

1981

# John P. Dority v. Jeanne D. Dority v. Brief of Respondent

Utah Supreme Court

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## Recommended Citation

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IN THE SUPREME COURT OF THE STATE OF UTAH

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JOHN P. DORITY, :  
Plaintiff-Appellant, :  
v. : Appeal No. 17376  
JEANNE D. DORITY, :  
Defendant-Respondent. :

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**BRIEF OF RESPONDENT**

Appeal from the Judgment of the Third District Court  
in and for Salt Lake County  
Honorable James S. Sawaya, Judge

B. L. Dart  
John D. Parken  
DART & STEGALL  
430 Ten Broadway Building  
Salt Lake City, Utah 84101  
Telephone: 521-6383

Attorneys for Defendant-  
Respondent

David M. Swope  
John K. Mangum  
NIELSEN & SENIOR  
1100 Beneficial Life Tower  
36 South State Street  
Salt Lake City, Utah 84111

Attorneys for Plaintiff-  
Appellant

**FILED**

MAY - 4 1981

**Clerk, Supreme Court, Utah**

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B. L. Dart  
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Salt Lake City, Utah 84101  
Telephone: 521-6383

Attorneys for Defendant-  
Respondent

David M. Swope  
John K. Mangum  
NIELSEN & SENIOR  
1100 Beneficial Life Tower  
36 South State Street  
Salt Lake City, Utah 84111

Attorneys for Plaintiff-  
Appellant

## TABLE OF CONTENTS

	Page
NATURE OF CASE . . . . .	1
DISPOSITION IN LOWER COURT . . . . .	1
RELIEF SOUGHT ON APPEAL . . . . .	1
STATEMENT OF FACTS . . . . .	2
ARGUMENT . . . . .	5
POINT I	
THE CAREFULLY CONSIDERED DECREE FASHIONED BY THE TRIAL COURT IS PRESUMED PROPER AND SHOULD NOT BE MODIFIED ABSENT A CLEAR SHOWING BY THE APPELLANT THAT THE TRIAL COURT HAS ABUSED ITS DISCRETION OR WAS MISTAKEN AS TO THE APPLICABLE LAW. . . . .	5
POINT II	
APPELLANT HAS ENTIRELY FAILED TO MEET HIS BURDEN OF DEMONSTRATING SOME ABUSE OF DISCRETION OR MISAPPLICATION OF LAW: THEREFORE, THE ORIGINAL DECREE SHOULD BE AFFIRMED IN ITS ENTIRETY. . . . .	8
A. The trial court appropriately refused to be bound by Pennsylvania law. . . . .	8
B. The total property distribution effected by the trial court is entirely appropriate. . . . .	12
POINT III	
THE THREE-YEAR ALIMONY AWARD ENTERED BY THE TRIAL COURT IS APPROPRIATE AND SHOULD NOT BE MODIFIED. . . . .	17
POINT IV	
RESPONDENT SHOULD BE AWARDED HER ATTORNEY'S FEES INCURRED IN THE DEFENSE OF THIS APPEAL. . . . .	21
CONCLUSION . . . . .	22

# CASES CITED

	Page
Baker v. Baker, 551 P.2d 1263 (Utah 1976) . . . . .	7
Carter v. Carter, 19 Utah 2d 183, 429 P.2d 35 (1967) . . . . .	8
Eastman v. Eastman, 558 P.2d 514 (Utah 1976) . . . . .	6
Ehninger v. Ehninger, 569 P.2d 1104 (Utah 1977) . . . . .	21-22
English v. English, 565 P.2d 409 (Utah 1977) . . . . .	7-20
Fletcher v. Fletcher, 615 P.2d 1218 (Utah 1980) . . . . .	13-14
Frank v. Frank, 585 P.2d 453 (Utah 1978) . . . . .	20
Gramme v. Gramme, 587 P.2d 144 (Utah 1978) . . . . .	18
Hansen v. Hansen, 537 P.2d 491 (Utah 1975) . . . . .	7-8
In re Marriage of Ramsey, 526 P.2d 319 (Ct. App. Colo. 1974) . . . . .	10
Iverson v. Iverson, 526 P.2d 1126 (Utah 1974) . . . . .	8
Jespersion v. Jespersen, 610 P.2d 326 (Utah 1980) . . . . .	15-16
Michelsen v. Michelsen, 14 Utah 2d 328, 383 P.2d 932 (1963) . . . . .	8
Mitchell v. Mitchell, 527 P.2d 1359 (Utah 1974) . . . . .	8

Naylor v. Naylor,	
563 P.2d 184 (Utah 1977)	8
Noble v. Noble,	
26 Ariz. App. 89, 546 P.2d 358 (1976)	11
Pearson v. Pearson,	
561 P.2d 1080 (Utah 1977)	8
Smestad v. Smestad,	
94 Idaho 181, 484 P.2d 730 (1971)	10
Spangler v. Spangler,	
561 P.2d 1076 (Utah 1977)	8
Tremayne v. Tremayne,	
116 Utah 483, 211 P.2d 452 (1949)	14-15
Wilson v. Wilson,	
5 Utah 2d 79, 296 P.2d 977 (1956)	6-7, 19-20

