

1990

# Leslieann Haacke (Glenn) v. Mark Mitchell Glenn : 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.

Mark Mitchell Glenn; Pro Se.

Mary C. Corporon; Corporon AND Williams; Attorney for Appellant.

---

## Recommended Citation

Brief of Appellant, *Haacke v. Glenn*, No. 900531 (Utah Court of Appeals, 1990).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/2945](https://digitalcommons.law.byu.edu/byu_ca1/2945)

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**

UTAH  
DOCUMENT  
KFU  
50  
.A10  
DOCKET NO. 900531-CA

---

IN THE UTAH COURT OF APPEALS

---

LESLIEANN HAACKE (GLENN),

Plaintiff/Appellant,

Docket No. 900531-CA

-vs-

MARK MITCHELL GLENN,

Priority Classification 14b

Defendant/Appellee.

---

AN APPEAL FROM THE FINAL JUDGMENT AND DECREE OF DIVORCE  
ENTERED ON OR ABOUT SEPTEMBER 14, 1990 BY THE SECOND  
JUDICIAL DISTRICT IN AND FOR DAVIS COUNTY, STATE OF  
UTAH, THE HONORABLE RODNEY S. PAGE, JUDGE PRESIDING.

---

**BRIEF OF APPELLANT**

---

MARY C. CORPORON #734  
Attorney for Plaintiff/Appellant  
CORPORON & WILLIAMS, P.C.  
310 South Main Street  
Suite 1400  
Salt Lake City, Utah 84101  
(801) 328-1162

MARK MITCHELL GLENN  
Defendant Pro Se  
4878 South Highland Circle, #6  
Salt Lake City, Utah 84117

**FILED**

FEB 22 1991

COURT OF APPEALS

---

IN THE UTAH COURT OF APPEALS

---

LESLIEANN HAACKE (GLENN),

Plaintiff/Appellant,

Docket No. 900531-CA

-VS-

MARK MITCHELL GLENN,

Priority Classification 14b

Defendant/Appellee.

---

AN APPEAL FROM THE FINAL JUDGMENT AND DECREE OF DIVORCE  
ENTERED ON OR ABOUT SEPTEMBER 14, 1990 BY THE SECOND  
JUDICIAL DISTRICT IN AND FOR DAVIS COUNTY, STATE OF  
UTAH, THE HONORABLE RODNEY S. PAGE, JUDGE PRESIDING.

---

BRIEF OF APPELLANT

---

MARY C. CORPORON #734  
Attorney for Plaintiff/Appellant  
CORPORON & WILLIAMS, P.C.  
310 South Main Street  
Suite 1400  
Salt Lake City, Utah 84101  
(801) 328-1162

MARK MITCHELL GLENN  
Defendant Pro Se  
4878 South Highland Circle, #6  
Salt Lake City, Utah 84117

## TABLE OF CONTENTS

TABLE OF CONTENTS . . . . .	i
TABLE OF AUTHORITIES. . . . .	ii
JURISDICTIONAL AUTHORITY. . . . .	1
NATURE OF PROCEEDINGS . . . . .	1
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW. . . . .	2
DISPOSITIVE AUTHORITIES . . . . .	2
STATEMENT OF FACTS/ STATEMENT OF THE CASE . . . . .	2
ARGUMENT	
THE LOWER COURT ERRED IN FAILING TO GRANT APPELLANT'S COMPLAINT FOR AN ANNULMENT . . . . .	4
CONCLUSION. . . . .	7
APPENDICES. . . . .	iii
CERTIFICATE OF MAILING. . . . .	iv

## **TABLE OF AUTHORITIES**

### **Cases**

<u>Avnery v. Avnery</u> , 375 N.y.S.2d 888. . . . .	5
<u>Douglass v. Douglass</u> , 307 P.2d 674 (Cal. 1957). . . . .	5,6

### **Rules**

<u>Rules of the Utah Court of Appeals</u> , Rule 3. . . . .	1
---	---

### **Statutes**

<u>Utah Code Annotated</u> , Section 30-1-17.1. . . . .	2,4
<u>Utah Code Annotated</u> , Section 78-2a-3(2)(g). . . . .	1

---

IN THE UTAH COURT OF APPEALS

---

LESLIEANN HAACKE (GLENN),

Plaintiff/Appellant,

Docket No. 900531-CA

-vs-

MARK MITCHELL GLENN,

Priority Classification 14b

Defendant/Appellee.

---

AN APPEAL FROM THE FINAL JUDGMENT AND DECREE OF DIVORCE  
ENTERED ON OR ABOUT SEPTEMBER 14, 1990 BY THE SECOND  
JUDICIAL DISTRICT IN AND FOR DAVIS COUNTY, STATE OF  
UTAH, THE HONORABLE RODNEY S. PAGE, JUDGE PRESIDING.

---

**BRIEF OF APPELLANT**

---

COMES NOW THE PLAINTIFF/APPELLANT to the above-captioned  
action, by and through counsel, and hereby submits the following  
as her appellate brief herein.

**JURISDICTIONAL AUTHORITY**

Jurisdiction is conferred upon this Court pursuant to Rule 3  
of the Rules of the Utah Court of Appeals, and pursuant to Utah  
Code Annotated, Section 78-2a-3(2)(g) (1953, as amended).

**NATURE OF PROCEEDINGS**

This is an appeal from a final judgment and order denying  
plaintiff's complaint for a decree of annulment and granting  
plaintiff's complaint as a decree of divorce instead.

### STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The issue presented for review in this appeal is: Did the lower court err in failing to grant plaintiff's complaint for annulment and in granting plaintiff a decree of divorce instead?

### DISPOSITIVE AUTHORITIES

There are no case law authorities or statutory authorities or constitutional provisions believed by plaintiff/appellant to be wholly dispositive of the issue on appeal herein. The statutory authority which may be dispositive of the issue presented on appeal is Utah Code Annotated, Section 30-1-17.1, a true and correct copy of which is attached hereto, designated as "Appendix A" and incorporated herein by reference.

### STATEMENT OF FACTS / STATEMENT OF THE CASE

1. Appellant and appellee participated in a marriage ceremony on December 16, 1989 in the City of Bountiful, County of Davis, State of Utah. (TR, p.1, 1.25 to p.2, 1.2)

2. A complaint for divorce was filed by the appellant in the Second Judicial District Court in and for Davis County, State of Utah on September 5, 1990. (Attached hereto as "Appendix B") Thereafter, appellant filed an amended complaint for annulment. (Attached hereto as "Appendix C") The defendant/appellee entered into an *Amended Stipulation and Property Settlement Agreement* (attached hereto as "Appendix D"), consenting to entry of a

decree of annulment as requested by plaintiff/appellant.

3. The lower court, having heard the matter on September 14, 1990, and after taking evidence, refused to grant the appellant an annulment and, instead, granted the appellant a divorce. A true and correct copy of the *Findings of Fact and Conclusions of Law* and *Decree of Divorce* entered by the Court are attached hereto, designated as "Appendix E" and "Appendix F," respectively, and incorporated herein by reference.

4. Prior to and during the course of the parties' "marriage," the appellee made fraudulent misrepresentations to the appellant concerning his honesty, trustworthiness and lack of criminal involvement. More specifically, appellee deliberately and intentionally concealed from the appellant, prior to and during the parties' marriage, that he had been convicted of a second degree felony, theft of property, in the State of Alabama, his previous residence. Appellee represented to appellant that the purpose of his travels back and forth between Utah and Alabama was to take care of prior child support obligations, when in reality he was utilizing the parties' joint funds for payment of his fines and restitution attendant to his felony conviction. Appellant did not become aware of appellee's criminal record until she was approached by her employer, the Utah Department of Corrections, after the parties' "marriage." (TR, p.2, 1.24-p.4, 1.1.)

5. Appellant was at all times relevant an attorney for the



Inspector General's Division, and had unlimited access to criminal files and records, which created a severe conflict of interest between appellant's "marriage" and her employment. This situation also placed the appellant in violation of state policy and procedure and state statute (TR, p.3, 11.5-10) and, as a result, appellant was by a letter written by Gary W. DeLand, Executive Director of the Utah Department of Corrections, dated September 4, 1990, that her employment with the Department would be terminated effective September 14, 1990. That letter also stated that if appellant's current circumstances were changed (i.e., if the marital relationship were terminated immediately and if her marriage were annulled or dissolved) the Department would consider her for re-employment. A true and correct copy of said letter is attached hereto, designated as "Appendix G" and incorporated herein by reference.

6. Given appellant's field of employment, which is criminal investigations and justice, appellant's present and potential future employers (including, possibly, the Federal Bureau of Investigation) will distinguish quite heavily between divorce and annulment due to the felon status of the appellee.

#### **ARGUMENT**

#### **THE LOWER COURT ERRED IN FAILING TO GRANT APPELLANT'S COMPLAINT FOR AN ANNULMENT.**

Utah Code Annotated, Section 30-1-17.1, specifically states

that a marriage may be annulled for any of the following causes existing at the time of the marriage: (1) when the marriage is void under Chapter 1 of Title 30, or (2) upon grounds existing at common law.

Concealment or misrepresentation of material facts are grounds for annulment of a marriage at common law. In Avnery v. Avnery, 375 N.Y.S. 2d 888, 890, the Court stated:

In order to obtain an annulment on the ground of fraud, a plaintiff must establish fraud which is "material, to that degree that, had it not been practiced, the party deceived would not have consented to the marriage", and is of such a nature as to deceive an ordinarily prudent person. (Citing DiLorenzo v. DiLorenzo, 67 N.E. 63, 64; Shonfeld v. Shonfeld, 184 N.E. 60,61; Kober v. Kober, 211 N.E.2d 817, 819.)

(A true and correct copy of Avnery, is attached hereto, designated as "Appendix H.")

