT ON CAPITAL GAINS
25 TAXES THAT CAN BE SHELTERED?

1 A. UNDER THE AGE OF 55?

2 Q. YES.

3 A. \$125,000.

4 Q. AND IF THE HOME WERE AWARDED TO MRS. HOWELL AND
5 SUBSEQUENTLY SOLD, WOULD THERE BE TAXABLE CONSEQUENCE TO
6 HER, EVEN IF SHE WERE 55?

7 A. IF SHE WERE 55, BASED UPON THE ADJUSTED BASIS
8 OF THE HOME WHICH SHOWS UP ON MR. HOWELL'S TAX RETURN,
9 BECAUSE IT'S BEEN APPRECIATED, WHICH IS APPROXIMATELY
10 \$50,000, THERE WOULD BE INCOME SUBJECT TO INCOME TAX
11 BEYOND THE \$125,000.

12 Q. HAVE YOU A CALCULATION, A PRESENT VALUE BASED
13 UPON THAT TAX RETURN AND THE DEPRECIATION BASED UPON THE
14 '87 TAX RETURN?

15 A. I HAVE.

16 Q. AND PRESENT VALUE -- WHAT KIND OF PRESENT
17 VALUE WOULD THAT TAX BE?

18 A. I PROJECTED IF THE HOME WERE SOLD FOR
19 \$290,000.00 --

20 MR. DOLOWITZ: OBJECTION, YOUR HONOR,
21 SPECULATIVE. WE DON'T KNOW WHAT THE VALUE IS. WE HAVE AN
22 APPRAISAL ON IT, BUT MR. LIAPIS OBJECTED TO THAT COMING IN.
23 SO AT THIS POINT WE HAVE JUST MY CLIENT'S OPINION. IT'S
24 NOT 290. THIS IS BASED TOTALLY ON SPECULATION. THERE ARE
25 NO FACTS IN EVIDENCE UPON WHICH TO BASE THAT.

1 MR. LIAPIS: I THINK MR. DOLOWITZ BASED HIS
2 QUESTION UPON A CERTAIN VALUE WITH REGARD TO THE 121
3 EXCLUSION. ALL HE DID IS -- HE JUST DIDN'T ASK WHAT KIND
4 OF PRESENT TAX CONSEQUENCES ARE THERE. I'M JUST FOLLOWING
5 UP ON THAT. I THINK HE OPENED THE DOOR. I DON'T THINK HE
6 CAN OBJECT TO THE LINE OF QUESTIONING.

7 MR. DOLOWITZ: I SAID HYPOTHETICALLY THAT THEY
8 HAVE 260 AS A GAIN. I DIDN'T ASK ANY PARTICULAR GAIN NOR
9 TIE IT IN AND SAY THIS WAS THE CASE. I JUST PULLED A
10 FIGURE OUT. HE SAID THIS IS THE GAIN --

11 MR. LIAPIS: NO, I'M FOLLOWING UP HIS QUESTION
12 ON THE HYPOTHETICAL TO SHOW THE CONSEQUENCE.

13 THE COURT: ALL RIGHT. YOU CAN STAY ON THE
14 HYPOTHETICAL.

15 Q. (BY MR. LIAPIS) STAYING WITHIN THE
16 HYPOTHETICAL, I THINK MR. DOLOWITZ USED THE 260 FIGURE.
17 YOU INDICATED YOU HAD REVIEWED THE TAX RETURN?

18 A. CORRECT.

19 Q. DID YOU USE THE INFORMATION TO DETERMINE THE
20 COST BASIS FROM THAT TAX RETURN?

21 A. YES, AND APPROXIMATELY \$50,000.

22 Q. USING A HYPOTHETICAL THEN OF 260,000 PROFIT,
23 THE 125,000 LIMIT, COULD YOU TELL US A PRESENT VALUE OF THE
24 TAX THAT WOULD BE SUFFERED IF THE HOME WERE SOLD?