#### AUTHORITIES CITED

§30-3-5(1) Utah Code Annotated (1953 as amended)	9
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IN THE SUPREME COURT OF THE STATE OF UTAH

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JOHN P. DORITY,	:	BRIEF OF RESPONDENT
Plaintiff-Appellant,	:	
v.	:	
JEANNE D. DORITY,	:	Case No. 17376
Defendant-Respondent.	:	

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NATURE OF CASE

This is a divorce action in which the plaintiff husband appeals from the property distribution and alimony award entered by the trial judge.

DISPOSITION IN LOWER COURT

Following a day-long trial before the Honorable James S. Sawaya, a divorce was granted to the parties. The husband was awarded in excess of one-half of the parties' accumulated property, but was ordered to pay a modest fixed-term alimony award to the wife.

RELIEF SOUGHT ON APPEAL

Defendant-respondent Jeanne D. Dority respectfully requests that this Court affirm in its entirety the Decree fashioned by the trial court and, additionally, order an award to her of such sum as will

reasonably compensate her for the attorney's fees incurred in the defense of this appeal.

### STATEMENT OF FACTS

Defendant-respondent (hereinafter "Mrs. Dority") deems it necessary to present a concise statement of the facts of this case since the statement presented by plaintiff-appellant (hereinafter "Mr. Dority") fails to reflect accurately all of the relevant facts and circumstances at issue.

At the time the parties were married--almost a quarter century ago in 1956--each had obtained essentially all of their formal education. (Tr. at 5 and 61; R. at 202 and 258.) Mr. Dority was a young patent attorney with I.B.M. earning approximately \$12,000 per year. (Tr. at 6; R. at 203.) During their marriage, the parties raised four children, all of whom had attained their majority prior to the trial. (Tr. at 8; R. at 205.)

The parties moved four times, keeping pace with Mr. Dority's employment, eventually locating in September of 1966, in Devon, Pennsylvania, where they purchased a home on Schoolhouse Lane. (Tr. at 9-10; R. at 206-07.) This residence was occupied by the parties and their children until August of 1972, when Mrs. Dority and the four children moved from the home. (Tr. at 12; R. at 209.) The parties have been separated since that time.



A separate maintenance action was commenced in Pennsylvania in 1972 (Tr. at 12-13; R. at 239-40) and, in June of 1977, Mr. Dority instituted divorce proceedings in Pennsylvania (Tr. at 15; R. at 212).

In the fall of 1978, Mr. Dority was transferred to Utah and, in 1979, he voluntarily elected to institute a Utah divorce action, even though the Pennsylvania proceedings were still pending at that time. (R. 2-4 and Tr. at 44; R. at 241.) Thereafter, Mr. Dority filed a petition in the Pennsylvania divorce proceeding seeking to discontinue that action based upon his residence here in Utah.

At the time of the trial, Mr. Dority was 55 years of age and employed as a senior patent attorney with the Sperry Corporation. (Tr. at 20; R. at 247.) He was earning in excess of \$51,000 per year. (Id.) On the other hand, Mrs. Dority was 52 years of age and suffering from impaired eyesight as a result of a cataract condition that had earlier necessitated surgery. (Tr. at 80; R. at 277.) She was employed at Drexel University in Pennsylvania, receiving a gross annual income of \$16,824. (Exhibit D-9, received R. at 274, reproduced infra at A-3.)

At the time of trial, the parties' former residence on Schoolhouse Lane in Devon, Pennsylvania, had an appraised value of \$95,000 (Deposition of Laurence Scott) and was subject to a mortgage in the amount of \$16,000 (Tr. at 32; R. at 229), with an additional \$17,000 owed to Mrs. Dority's family for the repayment of funds advanced for its maintenance and improvement (Tr. at 73-74; R. at 270-71). Accordingly,

the Pennsylvania property had a net value of \$62,000. In addition, Mr. Dority had purchased a \$100,000 house here in Salt Lake County, which was subject to a \$51,000 mortgage (Tr. at 33; R. at 230) and an obligation in the amount of \$30,500, incurred to obtain the downpayment. Accordingly, the Salt Lake property had a net value of \$18,500. The parties also owned in excess of \$112,000 in securities, which Mr. Dority had placed in his own name. (See, Exhibit D-8, received R. at 278, reproduced infra at A-1.) Mr. Dority further had a vested interest in a retirement fund with a value at trial in excess of \$85,000. (Tr. at 35; R. at 232.) While Mr. Dority claims that most of the stock owned at the time of trial had been acquired after the parties' separation in 1972, it was clear from his testimony that he had sold a substantial amount of stock acquired prior to the separation in order to reacquire stock following the separation. (Tr. at 37-39; R. at 234-36.)