In Douglass v. Douglass, 307 P.2d 674 (Cal. 1957), the wife filed a complaint for annulment. The Superior Court of Los Angeles County denied the annulment and the wife appealed. She alleged that she was induced into the marriage because her husband had falsely and fraudulently represented to her that he was a law abiding, respectable and honorable man and had concealed from her his real character. She relied upon these misrepresentations and otherwise would not have consented to the marriage. The husband in this case had concealed the fact that he was a convicted felon. Upon discovering these facts, the wife severed her relationship with the defendant and had not resided

with him since. The Court state that "the test in all cases is whether the false representations or concealment were such as to defeat the essential purpose of the injured spouse inherent in the contracting of a marriage." *Id.*, at page 675. The Court also stated that a "party has a right to a decree of annulment where the fraud is so grievous that it places the injured party in a relationship that is intolerable because it cannot honorably be endured." *Id.*, at page 676. The Court noted that the honorable character of a spouse, one whom the other spouse could respect and trust, and one whom she would be proud to have as a companion and to introduce to her friends, are the essentials of the marital relationship which the plaintiff expected and that "the fraud of the defendant in concealing his criminal record and true character was deceit so gross and cruel as to prove him to plaintiff to be a man unworthy of trust, either with respect to his truthfulness, his moral character or a disposition to be a law abiding citizen." *Id.*, at page 676. A true and correct copy of Douglass is attached hereto, designated as "Appendix I."

The facts in the case at hand are very similar to those in Douglass. The appellee here concealed from the appellant that he was a convicted felon. The appellant, being employed by the Department of Corrections as an attorney, was well aware of the fact that any involvement with a convicted felon would not only create a conflict of interest with her employer, but would lead to termination of her employment. Appellant relied upon the

representations of appellee that he was law abiding and truthful and would not have otherwise consented to marry him had she been informed of his prior conviction. Upon learning of appellee's criminal conviction, appellant immediately severed her relationship with the appellee. The type of concealment and misrepresentations by the husband in this case were egregious. Not only has this placed appellant's employment in jeopardy, but she has also lost the respect and confidence of her former co-workers, as evidenced by the letter of Gary W. DeLand, dated October 23, 1990 which is attached hereto as "Appendix J."

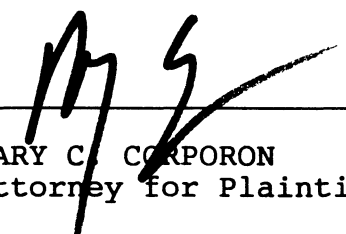
In order to minimize the injuries appellant has sustained as a result of this "marriage," a Decree of Annulment should be granted and all traces of this "marriage" should be erased as though the marriage never existed.

#### CONCLUSION

For the foregoing reasons, this Court should find that the trial court erred in refusing to grant the wife a decree of annulment and instead granting a divorce, and should reverse the decision of the lower court to allow appellant to receive a decree of annulment.

DATED THIS 14 day of February, 1991.

CORPORON & WILLIAMS

  
\_\_\_\_\_  
MARY C. CORPORON  
Attorney for Plaintiff/Appellant

## APPENDICES

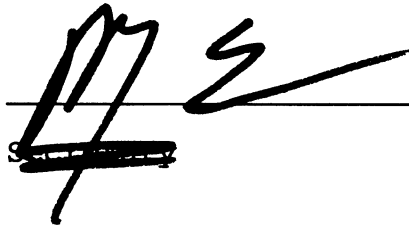
- Appendix A - Utah Code Annotated, Section 30-1-17.1
- Appendix B - Complaint for Divorce
- Appendix C - Amended Complaint for Annulment
- Appendix D - Amended Stipulation and Property Settlement Agreement
- Appendix E - Findings of Fact and Conclusions of Law
- Appendix F - Decree of Divorce
- Appendix G - Avnery v. Avnery, 375 N.Y.S.2d 888
- Appendix H - Douglass v. Douglass, 307 P.2d 674
- Appendix I - 9/4/90 letter of Gary W. DeLand
- Appendix J - 10/23/90 letter of Gary W. DeLand

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am employed in the offices of Corporon & Williams, attorneys for the plaintiff/appellant herein, and that I caused the foregoing Brief of Appellant to be served upon defendant/respondent by placing four true and correct copies of the same in an envelope addressed to:

MARK MITCHELL GLENN  
Defendant Pro Se  
48978 South Highland Circle, #6  
Salt Lake City, Utah 84117

and depositing the same, sealed, with first-class postage pre-paid thereon, in the United States mail at Salt Lake City, Utah on the 14 day of February, 1991.

A handwritten signature, possibly reading "L. S.", is written over a horizontal line. Below the line, the word "SIGNED" is printed in a small, bold, sans-serif font.

## **APPENDIX A**

**History:** R.S. 1898 & C.L. 1907, § 1197; C.L. 1917, § 2980; R.S. 1933 & C. 1943, 40-1-16.

## COLLATERAL REFERENCES

**Am. Jur. 2d.** — 52 Am Jur 2d Marriage § 123  
**C.J.S.** — 55 C J S Marriage § 26  
**Key Numbers.** — Marriage ⇐ 25(4)

### 30-1-17. Action to determine validity of marriage — Judgment of validity or annulment.

When there is doubt as to the validity of a marriage, either party may, in a court of equity in a county where either party is domiciled, demand its avoidance or affirmance, but when one of the parties was under the age of consent at the time of the marriage, the other party, being of proper age, shall have no such proceeding for that cause against the party under age. The judgment in the action shall either declare the marriage valid or annulled and shall be conclusive upon all persons concerned with the marriage.

**History:** R.S. 1898 & C.L. 1907, § 1214; C.L. 1917, § 3006; R.S. 1933 & C. 1943, 40-1-17; L. 1971, ch. 65, § 1.

**Cross-References.** — Conciliation petition, filing as temporary bar to filing action for annulment, § 30-3-16 7

## NOTES TO DECISIONS

## ANALYSIS

Attorney's fees on annulment  
 Extent of court's jurisdiction  
 Necessity for annulment

**Attorney's fees on annulment.**

The wife in a suit for annulment of the marriage is not entitled to an allowance of attorney's fees, but the allowance of attorney fees for determination of custody and support of a child of the marriage is proper. *Jenkins v Jenkins*, 107 Utah 239, 153 P 2d 262 (1944)

**Extent of court's jurisdiction.**

In a suit for divorce, in which the parties by consent litigated various issues involved in a

suit for annulment, although the pleadings did not state a cause of action for an annulment, the court, after granting the annulment, correctly proceeded to determine incidental issues concerning the division of the property and care and custody of the children. *Jenkins v Jenkins*, 107 Utah 239, 153 P 2d 262 (1944), and cases cited therein.

**Necessity for annulment.**

Where a purported marriage is void, there are neither grounds nor necessity for a divorce, however, it is proper for the good of society and the peace of mind of the persons concerned that void marriage be so declared by decree of the court. *Jenkins v Jenkins*, 107 Utah 239, 153 P 2d 262 (1944)

## COLLATERAL REFERENCES

**Am. Jur. 2d.** — 4 Am Jur 2d Annulment of Marriage § 1 et seq

**C.J.S.** — 55 C J S Marriage §§ 48-69

**A.L.R.** — Power of incompetent spouse's, guardian, committee or next friend, to sue for granting or vacation of divorce or annulment of marriage, or to make a compromise or settlement in such suit, 6 A L R 3d 681

Dismissal right of one spouse, over objection, to voluntarily dismiss claim for divorce, annulment, or similar material relief, 16 A L R 3d 283

Costs right of indigent to proceed in marital action without payment of costs, 52 A L R 3d 844

Attorney's fees in matters involving domestic relations, amount of, 59 A L R 3d 152

Prior institution of annulment proceedings or other attack on validity of one's marriage as barring or estopping one from entitlement to property rights as surviving spouse, 31 A L R 4th 1190

**Key Numbers.** — Marriage ⇐ 56 67

### 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 illegitimize 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)



## **APPENDIX B**

FILED IN CLERK'S OFFICE  
DAVIS COUNTY UTAH

SEP 5 4 29 PM '90

CLERK'S OFFICE  
BY ub -

D. MICHAEL NIELSEN (3668)  
Attorney for Plaintiff  
505 South Main Street  
Bountiful, Utah 84010  
Telephone: (801) 292-1818

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY

STATE OF UTAH

---

LESLIEANN GLENN, :  
Plaintiff, : **COMPLAINT FOR DIVORCE**

vs. :

MARK MITCHELL GLENN, : Civil No. 900748406 DA  
Defendant. :

---

pd 75.00

COMES NOW, Plaintiff and for cause of action against Defendant alleges as follows:

1. Plaintiff is and has been for more than three months immediately prior to the commencement of this action an actual and bona fide resident of Davis County, State of Utah.

2. Plaintiff and Defendant are husband and wife having been married on the 16th day of December, 1989, in Bountiful, Davis County, Utah.

3. During the course of the marriage irreconcilable differences have developed between the parties, to the degree that continuation of the marriage relationship is impossible.

4. The parties maintained their marital domicile in Davis County, State of Utah, and the acts complained of by Plaintiff herein occurred in Davis County, State of Utah.

**FILMED**

5. There have no children born to Plaintiff and Defendant as issue of this marriage. Plaintiff is pregnant at the present time and is not expected to deliver the child of these parties until April or May, 1991.

6. It is reasonable and proper that child support, visitation and other such issues be determined at the time of the birth of the child.

7. It is reasonable and proper that reasonable alimony should be awarded in this matter.

8. It is reasonable and proper that all of the possessions of the parties should be equitably divided by the Court.

9. During the course of the marriage, the parties have incurred debts and obligations. It is reasonable and proper that said debts and obligations should be equitably divided by the Court.

10. It is reasonable and proper that in the final Decree in this matter each party should be ordered to sign all papers, documents, titles, deeds and any other document necessary to effect any of the provisions of the Decree including but not limited to the transfer of real or personal property.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

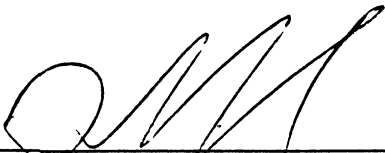
1. For a Decree of Divorce, the same to become final upon entry in the register of action.

2. For the said Decree to be granted in accordance with

the Complaint for Divorce as set forth above.

3. For such other and further relief as this Court deems just and proper.

DATED this 5th day of September, 1990.



