

1989

# Helen Jane Walters v. Lewis Mark Walters : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](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.

Robert L. Moody; Taylor, Moody & Thorne; attorney for appellant.

Thomas H. Means; attorney for respondent.

---

## Recommended Citation

Brief of Appellant, *Walters v. Walters*, No. 890671 (Utah Court of Appeals, 1989).

[https://digitalcommons.law.byu.edu/byu\\_ca1/2332](https://digitalcommons.law.byu.edu/byu_ca1/2332)

This Brief of Appellant 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](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

**BRIEF**

MENT

U

)

10

CKET NO. 890611

Robert L. Moody, #2302  
TAYLOR, MOODY & THORNE  
Attorneys for Defendant/Appellant  
2525 North Canyon Road  
P.O. Box 1466  
Provo, Utah 84603  
Telephone: (801) 373-2721

---

IN THE COURT OF APPEALS  
OF THE STATE OF UTAH

---

HELEN JANE WALTERS,

Plaintiff/Respondent,

vs.

LEWIS MARK WALTERS,

Defendant/Appellant.

Case No. 890671 CA  
Category 15

---

BRIEF OF APPELLANT

---

APPEAL FROM A DECREE OF DIVORCE OF THE FOURTH JUDICIAL  
JUDICIAL DISTRICT COURT, JUDGE RAY M. HARDING, PRESIDING

---

ROBERT L. MOODY, for:  
TAYLOR, MOODY & THORNE  
2525 North Canyon Road  
Provo, Utah 84604

ATTORNEYS FOR APPELLANT

THOMAS H. MEANS  
ATTORNEY AT LAW  
363 North University Ave.  
Suite 103  
Provo, Utah 84604

ATTORNEY FOR RESPONDENT

Robert L. Moody, #2302  
TAYLOR, MOODY & THORNE  
Attorneys for Defendant/Appellant  
2525 North Canyon Road  
P.O. Box 1466  
Provo, Utah 84603  
Telephone: (801) 373-2721

---

IN THE COURT OF APPEALS  
OF THE STATE OF UTAH

---

HELEN JANE WALTERS,	:	
Plaintiff/Respondent,	:	
vs.	:	
LEWIS MARK WALTERS,	:	Case No. <u>890671 CA</u>
Defendant/Appellant.	:	Category <u>15</u>

---

BRIEF OF APPELLANT

---

APPEAL FROM A DECREE OF DIVORCE OF THE FOURTH JUDICIAL  
JUDICIAL DISTRICT COURT, JUDGE RAY M. HARDING, PRESIDING

---

ROBERT L. MOODY, for:  
TAYLOR, MOODY & THORNE  
2525 North Canyon Road  
Provo, Utah 84604

ATTORNEYS FOR APPELLANT

THOMAS H. MEANS  
ATTORNEY AT LAW  
363 North University Ave.  
Suite 103  
Provo, Utah 84604

ATTORNEY FOR RESPONDENT

## TABLE OF CONTENTS

TABLE OF AUTHORITIES . . . . .	ii
JURISDICTION . . . . .	1
STATEMENT OF THE ISSUES AND STANDARDS OF REVIEW . . . . .	1
DETERMINATIVE STATUTES . . . . .	3
STATEMENT OF THE CASE . . . . .	3
A. NATURE OF THE CASE AND DISPOSITION AT TRIAL COURT . . . . .	3
B. COURSE OF THE PROCEEDINGS AND RELEVANT FACTS . . . . .	5
SUMMARY OF ARGUMENT . . . . .	10
ARGUMENT . . . . .	12
POINT I . . . . .	12
THE UNSOLEMNIZED RELATIONSHIP FROM JANUARY 1, 1980, UNTIL OCTOBER 5, 1984, SHOULD NOT BE RECOGNIZED AS A VALID MARRIAGE RELATIONSHIP . . . . .	12
A. Utah Code Anno. §30-1-4.5 enacted in 1987 is to be applied prospectively and not retroactively . . . . .	12
B. The Trial Court Erred By Establishing A Marriage Like Relationship From January 1, 1980 Until October 5, 1984. . . . .	15
POINT II . . . . .	17
THE TRIAL COURT ERRED BY AWARDING ATTORNEY FEES WHERE THERE WAS NO EVIDENCE OF FINANCIAL NEED . . . . .	17
CONCLUSION . . . . .	19
ADDENDUM . . . . .	21

## TABLE OF AUTHORITIES

<u>Cases Cited:</u>	<u>Page</u>
<u>50 West Broadway Assocs. v. Redevelopment Agency of Salt Lake,</u> <u>124 Utah Adv.Rep. 6 (1989) . . . . .</u>	2
<u>Andersen v. Andersen</u> , 757 P2d 476, 480 (Utah Ct.App. 1988) .	17
<u>Bagshaw v. Bagshaw</u> , 192 Utah Adv.Rep. 53, 55 (Ct.App. 1990) .	17
<u>Beals v. Beals</u> , 682 P2d 862, 864 (Utah 1984) . . . . .	17
<u>Bountiful v. Riley</u> , 124 Utah Adv.Rep. 15 (1989) . . . . .	2, 3
<u>Henretty v. Manti City Corporation</u> , 127 Utah Adv.Rep. 8 (1990)	2
<u>In re Vetas' Estate</u> , 110 Utah 187, 170 P2d 183 (1946) . . . .	15
<u>Layton v. Layton</u> , 777 P2d 504 (Utah App. 1989) . . . . .	13
<u>Marchant v. Marchant</u> , 743 P2d 199 (Utah App. 1987) . . . . .	14
<u>Mattes v. Olearain</u> , 759 P2d 1177 (Utah App. 1988) . . . . .	15, 17
<u>Newmeyer v. Newmeyer</u> , 745 P2d 1276, 1279-80 (Utah 1987) . . .	17
<u>Riche v. Riche</u> , 123 Utah Adv.Rep. 31, 34 (Ct.App. 1989) . . .	17
<u>Scharf v. BMG Corp.</u> , 700 P2d 1068, 1070 (Utah 1985) . . . . .	2
<u>State ex rel. Division of Consumer Protection v. Rio Vista Oil,</u> <u>Ltd.</u> , 127 Utah Adv.Rep. 4 (1990) . . . . .	2
<u>State v. Walker</u> , 743 P2d 191, 193 (Utah 1987) . . . . .	3

<u>Statutes and Rules Cited:</u>	<u>Page</u>
Utah Code Ann. §30-3-3 (1989) . . . . .	17
Utah Code Ann. §78-2a-3 (2) (h) (Supp. 1989). . . . .	1
Utah Code Ann. §30-1-2 (1984) . . . . .	3, 15
Utah Code Ann. §30-1-4.5 . . . . .	3, 11-15, 19
Utah Code Ann. §30-1-17.2 (1971) . . . . .	3, 17
Utah Rules of Civil Procedure 52 (a) . . . . .	2, 3

IN THE COURT OF APPEALS  
OF THE STATE OF UTAH

---

HELEN JANE WALTERS,	:	
Plaintiff/Respondent,	:	
vs.	:	
LEWIS MARK WALTERS,	:	Case No. <u>890671 CA</u>
Defendant/Appellant.	:	Category <u>15</u>

---

BRIEF OF APPELLANT

---

JURISDICTION

The Court of Appeals has appellate jurisdiction over this domestic relations matter pursuant to Utah Code Ann. §78-2a-3 (2) (h) (Supp. 1989).

STATEMENT OF THE ISSUES AND  
STANDARDS OF REVIEW

I. Did the trial court err by establishing a marital relationship between the parties beginning on or about January 1, 1980, when the parties did not solemnize their marriage until October of 1984?

Though the trial court treated the characterization of the marital relationship as a finding of fact, this particular issue regards a conclusion of law underlying the judgment. The

appellate court is not bound by the trial court's characterization of its determination as a finding of fact or conclusion of law. 50 West Broadway Assocs. v. Redevelopment Agency of Salt Lake, 124 Utah Adv.Rep. 6 (1989). To establish the marital relationship in question, the court had to interpret a statute which presents a question of law. State ex rel. Division of Consumer Protection v. Rio Vista Oil, Ltd., 127 Utah Adv.Rep. 4 (1990); Henretty v. Manti City Corporation, 127 Utah Adv.Rep. 8 (1990). In reviewing Conclusions of Law, the appellate court accords Conclusions of Law with no particular deference but reviews them for correctness. Scharf v. BMG Corp., 700 P2d 1068,1070 (Utah 1985).

II. Did the trial court err in dividing the property including real property acquired by the Defendant prior to the marriage being solemnized, and Defendant's retirement benefits on the basis of a one hundred nine (109) month relationship when indeed the parties were married for only fifty-two (52) months?

This issue challenges the trial court's Findings of Fact which is to be set aside on appeal if clearly erroneous. Utah R. of Civ. P. 52(a) (as amended, effective January 1, 1987). The trial court used equitable principles in dividing the real property and retirement benefits in question. The "clearly erroneous" standard applies regardless whether action is in equity or at law. Bountiful v. Riley, 124 Utah Adv.Rep. 15 (1989). The appellate



court may regard a Finding as clearly erroneous if it is induced by an erroneous view of the law. State v. Walker, 743 P2d 191,193 (Utah 1987).

III. Did the trial court err in awarding the Plaintiff ONE THOUSAND DOLLARS (\$1,000.00) attorney's fees though the parties stipulated that neither party was presently in need of or entitled to the continuing financial support of the other, including alimony?

The proper standard of review is "clearly erroneous" as this is a challenge of the trial court's Findings of Fact. Utah R. of Civ. P. 52(a). The Finding is clearly erroneous if the appellate court is convinced that a mistake has been made. Bountiful v. Riley, 124 Utah Adv.Rep. 15 (1989).