25 A. YES. I COMPUTED A PRESENT VALUE OF \$23,400.00,

1 ASSUMING THAT THE HOME WAS SOLD IN FIVE YEARS, AND
2 ASSUMING, USING AN 8 PERCENT DISCOUNT RATE.

3 Q. SO THAT'S SOMETHING MR. HOWELL OR MRS. HOWELL,
4 OR EITHER, WHOEVER WERE AWARDED THE HOME AND LIVE IN IT FOR
5 FIVE YEARS, WOULD HAVE TO LOOK FORWARD TO AT THAT
6 ASSUMPTION OF 260; IS THAT CORRECT?

7 A. YES.

8 MR. LIAPIS: THANK YOU.

9 THE COURT: MR. DOLOWITZ.

10

11 RE-CROSS EXAMINATION

12 BY MR. DOLOWITZ:

13 Q. ONE QUESTION YOU WERE ASKED, YOU SAY PAYMENT OF
14 ALIMONY IS A BENEFIT? IF YOU WERE ORDERED TO PAY ALIMONY
15 WOULD YOU CONSIDER THAT A TAX BENEFIT TO YOU?

16 A. WELL, A BENEFIT IN THAT FOR EVERY DOLLAR YOU
17 PAY, THE FEDERAL GOVERNMENT PAYS A PROPORTIONATE SHARE OF
18 IT; IN THIS CASE 33 PERCENT.

19 Q. BUT YOU WOULD BE PAYING 66 CENTS OF IT?

20 A. CORRECT.

21 Q. AND YOU WOULD NOT HAVE USE OF THAT 66 CENTS?

22 A. CORRECT.

23 Q. SOMEBODY ELSE WOULD?

24 A. CORRECT.

25 Q. WOULD YOU ADVISE A CLIENT TO WILLINGLY PAY

1 A. YES, I AM.

2 Q. AND IN WHAT CAPACITY?

3 A. I AM A SALES CLERK AT CASUAL FURNITURE IN
4 MIDVALE, AND I WORK AS SWITCHBOARD OPERATOR PART-TIME AT
5 SNOWBIRD.

6 Q. I SHOW YOU WHAT'S BEEN MARKED EXHIBIT 25.
7 ARE THOSE COPIES OF THE LAST FEW MONTHS OF YOUR PAYROLL?

8 A. YES.

9 Q. FROM BOTH JOBS?

10 A. YES.

11 Q. AND IS IT THOSE DOCUMENTS FROM WHICH WE HAVE
12 COMPUTED ASSETS AS SET OUT IN YOUR FINANCIAL DECLARATION,
13 THE INCOME OF \$639.00 GROSS?