In dividing the assets acquired during the tenure of the parties' 25-year marriage, the trial court awarded approximately \$160,000 in assets to Mr. Dority, while awarding only approximately \$120,000 of assets to Mrs. Dority. (See Schedule "A", infra at A-2.)

During the marriage, Mr. Dority progressed from a young attorney to a highly successful corporate patent attorney, with a consequent more than quadrupling of his annual income. Mrs. Dority, on the other hand, gave up her job as a newspaper reporter and remained at

home, rearing the parties' family and tending to their household needs.  
(Tr. at 62; R. at 259.)

Notwithstanding that he received some \$40,000 more than his wife and well over half of the combined assets, Mr. Dority appeals from the trial court's property distribution, challenging that it is unfair to him. Notwithstanding that the trial court ordered him to pay only \$500 per month in alimony, and only for a three-year period, Mr. Dority appeals from the trial court's alimony award, claiming that it is unreasonable.

## ARGUMENT

POINT I. THE CAREFULLY CONSIDERED DECREE FASHIONED BY THE TRIAL COURT IS PRESUMED PROPER AND SHOULD NOT BE MODIFIED ABSENT A CLEAR SHOWING BY THE APPELLANT THAT THE TRIAL COURT HAS ABUSED ITS DISCRETION OR WAS MISTAKEN AS TO THE APPLICABLE LAW.

This Court has on innumerable occasions held that, while a divorce action is equitable in nature, the ruling of the trial judge is favored with a presumption of propriety and accuracy. It is only in those few instances in which the appellant can clearly demonstrate a manifest abuse of discretion or misapplication of law that the decree fashioned by the trial judge will be disturbed. Such a proposition is logically grounded upon the advantaged position of the trial court, who

has observed the witnesses, heard the testimony, and become acquainted at least to a limited degree with the parties, their problems, and their properties.

In a tacit recognition of the fact that the Findings of Fact entered by Judge Sawaya are supported by sufficient credible evidence, Mr. Dority relies upon the equitable nature of divorce proceedings in his invitation to this Court to revamp the original decree. A similar invitation was refused in Eastman v. Eastman, 558 P.2d 514 (Utah 1976), with the observation that:

We have many times stated that even though proceedings in divorce cases are equitable, in which this Court may review the evidence, due to the prerogatives and advantaged position of the trial court, we give considerable deference to his findings and judgment; and we do not disturb them unless the evidence clearly preponderates to the contrary, or he has abused his discretion, or has misapplied principles of law.

558 P.2d at 515-16 (footnote citations omitted). It is, therefore, incumbent upon the appellant in a divorce case to demonstrate some clear abuse of discretion or misapplication of law before this Court will act to revise any aspect of the original decree.

This Court has long held that its inherent power to supplant the trial judge's discretion is to be exercised only judiciously and infrequently. For example, in Wilson v. Wilson, 5 Utah 2d 79, 296 P.2d 977 (1956), it was held that:

The more recent pronouncements of this court, and the policy to which we adhere, are to the effect that the trial judge has considerable latitude of discretion in such matters and that his judgment should not be changed lightly, and in fact, not at all, unless it works such a manifest injustice or inequity as to indicate a clear abuse of discretion.

296 P.2d at 981 (footnote omitted).

Since the plan of distribution and decree fashioned by the trial judge will be modified only if the result of a clearly demonstrated abuse of discretion or of a manifest misapplication of relevant law, the burden is upon the party dissatisfied with the trial court's decision to demonstrate such error. This traditional proposition was recognized in English v. English, 565 P.2d 409 (Utah 1977), in which the principles applicable to this appeal were concisely summarized by this Court:

The trial court, in a divorce action, has considerable latitude of discretion in adjusting financial and property interests. A party appealing therefrom has the burden to prove there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error; or the evidence clearly preponderated against the findings; or such a serious inequity has resulted as to manifest a clear abuse of discretion.

565 P.2d at 410 (footnote citation omitted). Essentially identical statements of this principle can be found in many other Utah cases, including Baker v. Baker, 551 P.2d 1263 (Utah 1976); Hansen v. Hansen,

537 P.2d 491 (Utah 1975); and Mitchell v. Mitchell, 527 P.2d 1359 (Utah 1974).

Under the standards of review traditionally applied by this Court, the property distribution and alimony award entered in this case are presumed valid and will be affirmed unless Mr. Dority has demonstrated that Judge Sawaya has so clearly abused his discretion as to result in substantial prejudice or has misapplied the relevant law of this state to such a degree that the decree entered is manifestly unfair and inequitable. Naylor v. Naylor, 563 P.2d 184 (Utah 1977); Spangler v. Spangler, 561 P.2d 1076 (Utah 1977); Pearson v. Pearson, 561 P.2d 1080 (Utah 1977); Iverson v. Iverson, 526 P.2d 1126 (Utah 1974); Carter v. Carter, 19 Utah 2d 183, 429 P.2d 35 (1967); Michelsen v. Michelsen, 14 Utah 2d 328, 383 P.2d 932 (1963).