#### DETERMINATIVE STATUTES

Utah Code Annotated, §30-1-4.5, §30-1-2 (as amended 1984), and §30-1-17.2 (1971) are the applicable statutes in this matter, copies of which are included in the Addendum.

#### STATEMENT OF THE CASE

##### A. NATURE OF THE CASE AND DISPOSITION AT TRIAL COURT.

This is an appeal from a Decree of Divorce and the Amended Decree of Divorce of the Fourth Judicial District Court, in which the Honorable Ray M. Harding, having issued a Memorandum Decision, ordered that the Plaintiff/Respondent (Helen Jane

Walters) was to be awarded for her equitable share of the parties equity in realty acquired by their joint efforts during their "marriage like relationship". The Decree also awarded the Plaintiff a proportionate share of the Defendant's (Defendant/Appellant Lewis Mark Walters) retirement benefits earned through his employment during the "marriage like relationship".

After a trial on the merits, the Court entered a Memorandum Decision finding that a "marriage like relationship" between the parties began on or about January 1, 1980 though the marriage was not solemnized until October 5, 1984. During the period between January 1, 1980 and October 5, 1984, the Defendant acquired the real property of which was awarded to the Plaintiff. The Plaintiff was also awarded a proportionate share of the retirement benefits earned by the Defendant during that period of time.

The trial court entered a subsequent Memorandum Decision of which the Plaintiff was awarded attorney fees. This ruling was incorporated into the Decree of Divorce and the Amended Decree of Divorce.

The Defendant appeals from the Decree of Divorce and the Amended Decree of Divorce stating that the Plaintiff is not entitled to the real property awarded to her because it was acquired by the Defendant during the period between January 1, 1980

and October 5, 1984 which was before the solemnization of the marriage. Likewise, the Plaintiff is not entitled to a proportionate share of the Defendant's retirement benefits earned by the Defendant during the period between January 1, 1980 and October 5, 1984. The Defendant also appeals from the Order awarding the Plaintiff attorney fees.

**B. COURSE OF THE PROCEEDINGS AND RELEVANT FACTS.**

In December of 1978, the Plaintiff and Defendant met. (Tr.15). At that time, the Plaintiff, and her two year old daughter from a previous marriage, resided in her trailer which was located in Orem, Utah. (Tr.30-31). The Defendant, working for the United States Air Force, was frequently called to work on temporary duty (TDY) assignments out of state at guided missile sights. (Tr.92). The Defendant resided in several States from 1978 through 1984 because of these TDY assignments. During this period, he resided in Montana, Missouri, South Dakota, Wyoming, and North Dakota. (Ex.10) (Tr.72-74,92). While the Defendant resided in these several States from 1978 through 1984, he made infrequent returns to Utah. (Tr.53). During this period, the Defendant maintained a habitable trailer in Highland, Utah, of which the water, gas, and utilities were always hooked up. (Tr.53-54). However, when the Defendant would return to Utah, he lived with the Plaintiff in her trailer. (Tr.54).

In July of 1977, the Defendant acquired real property in Highland, Utah. (Tr.94) (Ex.11). Said final payment for this property was made by the Defendant on May 23, 1981. (Tr.94) (Ex.14).

When the parties first met, the Plaintiff resided in her trailer in Orem, Utah. In May of 1980, Defendant purchased, in his own name, a trailer pad at 625 South 50 West, Pleasant Grove, Utah. (Tr.96) (Ex.15). At that time, the parties moved Plaintiff's mobile trailer onto that property. The Defendant paid for the costs of moving the trailer to the Pleasant Grove location as well as the costs incurred for culinary water and sewer connections. (Tr.96) From that time forward, the Plaintiff has resided in her trailer at that location. The Defendant paid for substantial improvements at this sight. (Tr.37,96). The Defendant did not charge Plaintiff rent for the placement of her trailer on the pad or for her use of the realty as her residence. (Tr.39). The Plaintiff's resources were used for the everyday necessities for herself and her daughter such as groceries, utilities, and trailer payments. (Tr.39).

Prior to and after the Plaintiff moved her trailer onto Defendant's lot, the Defendant assisted the Plaintiff by paying a number of debts and obligations of the Plaintiff's which included IRS - \$4,000.00, State Tax Commission - \$2,700.00, payment on

trailer - \$3,000.00, payment on car loan - \$400.00, payment on television loan - \$150.00, bills from a Wyoming accident - \$1,000.00, and the costs of moving her trailer from Orem to Pleasant Grove - \$521.00. (Tr.86-88,105-106) (Ex.13). These expenses totalling TEN THOUSAND THREE HUNDRED SEVENTY-ONE DOLLARS (\$10,371.00) were all paid by the Defendant for the Plaintiff's behalf of which the Defendant makes no claims for, (Tr.105), and of which he expected nothing in return. (Tr.88). At the time the Defendant paid these expenses, there was not an arrangement with regard to a marital relationship.

In the Fall of 1981, with the Defendant's knowledge, the Plaintiff enrolled her daughter in school under the last name of Walters. (Tr.42-43,107).

From 1978 through 1983, the Plaintiff filed her tax returns under the name of Hunter, the name from her previous marriage. (Tr.49-52) (Ex.3). Not until 1984, the year the parties were married, did the parties file a joint tax return. (Tr.52).

Prior to their marriage in 1984, the Plaintiff and the Defendant kept separate checking accounts of which the Defendant never intermingled his money with the Plaintiff's. (Tr.58). Nevertheless, the Defendant would periodically help the Plaintiff by paying her debts and obligations. (Tr.58-59) (Ex.13).

In July of 1984, the Plaintiff joined the Defendant in

North Dakota where the parties resided together. (Tr.44,72). On October 5, 1984, the parties were married in Manitoba, Canada. (Tr.11).

On July 19, 1985, the Defendant, with his own funds, acquired in his name a parcel of property located at 640 South 50 West in Pleasant Grove, Utah. (Tr.99) (Ex.11,16). This property was in the same trailer park facility as the 625 South 50 West property of which the parties lived. In October 1985, Defendant placed his trailer on that property. (Tr.100). Defendant had purchased such trailer in 1977 which he had kept in Highland, Utah. (Tr.101). At the time of trial (February 1989) the 640 South 50 West property had an encumbrance of \$5,000.00. (Tr.81) (Ex.11).

During the marriage differences between the parties developed resulting in their separation on or about November 10, 1987. (R.149)

At the time the parties met, the Plaintiff was employed by Geneva Steel. This employment continued except for a period when Geneva Steel ceased operations. At the time of trial, Plaintiff had been reemployed by Geneva Steel for approximately one (1) year. (Tr.36-37). While living at 625 South 50 West, Pleasant Grove, Utah, the Plaintiff contributed her earnings towards the purchase of food, utilities, and other regular living expenses. (R.151).

On October 26, 1987, the Plaintiff filed a Complaint for divorce. (R.1). On February 7, 1989, the parties appeared before the Honorable Ray M. Harding for purposes of terminating the marriage and dividing real and personal property. (R.3-4).

Following the trial, Judge Harding entered a Memorandum Decision finding "that the parties began to carry on a marriage like relationship on or about January 1, 1980, which was several years before the marriage was actually solemnized." (R.99).

From the established date of January 1, 1980, Judge Harding found that the Plaintiff was entitled to a share of Defendant's retirement benefits accrued during the existence of the marriage. The formula used to apportion the Plaintiff's share of the retirement benefits was derived from Marchant v. Marchant, 743 P2d 199, (Utah App. 1987), which awards one-half of the "total monthly payment times the fraction in which the numerator consists of the number of years or months they were married during which the Defendant was employed by the federal government and the denominator is the total number of years or months Defendant was in such employment." (R.100).

In regards to the distribution of real property, the trial court found that the property at issue was partially acquired before the marriage, and partially after. Considering when the properties were obtained, and how they were paid for, the court

found the following to be an equitable division of the real property:

The Plaintiff is to receive the property in Pleasant Grove where her mobile home is located free and clear. The Defendant may keep the Highland property which he acquired before the marriage, and the other Pleasant Grove property subject to the \$5,000.00 encumbrance which is still owing on that property. (R.101).

On July 31, 1989, the trial court, in a second Memorandum Decision, awarded the Plaintiff ONE THOUSAND DOLLARS (\$1,000.00) for attorney fees "based on need and the relative ability of the parties to pay." (R.115). Prior to this decision, it was represented to the Court that the Plaintiff was totally self supported from income earned from her employment at Geneva Steel, (R.111), and as incorporated in the Findings of Fact, it was found that neither party appeared to be in present need of or entitled to the continuing financial support of the other, either in the form of alimony or child support. (R.149).

The foregoing Memorandums were incorporated in the Amended Decree of Divorce. (R.168).

On November 9, 1989, the Defendant filed his Notice of Appeal from the Decision rendered by Judge Harding. (R.172).

### SUMMARY OF ARGUMENT

The State of Utah did not recognize an unsolemnized relationship as a marriage prior to 1987. The District Court



established a marital relationship between the Plaintiff and the Defendant beginning on or about January 1, 1980, though the parties did not solemnize the marriage until October 5, 1984. The District Court erred by applying equitable principals to the marriage like relationship by awarding Plaintiff a parcel of real estate purchased by the Defendant on May 27, 1980. The District Court also erred by awarding Plaintiff a portion of Defendant's retirement benefits on the basis of an one hundred nine (109) month relationship though the parties were married legally for only some fifty-two (52) months.

Before Utah adopted §30-1-4.5 in 1987, it did not recognize an unsolemnized relationship as a marriage, even though the parties to the relationship may have acted in other respects as spouses. §30-1-4.5 is to be applied prospectively and not retroactively. Therefore, the District Court mischaracterized the Plaintiff's and the Defendant's relationship as a marriage from January 1, 1980 until October 5, 1984.