14 A. YES.

15 Q. DOES THAT COMPRISE ALL OF THE EARNED INCOME YOU
16 HAVE AT THIS TIME?

17 A. YES, WITH THE EXCEPTION OF THE PIANO LESSONS,
18 WHICH IS ABOUT \$40 A MONTH.

19 MR. LIAPIS: WE MOVE FOR ADMISSION OF 25.

20 MR. DOLOWITZ: I HAVEN'T SEEN IT.

21 MR. LIAPIS: MAY I CONTINUE WHILE YOU REVIEW
22 THAT?

23 MR. DOLOWITZ: I HAVE NO OBJECTION TO 25, YOUR
24 HONOR.

25 THE COURT: IT WILL BE RECEIVED.

1 A. YES.

2 Q. WELL -- I'M SORRY, YOUR PROPOSAL IS \$3,500

3 ALIMONY AND \$500 CHILD SUPPORT?

4 A. I DON'T HAVE THAT.

5 Q. I'LL SHOW YOU MY COPY OF 18 AND DIRECT YOUR

6 ATTENTION TO PARAGRAPHS THREE AND FOUR?

7 A. YES. THIS IS WHAT WE DISCUSSED.

8 Q. WITH THE 4,000 PLUS YOUR SALARY, WOULD YOU BE

9 ABLE TO MEET YOUR MONTHLY NEEDS AND OBLIGATIONS?

10 A. YES.

11 Q. ARE YOU GOING TO HAVE A JOB AS OF JANUARY 3RD?

12 A. NOT AT CASUAL FURNITURE.

13 Q. WHY?

14 A. THEY'RE GOING OUT OF BUSINESS.

15 Q. AND IS THAT DECISION THEY MADE FORCING YOUR

16 TERMINATION?

17 A. YES.

18 Q. I SHOW YOU WHAT'S BEEN MARKED EXHIBIT 26, MRS.

19 HOWELL. CAN YOU IDENTIFY THAT?

20 A. YES. THESE ARE THE AVERAGE MONTHLY LIVING

21 EXPENSES.

22 Q. AND IF I WERE TO GO DOWN EACH OF THE CATEGORIES

23 AND THE AMOUNTS, WOULD YOUR TESTIMONY BE THE SAME AS

24 APPEARS ON THE DOCUMENT?

25 A. YES, THESE ARE AVERAGES.

1 Q. AND THOSE DESIGNATED WITH A "W", ARE THOSE THE
2 ONES YOU'RE WILLING TO TAKE, ASSUMING YOU'RE AWARDED THE
3 SUPPORT WE'RE ASKING?

4 A. YES.

5 Q. ONE OF THOSE HAPPENS TO BE THE CALIFORNIA HOME;
6 IS THAT CORRECT?

7 A. WELL, IT'S MARKED WITH THE "HUSBAND" OVER THE
8 EXHIBIT.

9 Q. THAT SHOULD BE MARKED WITH A "W"; IS THAT
10 CORRECT?

11 A. YES.

12 Q. WHY IS IT THAT YOU WANT THE CALIFORNIA HOME,
13 MRS. HOWELL?

14 A. WELL, THE CALIFORNIA HOME HAS -- WAS OUR HOME
15 AND THE CENTER OF OUR FAMILY FOR A NUMBER OF YEARS, 16
16 YEARS OR SO BEFORE MOVING UP HERE. AND IT'S JUST THE
17 CENTER OF OUR FRIENDSHIPS AND OUR LINK UP WITH THE KIDS
18 GROWING UP AND ALL THAT.

19 Q. HAS IT BE YOUR INTENTION FOR SOMETIME TO MOVE
20 BACK TO CALIFORNIA?

21 A. EVER SINCE MR. HOWELL MOVED OUT, YES.

22 Q. WHY HAVEN'T YOU LEFT THE UTAH HOME FOR THE
23 CALIFORNIA HOME?

24 A. WELL, I WAS HOPEFUL OF RECONCILIATION.

25 Q. AND HAVE THE FILINGS OF THE DIVORCE AND THE

1 DISMISSAL AND FILING AGAIN PRECIPITATED A PROBLEM WITH YOU
2 RETURNING TO CALIFORNIA?

3 A. YES, THEY HAVE. THERE WAS NO WAY TO REALLY
4 MAKE PLANS, AND THE FACT THAT THE INCOME GENERATED FROM THE
5 RENTAL DOWN THERE HELPED KEEP THINGS AFLOAT HERE.

6 Q. IF THE COURT WERE TO AWARD YOU THE HOUSE, WHEN
7 WOULD YOU MOVE, IF YOU COULD?

8 A. AS SOON AS POSSIBLE. THERE'S A SCHOOL BREAK
9 THE END OF JANUARY. IT WOULD BE ADVISABLE TO MOVE SHAUN AT
10 THAT TIME.

11 Q. WOULD YOU BE WILLING TO GO ALONG WITH MR.
12 HOWELL'S PROPOSAL YOU SELL THE HOUSE?

13 A. IN CALIFORNIA?

14 Q. YES.

15 A. NO, I DON'T WANT TO DO THAT.

16 Q. WOULD YOU BE WILLING TO TAKE THE CHANCES WITH
17 REGARDS TO WHETHER OR NOT YOU COULD ROLL THAT HOUSE OVER IN
18 THE WAYS THAT WERE DISCUSSED BY MR. PAPANIKOLAS?