---

D. MICHAEL NIELSEN  
Attorney for Plaintiff

## **APPENDIX C**

D. MICHAEL NIELSEN (3668)  
Attorney for Plaintiff  
505 South Main Street  
Bountiful, Utah 84010  
Telephone: (801) 292-1818

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY

STATE OF UTAH

---

LESLIEANN GLENN,	:	
Plaintiff,	:	AMENDED COMPLAINT
vs.	:	FOR ANNULMENT
MARK MITCHELL GLENN,	:	Civil No. 900748406DA
Defendant.	:	

---

COMES NOW, Plaintiff and for cause of action against Defendant alleges as follows:

1. Plaintiff is and has been for more than three months immediately prior to the commencement of this action an actual and bona fide resident of Davis County, State of Utah.

2. Plaintiff and Defendant are husband and wife having been married on the 16th day of December, 1989, in Bountiful, Davis County, Utah.

3. The parties maintained their marital domicile in Davis County, State of Utah, and the acts complained of by Plaintiff herein occurred in Davis County, State of Utah.

4. There have no children born to Plaintiff and Defendant as issue of this marriage and none are expected. Plaintiff was previously informed that she was pregnant, but upon

further verification, it has been discovered that Plaintiff has either miscarried or that the original prognosis was incorrect.

#### **FIRST CAUSE OF ACTION**

5. That the marriage of the above-entitled parties should be declared null and void pursuant to the terms of Section 30-1-17.1(2), Utah Code Annotated, in that prior to the marriage, Defendant did make fraudulent misrepresentations concerning his honesty, trustworthiness and lack of criminal involvement. Defendant failed to inform Plaintiff that he had been convicted of a felony in the state of his previous residence, Alabama; he informed Plaintiff that he was traveling to Alabama to take care of prior child support obligations and problems, when in reality he was utilizing the funds of these parties for payment of fines and restitution, and he failed to inform Plaintiff of his prior criminal activity, much to Plaintiff's detriment in the form of loss of her employment with the State of Utah, Department of Corrections.

6. Defendant's misrepresentations about his lack of criminal activity, his intentional misleading of Plaintiff regarding his absence from this state and the use of funds expended for fines and restitution, as well as his misrepresentations about his honesty and integrity have caused Plaintiff great suffering and distress and constitutes sufficient grounds for an annulment of the marriage between the parties.

7. That upon learning of the true nature and disposition of Defendant, Plaintiff ceased cohabitation with Defendant and

seeks annulment of this marriage by action of this Court.

8. It is reasonable and proper that this Court reasonably and equitably divide the possessions, debts and obligations of these parties.

#### SECOND CAUSE OF ACTION

9. Plaintiff incorporates by reference paragraphs 1 through 8, as though fully set forth herein.

10. During the course of the marriage irreconcilable differences have developed between the parties, to the degree that continuation of the marriage relationship is impossible.

11. It is reasonable and proper that this Court equitably and reasonably divide the debts, obligations and possessions of these parties.

WHEREFORE, as to Plaintiff's First Cause of Action, Plaintiff prays for judgment against Defendant as follows:

1. That the marriage of the parties be declared null and void as though it did not exist.

2. That the debts, obligations and possessions of the parties be reasonably and equitably divided by the Court.

3. That Plaintiff be restored to her former name, Haacke.

WHEREFORE, as to Plaintiff's Second Cause of Action, Plaintiff prays for judgment against Defendant as follows:

1. For a Decree of Divorce dissolving the bonds of matrimony between Plaintiff and Defendant.

2. That the debts, obligations and possessions of the



parties be reasonably divided by the Court.

3. That Plaintiff be restored to her former name,  
Haacke.

DATED this 11th day of September, 1990.

A handwritten signature in black ink, appearing to read 'D. Michael Nielsen', is written over a horizontal line.

D. MICHAEL NIELSEN  
Attorney for Plaintiff

## **APPENDIX D**

FILED IN CLERK'S OFFICE  
DAVIS COUNTY, UTAH

SEP 20 8 29 AM '90

CLERK OF DISTRICT COURT

BY \_\_\_\_\_  
DEPUTY CLERK

D. MICHAEL NIELSEN (3668)  
Attorney for Plaintiff  
505 South Main Street  
Bountiful, Utah 84010  
Telephone: (801) 292-1818

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY

STATE OF UTAH

---

LESLIEANN GLENN,	:	
	:	
Plaintiff,	:	AMENDED STIPULATION AND
	:	PROPERTY SETTLEMENT AGREEMENT
vs.	:	
	:	
MARK MITCHELL GLENN,	:	Civil No. 900748406DA
	:	
Defendant.	:	

---

COMES NOW, Plaintiff, LeslieAnn Glenn, and Defendant, Mark Mitchell Glenn, and do hereby stipulate, agree and compromise the issues in the above-referenced action as follows:

1. Plaintiff and Defendant stipulate and agree that they are desirous of entering into this Stipulation and Property Settlement Agreement and division of all of the respective property rights, and effecting a complete settlement of all issues of child support, alimony, attorney's fees, court costs and other related matters.

2. Plaintiff and Defendant recognize that a Complaint for Divorce is on file herein, having been filed by Plaintiff on or about the 5th day of September, 1990.

3. Defendant, by execution of this Stipulation and Property Settlement Agreement, hereby waives further action on his

**FILMED**

part. Defendant agrees and understands that by his signature, he has given his consent to the entry of a default judgment herein, and has entered his appearance and consented to jurisdiction of the Court in this matter. Defendant further consents that this Court may enter his default and finalize this action at any time, awarding Plaintiff a Decree of Annulment or, in the alternative, a Decree of Divorce upon the grounds as set forth in Plaintiff's Complaint, without further notice to him. Defendant specifically requests that this Court finalize the above-reference action as soon as possible, with a waiver of the statutory waiting period, should the Court deem such action appropriate.

4. There have no children born to Plaintiff and Defendant as issue of this marriage and none is expected. Plaintiff was previously informed that she was pregnant, but upon further verification, it has been discovered that Plaintiff has either miscarried or that the original prognosis was incorrect.

5. The parties shall each be awarded those possessions and items in his/her possession at the present time. The parties stipulate that they have fairly and equitably divided the possessions belonging to them.

6. Plaintiff shall be solely responsible for the following debts and obligations, and shall indemnify, defend and hold Defendant harmless therefrom:

(a) approximate amount of Twenty-Eight Thousand Dollars (\$28,000.00) owed to Key Bank, representing the debt on Plaintiff's automobile;

(b) approximate amount of Seven Thousand Five Hundred Dollars (\$7,500.00) owed to Brigham Young University for Plaintiff's student loan;

(c) approximate amount of Eleven Thousand Five Hundred Dollars (\$11,500.00) owed to Loan Servicing Corporation of Utah for Plaintiff's student loan; and

(d) approximate amount of Two Hundred Thirty-Five Dollars (\$235.00) to Broadway Southwest;

(e) approximate amount of Fourteen Thousand Dollars (\$14,000.00) owed to Plaintiff's father, Verl Haacke, in the form of a second mortgage on Mr. Haacke's residence.

7. Defendant shall be solely responsible for the following debts and obligations, and shall indemnify, defend and hold Plaintiff harmless therefrom:

(a) approximate amount of One Thousand Fifty-Nine Dollars (\$1,059.00) to E.S.E. Credit Union for Defendant's automobile.

(b) approximate amount of Nine Hundred Fourteen Dollars (\$914.00) to E.S.E. Credit Union for a signature loan;

(c) approximate amount of Two Thousand Eight Hundred Seventy-Two Dollars (\$2872.00) to E.S.E. Credit Union for a signature loan;

(d) approximate amount of Two Thousand Three Hundred Six Dollars (\$2306.00) to Discover Card;

(e) approximate amount of Two Thousand Six Hundred Ninety-One Dollars (\$2691.00) to MBNA America for Defendant's

Mastercard;

(f) approximate amount of Two Thousand Five Hundred Thirty-Two Dollars (\$2532.00) to Security Pacific Bank of Arizona for Defendant's Visa;

(g) approximate amount of Nine Hundred Sixteen Dollars (\$916.00) to Z.C.M.I.; and

(h) approximate amount of Nine Hundred Fifty Dollars (\$950.00) to Plaintiff's father, Verl Haacke.

8. In addition to the above-referenced debts and obligations, there is an additional obligation owed to Plaintiff's father, Verl L. Haacke, of Bountiful, Utah, in the approximate amount of Twenty-Six Thousand Five Hundred Dollars (\$26,500.00), at eight percent (8%) interest per annum. The parties shall repay said Plaintiff's father in the following amounts, and shall indemnify, defend and hold the other party harmless from his/her responsibility incident to this debt:

(a) Plaintiff shall be responsible for the sum of Sixteen Thousand Five Hundred Dollars (\$16,500.00), to be paid at the rate of One Hundred Eighty Dollars (\$180.00) per month, for a period of thirty months, with payment of the balance in full within thirty days of the last payment; and

(b) Defendant shall be responsible for the amount of Ten Thousand Dollars (\$10,000.00) to be paid at the rate of One Hundred Twenty Dollars (\$120.00) per month, for thirty months, with payment of the balance in full within thirty days of the last payment. Defendant shall pay this debt in full as soon

as circumstances permit refinancing or other means of said payment.

9. It is the intent of the parties that Defendant shall continue his efforts to refinance all or part of the joint debts of this marriage as delineated in the above-paragraphs, to remove Plaintiff's name from those debts and relieve Plaintiff from any obligation pertaining thereto. Defendant recognizes a continuing affirmative obligation to put forth the necessary efforts to obtain proper refinancing and clear Plaintiff's credit as soon as such action is possible.

10. Plaintiff is in possession of a 1990 Mazda Miata automobile, which automobile is held solely in her name. Defendant waives all claim to the said automobile. The parties are also owners of a 1976 MG automobile, currently in the possession of Defendant. The said MG automobile shall remain in the ownership of both parties, until Defendant has successfully refinanced or paid the debts as delineated above, when the automobile shall be solely awarded to Defendant. Defendant shall indemnify, defend and hold Plaintiff harmless from any and all obligations pertaining to the said MG automobile, so long as it is in his possession.