**POINT II. APPELLANT HAS ENTIRELY FAILED TO MEET HIS BURDEN OF DEMONSTRATING SOME ABUSE OF DISCRETION OR MISAPPLICATION OF LAW; THEREFORE, THE ORIGINAL DECREE SHOULD BE AFFIRMED IN ITS ENTIRETY.**

**A. The trial court appropriately refused to be bound by Pennsylvania law.**

Although appellant in his brief (App. Br. at 11-12) recognizes the great discretion accorded the trial court in domestic matters, he then myopically ignores this principle, arguing that the trial court

erroneously refused to be bound by certain arbitrary provisions of Pennsylvania law. Mr. Dority voluntarily filed this divorce action here in Utah and, thereafter, voluntarily sought the dismissal of the Pennsylvania action, which he had earlier filed. Notwithstanding his clearly manifest election to obtain his divorce in Utah, Mr. Dority now seeks to require the trial court to apply selectively portions of the domestic relations law of Pennsylvania, which Mr. Dority apparently believes to favor his position. The unreasonableness is apparent of Mr. Dority's demand that his wife (who was still a Pennsylvania resident at the time of the trial of this action) come to Utah to defend the divorce proceeding but then be faced with the application of certain isolated provisions of Pennsylvania law.

Mr. Dority is a Utah resident. He voluntarily filed this divorce action here in Utah. The overwhelming bulk of the parties' assets were located in Utah. Mr. Dority abandoned the divorce action that he had once commenced in Pennsylvania. Yet, he now argues that the trial court should have applied Pennsylvania law.

The trial court, of course, had the statutory jurisdiction to divide fully the property of the parties. Section 30-3-5, Utah Code Annotated (1953 as amended), broadly states:

When a decree of divorce is made,  
the court may make such orders in  
relation to the . . . property and  
parties . . . as may be equitable. . . .

§30-3-5(1), Utah Code Annotated (1953 as amended). Accordingly, once

the jurisdictional prerequisites were met, the trial court had broad power to divide the property of the parties in an equitable manner.

The bulk of the parties' property was located here in Utah; accordingly, it was appropriate that this property, at least, be divided pursuant to Utah law. In In re marriage of Ramsey, 526 P.2d 319 (Ct. App. Colo. 1974), the trial court's refusal to distribute property pursuant to Colorado law was reversed:

An action for dissolution of marriage is a proceeding in rem . . . . Moreover, where, as here, a petitioner . . . has possession of property located in Colorado . . . the court acquires control of the property by virtue of its jurisdiction over petitioner, and the court thereby obtains jurisdiction to determine the appropriate disposition of that property.

526 P.2d 320 (citations omitted). Likewise in this case, the trial court properly distributed the property of these parties in accordance with Utah law.

Moreover, in Smestad v. Smestad, 94 Idaho 181, 484 P.2d 730 (1971), the Idaho Supreme Court articulated a similar proposition, but extended its scope to include property of the parties located in a foreign jurisdiction. The wife contended on appeal that the trial court had erred in distributing property located outside the state of Idaho. The court held, however, that so long as personal jurisdiction had been obtained, it was appropriate for the trial court to apply its law in



order to distribute property located outside of the state of Idaho. (484 P.2d at 733). Mr. Dority does not dispute that the trial court had obtained personal jurisdiction over both parties.

In Noble v. Noble, 26 Ariz. App. 89, 546 P.2d 358 (1976), this concept was applied even to property located in a foreign nation. It was argued on appeal that the trial court had erred both in attempting to effect a distribution of the foreign property and in basing the distribution upon the provisions of its local state law. These contentions were rejected on appeal:

We agree that the courts of this state do not have jurisdiction to determine title to property in another state or foreign country. However, we do not view the trial court's determination of the interest of the parties in the Denmark property as determining the title to that property. Rather, we view the trial court's determination to simply be, as between the parties before the court, what interest they held in the foreign jurisdiction property. This the trial court may properly do. . . .

546 P.2d at 361. In the present case, it was appropriate both for the trial court to divide and distribute the relatively small portion of the parties' property that was not located within the state of Utah and for the trial court to have divided that property under the applicable provisions of Utah law.

Appellant does not contend that the overall distribution of the parties' property effected by the trial court was inherently unjust

or inequitable; rather, Mr. Dority simply complains that the trial court did not find itself to be bound by certain provisions of Pennsylvania law. The trial court's award of the residence in Pennsylvania to Mrs. Dority makes a great deal of common sense--Mr. Dority effectively abandoned that house two years ago when he moved to Utah and knowingly allowed it to go to the point of foreclosure, thus requiring Mrs. Dority to take the property back and care for it. (Tr. at 48 and 72-73; R. at 245 and 269-70.) Additionally, Mr. Dority has chosen to reside here in Utah, while Mrs. Dority remains in Pennsylvania. Under such circumstances, it was logical for the trial court to award the Utah property to Mr. Dority, and the Pennsylvania property to Mrs. Dority.