19 A. YES.

20 Q. I'M SORRY. DID YOU UNDERSTAND MY QUESTION?

21 A. WELL, YOU'RE ASKING IF I WANT POSSESSION OF THE
22 CALIFORNIA HOME?

23 Q. OH, NO. I'M SORRY. MR. DOLOWITZ WAS ASKING
24 MR. PAPANIKOLAS IF -- THERE WAS A QUESTION WHETHER YOU
25 COULD ROLL OVER THE SALE PROCEEDS OF THAT HOUSE AND AVOID

1 TAXES; DO YOU RECALL THAT?

2 A. YES, I DO.

3 Q. AND WOULD YOU BE WILLING TO TAKE THAT CHANCE
4 AND TRY TO ROLL OVER THOSE PROCEEDS AND AVOID A TAX AT THIS
5 TIME?

6 A. NO, YOU MEAN SPLITTING IT RIGHT NOW? NO, THAT
7 SOUNDED LIKE A VERY BIG RISK TO ME.

8 Q. MR. HOWELL HAS ALSO PROPOSED NO ALIMONY TO YOU;
9 IS THAT CORRECT?

10 A. CORRECT.

11 Q. AND INDICATED THAT IF YOU SOLD ALL THESE
12 ASSETS, YOU COULD USE THOSE TO SUPPORT YOURSELF. WOULD YOU
13 GO ALONG WITH THAT?

14 A. NO.

15 Q. WHY?

16 A. WELL, I THINK I'VE PUT A PRETTY BIG INVESTMENT
17 INTO THIS MARRIAGE MYSELF. WE'VE GONE THROUGH A LOT OF
18 YEARS TOGETHER, A LOT OF TIME. AND THAT WAS AN INVESTMENT
19 ON MY PART ALSO. AND THROUGH THE NAVAL CAREER AND MOVING
20 ON UP THROUGH HIS AIRLINE CAREER, I FELT LIKE THOSE WERE
21 JOINT INVESTMENTS THAT WE WERE MAKING. AND I REALLY
22 BELIEVE IN COMMITMENTS, AND I BELIEVED THAT WE WERE
23 COMMITTED TO THE SAME PURPOSE FOR A LONG TIME.

24 Q. YOU HEARD HIM INDICATE ABOUT THE SUFFERINGS OF
25 THE WESTERN AIRLINES SALARY AND SO FORTH. WAS THAT

1 ACCURATE?

2 A. YES.

3 Q. DID THAT CAUSE FINANCIAL BURDENS?

4 A. THINGS WERE TIGHT, AND WE WERE ALSO RUNNING A
5 BUSINESS AT THAT TIME TO HELP SUPPLEMENT, WHICH TOOK EVEN
6 MORE OF HIS TIME, YES.

7 Q. DO YOU BELIEVE THAT THE ALIMONY SHOULD BE BASED
8 UPON HIS CURRENT INCOME?

9 A. YES, I DO.

10 Q. DO YOU BELIEVE THAT YOUR LIVING EXPENSES OVER
11 THE YEARS HAVE BEEN MEAGER IN THE SENSE OF THE '85, '86
12 PERIOD WHEN HE WAS SUFFERING FROM THE WAGE DEDUCTION?

13 A. YES. THERE WERE TIMES WHEN IT WAS TIGHT, YES.

14 Q. WE HAVE INTRODUCED EXHIBIT 18 ALREADY, WHICH
15 WAS YOUR ITEMIZATION OF THE ASSETS, VALUES AND PROPOSED
16 DISTRIBUTION, CORRECT?

17 A. YES. I HAVE A COPY OF THAT.

18 Q. THERE'S BEEN SOME TESTIMONY THAT THERE'S BEEN
19 TWO OFFERS TO BUY ON THE HOME?

20 A. ABOUT THE UTAH HOME?

21 Q. YES.

22 A. YES.

23 Q. HOW MUCH WERE THOSE OFFERS?

24 A. 140,000.

25 Q. WHY, TO YOUR INFORMATION AND KNOWLEDGE, WOULD

1 HAVE TO BE HOME?

2 A. I THINK A REASONABLE TIME WOULD BE FIVE OR SIX
3 IN THE AFTERNOON.

4 Q. IS THERE ANYTHING THAT STOPS YOU FROM SECURING
5 A 8:00 TO 5:00 JOB?

6 A. I HAVE NOT BEEN ABLE TO FIND ONE.

7 Q. YOU HAVE BEEN SEPARATED FROM MR. HOWELL, IN
8 ESSENCE, FOR FOUR YEARS?

9 A. BASICALLY.

10 Q. HAVE YOU BEEN WORKING FOR FOUR YEARS AT THAT
11 JOB?

12 A. OFF AND ON.

13 Q. HAVE YOU GONE TO ANY JOB COUNSELORS TO TRY AND
14 GET A JOB?

15 A. YES, I WENT TO THE UNIVERSITY OF UTAH AND HAD
16 AN EVALUATION.

17 Q. EXAMINING EXHIBIT 26-D, YOUR HOUSE, YOU'RE
18 CLAIMING LIVING EXPENSES OF \$5,000 A MONTH. AREN'T THOSE
19 BUILT AROUND A HOUSE PAYMENT OF \$1,500.00 PAYMENTS A MONTH?

