

2000

# Kenneth M. Hall v. Debora Hall : Brief of Appellant

Utah Court of Appeals

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Donald W. Winters; attorney for appellee.

Thomas R. Blonquist; attorney for appellant .

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IN THE UTAH COURT OF APPEALS

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Trial Court No. 984402025

Appellate Case No. 20001104-CA

Priority Classification 15

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KENNETH M. HALL,

Appellant,

v.

DEBORA HALL,

Appellee.

Appeal from rulings of the Honorable Guy R. Burningham  
Judge of the Fourth District Court

---

BRIEF OF APPELLANT

---

Respectfully submitted,  
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Attorney for Appellant  
40 South Sixth East  
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**STATEMENT REGARDING ORAL ARGUMENT**

Counsel requests oral argument

**FILED**  
Utah Court of Appeals  
JUL 03 2001  
Paulette Stagg  
Clerk of the Court

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KENNETH M. HALL,

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Appeal from rulings of the Honorable Guy R. Burningham  
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BRIEF OF APPELLANT

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Respectfully submitted,  
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**STATEMENT REGARDING ORAL ARGUMENT**

Counsel requests oral argument

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

### **CASES**

*Barnes v. Barnes*, 857 P.2d 257, 259 (Utah App. 1993) (citing *Richie v. Richie*, 784 P.2d 465, 467 (Utah App. 1989)).

*Crockett v. Crockett*, 836 P.2d 818, 820 (Utah App. 1992) (quoting *Turner v. Turner*, 649 P.2d 6, 8 (Utah 1982)).

*Jackson v. Jackson*, 617 P.2d 338, 340 (Utah 1980)

*Turner v. Turner*, 649 P.2d 6,8 (Utah 1982)

*Whitehead v. Whitehead*, 836 P.2d 814, 816 (Utah App. 1992)

*Workman v. Workman*, 652 P.2d 931, 933 (Utah 1982)

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IN THE UTAH COURT OF APPEALS

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Trial Court No.	984402025
Appellate Case No.	20001104-CA
Priority Classification	15

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KENNETH M. HALL,

Appellant,

v.

DEBORA HALL,

Appellee.

Appeal from a ruling of the Honorable Guy R. Burningham  
Judge of the Third District Court

---

BRIEF OF APPELLANT

---

Appellant submits the following as his Brief herein:

**JURISDICTIONAL AUTHORITY**

Jurisdiction to review the final order and judgment entered herein is vested in the Utah Court of Appeals pursuant to Utah Code Annotated §78-2a-3(2)(h) (1953, as amended).

## **NATURE OF THE PROCEEDINGS**

This appeal is from a decree of divorce and supporting findings of fact and conclusions of law dated February 7, 2000, and the amended findings of fact, conclusions of law and amended decree of divorce entered on November 17, 2000.

## **ISSUES PRESENTED ON APPEAL AND STANDARD OF REVIEW**

The issues presented for review in this case are:

1. Did the Appellant agree that the forty acres of undeveloped land would not be part of the marital estate? The standard of review relative to this issue is the clearly erroneous standard see *Barnes v. Barnes*, 857 P.2d 257, 259 (Utah App. 1993) (citing *Richie v. Richie*, 784 P.2d 465, 467 (Utah App. 1989)).

2. Did the property awarded to Appellee in her previous marriage become a marital asset during her marriage to Appellant? The standard of review applicable to this issue is the abuse of discretion standard. See *Whitehead v. Whitehead*, 836 P.2d 814, 816 (Utah App. 1992).

3. Was the property award to the Appellant equitable? The standard of review relative to this issue is the abuse of discretion standard. See *Crockett v. Crockett*, 836 P.2d 818, 820 (Utah App. 1992) (quoting *Turner v. Turner*, 649 P.2d 6, 8 (Utah 1982)).

## **STATUTORY PROVISIONS**

### **STATUTES**

Utah Code Annotated §78-2a-3(2)(h) (1953, as amended)

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

### **STATEMENT OF THE CASE**

This is an appeal from an amended decree of divorce entered on November 17, 2000. A bench trial was held on November 24, 1999, at the conclusion of which the court took the matter under advisement. A memorandum decision was handed down on December 20, 1999. On January 3, 2000, the Appellant filed a motion for reconsideration of the memorandum decision which was denied by the court on February 7, 2000. Following the preparation of the findings of fact and conclusions of law and the filing of objections thereto by the Appellant, a decree of divorce and supporting findings of fact and conclusions of law were signed on February 7, 2000, and amended findings of fact, conclusions of law and an amended decree of divorce were signed on November 17, 2000. Appellant filed his notice of appeal on December 7, 2000.

### **FACTS**

The following factual presentation represents a marshalling of the evidence presented by Appellant and Appellee at the trial court level.

(For ease of reference, the Petitioner/Appellant will be referenced throughout the remainder of this brief as “Ken” and Respondent/Appellee as “Debora”. References to the



pleadings in the record on appeal are by the letter "R" followed by the arabic number placed on the pleading during the pagination process. In some cases, the letter "P" is used to indicate the paragraph number of the document. References to the trial transcript are identified by the letters Tp followed by the page number of the transcript. Exhibits are referred to by the exhibit number. Other major documents are in the Addendum.)