Since in the overall distribution of the property, Mr. Dority was awarded well over half of the parties' assets, he has no legitimate complaint with the distribution fashioned by the trial court.

**B. The total property distribution effected by the trial court is entirely appropriate.**

The assets of the parties, as reflected by their testimony, are summarized in defendant's Exhibit 8, which was received into evidence by the trial court. (Tr. at 81; R. at 278.) This exhibit is reproduced in the Appendix to this brief. (Infra at A-1.) At trial, Mr. Dority testified that the Sperry Corporation stock was worth \$93,805

(Tr. at 34; R. at 231) and the trial court interlineated that amount; therefore, the assets actually total \$286,316.

As noted earlier, the trial court awarded \$162,119.50 of these assets to Mr. Dority, well in excess of one-half. The distribution of the assets effected by the trial court's Decree is summarized as Schedule "A" in the Appendix. (Infra at A-2.)

Examination of the distribution effected by the trial court makes clear that Mr. Dority's complaints about the property distribution are without merit. The trial court managed to give Mr. Dority well in excess of one-half of the parties' assets while at the same time implementing the logical result of leaving each party with one of their two homes. Mr. Dority claims that the trial court should be directed to credit him with "the equivalent value of the separate property appellant brought into the marriage which was traced to the acquisition of the Devon real property". (App. Br. at 14.) Mr. Dority did not document this disputed claim at trial, yet, this is precisely what the trial court has done in distributing more than one-half of the total assets to Mr. Dority.

The trial court has certainly not abused its discretion in fashioning the property distribution. As this Court recently observed in Fletcher v. Fletcher, 615 P.2d 1218 (Utah 1980):

There is no fixed formula upon which to determine a division of properties, it is the prerogative of the court to make whatever disposition of property as it

deems fair, equitable, and necessary for the protection and welfare of the parties. In the division of marital property, the trial judge has wide discretion, and his findings will not be disturbed unless the record indicates an abuse thereof.

615 P.2d at 1222 (footnote citations omitted). The trial court cannot be said, in this case, to have abused its "wide discretion" by making the logical distribution of one house to each party, while at the same time ensuring that Mr. Dority receive in excess of one-half of the parties' total properties.

Mr. Dority's contentions on appeal are nothing more than an attempt to augment the already generous property distribution fashioned by the trial court. He, in effect, complains that he was awarded only something in excess of one-half of the parties' total assets. However, property distributions much more favorable to the wife have been routinely upheld by this Court. For example, in Tremayne v. Tremayne, 116 Utah 483, 211 P.2d 452 (1949), the trial court awarded approximately four-fifths of the parties' property to the wife. In upholding that distribution, this Court noted that the distribution of property

is in the discretion of the trial court which will not be disturbed unless the court abuses its discretion. The facts of each divorce case are different and each must be determined on what is equitable to the parties under the facts of the case. . . .

Through schooling [the husband's] earning capacity has been substantially

increased during the marriage and [the wife's] earning capacity has not been proportionately increased during that time. . . . How far either one would have gone without the other is largely a matter of conjecture. The facts and circumstances amply justified the court in dividing the property as it did even if treated as a division of the property but does not require that she be awarded a larger portion thereof. The court acted well within its discretion and we will not disturb its decision thereon.

211 P.2d at 454 (numerous citations omitted).

In his brief, Mr. Dority argues that this Court's decision in Jespersion v. Jespersen, 610 P.2d 326 (Utah 1980), supports his contention that his alleged contribution, subsequently traced to the Pennsylvania real property, should have been reimbursed to him by the trial court. An examination of the facts of that case reveals, however, that any reliance upon it by Mr. Dority is misplaced. In Jespersion, the marriage was only of five years' duration and the parties were 68 and 73 years of age at the time of their marriage. The husband had brought "virtually no assets" to the marriage, while the wife brought in excess of \$40,000 in assets, more than half of which were in cash. (610 P.2d at 327.) Moreover, this Court emphasized that neither of the parties, being of advanced age, were gainfully employed; thus, no assets were produced during the marriage. (Id.) This Court held that the trial court had not abused its discretion by fashioning a property

distribution which, in effect, reimbursed the wife for the assets which she had brought to the marriage.

In the present case, the marriage occurred 25 years ago between vigorous and productive young adults; Mr. Dority's salary has quadrupled to over \$50,000 per year; and assets well in excess of one-quarter million dollars have been amassed during the marriage. By no stretch of the imagination can this Court's holding in Jespersion be said to stand for the proposition that Mr. Dority is entitled to a dollar-for-dollar reimbursement of the assets that he (allegedly) brought to this marriage.