20 A. THEY ARE AT THE PRESENT TIME.

21 Q. IF YOU SOLD THAT HOUSE AND MOVED TO SOMETHING
22 LESS EXPENSIVE, THAT EXPENSE WOULD DROP?

23 A. IT WOULD DEPEND UPON WHERE I WAS LIVING AT THE
24 TIME. IT'S MORE EXPENSIVE TO LIVE IN CALIFORNIA, ALSO.

25 Q. YOU'VE INDICATED FOOD AND HOUSEHOLD SUPPLIES OF

1 A. WHAT ARE YOU REFERRING TO, WHICH SHEET?

2 Q. I'M LOOKING AT EXHIBIT 26-D, "DEFENDANTS
3 AVERAGE MONTHLY LIVING EXPENSES". YOU SAY YOU WERE
4 SPENDING \$5,021.00 A MONTH?

5 A. ALL OF THESE FIGURES THAT YOU SEE HERE ARE
6 REPRESENTATIVE OF AVERAGES FROM CHECKS THAT I HAVE WRITTEN.
7 THESE ARE ACCURATE FIGURES.

8 Q. COULD YOU EXPLAIN TO ME WHERE THE ADDITIONAL
9 \$2,000 A MONTH IS COMING FROM?

10 A. I TOLD YOU EARLIER I HAD BORROWED MONEY ON A
11 COUPLE OF OCCASIONS. I'VE ALSO HAD SOME GIVEN TO ME.

12 Q. WHOSE BEEN GIVING YOU MONEY?

13 A. WELL, JUST A GIFT FROM FAMILY OR FRIENDS.

14 Q. WHO? WHO IN SPECIFIC HAS GIVEN YOU GIFTS AND
15 WHAT AMOUNTS AND WHEN?

16 A. I DON'T HAVE A RECORD OF THAT.

17 Q. WHEN WAS THE LAST GIFT OF MONEY YOU RECEIVED?

18 A. I RECEIVED A \$200 CHRISTMAS GIFT. DO YOU WANT
19 TO KNOW ABOUT MY CHRISTMAS GIFTS?

20 Q. FROM WHOM?

21 A. MY BROTHER.

22 Q. WHEN WAS THE GIFT BEFORE THAT?

23 A. I DON'T RECALL.

24 Q. BUT SOMEHOW OR ANOTHER IT TOTALS \$2,000 A
25 MONTH. NOW YOU SAID YOU BORROWED MONEY. THERE'S A LOAN ON

1 HERE FROM TRACY COLLINS', 300 -- I'M LOOKING AT EXHIBIT 27.
2 WHEN DID YOU TAKE OUT A LOAN AT TRACY COLLINS FOR \$353.00
3 OR IS THAT THE PRESENT BALANCE?