1. During their marriage, the parties lived at 18185 West 1540 North, Fairfield, Utah which comprised a home on one acre and 40 adjacent unimproved acres of pasture land, some irrigated and some unirrigated, and twenty-five shares of water stock purchased with the land, all hereinafter referred to as the "Property". R. 11 P 6

2. The Property was awarded to Debora in her previous divorce. See Exhibit 10 P 7.

3. In that divorce action, Civil No. 914400172, one of the Judges of the Fourth Judicial District Court found that

A. at July 22, 1992, the Property had an \$80,000 value, see Exhibit 10 P 6, and

B. the Property was encumbered by a \$44,353 debt owed to Earl and Gayle Crossman, evidenced by a trust deed note dated November 22, 1985, signed by Debora and her former husband, Vernaar J. Wilson. See Exhibit 11.

4. The Property was awarded to Debora, subject to the indebtedness owed to Crossmans, leaving her an equity at July 22, 1992, of \$35,646.77. See Exhibit 10 P 6.

5. The trust deed held by the Crossmans covered the Property i.e. the home, the one acre, the forty acres of irrigated and unirrigated pasture and the twenty-five shares of water stock. See Exhibit 11.

6. The debt to the Crossmans was due in March of 1993, eight months after Ken and Debora were married. See Exhibit 11.

7. Ken had no legal obligation to the Crossmans. See Exhibit 11.

8. As a veteran of the Persian Gulf War, Ken had the right to obtain one V.A. loan. Tp. 50 line 18.

9. Debora could not apply for a loan from First Security Bank until she had worked there for one year. Tp. 57 line 7.

10. Debora knew that First Security Bank would not loan money on raw land. Tp. 60 line 3.

11. On March 11, 1993, Ken obtained a \$52,852 V.A. loan through First Security Bank. See Exhibit 12.

12. Both Ken and Debora signed the V.A. loan. See Exhibit 12.

13. The loan proceeds were used to pay Debora's debt to the Crossmans and make improvements to the home in which the parties resided during their marriage. Tp. 68 line 2.

14. Ken testified that at no time prior to obtaining the V.A. loan to pay Crossmans and make improvements to the house did the parties

A. discuss dividing the Property. Tp. 45.

B. discuss that all Ken would receive was an interest in the house and 1 acre. Tp. 45.

15. Ken testified that he would not have utilized his VA entitlement if he had been told by Debora that all he would receive was an interest in the house and 1 acre. Tp. 45.

16. Debora testified that prior to obtaining the V.A. loan to pay Crossmans and make repairs to the house

A. she did not deed an interest in the 40 acres to Ken. Tp 60 line 19.

B. Ken knew exactly how Debora felt about it. Tp 60 line 19.

17. There exists no written agreement between the parties wherein Ken agreed to obtain a VA loan in exchange for a one half interest in only the home and one acre and not in the adjacent forty acres.

18. Monthly payments on the V.A. loan were made by Ken and Debora from their joint earnings during the marriage and, since their separation in September of 1998, each paid one half of the monthly payment as ordered by the court in the temporary mutual restraining order and order on order to show cause dated November 2, 1998.

19. At the time of trial,

A. the balance owed under the V.A. loan, sold by First Security Bank to Countrywide Funding, was approximately \$44,500

B. the house and one acre had a fair market value of \$111,000, see Exhibits 7 and 8, and

C. the vacant acreage had a fair market value of \$157,600. See Exhibit 9.

20. At the conclusion of the trial, the trial court took the matter under advisement and on December 20, 1999, issued a memorandum decision in which, among other things, the court ruled that the home and one acre comprised a marital asset but that the adjacent forty acre parcel was not a marital asset and awarded the same to Debora as her sole and separate property.

21. After the court issued its memorandum decision and prior to the entry of the decree of divorce, Ken filed a motion for reconsideration.

22. By its February 7, 2000 ruling, the trial court denied Ken's motion.

23. Pursuant to the court's memorandum decision and its ruling on Ken's motion for reconsideration, amended findings of fact, conclusions of law and an amended decree of divorce were entered on November 17, 2000.

24 Ken filed a notice of appeal on December 7, 2000.

### **ARGUMENT**

**POINT 1.** There is no evidence that Ken understood that the 40 acres of undeveloped land would not be part of the marital estate.

In its amended findings of fact at paragraph 16, the trial court found that at the time of the signing of the V.A. loan documents, the parties discussed the remaining 40 acres with Debora stating that such was to remain her separate property.

A close examination of the evidence clearly shows that there is nothing to support this finding and, therefore, that it is clearly erroneous.

There is no written document stating that at the time he took out the V.A. loan, Ken understood that the 40 acres of undeveloped land would not be part of the marital estate.

The only evidence presented on this point was the testimony of the parties:

Debora testified at Tp. 60, as follows:

Q But at any time did you ever deed him any interest in what we referred to as the acreage or the raw—

A No. He knew exactly how I felt about it.

Ken testified at Tp. 45, as follows:

Q Was there ever a discussion between you and Debbie prior to the time that you signed on that \$52,000 loan of dividing up that property?