While Mr. Dority asserts that his testimony that he brought some \$26,000 in government bonds to the marriage was "unrefuted" (App. Br. at 6), Mrs. Dority testified that he never told her about this money; that to her knowledge he brought no such assets with him to the marriage; and that immediately after their marriage he had to borrow \$500, previously given to her by her father, in order to repair the roof. (Tr. at 62-63; R. at 259-60.) Accordingly, the trial court may also have found Mr. Dority's belated claim to these assets to have been inherently incredible.

Throughout his argument that the property distribution should be modified, Mr. Dority myopically isolates the Pennsylvania real property, failing to recognize that the overall distribution is entirely

fair and cannot be said to constitute an abuse of discretion by the trial court.

**POINT III. THE THREE-YEAR ALIMONY AWARD ENTERED BY THE TRIAL COURT IS APPROPRIATE AND SHOULD NOT BE MODIFIED.**

The trial court ordered that Mr. Dority pay \$18,000 in alimony, at the rate of \$500 per month for three years. On appeal, Mr. Dority contends that this award "should be vacated." Again, Mr. Dority suggests that since he once lived in Pennsylvania, Pennsylvania law should be applied with regard to alimony. He admits, however, that the Pennsylvania law in effect at the time of the trial permitted the award of alimony. (App. Br. at 17-18.) Although it was he who chose to bring this action in Utah, Mr. Dority now contends that the trial court erred by not applying Pennsylvania law to its alimony award. Such a contention is without merit and, not surprisingly, Mr. Dority fails to cite a single case or authority in support of it.

The trial court's modest alimony award to Mrs. Dority is appropriate and in full compliance with the decisions of this Court, which have consistently held that an ex wife is entitled to an award of alimony based upon her health, the duration of her marriage, the standard of living to which she has become accustomed during that marriage, and the former husband's demonstrated income potential.

These factors were recently recognized by this Court in Gramme v. Gramme, 587 P.2d 144 (Utah 1978), which Mr. Dority cites in his brief (App. Br. at 20). In the present case, Mrs. Dority has experienced continuing difficulties with her eyesight and is earning less than one-quarter of Mr. Dority's income. Moreover, this is a long-term marriage, during which Mrs. Dority has raised the parties' family and maintained their household, while Mr. Dority has prospered in his career. Under the factors enumerated by this Court in Gramme, the short-term alimony ordered by the trial court cannot be said to constitute an abuse of discretion.

Mr. Dority's contention (App. Br. at 17) that the three-year alimony award entered by the trial court is double what he has been paying to Mrs. Dority under the temporary Pennsylvania support order is misleading because it fails to recognize that in Pennsylvania she was receiving not only \$250 in alimony but an additional \$400 in support for a total of \$650 per month. Equally misleading is Mr. Dority's assertion (App. Br. at 18) that he had paid "over \$32,000 by the time of trial" in temporary support to his wife. In so stating, he wholly overlooks that during the corresponding period he had earned well over \$300,000. (Tr. at 46-47; R. at 243-44.) Clearly this is not--as Mr. Dority contends--an "enormous windfall". (App. Br. at 18.) Nor is alimony of \$500 per month for a three-year period a "very generous award". (Id.)



The evidence adduced at trial demonstrated that Mrs. Dority's monthly living expenses total \$2,272.69. These expenses were itemized in defendant's Exhibit 10, which was received into evidence by the trial court. (Tr. at 79; R. at 276.) A copy of this exhibit is reproduced in the Appendix. (Infra at A-4.) Accordingly, Mr. Dority's protestations (App. Br. at 18) that his former wife "had a monthly expendable income of \$1,332.02" is unavailing and amounts to nothing more than a tacit admission of her need for some degree of continued support.

In light of the long duration of the marriage, Mr. Dority's demonstrated substantial income potential, and the standard of living to which his wife had grown accustomed during the marriage, the trial court's award of alimony in the amount of \$500 per month for a limited three-year period cannot be said to be an abuse of discretion. These very factors have long been held by this Court to be of significance in determining the wife's entitlement to alimony. For example, in Wilson v. Wilson, 5 Utah 2d 79, 296 P.2d 977 (1956), the marriage had lasted 15 years and the principal issue on appeal was the appropriate amount of alimony to be awarded. This Court held that in determining alimony,

[t]he court's responsibility is to endeavor to provide a just and equitable adjustment of [the parties'] economic resources so that the parties can reconstruct their lives on a happy and useful basis. In doing so it is necessary for the court to consider . . . an appraisal of all of the attendant facts and circumstances: the duration of the marriage; the ages of the

parties; their social positions and standards of living; their health; considerations relative to children; the money and property they possess and how it was acquired; and their capabilities and training and their present and potential incomes.

296 P.2d at 979-80 (emphasis added, footnote omitted). Application of these factors in the present case renders inescapable the conclusion that the trial court acted well within its sound discretion.

The policy that the alimony award be sufficient to enable the wife to maintain the social status and standard of living to which she has become accustomed during her marriage has been emphasized in other recent decisions of this Court. In English v. English, 565 P.2d 409 (Utah 1977), it was held in connection with a twenty-year marriage that:

[T]he most important function of alimony is to provide support for the wife as nearly as possible at the standard of living she enjoyed during marriage, and to prevent the wife from becoming a public charge.