In the alternative, the Defendant claims that there was not a marriage like relationship prior to the solemnization on October 5, 1984. The District Court misconstrued Utah Code Ann. §30-1-4.5, by determining a marriage under that section more than one year after the duration of the relationship in question.

Though the decision to award attorney's fees in divorce

proceedings rests primarily in the sound discretion of the trial court, the award must be based on evidence of both financial need and reasonableness. Such evidence was not produced before the trial court. The court relied on the Plaintiff's attorney's Affidavit in Support of Attorney's Fees which acknowledged that the Plaintiff was totally self supported from an income earned from her present employment. Thus, there was no financial need for attorney fees to be awarded.

### ARGUMENT

#### POINT I

THE UNSOLEMNIZED RELATIONSHIP FROM JANUARY 1, 1980, UNTIL  
OCTOBER 5, 1984, SHOULD NOT BE RECOGNIZED  
AS A VALID MARRIAGE RELATIONSHIP

A. Utah Code Ann. §30-1-4.5 enacted in 1987 is to be applied prospectively and not retroactively.

Though the trial court did not refer directly to Utah Code Ann. §30-1-4.5,<sup>1</sup> the Court established that the Plaintiff and the Defendant "began to carry on a marriage like relationship on or about January 1, 1980, which was several months before the marriage was actually solemnized." The parties eventually did solemnize their marriage on October 5, 1984. Because the Court considered the parties to have begun their marital relationship on

---

<sup>1</sup> Utah Code Ann. §30-1-4.5 is entitled validity of marriage not solemnized. A copy of which is attached in the Addendum.

January 1, 1980, it was determined that the parties were married for one hundred nine (109) months. The Defendant argues that the length of the marriage was in fact fifty two (52) months, measured from the time the marriage was solemnized. (Tr.5).

The Utah Court of Appeals recently addressed Utah Code Ann. §30-1-4.5 in Layton v. Layton, 777 P2d 504 (Utah App. 1989). In Layton, the Court found that before the adoption of §30-1-4.5 in 1987, "Utah did not recognize an unsolemnized relationship as a marriage, even though the parties to the relationship may have acted in other respects as spouses." Id. at 505. Also, the Court determined that §30-1-4.5 has only prospective, and not retroactive, effect. Id.

In reviewing the property division, the trial court decided that the property was to be divided according to the equitable principals governing divorce actions. Determining that the marital relationship began in 1980, the Plaintiff was awarded the real property located at 625 South 50 West, Pleasant Grove, Utah, free and clear. (R.101). This property was purchased by the Defendant in his own name in May of 1980. (Tr.96). The Defendant paid for the costs of moving the Plaintiff's trailer to this location, (Tr.96), and allowed the Plaintiff to reside there rent free. (Tr.39). The Defendant also paid for substantial improvements at this sight. All this was done prior to the parties

solemnizing their marriage. The Plaintiff was also awarded a share of Defendant's retirement benefits accrued during the existence of the marriage beginning on January 1, 1980. (R.100). The formula used to apportion the Plaintiff's share of this retirement benefit comes from Marchant v. Marchant, 743 P2d 199 (Utah App. 1987). Such formula calls for one-half (50%) of the total amount of all the Defendant's monthly benefit payments be multiplied by the fraction in which the numerator is 109 and the denominator is the total number of months the Defendant is employed by the federal government. (R.166). The numerator of 109 is derived from the trial court's establishment of a marital relationship beginning on January 1, 1980.

It is apparent that the trial court erred by applying §30-1-4.5 retroactively. This resulted in the trial court mischaracterizing the relationship between the parties as a marriage from January 1, 1980 until October 5, 1984. Thus, the Plaintiff was wrongfully awarded the real property at 625 South 50 West, Pleasant Grove, Utah. Also, the numerator used in the Marchant formula used to award a proportionate share of the Defendant's retirement benefit should be eliminated or refigured

from the date of the solemnization of the marriage.<sup>2</sup>

B. The Trial Court Erred By Establishing A Marriage Like Relationship From January 1, 1980 Until October 5, 1984.

Prior to 1987, marriages not solemnized by an authorized person were prohibited and declared void. Utah Code Ann. §30-1-2 (3) (1984); In re Vetas' Estate, 110 Utah 187, 170 P2d 183 (1946). See Mattes v. Olearain, 759 P2d 1177 (Utah App. 1988).

In the event it is permissible to recognize a marriage like relationship between the parties from January 1, 1980 until October 5, 1984, it is evident that the trial court erred by establishing a marriage like relationship. The Court was not at privy to determine or establish that such a relationship existed. According to §30-1-4.5,

"(1) A marriage which is not solemnized. . . shall be legal and valid if a court. . . establishes that it arises out of a contract between two consenting parties who:

- (a) are capable of giving consent;
- (b) are legally capable of entering a solemnized marriage under the provisions of this chapter;
- (c) have cohabited;
- (d) mutually assume marital rights, duties, and obligations;
- (e) who hold themselves out as and have acquired a uniform and general reputation as husband and wife.

---

<sup>2</sup> The numerator of 109 is the number of months the parties were married from January 1, 1980. The appropriate numerator should be 52, the number of months the parties were married after the solemnization of the marriage if Plaintiff should share at all.

(2) The determination for establishment of a marriage under this section must occur during the relationship described in subsection (1), or within one year following the termination of that relationship." Id. (emphasis added).

As subsection (2) points out, the determination for the establishment of a common law marriage must occur during such relationship, or within one year following the termination of that relationship. The relationship in question from January 1, 1980 up until October 5, 1984 was not determined or established to be a common law marriage until February 15, 1989. (R.99). This determination was more than four (4) years after the solemnization of the marriage.

It is also evident that the parties themselves did not recognize that a binding marriage like relationship existed prior to October 5, 1984. Prior to the marriage, the Defendant resided in several States making infrequent returns to Utah. (Tr.53,72-74,92). From 1978 through 1983, the Plaintiff filed her tax returns under the name of Hunter, the name from her previous marriage. (Tr.49-52). It was not until 1984, the year that the parties were married, that the parties filed a joint tax return. (Tr.52). The record shows no evidence that the parties held themselves out as husband and wife nor required a uniform and general reputation as being husband and wife. The parties knew that they did not have a marriage like relationship evidenced by

the fact that they decided to have a solemnized marriage on October 5, 1984. (Tr.5)

Regarding the property acquired and the retirement benefit's earned prior to the solemnization of the marriage, the equitable provisions of §30-1-17.2 would also be inappropriate to apply in the instant case.<sup>3</sup> "To hold otherwise would legitimate a knowing common law relationship the legislature had expressly declared invalid." Mattes v. Olearain, 759 P2d at 1181.

## POINT II

### THE TRIAL COURT ERRED BY AWARDING ATTORNEY FEES WHERE THERE WAS NO EVIDENCE OF FINANCIAL NEED

Attorney's fees in divorce actions may be ordered under Utah Code Ann. §30-3-3 (1989). There are two requirements which must be met before a court can award attorney's fees. "The trial court must find the requesting party is in need of financial assistance that the fees requested are reasonable." Bagshaw v. Bagshaw, 192 Utah Adv.Rep. 53, 55 (Ct.App. 1990); Riche v. Riche, 123 Utah Adv.Rep. 31, 34 (Ct.App. 1989); see generally Newmeyer v. Newmeyer, 745 P2d 1276, 1279-80 (Utah 1987); Beals v. Beals, 682 P2d 862,864 (Utah 1984); Andersen v. Andersen, 757 P2d 476,480 (Utah Ct.App. 1988).

---

<sup>3</sup> §30-1-17.2 pertains to property accumulated subsequent to a marriage. A copy is attached in the Addendum.

The trial court heard no evidence regarding the Plaintiff's need for financial assistance. It relied on the Plaintiff's attorney's Affidavit In Support of Attorney's Fees in awarding the Plaintiff ONE THOUSAND DOLLARS (\$1,000.00) "based on need and the relative ability of the parties to pay." (R.115).

In the Affidavit of Support of Attorney's Fees, the Plaintiff's attorney proffered that the Plaintiff was totally self supportive from income earned from her present employment at Geneva Steel. (R.111). Also, in the adopted Findings of Fact and Conclusions of Law it was found that neither party appeared "to be presently in need of or entitled to the continuing financial support of the other, either in the form of alimony or child support." (R.149). At the time of trial, Plaintiff had been reemployed by Geneva Steel for approximately one (1) year. (Tr.36-37). Her total gross income for 1988 was TWENTY SIX THOUSAND ONE HUNDRED EIGHTY-TWO and 40/100 DOLLARS (\$26,182.40). (R.111).

Prior to the solemnization of the marriage, the Plaintiff received great assistance from the Defendant who paid for a number of debts and obligations of the Plaintiff's.<sup>4</sup> The expenses paid by the Defendant enabled the Plaintiff to preserve her assets. These expenses totalled TEN THOUSAND THREE HUNDRED SEVENTY-ONE DOLLARS (\$10,371.00). (Ex.13). The Plaintiff is free from these

---

<sup>4</sup> Supra page 7 of Brief.



debts and obligations and little if any payments are still due on the trailer in which she resides. The Defendant has assisted the Plaintiff with trailer payments totalling at least THREE THOUSAND DOLLARS (\$3,000.00). (Ex.13).

It was improper for the trial court to award the Plaintiff attorney's fees without determining that the Plaintiff was in financial need.