11. Defendant shall fully insure the said MG automobile, so long as Plaintiff's name is shown on the financing documents or title, and shall indemnify, defend and hold harmless Plaintiff from any claim or damage arising from his failure to do so. To this end, the parties shall continue to arrange for automobile insurance on a joint basis, as they have in the past. Each party shall be

responsible to pay the respective costs of insurance, on a prorated basis in accordance with policy costs on his/her particular automobile.

12. No alimony shall be awarded to Defendant in this case. Defendant hereby waives and relinquishes his right to claim alimony against Plaintiff, at present and in the future.

13. No pension or retirement benefits/assets shall be awarded in this case. Plaintiff and Defendant hereby waive and relinquish his/her right to claim against the pension or retirement benefits/assets of the other party.

14. The parties shall each indemnify, defend and hold harmless one other from any and all past tax obligations, as well as any and all debts or obligations incurred since the parties' separation.


15. Each of the parties shall sign all papers, documents, titles, deeds and any other document necessary to effect any of the provisions hereof, including but not limited to the transfer of real or personal property.

16. Plaintiff shall be restored to her former name of Haacke.

17. Defendant shall pay to Plaintiff the sum of Two Hundred Eighty-Eight and 50/100 Dollars (\$282.50), representing one-half of the cost of attorney's fees incurred by Plaintiff in finalization of this action.



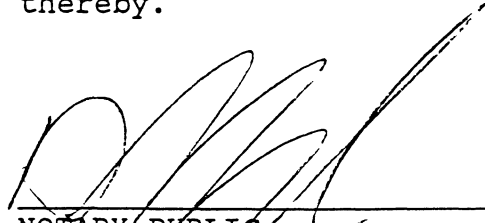
DATED this 1<sup>st</sup> day of September, 1990.

  
\_\_\_\_\_  
LESLIEANN GLENN  
Plaintiff

**VERIFICATION AND ACKNOWLEDGEMENT**

STATE OF UTAH       )  
                              : ss  
COUNTY OF DAVIS    )

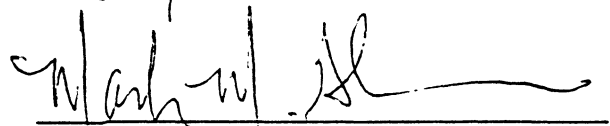
THE ABOVE-NAMED PARTY, LeslieAnn Glenn, personally appeared before me, a notary public, on the date above-written, and having been duly sworn upon her oath acknowledged to me that she was the person that had executed the above and foregoing STIPULATION AND PROPERTY SETTLEMENT AGREEMENT, having read and understood it, and knowing the contents thereof, and having voluntarily subscribed her name thereto intending to be bound thereby.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: SANITIA, UTAH

My Commission Expires:

1/6/91

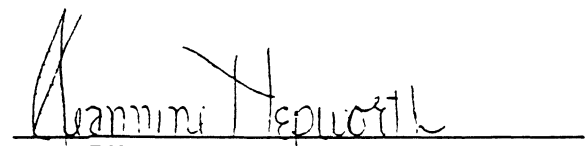
DATED this 12 day of Sept., 1990.

  
MARK MITCHELL GLENN  
Defendant

**VERIFICATION AND ACKNOWLEDGEMENT**

STATE OF UTAH       )  
                              : ss  
COUNTY OF DAVIS    )

THE ABOVE-NAMED PARTY, Mark Mitchell Glenn, personally appeared before me, a notary public, on the date above-written, and having been duly sworn upon his oath acknowledged to me that he was the person that had executed the above and foregoing STIPULATION AND PROPERTY SETTLEMENT AGREEMENT, having read and understood it, and knowing the contents thereof, and having voluntarily subscribed his name thereto intending to be bound thereby.

  
NOTARY PUBLIC  
Residing at: Bountiful, Utah

My Commission Expires:

1-6-91

## **APPENDIX E**

D. MICHAEL NIELSEN (3668)  
Attorney for Plaintiff  
505 South Main Street  
Bountiful, Utah 84010  
Telephone: (801) 292-1818

FILED IN CLERK'S OFFICE  
DAVIS COUNTY, UTAH

SEP 18 10 12 AM '90

CLERK OF DISTRICT COURT  
BY \_\_\_\_\_

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY  
STATE OF UTAH

---

LESLIEANN GLENN,	:	
Plaintiff,	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW
vs.	:	
MARK MITCHELL GLENN,	:	Civil No. 900748406DA
Defendant.	:	

---

The above entitled matter came on for regular hearing on the 14th day of September, 1990, at the hour of 9:00 a.m. before the Honorable Rodney S. Page, Judge presiding. Plaintiff appeared in person and was represented by her Counsel D. Michael Nielsen. Defendant neither appeared in person nor by Counsel, having previously executed a Waiver of Service and Stipulation allowing his default to be entered.

Plaintiff being first duly sworn, the Court having heard the testimony introduced on behalf of Plaintiff, and being familiar with the pleadings and papers on file herein and being fully advised in the premises, does hereby make and enter the following:

FINDINGS OF FACT

1. Plaintiff is and has been for more than three months immediately prior to the commencement of this action an actual and

FILED

bona fide resident of Davis County, State of Utah.

2. Plaintiff and Defendant are husband and wife having been married on the 16th day of December, 1989, in Bountiful, Davis County, Utah.

3. The parties maintained their marital domicile in Davis County, State of Utah, and the acts complained of by Plaintiff herein occurred in Davis County, State of Utah.

4. There have no children born to Plaintiff and Defendant as issue of this marriage and none are expected. Plaintiff was previously informed that she was pregnant, but upon further verification, it has been discovered that Plaintiff has either miscarried or that the original prognosis was incorrect.

5. Plaintiff should be awarded a Decree of Divorce in this matter in that prior to the marriage, Defendant did make fraudulent misrepresentations concerning his honesty, trustworthiness and lack of criminal involvement. Defendant failed to inform Plaintiff that he had been convicted of a felony in the state of his previous residence, Alabama; he informed Plaintiff that he was traveling to Alabama to take care of prior child support obligations and problems, when in reality he was utilizing the funds of these parties for payment of fines and restitution, and he failed to inform Plaintiff of his prior criminal activity, much to Plaintiff's detriment in the form of loss of her employment with the State of Utah, Department of Corrections.

6. Defendant's misrepresentations about his lack of criminal activity, his intentional misleading of Plaintiff

regarding his absence from this state and the use of funds expended for fines and restitution, as well as his misrepresentations about his honesty and integrity have caused Plaintiff great suffering and distress and constitutes sufficient grounds for the granting of a Decree of Divorce, dissolving the bonds of matrimony existing between these parties.

7. The parties shall each be awarded those possessions and items in his/her possession at the present time.

8. Plaintiff shall be solely responsible for the following debts and obligations, and shall indemnify, defend and hold Defendant harmless therefrom:

(a) approximate amount of Twenty-Eight Thousand Dollars (\$28,000.00) owed to Key Bank, representing the debt on Plaintiff's automobile;

(b) approximate amount of Seven Thousand Five Hundred Dollars (\$7,500.00) owed to Brigham Young University for Plaintiff's student loan;

(c) approximate amount of Eleven Thousand Five Hundred Dollars (\$11,500.00) owed to Loan Servicing Corporation of Utah for Plaintiff's student loan; and

(d) approximate amount of Two Hundred Thirty-Five Dollars (\$235.00) to Broadway Southwest;

(e) approximate amount of Fourteen Thousand Dollars (\$14,000.00) owed to Plaintiff's father, Verl Haacke, in the form of a second mortgage on Mr. Haacke's residence.

9. Defendant shall be solely responsible for the

following debts and obligations, and shall indemnify, defend and hold Plaintiff harmless therefrom:

(a) approximate amount of One Thousand Fifty-Nine Dollars (\$1,059.00) to E.S.E. Credit Union for Defendant's automobile.

(b) approximate amount of Nine Hundred Fourteen Dollars (\$914.00) to E.S.E. Credit Union for a signature loan;

(c) approximate amount of Two Thousand Eight Hundred Seventy-Two Dollars (\$2872.00) to E.S.E. Credit Union for a signature loan;

(d) approximate amount of Two Thousand Three Hundred Six Dollars (\$2306.00) to Discover Card;

(e) approximate amount of Two Thousand Six Hundred Ninety-One Dollars (\$2691.00) to MBNA America for Defendant's Mastercard;

(f) approximate amount of Two Thousand Five Hundred Thirty-Two Dollars (\$2532.00) to Security Pacific Bank of Arizona for Defendant's Visa;

(g) approximate amount of Nine Hundred Sixteen Dollars (\$916.00) to Z.C.M.I.; and

(h) approximate amount of Nine Hundred Fifty Dollars (\$950.00) to Plaintiff's father, Verl Haacke.

10. In addition to the above-referenced debts and obligations, there is an additional obligation owed to Plaintiff's father, Verl L. Haacke, of Bountiful, Utah, in the approximate amount of Twenty-Six Thousand Five Hundred Dollars (\$26,500.00), at

eight percent (8%) interest per annum. The parties shall repay said Plaintiff's father in the following amounts, and shall indemnify, defend and hold the other party harmless from his/her responsibility incident to this debt:

(a) Plaintiff shall be responsible for the sum of Sixteen Thousand Five Hundred Dollars (\$16,500.00), to be paid at the rate of One Hundred Eighty Dollars (\$180.00) per month, for a period of thirty months, with payment of the balance in full within thirty days of the last payment; and

(b) Defendant shall be responsible for the amount of Ten Thousand Dollars (\$10,000.00) to be paid at the rate of One Hundred Twenty Dollars (\$120.00) per month, for thirty months, with payment of the balance in full within thirty days of the last payment. Defendant shall pay this debt in full as soon as circumstances permit refinancing or other means of said payment.

11. It is the intent of the parties that Defendant shall continue his efforts to refinance all or part of the joint debts of this marriage as delineated in the above-paragraphs, to remove Plaintiff's name from those debts and relieve Plaintiff from any obligation pertaining thereto. Defendant recognizes a continuing affirmative obligation to put forth the necessary efforts to obtain proper refinancing and clear Plaintiff's credit as soon as such action is possible.