A. No.

Q Was there ever a discussion between the two of you where she said if you take out a \$52,000 loan with me to pay off this obligation the only thing you will get out of it is a deed to the house and the one acre?

A. No.

Q If she had told you that, would you have signed on the \$52,000 loan?

A Most definitely not.

The foregoing testimony gives no support whatsoever to the finding of the trial court that the 40 acres was to remain the sole property of Debora and did not become part of the marital estate.

**POINT 2.** All property awarded to Debora in her previous marriage became marital property during her marriage to Ken when he utilized his V.A. entitlement to pay for it.

One question presented by this case is whether or not all of the real property awarded to the Debora in her previous marriage became marital property during her marriage to Ken.

A similar situation existed in the case of *Workman v. Workman*, 652 P.2d 931(Utah 1982). Shortly after the parties were married, they sold the wife's home in Heber City and with the proceeds, purchased the Park City home from the husband's mother by paying her \$1,500 and paying the State of Utah \$4,500 to extinguish its lien on the property. Based upon these facts, the trial court awarded the wife one half interest in the parties' Park City home and the husband appealed. The Utah Supreme Court upheld the award to the wife by stating, at page 933

Assuming arguendo that the property was validly conveyed to the husband prior to the marriage, it does not follow that it must be awarded solely to him in a property settlement, especially where the wife has used her separate resources to purchase the property from the husband's mother and to clear pending liens.

To further support the award, the high court quoted its ruling in *Jackson v. Jackson*, 617 P.2d 338, 340, 1(Utah 1980), which states that

The state of title to marital property prior to a divorce decree is not necessarily binding on the trial court in its distribution of such property pursuant to such decree. The trial court is empowered to make such distributions as are just and equitable, and may compel such conveyances as are necessary to that end.

These cases support an award of one half of the Property to Ken on the basis that he used his separate resources to pay the \$44,353 debt to Mr. Crossman i.e. he took out a V.A. loan and made payments on said loan for 7 years and 8 months.

**POINT 3** Equity demands that the Property was part of the marital estate.

Ken understands that under the Utah Supreme Court case of *Turner v. Turner*, 649 P.2d 6, 8 (Utah 1982), an appellate court may weigh the evidence and substitute its judgment for that of the trial court in divorce actions but it will not do so lightly and merely because its judgment differs from that of the trial judge. A trial court's apportionment of marital property will not be disturbed unless there has been manifest injustice or inequity showing a clear abuse of discretion.

Ken urges that the facts of this case clearly show injustice and inequity by the court's determination that the 40 acre parcel was not part of the marital estate. Most

persuasive is the fact that but for Ken utilizing his V.A. entitlement, Debora would have lost the Property which was the only asset she received from her first marriage. In as much as the trust deed held by the Crossmens was secured by all of the Property not just a portion thereof, it was unfair and unjust for the trial court to determine that Ken's V.A. loan purchased the entire Property but only a portion thereof became part of the marital estate.

Of equal importance is an analysis of the math at the time Ken borrowed money to pay Debora's debt:

#### Scenario I

Prior to paying the Crossmens, there was no marital estate equity.

Value of the Property	\$80,000
Debt to the Crossmens	44,353
Debora's equity	35,647
Marital estate equity	-0-

#### Scenario II

After the Crossmens were paid, there was no marital estate equity.

Value of Property	\$80,000
V.A. Loan	52,852
Debora's equity	35,647
Marital estate equity	< 1,501 >



Ken obligated himself to pay a \$52,852 loan and in return believed he was entitled to a one-half interest in the Property. What he did to help Debora was in the context of a husband and wife relationship; it was not an arms length business deal.

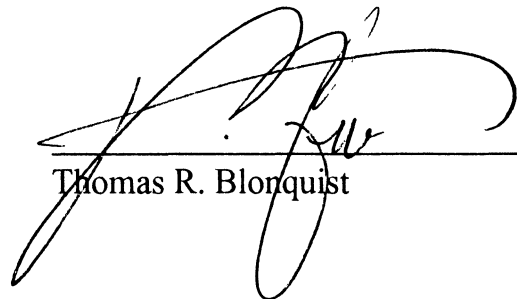
The facts of this case clearly show that the trial court's ruling worked such manifest injustice or inequity to Ken as to constitute a clear abuse of discretion.

### **CONCLUSION**

Based upon the foregoing, Ken urges

- A. that the trial court's ruling be reversed,
- B. that he be awarded one half of the Property after recognizing Debora's \$35,644.77 premarital interest, and
- C. that he be awarded his costs and attorney's fees incurred herein.