### CONCLUSION

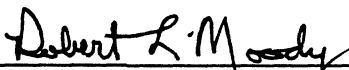
The Fourth Judicial District Court erred by establishing a marital relationship between the Plaintiff and the Defendant beginning on or about January 1, 1980, though the parties did not solemnize their marriage until October of 1984. Utah Code Ann. §30-1-4.5, which recognizes properly formed common law marriages, was not enacted until 1987. Such statute has only prospective, and not retroactive, effect. Also, the common law marriage relationship must be established during or within one year following the purported marriage like relationship. Thus, the trial court mischaracterized the parties relationship as a marriage. Awarding the Plaintiff property and retirement benefits acquired prior to the solemnization of the marriage would legitimate a knowing common law relationship of which the legislature has expressly declared invalid.

The trial court also erred by awarding the Plaintiff

attorney fees without establishing that the Plaintiff was in financial need.

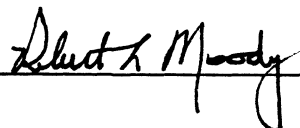
The Defendant asks that the Court remand this case to the Fourth Judicial District Court to enable it to redistribute the real property and retirement benefits acquired by the Defendant prior to the solemnization of the marriage. The recognized date of marriage should be that of October 5, 1984 the date in which the parties had a solemnized marriage. Also, it is inappropriate for the Plaintiff to be awarded attorney fees as there is no evidence that she is in financial need.

DATED this 7<sup>th</sup> day of May, 1990.

  
\_\_\_\_\_  
ROBERT L. MOODY  
TAYLOR, MOODY & THORNE  
Attorneys for Defendant/Appellant

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 7<sup>th</sup> day of May, 1990, I mailed a true and correct copy of the foregoing to Thomas H. Means, Attorney for Plaintiff/Respondent, 363 North University Ave., Suite 103, Provo, Utah 84604; postage prepaid.

  
\_\_\_\_\_

## **ADDENDUM**

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

1989 FEB 16 PM 4:00  
SP

\*\*\*\*\*

HELLEN JAYNE WALTERS,

Plaintiff,

CASE NUMBER CV 87 2408

-vs-

RAY M. HARDING, JUDGE

LEWIS MARK WALTERS,

Defendant.

**MEMORANDUM DECISION**

\*\*\*\*\*

The Court, having conducted the trial of this matter on February 7th, 1989 and having taken all issues under advisement, will rule at this time.

The Court finds that the parties in this action are residents of Utah County, and the Court has jurisdiction. Each of the parties is granted a divorce against the other on grounds of irreconcilable differences. The Court finds that such grounds exist. The Court will not award alimony to either party.

There was an issue raised at trial as to exactly when the marital relationship between the parties began. The Court finds, based on the evidence presented at trial, that the parties began to carry on a marriage like relationship on or about January 1, 1980, which was several years before the marriage was actually solemnized.

The Court considered a number of factors in determining that the marital relationship began in 1980. Among these is the fact that the defendant stayed in the plaintiff's trailer with her when he was not working out of state. The defendant had the plaintiff's trailer moved onto a lot which he was paying for, and did not charge rent. The plaintiff made improvements on the

property such as would be expected of a married couple. The defendant paid debts and obligations for the plaintiff including substantial debts to the I.R.S. and the State Tax Commission. The plaintiff's child with the defendant's consent was enrolled in school under the name Walters. While working out of state, the defendant sent the plaintiff money to live on. Based on the foregoing circumstances, the Court finds that the parties established a marital relationship beginning on or about January 1st, 1980. This is an approximate date because the Court does not have sufficient evidence to fix an exact date.

Because the Court considers the parties to have begun their marital relationship on January 1, 1980, plaintiff is entitled to a share of defendant's retirement benefits accrued during the existence of the marriage. The formula which is to be used to apportion the plaintiff's share of the retirement benefit is found in Marchant v. Marchant, 743 P.2d 199 (Utah App. 1987). The plaintiff will not receive any retirement benefits until the defendant retires. If for any reason the defendant does not qualify for the benefit, neither will the plaintiff. In order to become eligible to receive retirement benefits when they become available, plaintiff's counsel must prepare an order which is to be filed with the defendant's employer which will give the instructions for payment of retirement benefits to the plaintiff. The formula which should be used in the order is "one half of his total monthly payment times the fraction in which the numerator consists of the number of years or months they were married during which the defendant was employed by the federal government and the denominator is the total number of years or months defendant was in such employment." Marchant, at 206. The fraction cannot be determined until the defendant retires. If the parties wish to avoid the need to enter such an order, they may wish to consider a cash settlement of the retirement benefits.

The real property which is at issue was partially acquired before the marriage, and partially after. Considering when the properties were obtained, and how they were paid for, the Court finds the following to be an equitable division of the real property. The plaintiff is to receive the property in Pleasant Grove where her mobile home is located free and clear. The defendant may keep the Highland property which he acquired before the marriage, and the other Pleasant Grove property subject to the \$5,000.00 encumbrance which is still owing on that property. The Court finds that this is a fair division of the property which was either acquired or paid for during the marriage.

The Court, having no evidence as to the amount of money in the Deseret Bank, or the America First accounts during or before the marriage, will award plaintiff half of each of those. Plaintiff is to receive \$400.00 from the Deseret Bank Account, and \$2750.00 of the America First account.

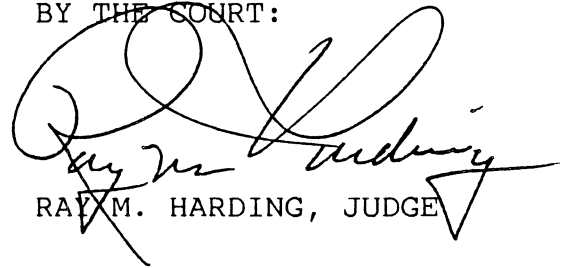
The Court has no evidence of values with which to divide the disputed personal property of the parties. The parties are therefore given the option of either agreeing on a division of property between themselves, or having one party prepare two lists of property and the other selecting a list. If the parties have not used one of these methods to divide the property within 10 days, the Court orders the property sold and the proceeds divided.

The Court will consider the issue of attorney's fees upon submission of affidavits by counsel.

Counsel for plaintiff to prepare findings of fact, conclusions of law, and a decree of divorce, and an order regarding retirement benefits, if necessary, and submit them to opposing counsel for approval as to form prior to filing with the Court for signature.

Dated this 15th day of February, 1989.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Ray M. Harding", is written over the printed name. The signature is fluid and stylized, with a large loop at the beginning and a sharp downward stroke at the end.

RAY M. HARDING, JUDGE

cc: Robert L. Moody, Esq.  
Thomas H. Means, Esq.

1969 MAR 22 11 2 01  
HJ

THOMAS H. MEANS  
Attorney for Plaintiff  
81 East Center  
P.O. Box 2283  
Provo, Utah, 84603  
[801] 377-7980

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

---

HELEN JAYNE WALTERS,	)	
	)	<b>AFFIDAVIT IN SUPPORT OF</b>
Plaintiff,	)	<b>ATTORNEY'S FEES</b>
	)	
v	)	
	)	
LEWIS MARK WALTERS,	)	No. CV 87 2408
	)	
Defendant.	)	

---

STATE OF UTAH        )  
                              : ss  
County of Utah        )

Your affiant, upon his oath, swears and deposes as follows:

1. My name is Thomas H. Means; I am an attorney in good standing, licensed by the Utah State Bar and holding Utah State Bar card #2222. I am experienced in the litigation of the character presented by this action.

2. I am attorney of record for the party as indicated above.



3. In my capacity as attorney of record for such party I have reviewed the file and record of this matter, have consulted with my client and others, have advised my client by telephone and office visits, have prepared and filed pleadings, have discovered the facts attendant to the issues, and have appeared in a representative capacity for and with my client at each and all hearings as may be indicated by the file of this matter. Specifically, actions necessitated by the exigencies of this matter include the following:

Ex Parte Motions for Temporary Restraining Order,  
Preliminary Injunction, and Order to Show Cause,  
Affidavits and Temporary Restraining Order and Order to  
Show Cause, meetings and consultation with Sheriff,  
Hearing of Order To Show Cause, Stipulation, Preliminary  
Injunction, Order, consultation with Pleasant Grove  
detective and Pleasant Grove City Attorney regarding  
Defendant's first violation of Temporary Restraining  
Order, pre-trial hearing, Pre-Trial Order, Affidavits in  
support of and second Motion for Order to Show Cause,  
second Order to Show Cause, hearing on second Order to  
Show Cause, Findings of Fact and Conclusions of Law, and  
Judgment Upon Order to Show Cause, consultation with  
Pleasant Grove Police and Utah County Attorney regarding

Defendant's second violation of Preliminary Injunction, three sets of Plaintiff's Interrogatories, and Certificates of Service, three sets of responses to Defendant's Interrogatories, review of records of Utah County Recorder, four Lis Pendens, telephone consultation with pay clerk at Hill Air Force Base, consultation with real estate appraiser, telephone consultation with banks and credit union regarding accounts, multiple meetings and consultations with investigator, research of case law, Subpoenas for records and appearances (8), telephone consultation with Alpine School District, research of federal right to privacy law [USCA, Section 552(a)] and Motion to Compel for response to Subpoena, consultation with parties' tax preparer, review of Defendant's tax returns, trial preparation, trial, Release of Lis Pendens, drafts of final Findings of Fact and Conclusions of Law, Decree of Divorce, Qualified Domestic Relations Order, Affidavit in Support of Attorney's Fees,

4. I have contracted with my client to provide such services, consultations, and representations at the rate of \$60.00 per hour.