4 A. THOSE FIGURES SHOULD BE REVERSED. TRACY
5 COLLINS BANK IS THE 601. CAMARILLO COMMUNITY BANK IS 353.

6 Q. WHEN DID YOU TAKE OUT THE LOAN?

7 A. SEPTEMBER.

8 Q. OF THIS YEAR?

9 A. YES, OR AUGUST. I CAN'T REMEMBER. I THINK MY
10 FIRST PAYMENT WAS SEPTEMBER.

11 Q. THAT WAS TRACY COLLINS?

12 A. RIGHT.

13 Q. AT THE TIME YOU TOOK IT OUT WITH TRACY COLLINS,
14 WHAT WAS THE PURPOSE OF THE LOAN?

15 A. TO CONSOLIDATE DEBTS.

16 Q. DID YOU PUT UP ANY SECURITY FOR THE LOAN?

17 A. NO.

18 Q. CAMARILLO COMMUNITY BANK, WHEN WAS THAT LOAN
19 INCURRED?

20 A. THAT WAS ABOUT 13, 14 MONTHS AGO.

21 Q. WAS ANY SECURITY POSTED ON THAT?

22 A. NO.

23 Q. WHAT WAS THE PURPOSE OF THAT LOAN?

24 A. TO PAY DEBTS.

25 Q. THESE ARE SIGNED FOR SOLELY BY YOU?

1 A. THE CAMARILLO ONE IS.

2 Q. TRACY COLLINS IS SIGNED BY YOU SOLELY?

3 A. NO.

4 Q. WHO SIGNED ON IT WITH YOU?

5 A. MARILYN HAIRS.

6 Q. THAT'S NOT MR. HOWELL?

7 A. NO.

8 Q. YOU HAVE HERE A PERSONAL LOAN FOR ATTORNEY'S
9 FEES, \$1,500.00?

10 A. YES.

11 Q. FROM WHOM IS THAT LOAN TAKEN?

12 A. THAT'S A VERY PERSONAL MATTER. IT INVOLVES A
13 PROBLEM WITHIN THE FAMILY. I THINK IT WOULD CREATE A
14 PROBLEM TO ANSWER THAT. I'D RATHER KEEP IT PRIVATE. I
15 THINK IT WILL CAUSE STRIFE.

16 Q. THEN THAT REALLY WASN'T BORROWED, WAS IT?

17 A. PARDON?

18 Q. THAT MONEY WASN'T BORROWED?

19 A. I WOULD LIKE TO REPAY IT.

20 Q. YOU WOULD LIKE TO. SO YOU HAVE NOT REPAID?

21 A. I HAVE NOT.

22 Q. WHEN YOU PUT DOWN \$100 A MONTH, THAT IN FACT IS
23 NOT BEING PAID?

24 A. NOT AT THIS POINT. THAT IS WHAT I NEED TO DO.

25 Q. THERE IS A VISA FOR CAMARILLO BANK. IS THAT

1 YOUR OWN VISA?

2 A. YES.

3 Q. YOU'VE TAKEN OUT AND MAINTAINED IT BY YOURSELF?

4 A. YES.

5 Q. NORDSTROMS IS SOLELY YOUR DEBT?

6 A. YES.

7 Q. WINESTOCKS IS SOLELY YOUR DEBT?

8 A. YES.

9 Q. ZCMI IS SOLELY YOUR DEBT?

10 A. YES.

11 Q. THOSE HAVE ALL BEEN INCURRED BY YOU SINCE THIS
12 ACTION HAS BEEN PENDING?

13 A. NO.

14 Q. WHICH ONES HAVE NOT BEEN INCURRED DURING THE
15 PENDENCY OF THIS ACTION?

16 A. THE VISA, ALL FOUR ARE ON-GOING ACCOUNTS.

17 Q. THEN YOU HAVE NOT PAID -- WERE THE SAME AMOUNTS
18 DUE AT THE TIME THIS ACTION WAS FILED?

19 A. VERY CLOSE.

20 Q. WOULD YOU HAVE PAID THEM OFF IF YOU HAD NOT
21 INCURRED ADDITIONAL CHARGES DURING THIS YEAR?

22 A. POSSIBLY.

23 Q. LOOKING AT THE DEBTS YOU'VE INDICATED ARE FOR
24 YOUR HUSBAND, IF THE CALIFORNIA HOME IS SOLD THE
25 WEYERHAUSER MORTGAGE AND PACIFIC SOLDIER (SIC) LOAN WOULD

1 MR. DOLOWITZ: NO FURTHER QUESTIONS.

2 MR. LIAPIS: I HAVE NO FURTHER QUESTIONS, YOUR
3 HONOR.

4 THE COURT: YOU MAY STEP DOWN MISS HOWELL.
5 THANK YOU. ANYTHING FURTHER, MR. LIAPIS?

6 MR. LIAPIS: JUST A PROFFER ON THE ATTORNEY'S
7 FEES, YOUR HONOR. I MAY DO THAT FROM HERE, IS THAT ALL
8 RIGHT, COUNSEL?