565 P.2d at 411 (emphasis added). And in Frank v. Frank, 585 P.2d 453 (Utah 1978), in response to the remonstrances of a physician to the trial court's alimony award, this Court observed:

How the defendant, or any one on his behalf, could even suggest that a wife who had devoted 21 years to her marriage and reared a family should be turned out to subsist on her own is as discordant to our sense of justice as it was to the trial judge.

585 P.2d at 455. This observation would appear equally applicable to the present case.

During his marriage, Mr. Dority's salary quadrupled from just over \$12,000 to the more than \$50,000 he presently earns as a senior corporate patent attorney. During their marriage, the Dorities amassed assets in excess of one-quarter million dollars. Mr. Dority now contends that the trial court's award of alimony of \$500 per month for three years was an abuse of discretion; any such contention is utterly without merit.

**POINT IV. RESPONDENT SHOULD BE AWARDED HER  
ATTORNEY'S FEES INCURRED IN THE DEFENSE OF THIS APPEAL.**

Due to Mr. Dority's dissatisfaction with Judge Sawaya's rulings, Mrs. Dority has been burdened with the costs of this appeal. This Court has frequently held that, in such circumstances, an award is appropriate to cover the added costs necessitated by the dissatisfied party's appeal. For example, in Ehninger v. Ehninger, 569 P.2d 1104 (Utah 1977), the husband, disenchanted with the trial judge's award, appealed with the usual contention that the property distribution was unfair and inequitable. The original decree was affirmed and the case remanded to the trial court for the assessment and award of attorney's fees incurred by the wife as a result of the appeal:

Inasmuch as the plaintiff has been put to the necessity of defending this appeal, which we have found to be without merit, it is our opinion that she is

justified in her request for a further award of attorney's fees in addition to the modest amount of \$200 allowed her in the trial court.

569 P.2d at 1106. To the same effect are Fletcher v. Fletcher, 615 P.2d 1218 (Utah 1980); and Baker v. Baker, 551 P.2d 1263 (Utah 1976). In this case, an award of attorney's fees on appeal is particularly appropriate, since the trial court did not award fees to either party at the trial, thus requiring each to bear their own costs.

The only aspect of Judge Sawaya's decree with which Mr. Dority does not quibble is the granting of the divorce itself. As a result of this appeal, Mrs. Dority has incurred substantial additional expense. It is, therefore, appropriate that she be reimbursed for those additional expenses necessitated by this groundless appeal.

### CONCLUSION

In divorce cases, this Court has invariably held that the decision of the trial judge is to be respected unless it clearly appears that he has abused his discretion or manifestly misapplied relevant law. This standard of review appropriately grants deference to the advantaged position of the trial judge, who has seen the parties, listened to their testimony, and had a personal opportunity to perceive their problems and circumstances. Nowhere in his brief does appellant isolate a single instance in which Judge Sawaya's findings are not supported by the

evidence; rather, Mr. Dority states and restates his dissatisfaction with the trial judge's ruling--such is neither an appropriate nor a sufficient ground for reversal or modification.

Mr. Dority was transferred to Utah in 1978 and in 1979 he filed the present action here in Utah. He also voluntarily petitioned to dismiss a Pennsylvania divorce action that he had earlier filed. Only a single asset of the parties remains in Pennsylvania. Yet Mr. Dority now complains that the trial court refused to consider itself bound by certain arbitrary provisions of Pennsylvania's domestic relations law, which Mr. Dority apparently deems favorable to his position. The trial court correctly refused to consider itself bound by Pennsylvania law.

Even if, through an application of Pennsylvania law, Mr. Dority is entitled to a one-half interest in the Pennsylvania real property, the overall property distribution fashioned by the trial court is sufficiently generous to him that modification is not required. Dealing with assets totaling approximately \$286,000, the trial court awarded \$162,000 to Mr. Dority and only \$124,000 to respondent. The overall property distribution is, therefore, entirely fair and equitable and well within the sound discretion of the trial court. Modification is unnecessary and would be inappropriate.

In the dissolution of this marriage, which had lasted for a quarter century, the trial court ordered that Mr. Dority pay alimony for

only three years at the rate of \$500 per month. In light of Mrs. Dority's impaired vision, the fact that her income is a mere quarter of Mr. Dority's, and the expenses inherent in the standard of living enjoyed by Mrs. Dority during the marriage, such a modest alimony award is certainly not an abuse of discretion.

Although Mr. Dority points to the fact that he has paid a substantial sum to his wife as temporary alimony during their separation, he ignores the fact that during the same period he earned ten times that amount. The short-term alimony award entered by the court is entirely reasonable and must be affirmed.