5. I have dedicated 77.52 hours to date in representation of my client in this matter.

6. As per said fee agreement, and through 19 March, 1989, my client has incurred the following expenses in this action:

attorney fees	\$4651.00
advances-service costs	27.00
filing fees	87.00
recorders fees	40.00
witness fees	14.00
accounting costs	32.00
investigations	500.00
appraisals	450.00
total	\$5801.00

7. To date my client has expended \$1782.00 toward the above-noted expenses of this action.

8. The present unpaid balance of the expenses of this action is \$4019.00 all of which balance constitutes unpaid attorney's fees.

9. I believe such rate and such total fees at this stage of the proceedings to be reasonable, given the amount in controversy, the time necessarily expended by me in the matter, the relative complexity of the matter, and the comparable rates charged and time that would likely be dedicated to such representation by other

competent attorneys licensed to practice in this Court, and I further believe the various actions taken in Plaintiff's behalf in the prosecution of her claims have been reasonable, necessary, supported by good cause, and not frivolous nor brought in bad faith nor for delay nor harassment.

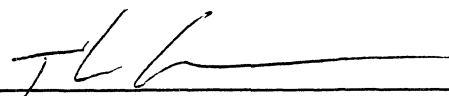
10. After-accruing fees will be as set forth in a Supplemental Affidavit of Attorney's Fees, if appropriate.

11. Your affiant proffers that Plaintiff is totally self-supported from income earned from her present employment at Geneva Steel, that in addition to supporting herself she is responsible for the total support of her daughter Shirley Schantell Hunter (Walters) whom she has custody of, and is partially supporting another adult daughter, Angela Cassingham, who lives with Plaintiff, who maintains part-time employment with a janitorial service, and who is afflicted with a disease which presently prevents her from maintaining full time employment and from living alone, to wit Guillain-Barre Syndrome.

12. At the trial of this matter Plaintiff gave testimony of her total gross income for 1988. It is your affiant's recollection that said total was \$26,182.40.

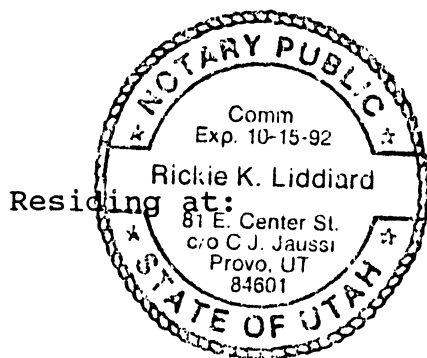
13. The legal basis for an award of attorney's fees is Section 30-3-3, Utah Code and the established law regarding awards of attorney's fees in actions for divorce as set forth in decisions such as Kerr v Kerr, 610 P2nd 1380, Beals v Beals, 682 P2nd 862, Cabrera v Cottrel, 694 P2nd 622, Talley v Talley, 739 P2nd 83, Newmeyer v Newmeyer, 745 P2nd 1276, Porco v Porco, 752 P2nd 365, Rasband v Rasband, 752 P2nd 1313, Aspar v Aspar 753 P2nd 978, Andersen v Andersen, 757 P2nd 476, Sorensen v Sorensen, 102 UAR 14, and Maughan v Maughan, 102 UAR 44. I believe Plaintiff justly deserves an award of attorney's fees and that such award to Plaintiff is supported by the facts and circumstances of this matter and the statute and decisions above cited.

Dated this 20 day of MARCH, 1989.

  
\_\_\_\_\_  
Thomas H. Means  
Affiant  
Attorney for Plaintiff

**ACKNOWLEDGMENT**

On the 20 day of MARCH, 1989, personally appeared before me, **Thomas H. Means**, who duly acknowledged executing the foregoing Affidavit.



Rickie K. Liddiard  
Notary Public  
(seal)

My commission expires:

8

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

\*\*\*\*\*

HELEN JAYNE WALTERS,

Plaintiff,

CASE NUMBER CV 87-2408

-vs-

RAY M. HARDING, JUDGE

LEWIS MARK WALTERS,

Defendant.

MEMORANDUM DECISION

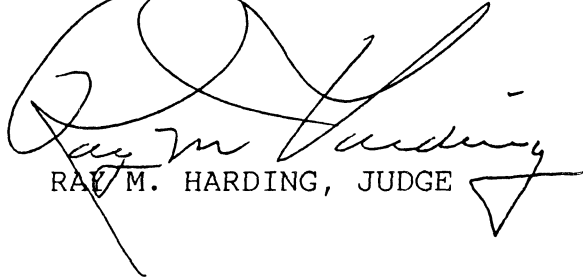
\*\*\*\*\*

The Court, having reserved the issue of attorney's fees in this matter will rule, and will award the plaintiff \$1,000.00 based on need and the relative ability of the parties to pay.

Counsel for plaintiff to prepare an order incorporating the terms of this decision and submit it to opposing counsel for approval as to form prior to filing with the Court for signature.

Dated this 31st day of July, 1989.

BY THE COURT:

  
RAY M. HARDING, JUDGE

cc: Thomas H. Means, Esq.  
Robert L. Moody, Esq.

FILED IN  
4TH JUDICIAL DISTRICT COURT  
JAN 11 1989

CLERK OF COURT



THOMAS H. MEANS, #2222  
Attorney for Plaintiff  
363 North University Avenue  
Suite 103  
P.O. Box 2283  
Provo, Utah, 84603  
[801] 377-7980

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

---

HELEN JAYNE WALTERS,	)	
	)	
Plaintiff,	)	<b>FINDINGS OF FACT and</b>
	)	<b>CONCLUSIONS OF LAW</b>
v	)	
	)	
LEWIS MARK WALTERS,	)	No. CV 87 2408
	)	
Defendant.	)	

---

This matter came on regularly for trial on the 7th day of February, 1989. Plaintiff appeared personally and was represented by her attorney of record, Thomas H. Means. Defendant also appeared personally and was represented by his attorney of record, Robert L. Moody. Both parties gave testimony, as did Plaintiff's daughter, Sabrina Gunderson. The parties each introduced several exhibits and stated their stipulations into the record. Being thereby and otherwise fully apprised of the stipulations, facts, law, and filings regarding this matter, this Court, having taken the matter



under advisement and having issued its MEMORANDUM DECISION, now hereby enters the following.....

### **FINDINGS OF FACT**

1. Plaintiff was a resident of Utah County at the time of the filing of her Complaint and for at least three months prior thereto. Defendant was a resident of Utah County at the time of the filing of his Counterclaim and for at least three months prior thereto.

2. The parties' marriage was solemnized on 5 October, 1984, in Winnipeg, Manitoba, Canada.

3. No children have been born of this marriage and Plaintiff is not pregnant. Plaintiff has a minor daughter, Shirley Schantell Hunter (Walters) from a prior marriage, born 15 May, 1976, who resided with the parties during the entire period when the parties resided together. Plaintiff has another daughter, Sabrina Gunderson, now married, who resided with the parties for a short period when Plaintiff's mobile home was situated at 155 South 1200 West, Orem, Utah.

4. During the marriage, differences have developed between the parties, which differences the parties have unsuccessfully attempted to resolve. Such differences persist.

5. The parties have lived separate and apart from and since on or about 10 November, 1987.

6. Plaintiff and her daughter, Shirley Schantell Hunter (Walters) have both resided in their present residence situated at 625 South 50 West, Pleasant Grove, Utah, continuously since in or about May, 1980. Plaintiff's daughter has attended the elementary and secondary schools servicing that address for her entire education and has been and is a member of the local ward of the church also servicing that address. Prior to May, 1980, Plaintiff and her minor daughter resided in the same mobile home which was then located at 155 South 1200 West, Orem, Utah. This mobile home has been the minor's only home.

7. Defendant has been employed as a civilian employee of the federal government from and since 1967 through the time of trial.

8. During the parties' marriage Plaintiff has been an employee of United States Steel Corporation except for a period when her employer ceased operations at the Geneva plant which was the location where she was employed. At the time of trial, Plaintiff had been re-employed by Geneva Steel for a period of approximately one year.

9. Neither party appears to be presently in need of or entitled to the continuing financial support of the other, either in the form alimony or child support.

10. The parties established a marriage-like relationship several years before their marriage was actually solemnized. While it is not possible to determine from the evidence the precise date when the parties began to cohabit, Plaintiff has established by a preponderance of the evidence, and it is reasonable from the evidence to find that such relationship commenced on or about 1 January, 1980, and continued from and since that time through the time the marriage was solemnized and until the parties separated. From and since 1 January, 1980, the parties cohabited and commingled their efforts and their earnings in a manner such as would be expected of a married couple. The evidence which supports such finding is as follows:

a. The parties met on the Defendant's birthday, 4 December, 1978.

b. At the time they met Plaintiff resided in her mobile home which was situated on a rental space at 155 South 1200 West, Orem, Utah. Although Defendant's employment sometimes required temporary duty (TDY) assignments out of state at guided missile sights, beginning shortly after the parties first met, when not on TDY assignments, Defendant stayed with Plaintiff in her mobile home.

c. In May of 1980, Defendant purchased, in his own name, a trailer pad at 625 South 50 West, Pleasant Grove, Utah. At that

same time the parties moved Plaintiff's mobile home onto that pad where they continued to co-habit. Defendant paid for the costs of moving the mobile home to the Pleasant Grove location as well as the costs incurred for culinary water and sewer connections.

d. Defendant did not charge Plaintiff rent for the placement of her mobile home on the pad or for her use of the realty as her residence.

e. At various times when Defendant was on TDY assignments, Plaintiff helped arranged for and make physical improvements to the Defendant's realty on which her mobile home was placed and to another parcel that Defendant was purchasing and situated at 6072 West 9600 North, Highland, Utah. Such improvements included the laying of concrete pads at each location, leveling, laying water lines, planting of a lawn, and construction of out-buildings and a metal building.

f. While employed, Plaintiff contributed her earnings toward the purchase of food, utilities, and other regular living expenses. Defendant's earnings were used to make payments on the realty.

g. When Plaintiff was not employed, and while Defendant was on TDY assignments, Defendant sent monies home to maintain Plaintiff and her daughter.

h. Defendant made contributions toward Plaintiff's separate debts owed to the I.R.S., the Utah State Tax Commission, an encumbrance on her mobile home, and debts owed for the purchase of her car, a T.V., and medical expenses incurred in an automobile accident.

i. Although not adopted by Defendant, Plaintiff's minor daughter from a prior marriage, with Defendant's knowledge and permission, and prior to solemnization of the marriage, attended school under Defendant's family name of Walters.

j. Defendant listed his address on his federal and state income tax returns as 625 South 50 West, Pleasant Grove, Utah - the same as Plaintiff's residence - for each of the years 1979, 1980, 1981, 1982, and 1983.

k. Defendant listed Plaintiff's daughter "Schanny" in his federal income tax returns under the category of "dependent children who lived with you" for each of the years 1982, 1983, and 1984.

l. The evidence does not indicate that the parties' relationship changed after the solemnization of their marriage.