Respectfully submitted,



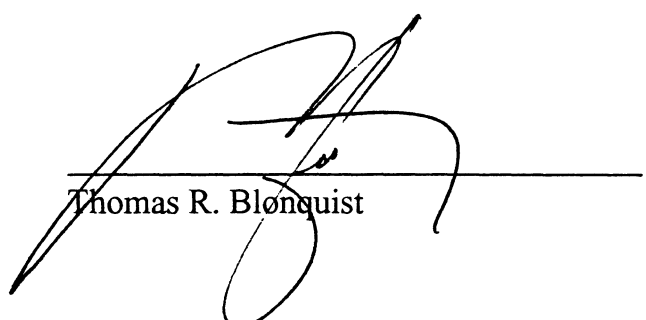
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Thomas R. Blonquist

## MAILING CERTIFICATE

The undersigned hereby certifies that on this 3<sup>rd</sup> day of July 2001, he mailed two true and correct copies of the foregoing brief, postage pre-paid, to:

Donald W. Winters  
Attorney at Law  
375 East 790 South  
Pleasant Grove, Utah 84062



Thomas R. Blomquist

## ADDENDUM

**FILED**  
Fourth Judicial District Court  
of Utah County, State of Utah  
Clerk  
11/17/00 Deputy

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Salt Lake City, UT 84102  
Telephone: (801) 533-0525

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IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

---

KENNETH M. HALL,	)	AMENDED DECREE OF
	)	DIVORCE
Petitioner,	)	
v.	)	
DEBORA HALL,	)	Civil No. 984402025
	)	
Respondent.	)	Judge Anthony W. Schofield

---

Having previously entered its decree of divorce herein without considering the timely objection filed by Petitioner, now, pursuant to the motion of Petitioner for the entry of an amended decree of divorce and good cause appearing, the court based upon its amended findings of fact and amended conclusions of law now makes and enters the following amended decree of divorce:

1. The Petitioner and Respondent are herewith awarded a Divorce each from the other, the same to become final upon March 7, 2000.
2. Neither party is awarded alimony.
3. Both parties are awarded the vehicles currently in their possession and each shall

separately assume the debt thereon and hold the other harmless therefrom.

4. The personal property of the parties shall remain as presently divided except that Petitioner shall have the following:

- a) tiller;
- b) home on the range sheep camp;
- c) lumber in the barn;
- d) tractor and portable tack room and its contents.

5. Petitioner is awarded \$600 out of the remaining proceeds from the sale of two draft mules and tack which occurred on November 2, 1998.

6. Petitioner is awarded one-half of the equity in the marital home and the one acre of land where it sits, this being the sum of \$21,500.00

7. Respondent is awarded the use and possession of the home and is ordered to pay Petitioner his equity within six months from the date of execution hereof. Interest shall accrue on Petitioner's herein awarded equity at the legal rate of 7.670 % commencing on the date of execution hereof.

8. Each party is to pay their own attorneys fees.


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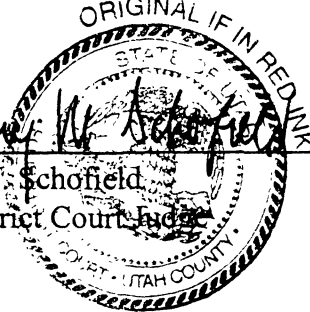
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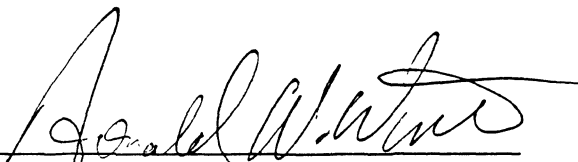
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DATED this 17 day of November, 2000.

  
Anthony W. Schofield  
Fourth District Court Judge



Approved as to form:

  
Donald W. Winters  
Attorney for Respondent

FILED  
Fourth Judicial District Court  
of Utah County, State of Utah  
CARMA B. SMITH, Clerk  
12/30/00 Deputy

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Salt Lake City, UT 84102  
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---

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

---

KENNETH M. HALL,	)	AMENDED FINDINGS OF FACT
	)	and CONCLUSIONS OF LAW
Petitioner,	)	
v.	)	
DEBORA HALL,	)	Civil No. 984402025
	)	
Respondent.	)	Judge Anthony W. Schofield

---

Having previously entered its findings of fact and conclusions of law, now, pursuant to the motion of Petitioner for the entry of amended findings of fact and conclusions of law and good cause appearing, the court now makes and enters the following amended findings of fact and conclusions of law:

AMENDED FINDINGS OF FACT

1. Petitioner and Respondent are husband and wife having married on July 23, 1992.
2. The marriage was childless and the parties separated during September of 1998, and have lived apart since that time.

3. Respondent was previously divorced on July 22, 1992.
4. In Respondent's previous divorce she was awarded certain real property consisting of one parcel of approximately 40 acres of vacant ground and one parcel consisting of a house and approximately one acre of ground, together with 24 shares of water.
5. At the time of the marriage of these parties both parcels of Respondent's real estate were encumbered by a debt still owing to the sellers thereof, Earl and Gayle Crossman, in the amount of \$44,353.23.
6. At the time of the purchase, Respondent and her then husband paid a \$40,000.00 down payment to the Crossmans against the full purchase price of \$90,000.00
7. At the time of the marriage of the parties to the present action, the vacant ground and the parcel with the house was worth approximately \$80,000.00 with Respondent's equity therein being \$35,646.77.
8. On March 11, 1993, Petitioner obtained a \$52,852 VA loan through First Security Bank.
9. Both Petitioner and Respondent signed the VA loan.
10. The loan proceeds were used to pay Respondent's debt to Mr. and Mrs Crossman and make improvements to the house in which Petitioner and Respondent resided during their marriage.
11. Petitioner's income was utilized during the marriage to make the monthly payments on the VA loan.