12. Plaintiff is in possession of a 1990 Mazda Miata automobile, which automobile is held solely in her name. Defendant



waives all claim to the said automobile. The parties are also owners of a 1976 MG automobile, currently in the possession of Defendant. The said MG automobile shall remain in the ownership of both parties, until Defendant has successfully refinanced or paid the debts as delineated above, when the automobile shall be solely awarded to Defendant. Defendant shall indemnify, defend and hold Plaintiff harmless from any and all obligations pertaining to the said MG automobile, so long as it is in his possession.

13. Defendant shall fully insure the said MG automobile, so long as Plaintiff's name is shown on the financing documents or title, and shall indemnify, defend and hold harmless Plaintiff from any claim or damage arising from his failure to do so. To this end, the parties shall continue to arrange for automobile insurance on a joint basis, as they have in the past. Each party shall be responsible to pay the respective costs of insurance, on a prorated basis in accordance with policy costs on his/her particular automobile.

14. No alimony shall be awarded to Defendant in this case. Defendant hereby waives and relinquishes his right to claim alimony against Plaintiff, at present and in the future.

15. No pension or retirement benefits/assets shall be awarded in this case. Plaintiff and Defendant hereby waive and relinquish his/her right to claim against the pension or retirement benefits/assets of the other party.

16. The parties shall each indemnify, defend and hold harmless one other from any and all past tax obligations, as well

as any and all debts or obligations incurred since the parties' separation.

17. Each of the parties shall sign all papers, documents, titles, deeds and any other document necessary to effect any of the provisions hereof, including but not limited to the transfer of real or personal property.

18. Plaintiff shall be restored to her former name of Haacke.

19. Defendant shall pay to Plaintiff the sum of Two Hundred Eighty-Eight and 50/100 Dollars (\$282.50), representing one-half of the cost of attorney's fees incurred by Plaintiff in finalization of this action.

Based upon the foregoing Findings of Fact, the Court now makes and enters its:

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties in the above-entitled matter and Plaintiff is entitled to a Decree of Divorce, dissolving the bonds of matrimony existing between these parties.

2. Plaintiff should be awarded a Decree of Divorce, the same to become absolute and final upon entry in the register of actions.

3. The Decree of Divorce should be entered and granted

in accordance with the Findings of Fact entered herein.

DATED this 17 day of Sept, 1990.

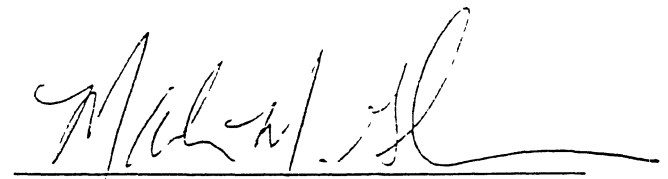
BY THE COURT:

  
RODNEY S. PAGE  
DISTRICT JUDGE

APPROVAL AND REQUEST FOR IMMEDIATE ENTRY

Defendant, Mark Mitchell Glenn hereby certifies that he has read the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, that he approves the same and that he requests that the Court enter the same immediately. Defendant hereby waives his right to object to the said Findings of Fact and Conclusions of Law, and requests the Court execute the same immediately.

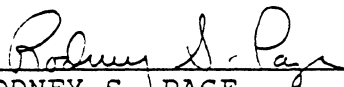
DATED this 14 day of September, 1990.

  
MARK MITCHELL GLENN  
Defendant

in accordance with the Findings of Fact entered herein.

DATED this 14<sup>th</sup> day of Sept, 1990.

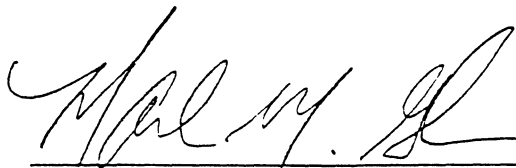
BY THE COURT:

  
\_\_\_\_\_  
RODNEY S. PAGE  
DISTRICT JUDGE

APPROVAL AND REQUEST FOR IMMEDIATE ENTRY

Defendant, Mark Mitchell Glenn hereby certifies that he has read the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, that he approves the same and that he requests that the Court enter the same immediately. Defendant hereby waives his right to object to the said Findings of Fact and Conclusions of Law, and requests the Court execute the same immediately.

DATED this 12 day of Sept., 1990.

  
\_\_\_\_\_  
MARK MITCHELL GLENN  
Defendant

## **APPENDIX F**

FILED IN CLERK'S OFFICE  
DAVIS COUNTY, UTAH

SEP 13 10 04 AM '90

CLERK, DIST. COURT

BY \_\_\_\_\_  
DEPUTY

D. MICHAEL NIELSEN (3668)  
Attorney for Plaintiff  
505 South Main Street  
Bountiful, Utah 84010  
Telephone: (801) 292-1818

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY  
STATE OF UTAH

---

LESLIEANN GLENN,	:	
Plaintiff,	:	DECREE OF DIVORCE
vs.	:	
MARK MITCHELL GLENN,	:	Civil No. 900748406DA
Defendant.	:	

---

This matter came on regularly for hearing on the 14th day of September, 1990, at the hour of 9:00 a.m. before the above-entitled Court, the Honorable Rodney S. Page presiding.

The Plaintiff was present in Court and represented by D. Michael Nielsen, Esquire. The Defendant was neither present in Court nor represented by Counsel, having previously signed a Stipulation and Property Settlement Agreement on file herein.

The Court determined that the default of the Defendant should be and the same is hereby entered. The Plaintiff, having been duly sworn and having testified, the Court having heretofore made and entered its Findings of Fact and Conclusions of Law, now therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Plaintiff is awarded a Decree of Divorce dissolving

JUDGMENT ENTERED

FILED

the bonds of matrimony and marriage contract existing between the parties, said Decree to become final and absolute upon signing and entry in the registrar of actions.

2. There have no children born to Plaintiff and Defendant as issue of this marriage and none are expected. Plaintiff was previously informed that she was pregnant, but upon further verification, it has been discovered that Plaintiff has either miscarried or that the original prognosis was incorrect.

3. The parties are hereby awarded those possessions and items in his/her possession at the present time.

4. Plaintiff shall be solely responsible for the following debts and obligations, and shall indemnify, defend and hold Defendant harmless therefrom:

(a) approximate amount of Twenty-Eight Thousand Dollars (\$28,000.00) owed to Key Bank, representing the debt on Plaintiff's automobile;

(b) approximate amount of Seven Thousand Five Hundred Dollars (\$7,500.00) owed to Brigham Young University for Plaintiff's student loan;

(c) approximate amount of Eleven Thousand Five Hundred Dollars (\$11,500.00) owed to Loan Servicing Corporation of Utah for Plaintiff's student loan; and

(d) approximate amount of Two Hundred Thirty-Five Dollars (\$235.00) to Broadway Southwest;

(e) approximate amount of Fourteen Thousand Dollars

(\$14,000.00) owed to Plaintiff's father, Verl Haacke, in the form of a second mortgage on Mr. Haacke's residence.

5. Defendant shall be solely responsible for the following debts and obligations, and shall indemnify, defend and hold Plaintiff harmless therefrom:

(a) approximate amount of One Thousand Fifty-Nine Dollars (\$1,059.00) to E.S.E. Credit Union for Defendant's automobile.

(b) approximate amount of Nine Hundred Fourteen Dollars (\$914.00) to E.S.E. Credit Union for a signature loan;

(c) approximate amount of Two Thousand Eight Hundred Seventy-Two Dollars (\$2872.00) to E.S.E. Credit Union for a signature loan;

(d) approximate amount of Two Thousand Three Hundred Six Dollars (\$2306.00) to Discover Card;

(e) approximate amount of Two Thousand Six Hundred Ninety-One Dollars (\$2691.00) to MBNA America for Defendant's Mastercard;

(f) approximate amount of Two Thousand Five Hundred Thirty-Two Dollars (\$2532.00) to Security Pacific Bank of Arizona for Defendant's Visa;

(g) approximate amount of Nine Hundred Sixteen Dollars (\$916.00) to Z.C.M.I.; and

(h) approximate amount of Nine Hundred Fifty Dollars (\$950.00) to Plaintiff's father, Verl Haacke.

6. In addition to the above-referenced debts and



obligations, there is an additional obligation owed to Plaintiff's father, Verl L. Haacke, of Bountiful, Utah, in the approximate amount of Twenty-Six Thousand Five Hundred Dollars (\$26,500.00), at eight percent (8%) interest per annum. The parties shall repay said Plaintiff's father in the following amounts, and shall indemnify, defend and hold the other party harmless from his/her responsibility incident to this debt:

(a) Plaintiff shall be responsible for the sum of Sixteen Thousand Five Hundred Dollars (\$16,500.00), to be paid at the rate of One Hundred Eighty Dollars (\$180.00) per month, for a period of thirty months, with payment of the balance in full within thirty days of the last payment; and

(b) Defendant shall be responsible for the amount of Ten Thousand Dollars (\$10,000.00) to be paid at the rate of One Hundred Twenty Dollars (\$120.00) per month, for thirty months, with payment of the balance in full within thirty days of the last payment. Defendant shall pay this debt in full as soon as circumstances permit refinancing or other means of said payment.

7. Defendant shall continue his efforts to refinance all or part of the joint debts of this marriage as delineated in the above-paragraphs, to remove Plaintiff's name from those debts and relieve Plaintiff from any obligation pertaining thereto. Defendant recognizes a continuing affirmative obligation to put forth the necessary efforts to obtain proper refinancing and clear Plaintiff's credit as soon as such action is possible.

8. Plaintiff is in possession of a 1990 Mazda Miata automobile, which automobile is held solely in her name. Defendant has waived all claim to the said automobile. The parties are also owners of a 1976 MG automobile, currently in the possession of Defendant. The said MG automobile shall remain in the ownership of both parties, until Defendant has successfully refinanced or paid the debts as delineated above, when the automobile shall be solely awarded to Defendant. Defendant shall indemnify, defend and hold Plaintiff harmless from any and all obligations pertaining to the said MG automobile, so long as it is in his possession.

9. Defendant shall fully insure the said MG automobile, so long as Plaintiff's name is shown on the financing documents or title, and shall indemnify, defend and hold harmless Plaintiff from any claim or damage arising from his failure to do so. To this end, the parties shall continue to arrange for automobile insurance on a joint basis, as they have in the past. Each party shall be responsible to pay the respective costs of insurance, on a prorated basis in accordance with policy costs on his/her particular automobile.