11. At the time of trial Defendant maintained an account at Deseret Bank with a balance in an amount of \$800.00 and an account at America First Thrift with a balance in the amount of \$5500.00. This Court is without evidence sufficient to establish whether

these balances were accumulated prior to or after the parties established their marital relationship. However, the balance of the America First Thrift account appears to have been accumulated after 10 November, 1987, the date on or about which Defendant was served with a Temporary Restraining Order which is the same date when Defendant withdrew \$3000.00 from the account.

12. As of the date of trial Defendant was the record owner of four parcels of realty, to wit:

a. Parcel 1-

625 South 50 West, Pleasant Grove, Utah, on which is located Plaintiff's aforementioned mobile home, a 1974 72 foot Concord.

b. Parcel 2-

640 South 50 West, Pleasant Grove, Utah, on which is located a 1975 70 foot Brighton mobile home.

c. Parcel 3-

6072 West 9600 North, Highland, Utah.

d. Parcel 4-

746 West 600 North, Orem, Utah

13. Parcel 1 was deeded to Defendant on 27 May, 1980. Parcel 2 was deeded to Defendant on 18 July, 1985. Parcel 3 was deeded to Defendant on 4 August, 1978. Defendant entered into a Uniform Real Estate Contract for the purchase of parcel 3 in July, 1977,

reciting a down-payment of \$2,200.00 with annual payments toward the balance of \$5,800.00 in amounts of \$1,000.00 each scheduled to commence in June, 1978. Defendant made a final payment for parcel 3 in the amount of \$1,682.15 on 23 May, 1981. The parties have stipulated that Defendant has no equitable interest in the Orem parcel and that he is listed as legal owner of parcel 4 only as an accommodation to his son to enable his son to acquire equitable interests in the property. Parcels 1 and 3 are not encumbered by any debt. Parcel 2 is encumbered by a purchase money debt with a balance as of the date of trial in the amount of approximately \$5,000.00.

14. Defendant testified as to the purchase prices and costs of improvements dedicated to parcels 1, 2, and 3 respectively and to his opinion of their respective total values as of the date of trial. The parties have stipulated to this Court's acceptance into evidence of written appraisals of the parcels offered by Plaintiff and conducted by Thomas C. Lamoreaux, a Certified Review Appraiser. This Court considers Mr. Lamoreaux's assessment of the valuations of the parcels more credible than Defendant's own assessment for the following reasons:

a. Defendant's assessments are based almost exclusively on a compilation of purchase price and costs of improvements to each parcel.

Mr. Lamoreaux's assessments are based on several factors including location, access to main arterial roads and shopping, existence or non-existence of public improvements, adverse easements, and adequate drainage, room size and layout, insulation, adequacy of storage and closets, appeal and marketability, remaining economic life, availability for expansion, comparisons to recent sales of similar and proximate properties, income potential, highest and best use, and replacement cost.

b. Defendant testified to having no significant training or experience as an appraiser or builder of similar properties.

Mr. Lamoreaux's Qualifications Summary attached to his appraisal indicates that he has attended courses in real estate appraisal given by the American Institute of Appraisers, that he has appraised similar properties in the subject area from 1974 to the present, that he has experience as a supervisor and general contractor of residential construction from 1971 to 1974, that he is a designated appraiser for the Federal National Mortgage Association, a Certified Review Appraiser, and a licensed Realtor, and that he is a member of the National Association of Review Appraisers and the International Right of Way Association.

Upon the foregoing, this Court accepts and adopts the valuations placed on the properties by Mr. Lamoreaux, to wit:

Parcel 1, with improvements & mobile home:	\$20,000.00
--	-------------



Parcel 2, with improvements & mobile home:	\$20,000.00
Parcel 3, with improvements:	\$10,000.00

15. The Court finds that because of the marriage-like relationship that began on 1 January, 1980, Plaintiff is entitled to a share of Defendant's retirement benefits accrued during the existence of the marriage-like relationship. The formula which is to be used to apportion the Plaintiff's share of the retirement benefit is found in Marchant v Marchant, 743 P2nd 199, (Utah App 1987). The Plaintiff shall not receive any retirement benefits until the Defendant retires. If for any reason the Defendant does not qualify for the benefit neither will the Plaintiff. In order to become eligible to receive retirement benefits when they become available, the Court finds that the Plaintiff's counsel must prepare an order which is to be filed with the Defendant's employer which will give the instructions for payment of retirement benefits to the Plaintiff. The formula which should be used in the Order is "one-half of his total monthly payment times the fraction in which the numerator consists of the number of years or months they maintained the marriage-like relationship during which the Defendant was employed by the federal government and the denominator is the total number of years or months the Defendant was in such employment."

16. With the exception of the aforementioned encumbrance affecting the property at 640 South 50 West, Pleasant Grove, and the parties' separate debts incurred since the date of their separation on 10 November, 1987, there exist no marital debts for which either party is liable either jointly or individually.

17. The parties have stipulated that Plaintiff should be awarded as her sole and separate property the parties' 1980 Chrysler automobile.

18. The parties have stipulated that Defendant should be awarded as his sole and separate property the parties' 1979 Chevrolet pick-up truck.

19. The parties have submitted their respective written lists of the other personalty of their marriage and have testified as to their respective claims to and needs for such personalty. The parties have each claimed entitlement to and need for many of the same items of personalty. From the evidence this Court is not able to ascertain or assign values to the various items of personalty listed or claimed by the parties nor does this Court have evidence from which it is able to determine, by a preponderance of the evidence which, if any, of such personalty is separate property as opposed to property accumulated during the parties' marital relationship.

20. Plaintiff has incurred an obligation in excess of \$4000.00 for attorney's fees reasonable to the prosecution of her Complaint. The hours expended as well as the hourly rate charged were reasonable in light of the complexity of the matter, the results obtained, and the hourly rate commonly charged for similar actions in this area. Plaintiff is in need of an award from Defendant to compensate her for a portion of said attorney's fees.

## **CONCLUSIONS OF LAW**

1. Plaintiff is entitled to a Decree of Divorce dissolving her marriage to Defendant.

2. Defendant is entitled to a Decree of Divorce dissolving his marriage to Plaintiff.

3. Neither party is entitled to an award of alimony or other order of lump sum or periodic financial support from the other.

4. This Court need make no orders regarding liability for family or marital debts except that debt affecting the realty situated at 640 South 50 West, Pleasant Grove, Utah, and except those separate debts incurred by the parties respectively after the date of their separation, as are addressed hereinbelow.

5. Each party should be held solely and individually liable for any and all debt incurred in his or her individual name after the date of their separation on 10 November, 1987.

6. Plaintiff should be awarded as her equitable share of the parties' savings accounts the sum of \$3150.00 representing \$400.00 from Defendant's Deseret Bank Account and \$2750.00 from Defendant's America First Thrift account. Defendant should be awarded the remainder of each account.

7. Plaintiff should be awarded as her equitable share of the parties' equity in the realty acquired by their joint efforts during their marital relationship, all right title and interest in and to the realty and improvements - including the mobile home - situated at 625 South 50 West, Pleasant Grove, Utah. Defendant should be ordered to deed and deliver such realty to Plaintiff. Defendant should retain all right, title, and interests in and to the parties' realty and improvements - including the mobile home - situated at 640 South 50 West, Pleasant Grove, Utah, and the realty and improvements situated at 6072 West 9600 North, Highland, Utah. Such division is equitable owing to the time periods during which such equities were acquired in relation to the marital relationship that existed between the parties both prior to and after solemnization of their marriage, owing to the respective contributions made to acquisition and improvement of the properties by each party, owing to the fact that such division preserves the long established residence of Plaintiff and her minor daughter as well as the minor's school and religious associations, and owing to the fact that such division approximates a near equal division of the monetary values of the properties.

8. Defendant should be held solely and individually liable for all debt encumbering, associated with, or owing for the realty, improvements, and mobile home situated at 640 South 50 West,

Pleasant Grove, Utah. Defendant should hold Plaintiff harmless therefrom.

9. Plaintiff should be awarded as her sole and separate property the parties' 1980 Chrysler automobile.

10. Defendant should be awarded as his sole and separate property the parties' 1979 Chevrolet pick-up truck.

11. It is proper that the parties' personalty as noted in their respective lists of personalty heretofore submitted to and accepted as evidence by this Court, excluding the aforementioned automobiles and mobile homes, be marshalled, sold, and the proceeds therefrom divided equally between them.