12. By a temporary order dated November 2, 1998, each party was ordered to pay one half of the monthly payment on the VA loan.

13. On March 11, 1993, in preparation for taking out a loan to pay off the party from whom she and her former husband originally purchased the real estate, the Respondent executed a Quitclaim Deed whereby she converted the house and acre into marital property of this marriage by naming Petitioner as a Joint Tenant with her on said property.

14. Nearly concurrently with the execution of the foregoing Quitclaim Deed, the parties obtained a loan in the amount of \$52,852.00 from First Security Bank using the house and one acre as collateral together with the Petitioner's VA entitlement.

15. After this loan, the equity remaining in the house and one acre was approximately \$32,000.00, of which one-half then belonged to each party as their share of what had then become marital property.

16. At the time of the execution of the Quitclaim Deed and the signing of the loan documents, the parties discussed the remaining 40 acres with Respondent stating that such was to remain her separate property.

17. Petitioner participated in the securing of the loan and the use of his VA entitlement knowing his consideration therefore was an interest in the house and one acre.

18. The proceeds of the loan were primarily used to make final payment to the Crossmans.

19. During the marriage, the Respondent consistently declined to convert the vacant acreage into a marital asset of the marriage.

20. Subsequently these parties took out a line of credit loan which currently has a balance of approximately \$19,000.00 (Bank One loan.)

21. The proceeds of the Bank One loan were used in part to effect repairs and for remodeling on the house and in part to pay bills of the parties and to acquire further marital assets.

22. The house and one acre presently has a fair market value of \$111,000.00

23. The vacant acreage presently has a fair market value of \$157,600.00.

24. The personal property of the parties has already been physically divided, with the exception that the tiller, home on the range sheep camp, lumber in the barn, tractor and portable tack room and its contents should be awarded to Petitioner in as much as these items were purchased by him either in trade for property he owned before he married Respondent or from the proceeds of the sale of the Lehi property he owned prior to his marriage to Respondent.

25. After the above items have been restored to Petitioner, the value of the personal property taken by the Petitioner, including livestock, will be equal to the value of the personal property retained by the Respondent.

26. Existing debt against the house and one acre, including the Bank One Loan is \$68,000.00

27. Equity to be divided in the house and one acre is \$43,000.00.

28. Respondent should be awarded use and possession of the home subject to the payment of Petitioners's equity.

From the foregoing Amended Findings of Fact, the Court now makes and enters the following:

#### AMENDED CONCLUSIONS OF LAW

1. The Court concludes that it has both subject matter and personal jurisdiction over the issues and parties in this action.

2. Each party is entitled to a divorce from the other on the grounds of irreconcilable differences.

3. Neither party is entitled to receive alimony from the other.

4. Both parties shall keep the vehicle currently in their possession and assume the debt thereon and hold the other party harmless.

5. Personal property shall be divided as set forth above in the findings.


6. The property which consists of the house and the one acre is a marital asset.

7. Petitioner should be awarded judgment in the amount of one-half the equity in the parcel of marital property being, \$21,500. Respondent is awarded the use and possession of the home, she should take steps to obtain the necessary financing to satisfy Petitioner's equity in the property within six (6) months of the signing of the final Order and Judgment

8. The \$1,200.00 on deposit in Respondent's attorney's trust account should be divided equally between the parties.

9. Each party should be ordered to assume and pay their own attorney's fees and costs incurred in connection with this action.

DATED this 30 day of ~~September~~<sup>December</sup>, 2000, nine pro tunc to  
November 17, 2000

  
Anthony W. Schofield  
Anthony W. Schofield  
Fourth District Court Judge

Approved as to form:

Donald W. Winters  
Donald W. Winters  
Attorney for Respondent

FILED  
CLERK OF COURT  
STATE OF ILLINOIS  
JAN 11 2001  
CHICAGO, ILL.

is impecunious or enters in the record the reason for not awarding fees.

(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in the custody of the other party.

(4) Orders entered under this section prior to entry of the final order or judgment may be amended during the course of the action or in the final order or judgment. 1993

### **30-3-4. Pleadings — Findings — Decree — Use of affidavit — Sealing.**

(1) (a) The complaint shall be in writing and signed by the petitioner or petitioner's attorney.

(b) A decree of divorce may not be granted upon default or otherwise except upon legal evidence taken in the cause. If the decree is to be entered upon the default of the respondent, evidence to support the decree may be submitted upon the affidavit of the petitioner with the approval of the court.

(c) If the petitioner and the respondent have a child or children, a decree of divorce may not be granted until both parties have attended the mandatory course described in Section 30-3-11.3, and have presented a certificate of course completion to the court. The court may waive this requirement, on its own motion or on the motion of one of the parties, if it determines course attendance and completion are not necessary, appropriate, feasible, or in the best interest of the parties.

(d) All hearings and trials for divorce shall be held before the court or the court commissioner as provided by Section 78-3-31 and rules of the Judicial Council. The court or the commissioner in all divorce cases shall enter the decree upon the evidence or, in the case of a decree after default of the respondent, upon the petitioner's affidavit.