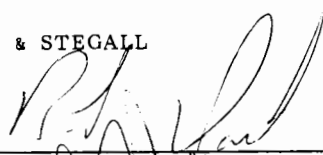
Due to this appeal, which results solely from Mr. Dority's disenchantment with Judge Sawaya's sound decisions, Mrs. Dority has incurred unnecessary but significant expense. Under the decisions of this Court, it is appropriate that she be awarded such additional sum as will reasonably compensate her for the attorney's fees incurred in the defense of this appeal.

The decree and property distribution entered by Judge Sawaya reflect careful, wise and judicious consideration of the parties and their properties. Those orders, carefully fashioned by the trial judge who has had an opportunity to observe and come to know the parties, should not be disturbed absent a showing of clear abuse of discretion or manifest injustice. No such showing has been made in this case and Judge Sawaya's decision should be affirmed in its entirety.

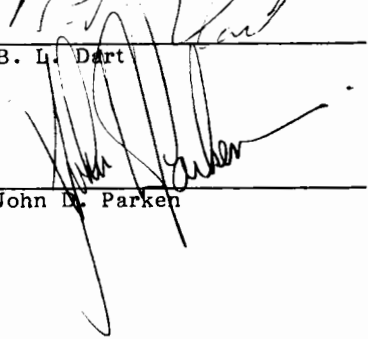
RESPECTFULLY SUBMITTED this 4th day of May ~~April~~ 1981.

DART & STEGALL

By

  
B. L. Dart

By

  
John D. Parken

DEFENDANT'S  
EXHIBIT -

8

DA-2447

ASSETS

<u>Asset</u>	<u>Value</u>	<u>Equity</u>
464 Schoolhouse Lane Devon, PA	\$95,000 (Deposition of Lawrence S. Scott) (16,000) (Mortgage) (17,000) (Gladys Doseff \$ to restore house) \$	62,000.00
3621 Oakview Drive	100,000 (Appraisal by Jerry Webber) (51,000) (Mortgage Walker Bank)	49,000.00
Asbestos Ltd.	1,102 shares at 3 3/5	4,000.00
Sperry Corp.	1,511 shares at 55 3/8	<del>83,583.00</del> 43,000.00
IBM	220 shares at 65 5/8	14,436.00
Loan at Merrill Lynch secured by stocks		(30,500.00)
Devon House Fund		2,000.00
TIAA-CREF		6,567.00
Sperry Vested Retirement (12/31/79)		85,008.00
Furniture (parties each have comparable values)		
Automobiles (parties each have comparable values)		
Total Assets Less Liabilities		<u>\$276,099.00</u>
Equal division of assets would be -		\$138,049.50 <u>138,049.50</u>
		\$276,099.00



# SCHEDULE "A"

## Distribution per Decree

	<u>Husband</u>	<u>Wife</u>
464 Schoolhouse Lane Devon, PA (Less mtg. & \$17,000 loan to wife's mother)		\$ 62,000.00
3621 Oakview Drive	\$ 49,000.00	
Asbestos Ltd.	4,000.00	
Sperry Corp. 850 to wife at 55 3/8 844 to husband at 55 3/8	46,736.50	47,068.75
IBM Stock 100 to wife at 65 5/8 120 to husband at 65 5/8	7,875.00	6,562.50
Loan at Merrill Lynch (secured by stocks)	(30,500.00)	
Devon House Fund		2,000.00
TIAA-CREF (wife's retirement fund)		6,567.00
Sperry Vested Retirement (12/31/79)	<u>85,008.00</u>	<u>                    </u>
	\$162,119.50	\$124,198.25
	Total	\$286,317.00

**DEFENDANT'S  
EXHIBIT**

**CURRENT INCOME OF PARTIES**

**Plaintiff - John P. Dority**

**Annual Income**

1976	\$ 46,739.00
1977	48,378.00
1978 (distortion for moving expense)	63,692.00
1979	59,466.00

Monthly Salary from Sperry (exclusive of dividends)	\$ 4,179.60
Less State and Federal withholding	1,243.00
Less Social Security (\$1,587.00 per year divided by 12)	<u>132.30</u>
Net Monthly Expendable Income	\$ 2,804.30

**Defendant - Jeanne Dority**

**Annual Income**

1979	\$ 16,824.00
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Monthly Income	\$ 1,402.00
Current Support	650.00
Rental Income (Schoolhouse Lane - gross rent \$650 less payments, taxes, and maintenance \$350)	<u>300.00</u>
Total	\$ 2,352.00
Less State, Federal and City taxes	334.00
Less Social Security	<u>85.98</u>
Net Monthly Expendable Income	\$ 1,932.02
Without Support From Plaintiff	\$ 1,332.02



CERTIFICATE OF SERVICE

I certify that on this 4 day of <sup>May</sup>~~April~~ 1981, I placed with "The Runner Service" two copies of the foregoing Respondent's Brief to be delivered to David M. Swope and John K. Mangum, NIELSEN & SENIOR, 1100 Beneficial Life Tower, 36 South State Street, Salt Lake City, Utah 84111.

B. Blanchard