10. No alimony shall be awarded to Defendant in this case. Defendant has waived and relinquished his right to claim alimony against Plaintiff, at present and in the future.

11. No pension or retirement benefits/assets shall be awarded in this case. Plaintiff and Defendant have waived and relinquish his/her right to claim against the pension or retirement benefits/assets of the other party.

12. The parties shall each indemnify, defend and hold harmless one other from any and all past tax obligations, as well as any and all debts or obligations incurred since the parties' separation.

13. Each of the parties shall sign all papers, documents, titles, deeds and any other document necessary to effect any of the provisions hereof, including but not limited to the transfer of real or personal property.

14. Plaintiff shall be restored to her former name of Haacke.

15. Defendant shall pay to Plaintiff the sum of Two Hundred Eighty-Eight and 50/100 Dollars (\$282.50), representing one-half of the cost of attorney's fees incurred by Plaintiff in finalization of this action.

DATED this 14<sup>th</sup> day of Sept, 1990.

BY THE COURT:

  
\_\_\_\_\_  
RODNEY S. PAGE  
DISTRICT JUDGE

APPROVAL AND REQUEST FOR IMMEDIATE ENTRY

Defendant, Mark Mitchell Glenn hereby certifies that he has read the foregoing DECREE OF DIVORCE, that he approves the same and that he requests that the Court enter the same immediately. Defendant hereby waives his right to object to the said Decree, and requests that the Court execute the same immediately.

DATED this 14<sup>th</sup> day of September, 1990.

A handwritten signature in black ink, appearing to read 'Mark Mitchell Glenn', written over a horizontal line.

MARK MITCHELL GLENN  
Defendant

## **APPENDIX G**

case. In our view, the Legislature, in defining kidnapping in the second degree, did not purpose to include a restraint of such an insubstantial nature as was present in the case at bar, particularly when such conduct is covered by another and more specific Penal Law section (§ 135.10, entitled "Unlawful imprisonment in the first degree"), which provides:

"A person is guilty of unlawful imprisonment in the first degree when he restrains another person under circumstances which expose the latter to a risk of serious physical injury."

Nor are we persuaded by the contention that the defendant's acquittal on the robbery charge in some way created a vacuum in which the jury could view the charge of kidnapping in the second degree in total isolation from the facts in the case and contrary to the prosecution's own theory that a robbery and a larceny actually had taken place (cf. *People v. Sigismondi*, 49 Misc.2d 1, 266 N.Y.S.2d 724, affd. 27 A.D.2d 937, 280 N.Y.S.2d 912, affd. 21 N.Y.2d 186, 287 N.Y.S.2d 33, 234 N.E.2d 212).

We have examined the other points raised by the defendant and find them to be without merit.

Accordingly, the judgment of conviction should be reversed, on the law, and the count for kidnapping in the second degree dismissed.

Judgment reversed, on the law, and the count for said crime is dismissed.

RABIN, Acting P. J., and HOPKINS, CHRIST and MUNDER, JJ., concur.



50 A.D.2d 806

**Esther AVNERY, Respondent, v. Joseph AVNERY, Appellant.**

Supreme Court, Appellate Division, Second Department.

Dec. 8, 1975.

The Supreme Court, Kings County, granted annulment of marriage, and husband appealed. The Supreme Court, Appellate Division, Second Department, held that evidence was insufficient to support finding that husband had fraudulently obtained wife's consent to marry; that wife had not shown that husband's fraud would have

deceived ordinarily prudent person; and that wife's action for annulment was barred on ground of condonation prior to commencement of action.

Reversed and remanded.

Hopkins, J., concurred in result.

#### 1. Marriage § 58(7)

In order to obtain annulment of marriage on ground of fraud, plaintiff must establish fraud which would deceive an ordinarily prudent person, and that plaintiff would not have consented to marriage absent practice of fraud. Domestic Relations Law § 140(e).

#### 2. Marriage § 60(7)

Evidence that husband had misrepresented to wife that he loved her and that he married her solely to take over her businesses, real property, and personal property, was not sufficient to support trial court's finding that wife had consented to marriage on basis of husband's fraud. Domestic Relations Law § 140(e).

#### 3. Marriage § 60(7)

Where wife's pleadings admitted that it may have been evident to objective observers that husband never loved her and married her only for her money, wife had not met test of showing that her consent to marriage was result of false representations on part of husband which would have deceived ordinarily prudent persons. Domestic Relations Law § 140(e).

#### 4. Marriage § 59

Where wife had cohabited with husband and continued to have marital relations with him after becoming aware that husband had made misrepresentations of his love in order to obtain her consent to marry, wife's action for annulment on ground of fraud in obtaining consent was barred by wife's condonation prior to commencement of action. Domestic Relations Law § 140(e).

Herbert Carr, New York City, for appellant.

Allen M. Fischer, Brooklyn (Roy A. Satine, New York City, of counsel), for respondent.

Before RABIN, Acting P. J., and MARTUSCELLO, BRENNAN, MUNDER and HOPKINS, JJ.

#### MEMORANDUM BY THE COURT.

In an action to annul a marriage, the defendant husband appeals from a judgment of the Supreme Court, Kings County, dated Novem-

ber 6, 1974, which, after a nonjury trial, *inter alia*, granted the annulment.

Judgment reversed, on the law and the facts, without costs, and case remitted to Special Term for further proceedings consistent herewith.

This action for annulment was brought pursuant to section 140 (subd. [e]) of the Domestic Relations Law on the ground that plaintiff's consent to the marriage was obtained by fraud. Contrary to the finding by the trial court, we conclude that plaintiff failed to establish her cause of action.

[1, 2] In order to obtain an annulment on the ground of fraud, a plaintiff must establish fraud which is "material, to that degree that, had it not been practiced, the party deceived would not have consented to the marriage" (*Di Lorenzo v. Di Lorenzo*, *supra* [174 N.Y. 467], p. 471, 67 N.E. 63, 64), and is 'of such a nature as to deceive an ordinarily prudent person.' (Id. p. 474, 67 N.E. p. 65)" (*Shonfeld v. Shonfeld*, 260 N.Y. 477, 479-480, 184 N.E. 60, 61). Plaintiff sought to annul her marriage on the ground that defendant had falsely represented that he loved her. She alleged that he misrepresented not only his love, but also his prior business experience and expertise and that he married not for love, and not to provide her with a home, etc., but solely to take over her businesses and real and personal property.

The record reveals that plaintiff met defendant while visiting Israel in June, 1971. Theirs was a whirlwind courtship; she took him back to New York, where they were married on July 4, 1971. They lived together, albeit not always in harmony, for more than two years. Plaintiff literally threw her money away on defendant and his family during that entire period. She bought him new teeth, new clothes, and a new hairpiece; she paid for his transportation to America and for all of the expenses of the wedding; she also paid the expenses of bringing defendant's sister and son and daughter-in-law to America; and she transferred one-half of the real property which she owned in Brooklyn to defendant. She did all of this willingly and without hesitation. She was an experienced business woman who had been married more than once prior to meeting defendant. She knew that defendant was divorced and that he had virtually no assets of his own. In short, plaintiff may have been disappointed in how her marriage turned out, but she was not deceived in entering into it.

The facts in this case are very similar to those in *Woronzoff-Daschkoff v. Woronzoff-Daschkoff* (303 N.Y. 506, 104 N.E.2d 877), in which the Court of Appeals stated (p. 510, 104 N.E.2d p. 879):

"The trial court found that defendant had made all the representations alleged in the complaint, and that plaintiff had relied on them in giving her consent to the marriage. Those representations, so

held the trial court, were all false in that defendant had, in Paris, received a large sum of money from his former wife, as a price for divorce, that defendant's sole purpose in marrying plaintiff was to get money for his own life of idleness and for his relatives, that to accomplish this he permitted plaintiff to pay all the honeymoon expenses and took money from her, that he attempted secretly to collect commissions from the contractor who remodeled plaintiff's home, that he tried to get money from plaintiff on the pretext of starting a business and tried to get her to set up a trust fund with him as her trustee, that he never made any real effort to find work or to support himself, and that he at no time offered 'to fulfill his marital obligation and promise to plaintiff to provide a home for her and to support himself'. Such were the findings."

The Court of Appeals went on to hold (pp. 511-512, 104 N.E.2d p. 880):

"Defendant, on that showing, was no model of chivalry or propriety. That proof, believed by the trier of the facts, was enough, we will assume, to expose him as a fortune hunter, a sluggard, a hypochondriac, and a man who took his promises lightly. But this is a suit to annul a marriage for fraud, and, while we have, for better or worse, retreated, *di Lorenzo v. di Lorenzo*, 174 N.Y. 467, 67 N.E. 63, 63 L.R.A. 92; *Shonfeld v. Shonfeld*, 260 N.Y. 477, 481, 184 N.E. 60, 61, from the old idea that marriages can be voided only for frauds going to the essentials of marriage, that is, consortium and cohabitation, it is, nonetheless, still the law in New York that annulments are decreed, not for any and every kind of fraud, *Mirizio v. Mirizio*, 242 N.Y. 74, 80, 150 N.E. 605, 607, 44 A.L.R. 714; *Svenson v. Svenson*, 178 N.Y. 54, 59, 70 N.E. 120, 122, but for fraud as to matters 'vital' to the marriage relationship only. *Lapides v. Lapides*, 254 N.Y. 73, 80, 171 N.E. 911, 913. Premarital falsehoods as to love and affection are not enough, nor disclosure that one partner 'married for money'."