(2) The file, except the decree of divorce, may be sealed by order of the court upon the motion of either party. The sealed portion of the file is available to the public only upon an order of the court. The concerned parties, the attorneys of record or attorney filing a notice of appearance in the action, the Office of Recovery Services if a party to the proceedings has applied for or is receiving public assistance, or the court have full access to the entire record. This sealing does not apply to subsequent filings to enforce or amend the decree. 1997

### **30-3-4.1 to 30-3-4.4. Repealed.**

1990

### **30-3-5. Disposition of property — Maintenance and health care of parties and children — Division of debts — Court to have continuing jurisdiction — Custody and visitation — Determination of alimony — Nonmeritorious petition for modification.**

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children;

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders; and

(d) provisions for income withholding in accordance with Title 62A, Chapter 11. Recovery Services.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide child care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.

(4) (a) In determining visitation rights of parents, grandparents, and other members of the immediate family, the court shall consider the best interest of the child.

(b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include in an order establishing a visitation schedule a provision, among other things, authorizing any peace officer to enforce a court ordered visitation schedule entered under this chapter.

(5) If a petition for modification of child custody or visitation provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(6) If a petition alleges substantial noncompliance with a visitation order by a parent, a grandparent, or other member of the immediate family pursuant to Section 78-32-12.2 where a visitation right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation.

(7) (a) The court shall consider at least the following factors in determining alimony:

(i) the financial condition and needs of the recipient spouse;

(ii) the recipient's earning capacity or ability to produce income;

(iii) the ability of the payor spouse to provide support; and

(iv) the length of the marriage.

(b) The court may consider the fault of the parties in determining alimony.

(c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

(d) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

WHEN RECORDED, MAIL TO:

*Beneficiary*  
*50 West Smith Lane*  
*Al. Moore, Utah*

35301

Space Above This Line for Recording

RECORDED AT THE REQUEST OF  
VALLEY TITLE CO.  
1985 DEC -2 AM 10:38  
MOUNTAIN VIEW  
UTAH COUNTY RECORDERS OFFICE  
PL 100

35301

VALLEY TITLE

# 18868

# TRUST DEED

With Assignment of Rents

THIS TRUST DEED, made this 22nd day of November, 1985,

between VERNARR J. WILSON and DEBBIE G. WILSON, husband and wife,

as TRUSTOR,

whose address is 18185 West 1500 North, Fairfield, Utah  
(Street and number) (City)

VALLEY TITLE CO.

as TRUSTEE,\* and

VERL J. CROSSMAN and GAYLE M. CROSSMAN, husband and wife; and CHARIE C.

CROSSMAN, their daughter, all as joint tenants, as BENEFICIARY,

WITNESSETH: That Trustor CONVEYS AND WARRANTS TO TRUSTEE IN TRUST,

WITH POWER OF SALE, the following described property situated in \_\_\_\_\_  
County, State of Utah:

As per Exhibit "A", attached hereto and by reference herein made a part hereof.

Together with 25 shares Primary Water Fairfield Irrigation Co. and Well rights  
under User's Claim #5-220-114 CA (UGWC #54-220)

Together with all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, now or hereafter used or enjoyed with said property, or any part thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits;

FOR THE PURPOSE OF SECURING (1) payment of the indebtedness evidenced by a promissory note of even date herewith, in the principal sum of \$50,000.00, made by Trustor, payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof; (2) the performance of each agreement of Trustor herein contained; (3) the payment of such additional loans or advances as hereafter may be made to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Trust Deed; and (4) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

\*NOTE: Trustee must be a member of the Utah State Bar; a bank, building and loan association or savings and loan association authorized to do such business in Utah; a corporation authorized to do a trust business in Utah; or a title insurance or abstract company authorized to do such business in Utah.

BOOK 2264 PAGE 946

PLAINTIFF'S

IT NO. 11

NO.

CLK:

EXHIBIT "A" - LEGAL DESCRIPTION

29.23  
MMS  
PARCEL 1: Beginning at a point in a fence line on the South side of a County road South 425.91 feet and West 725.54 feet from the North quarter corner of Section 32, Township 6 South, Range 2 West, Salt Lake Base and Meridian; thence South 0°03'30" West 224.52 feet to the quarter section line from which the center of Section 32, Township 6 South, Range 2 West bears East 726.00 feet; thence West 594.00 feet; thence North 0°03'30" West along a line parallel with the North-South quarter-section line 1837.38 feet to a point in a fence on the Southeasterly side of a State Highway; thence along the fence on the Southeasterly side of said highway, along the arc of a 2900 foot radius curve to the left 499.77 feet the long chord of which bears North 34°29'30" East 499.15 feet to a fence corner on the South side of a County road; thence South 89°13' East 310.97 feet along the fence on the South line of the County road to the point of beginning.

1 MMS  
TOGETHER WITH and subject to a right-of-way easement 6 feet wide on the East side of the Northerly 700 feet of said property as set forth in a right-of-way easement recorded on February 13, 1975 as Entry No. 2281 in Book 1404 at Page 649, records of Utah County, Utah.

PARCEL 2: Lot 2, Block 9, Fairfield Survey of Building Lots, according to the official plat thereof on file in the office of the Utah County Recorder.

9.02  
MMS  
PARCEL 3: All of Lots 7, 8, 9, Block 4, Fairfield Survey of Building Lots, according to the official plat thereof on file in the office of the Utah County Recorder.