9 MR. DOLOWITZ: IT'S ACCEPTABLE TO ME IF IT'S
10 ACCEPTABLE TO THE COURT.

11 THE COURT: FINE, JUST SO YOU CAN BE HEARD.

12 MR. LIAPIS: FOR PURPOSES OF THIS ACTION, YOUR
13 HONOR, IT WOULD BE OUR PROFFER THAT MRS. HOWELL RETAINED US
14 ON THE 2ND OF NOVEMBER, 1987. IT WOULD BE AFTER THE
15 DISMISSAL OF THE FIRST ACTION. SINCE THAT, SHE EMPLOYED US
16 AT THE RATE OF \$125.00 PER HOUR. I THINK THAT'S REASONABLE
17 WITHIN THE CONFINES OF THIS COMMUNITY, THE TYPE OF ACTION
18 PERFORMED AND PREPARATION IN THIS MATTER. TO DATE, I'VE
19 INCURRED IN THIS MATTER SOME 75.2 HOURS. AND THAT DOES NOT
20 INCLUDE THE TIME TODAY, WHICH IS GOING TO APPROACH AT LEAST
21 EIGHT HOURS AT \$125.00. I THINK THE CALCULATION CAME OUT
22 TO \$9,437.50. THAT IS WITHOUT THE EIGHT HOURS FOR TODAY.
23 AND I ASSUME IF THE COURT ASKS US FOR THE PAPERWORK IT
24 MIGHT TAKE ANOTHER TWO, THREE HOURS ON TOP OF THAT. THAT'S
25 THE BASIS FOR THE REQUEST IN EXHIBIT 18 FOR THE ATTORNEYS

1 TO THE PLAINTIFF UPON THE COMPLAINT, AND ALSO TO THE
2 DEFENDANT ON HER COUNTERCLAIM.

3 THE COURT FINDS THE DEFENDANT TO BE A FIT AND
4 PROPER PERSON TO BE AWARDED THE CARE AND CUSTODY OF THE
5 MINOR CHILD, SHAUN DANIEL HOWELL, AND FINDS IT WOULD BE IN
6 THE BEST INTERESTS OF THE CHILD IF THE DEFENDANT WERE
7 AWARDED CUSTODY OF THAT CHILD; THEREFORE AWARDS CUSTODY OF
8 THE MINOR CHILD TO THE DEFENDANT, WITH RIGHTS OF REASONABLE
9 VISITATION TO THE PLAINTIFF.

10 THE COURT IS GOING TO APPLY THESE GUIDELINES
11 WITH REGARD TO CHILD SUPPORT AND WILL ORDER THE PLAINTIFF
12 TO PAY THE DEFENDANT CHILD SUPPORT IN THE AMOUNT OF
13 \$1,363.00, UNTIL SHAUN REACHES THE AGE OF 18, AND/OR UNTIL
14 HIS NORMAL GRADUATING CLASS GRADUATES FROM HIGH SCHOOL.
15 THE COURT IS GOING TO ALLOW THE INCOME TAX EXEMPTION FOR
16 THE CHILD TO GO TO THE CUSTODIAL PARENT, THE DEFENDANT IN
17 THIS CASE.

18 WITH REGARD TO ALIMONY, THE COURT HAS ATTEMPTED
19 TO APPLY THE LAW OF THE STATE OF UTAH, AND THAT IS TO
20 EQUALIZE THE STANDARD OF LIVING OF THE PARTIES, AND TO
21 MAINTAIN THAT STANDARD AT A LEVEL AT WHICH IT EXISTED
22 DURING THE MARRIAGE. THE COURT IS OF THE OPINION THAT THAT
23 LEVEL OF STANDARD OF LIVING EXPERIENCED BY THE PARTIES
24 DURING THE MARRIAGE, IS BEST REPRESENTED BY THE STANDARD OF
25 LIVING THAT THEY ENJOYED AT THE TIME OF THE SEPARATION OF

1 THE PARTIES DURING THE 1986 PERIOD OF TIME.

2 AT THAT TIME THE PLAINTIFF IN THIS MATTER WAS
3 EARNING APPROXIMATELY 55, TO \$5,600.00 PER MONTH. THE
4 COURT FINDS THAT THE DEFENDANT DOES HAVE A NEED FOR AN
5 AWARD OF ALIMONY; THAT THE PLAINTIFF HAS THE ABILITY TO PAY
6 ALIMONY. AND IN DETERMINING HIS ABILITY TO PAY AND HELP
7 MAINTAIN HER STANDARD OF LIVING, THE COURT FINDS HIS
8 PRESENT INCOME TO BE \$10,000 A MONTH, GROSS.