[3] While the fraud required for an annulment must be "of such a nature as to deceive an ordinarily prudent person" (see *Shonfeld v. Shonfeld*, *supra*, 260 N.Y. p. 480, 184 N.E. p. 61; see, also, *Kober v. Kober*, 16 N.Y.2d 191, 195, 264 N.Y.S.2d 364, 367, 211 N.E.2d 817, 819), it appears that the trial court used a different standard. For example, the trial court observed, in its decision, that "although clear signs that the defendant never loved her were evident to objective observers from the outset, she [plaintiff] did not see them. She married under the spell of the defendant's protestations of love" (emphasis supplied). At another point in its decision the trial court stated, "in retrospect, the ingenious schemes of the defendant to take over the plaintiff's assets and real property ought to have become clear to her long before it did. Such hindsight, however, is seldom given to those

in love. The prudence required to be shown by the mythical 'ordinary man' must be applied reasonably by a court to the actual 'ordinary woman in love.' There is even an admission in plaintiff's brief that "although clear signs that appellant never loved her, wanted only her money and had used her, *may have been evident to objective observers from the outset*, respondent did not see them" (emphasis supplied). In other words, all concerned seem to agree that an "ordinarily prudent person" would not have been deceived by defendant's conduct and/or statements and would not have entered into marriage in reliance thereon. Such conduct or statements, therefore, cannot support the judgment.

Plaintiff argues that the trial court did not err in finding that defendant's sole purpose in inducing plaintiff to marry him was to evade the United States immigration laws pertaining to the entry of aliens. While fraud on this point might, in certain cases, constitute grounds for annulment (see, e. g., *Brillis v. Brillis*, 4 N.Y.2d 125, 173 N.Y.S.2d 3, 149 N.E.2d 510), the fact is the trial court made *no* such finding in this case.

[4] Finally, a careful review of the record convinces that, subsequent to June 15, 1973, almost two years after these parties were married, and with full knowledge of all that had gone on, plaintiff voluntarily cohabited with defendant and had sexual intercourse with him as his wife. She so testified. Accordingly, were we not reversing the judgment for failure of proof, we would reach the same result on the ground of condonation prior to commencement of the action (see Domestic Relations Law, § 140, subd. [e]).

In view of our conclusion that the marriage should not have been annulled, the case is remanded to Special Term for reconsideration of the provisions of the judgment concerning the ownership of and title to the various properties, as well as the award of counsel fees.

RABIN, Acting P. J., and MARTUSCELLO, BRENNAN and MUNDER, JJ., concur.

HOPKINS, J., concurs in the result, but only upon the ground of condonation.



**In the Matter of NANCY II \*, Respondent, v. LARRY II \*, Appellant.**

Supreme Court, Appellate Division, Third Department.

Dec. 4, 1975.

The father appealed from an order of the Family Court, Schuyler County, granting the mother custody of the four children and ordering the father to pay \$15 per week support for each child. The Supreme Court, Appellate Division, held that order awarding custody on sole ground that the mother was the preferred parent for custody of young children was error and matter would be remanded for a new hearing to take testimony as to changes in circumstances since original hearing.

Order reversed and matter remitted.

#### 1. Divorce ⇐298(1), 312.7

Order of family court granting mother custody of the four children following the obtaining of a divorce by father on sole ground that the mother was preferred custodian for young children was error as being contrary to statutory declaration that there is no prima facie right to custody of child in either parent, and matter was remanded for new hearing as to any change in circumstances since time of original hearing so that trial court could ascertain the best interests of children. Domestic Relations Law § 240.

#### 2. Appeal and Error ⇐1122(2)

Although Appellate Division has power to review questions of law and fact and may in a proper case render such judgment as should have been rendered by trial court after a nonjury trial, where evidence is in sharp conflict and veracity of witnesses is critical, it must order a new trial and not make new findings of fact.

James E. Halpin, Odessa, for appellant.

W. K. Cuddy, III, Montour Falls, for respondent.

Before SWEENEY, J. P., and KANE, KOREMAN, MAIN and LARKIN, JJ.

#### MEMORANDUM DECISION.

Appeal from an order of the Family Court, Schuyler County, entered July 18, 1975, which granted petitioner custody of her four

\* Fictitious names.



## **APPENDIX H**

juries inflicted on appellant. This, however, the court was not bound to conclude. The issue was one of fact, and from the negative evidence that the respondents had not used or had in their possession or control any dynamite caps after disposing of those used four years before in blasting operations on the nearby ranch, from the evidence that none of those who frequented the pump house had seen the coat in the pocket of which the caps were placed in the pump house, until the children found it hanging there, the trial court could conclude, as it did, that the presence of the caps in the pump house was unknown to the respondents, and that they had been placed there or permitted to be there by no act of the respondents or those for whose actions respondents were responsible. It is true that, since the Reynolds family, including the children, were properly on the premises, the dwelling house and its immediate environs at least, being furnished to Reynolds, senior, as a part of his compensation for labor, liability could be fastened upon respondents if they were negligent in allowing so highly dangerous a commodity as dynamite caps to be in a place where the children could obtain them (10 A.L.R.2d p. 22, et seq.); but here again whether or not respondents were negligent in not having, through more frequent inspections of the premises, discovered the presence of the caps was a question of fact for the trial court. Any negligence in their care of the premises had to be related to the matter of inspection under all the circumstances, including those as to the use of the pump house which the court found to be of such a nature as not to require anyone to be in there, except when the pump was operating, since the pump house, according to the testimony, was used for no other purpose than to house the pump. Having found the respondents did not store or keep the caps in the building, the question of whether or not respondents, in the exercise of due care, should have, by reasonable inspection, discovered the caps before the children did, was for the

trial court to determine. The circumstances support the court's findings absolving respondents.

We find no error in the record.

The judgment is affirmed.

PEEK and SCHOTTKY, JJ., concur.



**Isabelle Krossber DOUGLASS, Plaintiff  
and Appellant,**

**v.**

**Russell DOUGLASS, Defendant and  
Respondent.**

**Civ. 22267.**

**District Court of Appeal, Second District,  
Division 3, California.**

**March 1, 1957.**

**Annulment proceeding by wife.** The Superior Court, Los Angeles County, Bayard Rhone, J., denied annulment, and wife appealed. The District Court of Appeal, Shinn, P. J., held that wife was entitled to annulment.

Judgment reversed with instructions.

#### **1. Marriage ⇨58(7)**

Test as to whether marriage should be annulled is whether the false representations or concealment were such that essential purpose of injured spouse inherent in the contracting of the marriage was defeated. West's Ann.Civ.Code, § 82.

#### **2. Marriage ⇨58(7)**

Wife, who was induced to marry by husband's false representations that he was an honest, law abiding, respectable, and honorable man and that he had a little girl who was well provided for, was entitled to annulment in view of facts that father had been convicted of grand theft, was a parole

violate and a fugitive from justice, and was guilty of failure to support two children of a former marriage. West's Ann.Civ.Code, § 82.

#### **3. Marriage ⇨58(7)**

Either party to marriage has right to annulment decree where the fraud relied upon as justification for rescission of the marriage contract is so grievous that it places injured party in a relationship which is intolerable because it cannot honorably be endured. West's Ann.Civ.Code, § 82.

#### **4. Equity ⇨11**

Equity will not deny relief where a plan of deceit, which has been laid out and consummated, must inevitably defeat the essential purposes of the deceived party in entering into the relationship.

Krag & Krag and William L. Mock, Alhambra, for appellant.

SHINN, Presiding Justice.

Isabelle Krossber Douglass sued Russell Douglass for annulment of their marriage contracted August 9, 1955. She alleged that her consent to the marriage was induced by defendant's fraud in that he falsely and fraudulently represented to her that he was an honest, law abiding, respectable and honorable man and concealed from her his real character; she believed and relied upon said representations and otherwise would not have consented to the marriage. Defendant, in fact, had been convicted March 17, 1951 in Minnesota of the offense of grand theft; he was paroled to the Minnesota State Board of Parole; February 18, 1952, by order of the court, stay of execution of sentence was vacated and he was committed to the county jail at Moorhead, Minnesota. The foregoing facts were concealed from plaintiff with the fraudulent intent of deceiving her; November 24, 1955, upon the discovery of the falsehood of defendant's representations and of his true character, plaintiff severed her relations with defendant and has not since cohabited with him. Late in 1955, defendant was

apprehended by law enforcement officers Minnesota, was returned to that state and placed in jail. Defendant defaulted and default was duly entered.

Plaintiff testified at the trial to all the facts alleged in her complaint. Some three months after the marriage, law enforcement officers appeared at the Douglass home and took defendant into custody and caused him to be returned to Minnesota. Documentary evidence was introduced as proof of a Minnesota conviction, parole and revocation of parole. The revocation was due to a failure of Douglass to support two children by a previous marriage. At the time of the trial Douglass was still incarcerated in Minnesota jail. Plaintiff testified further that prior to her marriage defendant represented that he had "a little girl that was well provided for" whereas, in fact he had two children and had not supported them. The cause was submitted upon the evidence of plaintiff and the court denied annulment. Plaintiff appeals.

[1,2] In denying plaintiff relief the court stated: "But I have failed to find a California case that supports the decree of an annulment in a case such as we have here. In fact, I have found a great many cases to the contrary." We have made diligent search of the authorities and have found no case which would serve as precedent for denial of a decree of annulment to a plaintiff upon the facts established in the present case. The test in all cases is whether the false representations or concealment were such as to defeat the essential purpose of the injured spouse inherent in the contracting of marriage. Nothing short of this would justify an annulment; nothing more is required to establish the voidable character of the marriage contract. The facts of the decided cases are of infinite variety. Quite a few of them are listed in Schaub v. Schaub, 71 Cal.App.2d 467, 162 P.2d 96 and in Bruce v. Bruce, 71 Cal.App.2d 64, 163 P.2d 95. Millar v. Millar, 175 Cal. 797, 167 P. 394, L.R.A.1918B, 415, discusses the subject of annulment at length. The facts of the present case differ from

terially from those of all of the California cases involving annulment upon the ground of fraud. Such a factual situation is rarely to be found in the law books. We venture to say that no case is to be found in which any court which was free to decree an annulment of a marriage upon the ground of fraud has refused a decree to a litigant who was shown to be in the unfortunate position which Mrs. Douglass occupied at the time of her trial. Her right to an annulment is to us so clear as to make it wholly unnecessary for us to concern ourselves with the question whether our concept of justice has found expression in the decisions of other courts.