V.P.C.  
J.M.C.

[Signature]

BOOK 2284 PAGE 849

35301

CLK





17. That upon the request of Beneficiary, Trustor shall execute and deliver a supplemental note or notes for the sum or sums advanced by Beneficiary for the alterations, maintenance, improvement, maintenance, or repair of said property, for taxes or assessments against the same and for any other purpose authorized hereunder. Said note or notes shall be secured hereby on a parity with and as fully as if the advance evidenced thereby were included in the note first described above. Such supplemental note or notes shall bear interest at the rate provided for in the principal indebtedness, and shall be payable in approximately equal monthly payments for such period as may be agreed upon by the creditor and debtor. Failing to agree on the maturity, the whole of the sum or sums so advanced shall be due and payable ninety (90) days after demand by the creditor. In no event shall the maturity extend beyond the maturity of the note first described above.

18. In accepting payment of any such indebtedness hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

19. This Trust Deed shall remain in full force and effect during any postponement or extension of the time of payment of the indebtedness or any part thereof secured hereby.

20. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Trust Deed and the note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness, Trustee may (a) consent to the making of any map or plan of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any reconveyance or other agreement affecting this Trust Deed or the lien or charge thereon; (d) reconvey, without warranty, all or any part of said property. The grantee in any reconveyance may be described as "the person or persons entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor's fees for any of the services mentioned in this paragraph shall be \$5.

21. As additional security, Trustor hereby assigns to Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the property affected by this Trust Deed and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable, save and excepting rents, issues, royalties, and profits arising or accruing by reason of any oil, gas, or mineral lease of said property. If Trustor shall default as aforesaid, Trustor's right to collect any of such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues, and profits, pending or discontinuance of Beneficiary at any time, or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any warranty, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Trust Deed to any such warranty, lease or option.

22. Upon any default by Trustor hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name and for or otherwise collect said rents, issues, and profits, including

there just due and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

23. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

24. Upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default. If Beneficiary desires said property to be sold, it shall deposit with Trustee this Trust Deed and all promissory notes and documents evidencing expenditures secured hereby, shall deliver to Trustee a written notice of default and of election to cause said property to be sold, in the form required by law, which shall be duly filed for record by Trustee or Beneficiary.

25. (a) After the lapse of such time as may then be required by law following the recording of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause be deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one (1) day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its Deed conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may purchase at the sale.

(b) When Trustee sells pursuant to the powers herein, Trustee shall apply the proceeds of the sale to payment of the costs and expenses of executing the power of sale and of the sale, including the payment of Trustee's and attorney's fees actually incurred, which Trustee's and attorney's fees shall not in the aggregate exceed the following amounts based upon the amount secured hereby, and remaining unpaid: 6 2/3 per centum on the first \$1000 thereof, 2 per centum on the next \$7000 thereof, and 1 1/3 per centum on the balance thereof; and then to the debt as hereinafter:

(c) in the order recited.

(c) After paying the fees specified in subparagraph (b) if the sale is by Trustee, or the proper court and other costs of foreclosure, the proceeds of sale shall be applied to the order stated to the payment of:

(1) Cost of any evidence of title procured in connection with such sale and of any reverse mortgage;

(2) All taxes expended under this trust hereof, not then repaid, with interest at the rate provided for in the principal indebtedness;

(3) All other sums then secured hereby;

(4) Reimbursement of the Veterans Administration for any sums paid by it on account of the payment or non-payment of the indebtedness secured hereby; and

2. The Secretary may, from time to time, substitute a successor or successors to any Trustee in his behalf or acting hereunder to execute this Trust. And, upon such appointment, and without conveyance to the said Trustee, the latter shall be vested with all the powers and duties conferred upon any Trustee hereunder, and acting hereunder. Such such appointment and substitution shall be made by a written instrument executed by Secretary, containing full notice to this Trust. And said replacement shall be recorded in the public records of the County Recorder of the county or counties in which said property is situated, shall be conclusive proof of proper appointment of the successor Trustee. The Secretary's power of substitution and the procedure therefore shall not be exclusive of the

13. The undersigned, David, requests that a copy of his application of naturalization be sent to him at the address hereinafter set forth.

Had [redacted] in

0015690-310477  
 Kenneth M. Hall  
 00001-000000  
 00001-000000

DAVID A. McPHIE  
McPHIE, CONDIE & PECK  
Attorneys for Plaintiff  
2105 East Murray-Holladay Road  
Salt Lake City, Utah 84117  
(801) 278-3700

FILED IN  
4TH DISTRICT COURT  
STATE OF UTAH  
UTAH COUNTY  
JUL 22 10 12 AM '92  
*[Signature]*

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

-----oo0oo-----  
:  
DEBORA G. WILSON, : FINDINGS OF FACT AND  
:  
Plaintiff, : CONCLUSIONS OF LAW  
:  
:  
vs. :  
:  
VERNAAR J. WILSON, : Civil No. 91440<sup>0</sup>172  
:  
Defendant. : Judge 914400172  
:  
-----oo0oo-----

The above-entitled matter came on for evidentiary hearing before the Court Commissioner on June 22, 1992. Plaintiff was present and represented by counsel, David McPhie, and the defendant was present and represented by counsel, Gary Howe.