9 THE COURT HAS ALSO TAKEN INTO ACCOUNT THE
10 ABILITY OF THE DEFENDANT TO EARN AN INCOME IN THE AMOUNT OF
11 APPROXIMATELY \$7,500.00 A YEAR. AND IN CONSIDERING ALL OF
12 THESE MATTERS, THE COURT MAKES AN ALIMONY AWARD OF \$1,800 A
13 MONTH, TO BE PAID TO THE DEFENDANT BY THE PLAINTIFF, HALF
14 ON THE FIRST AND HALF ON THE 15TH, UNTIL THE DEFENDANT
15 EITHER REMARRIES, COHABITATES, OR UNTIL FURTHER ORDER OF
16 THIS COURT.

17 WITH REGARD TO THE RETIREMENT PLANS, THE COURT
18 WILL REQUIRE THAT THOSE PLANS BE DIVIDED EQUALLY BY A
19 QUALIFIED DOMESTIC RELATIONS ORDER, WITH THE EXCEPTION OF
20 THE MILITARY ACCOUNT PLAN, AND THAT THAT BE DIVIDED UNDER
21 THE WOODWARD FORMULA.

22 THE IRA'S WOULD BE AWARDED AS FOLLOWS: MERRILL
23 LYNCH IRA IN THE WIFE'S NAME, I BELIEVE NUMBER 59681578,
24 WOULD BE AWARDED TO THE WIFE, AND THE OTHER MERRILL LYNCH
25 AND THE WESTERN FEDERAL CREDIT UNION IRA WOULD BE AWARDED

1 CALIFORNIA VISA.

2 THE COURT IS GOING TO ORDER THE PLAINTIFF PAY
3 TO THE DEFENDANT ATTORNEYS FEES IN THE AMOUNT OF \$7,500.00.

4 NOW IS THERE ANYTHING THAT THE COURT HAS
5 OVERLOOKED?

6 MR. DOLOWITZ: I HAD A QUESTION, YOUR HONOR.
7 YOU SAID THAT THE PLAINTIFF WAS TO PAY THE MORTGAGE ON THE
8 HOME IN UTAH. THAT'S BEING LIVED IN BY THE DEFENDANT.

9 THE COURT: I'M GOING TO REQUIRE THAT HE PAY
10 THAT UP UNTIL MAY 1. IF THE HOME IS NOT SOLD BY THAT TIME,
11 AND THE DEFENDANT CONTINUES TO LIVE IN THE HOME, SHE WILL
12 BE REQUIRED TO PAY THE PAYMENT.

13 MR. DOLOWITZ: THAT'S ASSUMING JANUARY HASN'T
14 BEEN PAID, UP TO MAY.

15 THE COURT: I WILL INCLUDE THAT.

16 MR. LIAPIS: I HAVE SOME QUESTIONS, TOO, YOUR
17 HONOR. YOU WERE GOING AWFULLY FAST. YOU SAID ON THE LOTS
18 IN TEXAS, ONE WOULD BE SOLD AND THE PROCEEDS DIVIDED. THEN
19 I DIDN'T CATCH --

20 THE COURT: THEN THE SIX LOTS COULD BE DIVIDED
21 EQUALLY AMONG THE PARTIES; THREE LOTS TO GO TO EACH PARTY.
22 THE COURT FINDS THEM ALL TO BE OF APPROXIMATE EQUAL VALUE
23 AND HAVE A TOTAL VALUE OF 18,000.

24 MR. LIAPIS: WITH REGARDS TO THE SELL OF THE
25 CALIFORNIA HOME, IS THERE SOMEONE WHOSE GOING TO BE IN