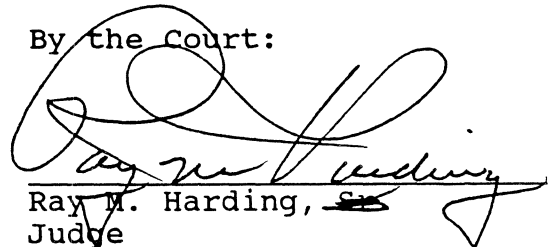
12. Plaintiff is entitled to a proportionate share of Defendant's civil service retirement benefits earned through his employment during the marital relationship. Such share should be determined according to the formula set forth in Marchant v Marchant, 743 P2nd 199 (Utah App. 1987). Accordingly, Plaintiff should not receive her share of such benefits until Defendant retires. If for any reason, Defendant does not qualify for such benefits, neither will Plaintiff. Plaintiff's proportionate share should be one half (50%) of the total amount of all of Defendant's monthly benefit payments multiplied by the fraction in which the numerator is the number of months comprising the period beginning on 1 January, 1980, and ending on the date of trial of this matter,

(109 months) and the denominator is the total number of months Defendant is employed by the federal government. The fraction cannot be determined until such time as Defendant shall retire. If Defendant separates from civil service in advance of retirement, and withdraws his contributions, Plaintiff should receive a portion of Defendant's refund based upon the above-noted fraction. Plaintiff is entitled to an award of such portion of Defendant's civil service retirement benefits as well as a Qualified Domestic Relations Order setting forth her rights in Defendant's civil service retirement benefits and authorizing and instructing the United States Office of Personnel Management to pay to her all sums to which she is entitled pursuant to the formula set forth hereinabove.

13. It is reasonable that Plaintiff be awarded as and for her reasonable attorney's fees the sum of \$1000.00.

Dated this 5 day of <sup>Oct.</sup>~~August~~, 1989.

By the Court:

  
Ray M. Harding, ~~Sr.~~  
Judge  
Fourth Judicial District  
Utah County

Approved as to form:

---

Robert L. Moody  
Attorney for Defendant



OCT 2' 6 1989

DA

THOMAS H. MEANS, #2222  
Attorney for Plaintiff  
363 North University  
Suite 103  
P.O. Box 2283  
Provo, Utah, 84603  
[801] 377-7980

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

---

HELEN JAYNE WALTERS,	)	
	)	AMENDED
Plaintiff,	)	DECREE OF DIVORCE
	)	
v	)	
	)	
LEWIS MARK WALTERS,	)	No. CV 87 2408
	)	
Defendant.	)	

---

This matter, having come on regularly for trial on the 7th day of February, 1989, and this Court, having taken the matter under advisement and having issued its MEMORANDUM DECISION, and having entered its written FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

1. Plaintiff is hereby granted a Decree of Divorce dissolving her marriage to Defendant.
2. Defendant is hereby granted a Decree of Divorce dissolving his marriage to Plaintiff.
3. Each party is hereby held solely and individually liable for any and all debt incurred in his or her individual name after

the date of their separation on 10 November, 1987. Each party shall hold the other harmless for any and all such debts incurred in his/her individual name after 10 November, 1987.

4. Plaintiff is hereby awarded as her equitable share of the parties' savings accounts the sum of \$3150.00 representing a \$400.00 share of Defendant's Deseret Bank Account and a \$2750.00 share of Defendant's America First Thrift account. Defendant is hereby awarded the remainder of each account.

5. Plaintiff is hereby awarded as her equitable share of the parties' equity in the realty acquired by their joint efforts during their marital relationship, all right title and interest in and to the realty and improvements - including the mobile home - situated at 625 South 50 West, Pleasant Grove, Utah. More particularly described as:

Lot 9, Plat D, Pleasant Grove Mobile Home Estates  
Defendant is hereby ordered to deed and deliver such realty to Plaintiff.

6. It is hereby ordered that Defendant retain all right, title, and interests in and to the parties' realty and improvements - including the mobile home - situated at 640 South 50 West, Pleasant Grove, Utah, and the realty and improvements situated at 6072 West 9600 North, Highland, Utah.

7. Defendant shall be and is hereby held solely and individually liable for all debt encumbering, associated with, or owing for the realty, improvements, and mobile home situated at 640 South 50 West, Pleasant Grove, Utah. Defendant shall hold Plaintiff harmless therefrom.

8. Plaintiff is hereby awarded as her sole and separate property the parties' 1980 Chrysler automobile.

9. Defendant is hereby awarded as his sole and separate property, the parties' 1979 Chevrolet pick-up truck.

10. It is hereby ordered that the parties' personalty as noted in their respective lists of personalty heretofore submitted to and accepted as evidence by this Court - but excepting the aforementioned automobiles and mobile homes - be marshalled, sold, and the proceeds therefrom divided equally between the parties.

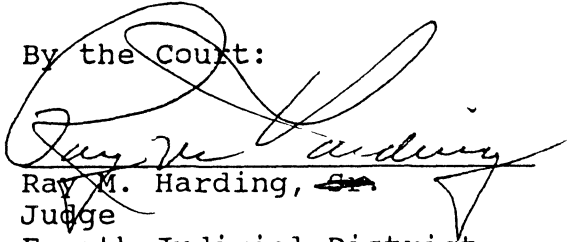
11. Plaintiff is hereby awarded a proportionate share of Defendant's civil service retirement benefits earned through his employment with the federal government during the marital relationship, which is and shall consist of one half (50%) of the total amount of all of Defendant's monthly benefit payments multiplied by the fraction in which the numerator is 109 and the denominator is the total number of months Defendant is employed by the federal government. The fraction shall be determined at such time as Defendant shall retire. Plaintiff shall not receive her

share of such benefits until Defendant retires. If Defendant separates from civil service in advance of retirement and withdraws his contributions, Plaintiff shall receive a portion of such refund based on the above-noted fraction. If for any reason, Defendant does not qualify for such benefits, neither will Plaintiff. Plaintiff is hereby granted and awarded such proportionate share of Defendant's civil service retirement benefits as well as a Qualified Domestic Relations Order setting forth her rights in Defendant's retirement benefits and authorizing and instructing the United States Office of Personnel Management to pay to her all sums to which she is entitled pursuant to the formula set forth hereinabove and hereby granted and awarded to her.


12. Plaintiff is hereby granted and Defendant is hereby ordered to pay as and for Plaintiff's reasonable attorney's fees the sum of \$1000.00.

Dated this 30 day of <sup>Oct.</sup> ~~August~~, 1989.

By the Court:

  
Ray M. Harding, ~~Sc~~  
Judge  
Fourth Judicial District  
Utah County

Approved as to form:

  
Robert L. Moody  
Attorney for Defendant

Robert L. Moody, #2302  
TAYLOR, MOODY & THORNE  
Attorneys for Defendant  
2525 North Canyon Road  
P.O. Box 1466  
Provo, Utah 84603  
Telephone 801-373-2721

---

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

---

HELEN JAYNE WALTERS,	:	
Plaintiff,	:	<u>SCHEDULE SHOWING RESIDENCY OF</u>
vs.	:	<u>PARTIES PRIOR TO MARRIAGE</u>
LEWIS MARK WALTERS,	:	Case No. <u>CV 87 2408</u>
Defendant.	:	Judge Ray M. Harding

---

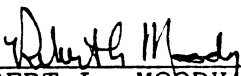
MARK

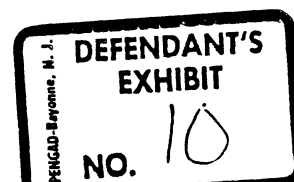
Meets Helen	December, 1978
Montana	January-August, 1979
Highland, Utah	August-October, 1979
Missouri	October, 1979-May, 1980
Highland, Utah	June-July, 1980
Rapid City, S.D.	August, 1980-March, 1982
Cheyenne, Wyoming	March, 1982-February, 1984
Grand Fork, N.D.	February, 1984-July, 1984
Grand Fork, N.D.	July, 1984

HELEN

Meets Mark
Orem, Utah
Orem, Utah
Orem, Utah
P.G., Utah
P.G., Utah
P.G., Utah
P.G., Utah
Grand Fork, ND

DATED this 6<sup>th</sup> day of February, 1989.

  
ROBERT L. MOODY  
TAYLOR, MOODY & THORNE  
Attorneys for Defendant



Robert L. Moody, #2302  
TAYLOR, MOODY & THORNE  
Attorneys for Defendant  
2525 North Canyon Road  
P.O. Box 1466  
Provo, Utah 84603  
Telephone 801-373-2721

---

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

---

HELEN JAYNE WALTERS, :  
 :  
Plaintiff, : SCHEDULE OF REAL PROPERTY  
 :  
vs. :  
 :  
LEWIS MARK WALTERS, : Case No. CV 87 2408  
 : Judge Ray M. Harding  
Defendant. :  
 :

---

COMES NOW the Defendant and hereby submits the  
following schedule of property:

(1) 6072 West 9600 North

Acquisition Date:	July 1977
Purchase Price:	\$ 8,000.00
Cost of Improvements:	\$10,000.00
Present Value:	\$20,000.00
Encumbrances:	\$ 0.00

Plaintiff's appraisal \$10,000.00

(2) 625 South 50 West

Acquisition Date:	May 5, 1980
Purchase Price:	\$11,500.00
	plus water and sewer hook-up \$2,150.00
Cost of Improvements:	\$13,000.00
	(not including Plaintiff's mobile home)

Present Value: \$26,000.00  
Encumbrances: \$ 0.00

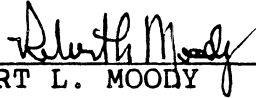
Plaintiff's appraisal \$20,000.00  
(including Plaintiff's mobile home)

(3) 640 South 50 West

Acquisition Date: July 19, 1985  
Purchase Price: \$10,500.00  
plus water and sewer hook-up \$2,165.00  
Cost of Improvements: \$ 0.00  
Present Value: \$13,000.00  
Encumbrances: \$ 5,000.00

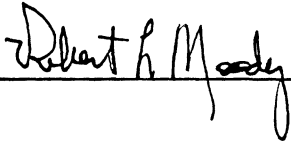
Plaintiff's appraisal \$20,000.00  
(including Defendant's mobile home)

DATED this 6<sup>th</sup> day of February, 1989.