[3,4] Section 82 of the Civil Code which lists fraud as a ground for annulment does not specify the particular frauds which will justify the rescission of a contract of marriage, but we do not doubt that either party to the marriage has a right to a decree of annulment where the fraud is so grievous that it places the injured party in a relationship that is intolerable because it cannot honorably be endured. "Equity will not deny relief where a plan of deceit has been laid out and consummated which must inevitably defeat the essential purposes of the deceived party in entering into the relationship." *Schaub v. Schaub*, supra, 71 Cal.App.2d 467, 476, 162 P.2d 966, 971. It would serve no good purpose to engage in a discourse upon the California cases in which various frauds have been held either sufficient or insufficient to justify a decree of annulment.

At the time of her marriage to defendant Mrs. Douglass had two children by a former marriage. There was no reason whatever to doubt that in consenting to marry defendant her purposes were such as any normal mother of two children would have in contracting a second marriage, namely, to have a home, a husband of honorable

character whom she could respect and trust, one whom she would be proud to have as a companion and to introduce to her friends, and who would be a suitable stepfather for her children. These are the essentials of the marital relationship which plaintiff expected and in all these respects her hopes were shattered and her purposes defeated. The facts that defendant stood convicted of grand theft, as a parole violator, a fugitive from justice and a father guilty of failure to support two children of a former marriage were not the only ones which blighted plaintiff's future. Even in those circumstances the defendant might eventually have turned out to be a worthy husband, for it is no doubt true that men who have served prison terms oftentimes prove to be as good husbands as many others whose unacquaintance with prison walls has been due entirely to their good fortune; but the fraud of defendant in concealing his criminal record and true character was a deceit so gross and cruel as to prove him to plaintiff to be a man unworthy of trust, either with respect to his truthfulness, his moral character or a disposition to be a law-abiding citizen. Denial of the prayer of plaintiff for annulment would mean that when defendant is released from prison she must either receive him and extend to him the rights and privileges that are usually due from a wife, or, rejecting and repulsing him, resign herself to the miserable and humiliating existence to which she would stand condemned by the fraud of the defendant and the court's harsh and unsympathetic denial of her plea for liberation. This, in our opinion, would be an unjust and intolerable imprisonment to inflict upon the innocent plaintiff. We can have no part in it.

The judgment is reversed with instructions to grant a decree of annulment.

WOOD and VALLÉE, JJ., concur.

**Filomena Delgado KIPLINGER, Plaintiff  
and Respondent,**

**v.**

**Clark W. KIPLINGER, Defendant and  
Appellant.**  
Civ. 21730.

District Court of Appeal, Second District,  
Division 3, California.

March 1, 1957.

Action by divorced wife against husband to quiet title to realty, or in the alternative, for partition. The Superior Court, Los Angeles County, Henry M. Willis, J., entered judgment that wife owned the property as her separate property and husband appealed. The District Court of Appeal, Parker Wood, J., held that evidence was insufficient to support findings that title to property was inadvertently placed in names of husband and wife as joint tenants, and that it was intent of parties that property be separate property of wife, and that husband had no interest in the property and that wife was owner of the property as her separate property.

Judgment reversed.

#### 1. Husband and Wife §14(3)

Where deed was to husband and wife as joint tenants, there was a presumption that title to the property was as described in the deed and burden was on wife, who sought to establish that property was her separate property, to rebut that presumption.

#### 2. Husband and Wife §14(3)

Presumption that title to property was as described in a joint tenancy deed, to husband and wife, arising from form of the deed, could not be rebutted solely by evidence as to source of funds used to purchase the property.

#### 3. Husband and Wife §14(3), 264

In action to quiet title to realty, or in the alternative for partition, evidence was insufficient to support findings that title to property was inadvertently placed

in names of husband and wife as joint tenants and that it was intent of parties that property be separate property of wife and that husband had no interest in the property and that wife was owner of the property as her separate property.

#### 4. Husband and Wife §229(6)

Where wife's complaint in action to quiet title alleged that husband claimed a interest in certain realty and that wife did not believe that husband had any interest in such realty, and husband, in his answer, denied generally and specifically such allegations, but also stated he joined wife in request for partition of the realty and asked that the realty be sold and proceeds be distributed equally between the parties, even though husband made his denial of interest by general reference to the complaint in view of fact that his answer also asserted he claimed an interest in the realty, a triable issue was presented as to his claimed interest in the realty.

Tanner, Thornton & Myers and John Bricker Myers, Los Angeles, for appellant.  
Abe Richman, Los Angeles, for respondent.

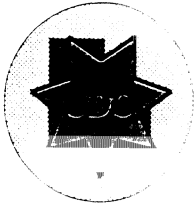
PARKER WOOD, Justice.

Action to quiet title to real property or in the alternative, for partition. Judgment was that plaintiff owns the property as her separate property. Defendant appealed from the judgment.

Appellant contends that the evidence does not support the findings.

Plaintiff and defendant were married in September, 1949. In January, 1950, the acquired record title to real property (house and lot) in Encino by a deed which recited that the property was conveyed to them "as joint tenants." In acquiring the property, a down payment of \$351.90 was made, and plaintiff and defendant executed a note and a trust deed for a \$100,000 loan in the amount of \$9,500. The unpaid balance of the loan at the time of trial was \$8,337.49. Plaintiff obtained an inter

## **APPENDIX I**



Norman H. Bangerter  
Governor  
Gary W. DeLand  
Executive Director

# State of Utah

DEPARTMENT OF CORRECTIONS  
EXECUTIVE OFFICES

6100 South Fashion Blvd.  
Murray, Utah 84107  
(801) 265-5500

September 4, 1990

Ms. LeslieAnn Glenn  
375 South 100 East  
Bountiful, Utah 84010-4901

Dear LeslieAnn:

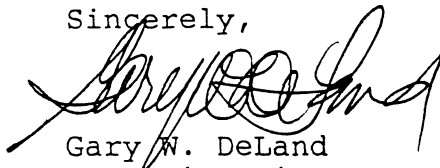
As a follow up to our meeting August 23, 1990, this letter is intended to memorialize the issues discussed and officially provide notice of the need to terminate your employment with the Utah State Department of Corrections as a result of your marriage to a parolee under supervision to the Utah Department of Corrections (on Inter-State Compact from Alabama). While that marriage took place without your knowledge of his criminal status, both you and the Department are now cognizant of the situation and the Attorney General's office has determined a conflict of interest now exists in violation of both Utah Code and UDC regulations. The A.G.'s review of the circumstances has resulted in a finding from that office that the only viable option available to the UDC in light of that relationship is termination of the employment relationship.

It is my unpleasant responsibility, therefore, to notify you that effective September 14, 1990, will terminate your employment. It is particularly difficult for me, because your performance has been very good; well above the performance levels required of the position. The two weeks notice will:

1. allow you severance pay for at least a brief time to assist you with the transition and to give you some time to find another job; and
2. permit Carrie time to debrief you concerning the cases you are currently handling.

If at some time in the future the current circumstances were to change, eliminating the conflict of interest, I would certainly be more than happy to entertain your application for reemployment with the UDC. As I have explained to you in the past, I am very satisfied with the quality of your work.

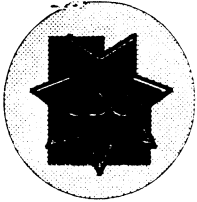
Sincerely,

A handwritten signature in black ink, appearing to read "Gary W. DeLand". The signature is fluid and cursive, with a large initial "G" and "D".

Gary W. DeLand  
Executive Director  
Utah Department of Corrections

GWD/mp

## **APPENDIX J**



Norman H. Bangerter  
Governor  
Gary W. DeLand  
Executive Director

# State of Utah

DEPARTMENT OF CORRECTIONS  
EXECUTIVE OFFICES

6100 South Fashion Blvd.  
Murray, Utah 84107  
(801) 265-5500

October 23, 1990

Ms. LeslieAnn Glenn  
375 South 100 East  
Bountiful, Utah 84010-4901

Dear LeslieAnn:

This matter has been a difficult and trying one for all involved, and needs to be finalized just as quickly as possible. That is what I am in the process of attempting to facilitate, now.

By way of summarizing what has happened:

1. You married Mark Mitchell GLENN, a parolee under felony supervision to the state of Alabama.
2. At some point it was discovered that Mark Glenn was a parolee which, of course, you have stated you learned about only after you were married.
3. Your marriage resulted in counsel to the UDC from the A.G.'s office that a conflict of interest was created as a result of your marriage.
4. After looking at all the options, ultimately you were notified on September 4, 1990, that we would be forced to terminate your employment with the Department as of September 14, 1990.
5. On September 14, 1990, your divorce from Mark Glenn was finalized, resulting in termination of the marriage which created the conflict of interest and ended the need to end your employment with the UDC.

As a result of this situation a number of your colleagues in the Investigations Bureau and Legal Services Bureau have notified Division administrators:

1. that they did not believe your explanations;



2. that they took exception with some of your actions during the time this matter was on-going;
3. that they wanted a full investigation; and
4. some said they did not want to work with you.

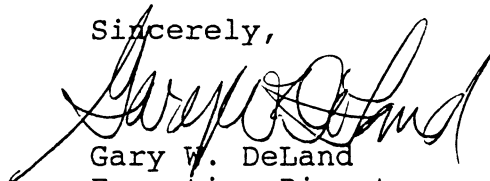
The concerns of these members created a concern about the working atmosphere in the Division if you returned and prompted inquiries as to the possibility of transferring you to the Attorney General's office. At one point, your transfer appeared to be assured, but now looks very much in doubt.

Therefore, it is my intent to return you to work at the UDC and to end the current arrangement which has kept your assignment away from 6100 South 300 East. I am instructing Nick Morgan to assign you to the Legal Services Bureau offices for your work station, forthwith, with the following understandings:

1. Your divorce effectively ends all ties and contact with Mark Glenn. Any meetings made necessary as a result of the divorce should be cleared with Carrie Hill.
2. You will have no access to Mark Glenn's offender files.
3. We will investigate the concerns and allegations raised by staff. Obviously, we would go wherever the investigation takes us.
4. We will continue to explore the possibility of relocating you to the A.G.'s office if a mutually beneficial arrangement can be made.

Due to the problems which have occurred, I would imagine some tension will result when you return. Hopefully, you and those you work with can work through any problems and feelings that exist and reestablish the confidence and trust needed.

Sincerely,



Gary W. DeLand  
Executive Director  
Utah Department of Corrections

GWD/mp

cc: Nick Morgan  
Carrie Hill