A Stipulated Pre-Trial Order was entered into and filed with the court on February 3, 1992, whereas the parties stipulated on the issued of child custody, visitation, and child support. The parties further stipulated that the disputed issues reserved for trial would be property division, debt payment, alimony, and attorney fee's.

The court, having heard the evidence adduced by the parties through proffer and direct testimony in support of their respective positions, took the matter under advisement.

The court having reviewed the above documentation and upon being advised in

PLAINTIFF'S	
EXHIBIT NO. <u>10</u>	
CASE NO. _____	
DATE: _____	CLK: _____

earned and contributed to the marriage during those years.

Defendant admitted that he realized advantages from his self-employment in the business known as The Iron Anvil or Double U Inc., that is co-owned by defendant and his father, and which allowed him to benefit from income that was not reported through the business, such as a family vacation that was written off as a business expense, vehicles, gas, and insurance coverage which were paid for by the business and used almost exclusively for family purposes, and cash payments from customers that went unreported for tax purposes. Thus, the court finds that substantial benefits were derived from defendant's business ownership and self-employment that enabled defendant to shelter some of his income from tax liability and that these benefits were used to directly subsidize the marriage. Therefore, the court finds that during the course of the marriage the parties derived additional income in the amount of approximately \$10,000 to \$15,000 per year from The Iron Anvil or Double U Inc. Therefore, the court shall find that defendant's income for purposes of determining alimony and attorneys fee's is \$45,000 per year.

6. With regard to the valuation of the marital home, plaintiff alleges that the home which is located at 18185 West 1540 North, Fairfield, Utah, on an one acre parcel is worth approximately \$60,000, and that the adjacent forty (40) acre parcel is valued at approximately \$400 per acre for the "dry" land \$1,000 per acre for the land which has access to irrigation water and is currently used as pasture. Plaintiff further testified that outbuildings on the property could be valued at \$2,000.

Defendant alleges that the home located on the one acre parcel is worth approximately \$65,000 and that the marital home along with the additional acreage can be valued at approximately \$90,000.

The court recognizes that the parties' real property is unique in nature in that marital home is a small family farm and acreage located in a rather remote small town. The court acknowledges that the parties attempted to have an appraisal done and that the appraisal was not completed before the trial date due to the difficulty the parties' appraiser encountered in making adequate comparisons to similar properties and in evaluating a fair market price for such an unique piece of real property.

Therefore, after taking into account both parties' testimony as to the recent sale prices and value of adjoining and nearby properties, the court finds that the real property comprised of the marital home on a one acre parcel and the additional forty (40) acres of adjacent, irrigated and un-irrigated pasture land should be valued at \$80,000. According to testimony, the parties currently owe \$44,353.23 on the property, thus their equity would be \$35,646.77. (\$80,000 current market value - \$44,353.23 balance owing = \$35,646.77 equity.) Each party is awarded an one-half (1/2) share of the equity in the marital home in the amount of \$17,823.38. Plaintiff is awarded the possession and use of the marital home and adjoining acreage and is ordered to pay defendant his one-half share of the equity.

7. With regard to defendant's ownership share of stock in The Iron Anvil or Double U Inc., a business owned by defendant and his father, defendant alleges that he only owns 28% of the stock and plaintiff alleges that defendant has always represented to her that defendant's father and defendant own the business in a 60/40 split. The court will accept the figure of \$33,004.00 as the value of stock owned by defendant in Double U Inc. See plaintiff's exhibit No. 12 Therefore, plaintiff is entitled to one-half (1/2) of defendant's share of Double U Inc. stock in the amount of \$16,502. ( $\$33,004 \times 50\% = \$16,502.00$ ).

The plaintiff may offset her share of the Double U Inc. stock in the amount of \$16,502 against defendant's share in equity of the marital home in the amount of \$17,823.38. Therefore, plaintiff is ordered to pay defendant \$1,321.38 for the balance of defendant's interest in the parties' equity in the home and defendant is ordered to release his interest in the home upon receipt of payment from plaintiff.

8. With regard to the division of other personal property accumulated by the parties during the court of their marriage, the court orders defendant to return to plaintiff her wedding and engagement rings and the vise he took from the barn. Further, defendant is ordered to sign over to plaintiff the title to the horse trailer currently in her possession.

All other remaining personal property, including household furnishings, farm equipment, and farm animals such as the horses, dogs, and goats shall be awarded to each of the parties as they have heretofore divided it, with the exception that defendant shall be allowed to retrieve the negatives of family photographs.

9. With regard to the marital debts, defendant alleges that the parties borrowed \$17,000 from the Iron Anvil or Double U Inc. in order to purchase a duplex from the buyers of the parties' Bluffdale home and the such purchase of the duplex was necessary to facilitate the sale of the Bluffdale home. Defendant alleges that plaintiff should be held jointly responsible for the \$17,000 debt to The Iron Anvil or Double U Inc.

Plaintiff alleges that no contingency agreement existed with the purchasers of the Bluffdale home and that the purchase of the duplex, which was subsequently foreclosed on, was solely an investment property purchased by The Iron Anvil or Double U Inc. for tax shelter purposes.