  
\_\_\_\_\_  
ROBERT L. MOODY  
TAYLOR, MOODY & THORNE  
Attorney's for Defendant

#### CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 6<sup>th</sup> day of February, 1989, I mailed a true and correct copy of the foregoing to the Plaintiffs's attorney, Thomas H. Means, P.O. Box 2283, Provo, Utah 84603; postage prepaid.

  
\_\_\_\_\_

Robert L. Moody, No. 2302  
TAYLOR, MOODY & THORNE  
Attorneys for Defendant  
2525 North Canyon Road  
P. O. Box 1466  
Provo, Utah 84603  
(801) 373-2721

---

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

---

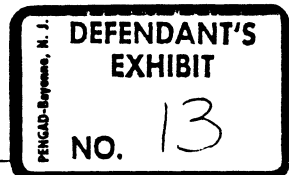
HELEN JAYNE WALTERS,	:	EXPENSES PAID BY DEFENDANT
	:	TO ENABLE PLAINTIFF TO
Plaintiff,	:	PRESERVE ASSETS
vs.	:	
LEWIS MARK WALTERS,	:	
	:	Civil No. <u>CV 87 2408</u>
Defendant.	:	Judge Ray M. Harding

---

I.R.S.	\$4,000.00
State Tax Commission	\$2,700.00
Payment on Trailer	\$3,000.00
Payment on Car Loan	\$400.00
Payment on T.V. Loan	\$150.00
Wyoming Accident Bills	\$1,000.00
Costs to move Trailer from Orem to Pleasant Grove	<u>\$521.00</u>
TOTAL:	<u>\$10,371.00</u>

DATED this 6<sup>th</sup> day of February, 1989.

Robert L. Moody  
ROBERT L. MOODY





**30-1-4.5. Validity of marriage not solemnized.**

(1) A marriage which is not solemnized according to this chapter shall be legal and valid if a court or administrative order establishes that it arises out of a contract between two consenting parties who:

- (a) are capable of giving consent;
- (b) are legally capable of entering a solemnized marriage under the provisions of this chapter;
- (c) have cohabited;
- (d) mutually assume marital rights, duties, and obligations; and
- (e) who hold themselves out as and have acquired a uniform and general reputation as husband and wife.

(2) The determination or establishment of a marriage under this section must occur during the relationship described in Subsection (1), or within one year following the termination of that relationship. Evidence of a marriage recognizable under this section may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

**History:** C. 1953, 30-1-4.5, enacted by L. 1987, ch. 246, § 2.

**Severability Clauses.** — Laws 1987, ch. 246, § 5 provided that if any provision of Chap-

ter 246, or the application of any provision to any person or circumstance, is held invalid, the remainder of the chapter is to be given effect without the invalid provision or application.

**30-1-5. Marriage solemnization — Before unauthorized person — Validity.**

No marriage solemnized before any person professing to have authority therefor shall be invalid for want of such authority, if consummated in the belief of the parties or either of them that he had such authority and that they have been lawfully married.

**History:** R.S. 1898 & C.L. 1907, § 1187; C.L. 1917, § 2970; R.S. 1933 & C. 1943, 40-1-5.

**Cross-References.** — Authorized person required to solemnize marriage, § 30-1-2.

**NOTES TO DECISIONS****Foreign common-law marriages.**

This section does not render valid a common-law marriage entered into in a foreign state

where such marriages are recognized. In re Vetas' Estate, 110 Utah 187, 170 P 2d 183 (1946).

**COLLATERAL REFERENCES**

**Am. Jur. 2d.** — 52 Am. Jur. 2d Marriage §§ 39, 106.

**C.J.S.** — 55 C.J.S. Marriage § 29

**A.L.R.** — Validity of marriage as affected by

lack of legal authority of person solemnizing it, 13 A.L.R.4th 1323

**Key Numbers.** — Marriage ⊃ 27

## 30-1-1

## HUSBAND AND WIFE

- 30-1-30. Premarital counseling — State policy — Applicability.
- 30-1-31. Premarital counseling board in county — Appointment, terms, compensation, offices — Common counseling board with adjacent county.
- 30-1-32. Master plan for counseling.
- 30-1-33. Conformity to master plan for counseling as prerequisite to marriage license — Exceptions.
- 30-1-34. Certificate of completion of counseling.
- 30-1-35. Persons performing counseling services designated by board — Exemption from license requirements.
- 30-1-36. Activities included in premarital counseling.
- 30-1-37. Confidentialness of information obtained under counseling provisions.
- 30-1-38. Fee for counseling.
- 30-1-39. Violation of counseling provisions — Misdemeanor.

**30-1-1. Incestuous marriages void.** Marriages between parents and children, ancestors and descendants of every degree, brothers and sisters of the half as well as the whole blood, uncles and nieces, aunts and nephews, first cousins, or between any persons related to each other within and not including the fifth degree of consanguinity computed according to the rules of the civil law, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate.

**History:** R.S. 1898, § 1183; L. 1907, ch. 29, § 1; C.L. 1907, § 1183; C.L. 1917, § 2966; R.S. 1933 & C. 1943, 40-1-1.

### **Compiler's Notes.**

Analogous former statutes, 2 Comp. Laws 1888, ch. V, §§ 2583 to 2601.

### **Collateral References.**

Marriage ⇌ 10.  
55 CJS Marriage § 16.  
52 AmJur 2d 914-919, Marriage §§ 62-66.  
Cohabitation: liability of one putative spouse to other for wrongfully inducing entry into or cohabitation under illegal, void, or nonexistent marriage, 72 ALR 2d 956.  
Constitutionality of marriage statutes as affected by discriminations or exceptions, 3 ALR 1568.

Correct name of married woman, 35 ALR 417.

Death, right to attack validity of marriage after death of party thereto, 47 ALR 2d 1393.

Duty of husband to provide necessaries for wife as affected by her possession of independent means, 18 ALR 1131.

Habit and repute as essential to common-law marriage, 33 ALR 27.

Mental capacity to marry, 82 ALR 2d 1040.

Presumption as to validity of second marriage, 14 ALR 2d 7.

Subsequent marriage as bar to prosecution for rape, 9 ALR 339.

Validity of common-law marriage, 39 ALR 538, 60 ALR 541, 94 ALR 1000, 133 ALR 758.

Validity of marriage as affected by intention of the parties that it should be only a matter of form or jest, 14 ALR 2d 624.

**30-1-2. Marriages prohibited and void.** The following marriages are prohibited and declared void:

- (1) With a person afflicted with syphilis or gonorrhea that is communicable or that may become communicable.
- (2) When there is a husband or wife living from whom the person marrying has not been divorced.
- (3) When not solemnized by an authorized person, except as provided in Section 30-1-5.
- (4) When the male or female is under sixteen years of age unless consent is obtained as provided in Section 30-1-9.
- (5) When the male or female is under 14 years of age.

### 30-1-17.1. Annulment — Grounds for.

A marriage may be annulled for any of the following causes existing at the time of marriage:

- (1) When the marriage is prohibited or void under Chapter 1 of Title 30.
- (2) Upon grounds existing at common law.

**History:** C. 1953, 30-1-17.1, enacted by L. 1971, ch. 65, § 2.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 4 Am. Jur. 2d Annulment of Marriage §§ 3-42.

**C.J.S.** — 55 C.J.S. Marriage § 50.

**A.L.R.** — Concealment of or misrepresentation as to prior marital status as ground for annulment of marriage, 15 A.L.R.3d 759.

Religion: concealment or misrepresentation relating to religion as ground for annulment, 44 A.L.R.3d 972.

Identity: what constitutes mistake in the identity of one of the parties to warrant annulment of marriage, 50 A.L.R.3d 1295

Incapacity for sexual intercourse as ground for annulment, 52 A.L.R.3d 589

Finances: spouse's secret intention not to abide by written antenuptial agreement relating to financial matters as ground for annulment, 66 A.L.R.3d 1282.

Validity of marriage as affected by lack of legal authority of person solemnizing it, 13 A.L.R.4th 1323

**Key Numbers.** — Marriage ⇌ 58.

### 30-1-17.2. Action to determine validity of marriage — Orders relating to parties, property and children — Legitimacy of children.

If the parties have accumulated any property or acquired any obligations subsequent to the marriage, or there is a genuine need arising from economic change of circumstances due to the marriage, or if there are children born, or expected, the court may make temporary and final orders, and subsequently modify the orders, relating to the parties, their property and obligations, the children and their custody and visitation, and the support and maintenance of the parties and children, as may be equitable. The children born to the parties after the date of the marriage shall be deemed the legitimate children of both of the parties for all purposes.

**History:** C. 1953, 30-1-17.2, enacted by L. 1971, ch. 65, § 3[a].

**Cross-References.** — Nunc pro tunc entry of orders, § 30-4a-1

#### NOTES TO DECISIONS

##### ANALYSIS

Lord Mansfield rule  
Settlement.

##### Lord Mansfield rule.

The Lord Mansfield Rule, whereby spouses may not give testimony which would tend to illegitimatize child born to wife during the

marriage, was adopted *Lopes v Lopes*, 30 Utah 2d 393, 518 P 2d 687 (1974)

##### Settlement.

Court which granted annulment had authority to grant wife a \$1,200 settlement to enable her and her son by a prior marriage to return to her native Thailand *Maple v Maple*, 566 P 2d 1229 (Utah 1977)