

1992

Wendy E. Weaver v. Thomas A. Weaver, Jr. : Brief of Appellant

Utah Court of Appeals

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



Part of the [Law Commons](#)

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

George H. Searle; Attorney for Appellee.

John Walsh; Attorney for Appellant.

Recommended Citation

Brief of Appellant, *Weaver v. Weaver, Jr.*, No. 920149 (Utah Court of Appeals, 1992).
https://digitalcommons.law.byu.edu/byu_ca1/3068

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. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

BRIEF

UTAH
DOCUMENT
KFU
50

.A10
DOCKET NO. 920149 IN THE UTAH COURT OF APPEALS

-----oooooooooooooooooooooooo-----

WENDY E. WEAVER, ;
Plaintiff/Appellee, ; COURT OF APPEALS #920149-CA
vs. ; ARGUMENT CLASSIFICATION NO. 15
THOMAS A. WEAVER, JR., ;
Defendant/Appellant. ;

-----oooooooooooooooooooooooo-----

BRIEF OF THE APPELLANT

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
IN AND FROM SALT LAKE COUNTY
STATE OF UTAH

-----oooooooooooooooo-----

JUDGE JOHN ROKICH - PRESIDING

GEORGE H. SEARLE
ATTORNEY AT LAW
2805 SOUTH STATE STREET
SALT LAKE CITY, UTAH
84115

JOHN WALSH
ATTORNEY AT LAW
SUITE 270, 2319 FOOTHILL DR.
SALT LAKE CITY, UTAH
84109

FILED
Utah Court of Appeals

MAR 3 1993

John Walsh

THE CAPTION OF THE CASE CONTAINS THE NAMES OF ALL
PARTIES

TABLE OF CONTENTS

TABLE OF CASES	vii
TABLE OF STATUTES	vi
STATEMENT SHOWING JURISDICTION	v
STATEMENT OF THE ISSUES	v
DETERMINATIVE STATUTES	iv
SUMMARY OF THE ARGUMENT	iv
STATEMENT OF THE CASE	iii
NATURE OF THE CASE	iii
COURSE OF PROCEEDINGS	iii
DISPOSITION AT THE TRIAL COURT	iii
STATEMENT OF THE FACTS	iii
ARGUMENT ONE	1
ARGUMENT THWO	12
ARGUMENT THREE	15
ARGUMENT FOUR	25
CONCLUSION	31
CERTIFICATE OF DELIVERY	32

TABLE OF CASES

<u>Asper vs. Asper</u> , 753 P.2d 978, (Utah App. 1988) . . .	13
<u>Acton vs. Deliran</u> , 737 P.2d 996, (Utah, 1987) . . .	13
<u>Bell vs. Bell</u> , 810 P.2d 389, (Utah App. 1991) . . .	13
<u>Boyle vs. Boyle</u> , 735 P.2d 669, (Utah App. 1987) . . .	24
<u>Burt vs. Burt</u> , 799 P.2d 1166, (Utah App. 1990) . . .	14, 25, 27
<u>Bushell vs. Bushell</u> , 649 P.2d 85, (Utah, 1982) . . .	25, 27
<u>Canning vs. Canning</u> , 744 P.2d 325, (Utah App. 1987) .	14
<u>Davis vs. Davis</u> , 749 P.2d 647, (Utah, 1988)	13, 27
<u>English vs. English</u> , 565 P.2d 409, (Utah, 1979) . . .	15
<u>Fletcher vs. Fletcher</u> , 615 P.2d 1218, (Utah, 1980) .	25, 27
<u>Gardner vs. Gardner</u> , 748 P.2d 1076, (Utah, 1988) . .	27
<u>Georgedes vs. Georgedes</u> , 627 P.2d 44, (Utah, 1981) .	25, 27
<u>Gramme vs. Gramme</u> , 587 P.2d 144, (Utah, 1978)	24
<u>Higley vs. Higley</u> , 676 P.2d 379, (Utah, 1983)	29
<u>Howell vs. Howell</u> , 806 P.2d 109 (Utah App. 1991) . .	29
<u>Jeppson vs. Jeppson</u> , 684 P.2d 69, (Utah, 1984) . . .	27
<u>Knuteson vs. Knuteson</u> , 619 P.2d 1387, (Utah, 1980) .	10
<u>Maxwell vs. Maxwell</u> , 754 P.2d 84, (Utah App. 1988) .	29
<u>Morgan vs. Morgan</u> , 795 P.2d 684 (Utah App. 1990) . .	12
<u>Munns vs. Munns</u> , 790 P.2d 116, (Utah App. 1990) . . .	24
<u>Noble vs. Noble</u> , 761 P.2d 1369, (Utah, 1988)	14
<u>Olson vs. Olson</u> , 704 P.2d 564, (Utah, 1985)	29
<u>Paffel vs. Paffel</u> , 732 P.2d 69, (Utah, 1986)	13, 25, 27
<u>Rasband vs. Rasband</u> , 752 P.2d 1331, (Utah App. 1988)	29

TABLE OF CASES
continued

<u>Rudman vs. Rudman</u> , 812 P.2d 73, (Utah App. 1991) . . .	14
<u>Ruhsam vs. Ruhsam</u> , 742 P.2d 123, (Utah App. 1987) . .	14
<u>Sampinos vs. Sampinos</u> , 750 P.2d 615 (Utah App. 1988) .	14
<u>Schindler vs. Schindler</u> , 776 P.2d 84, (Utah App. 1989)	15
<u>Stevens vs. Stevens</u> , 754 P.2d 952, (Utah App. 1988) .	13
<u>Talley vs. Talley</u> , 739 P.2d 83, (Utah App. 1987) . . .	25, 27
<u>Thomson vs. Thomson</u> , 810 P.2d 428 (Utah App. 1991) . .	13
<u>Turner vs. Turner</u> , 649 P.2d 6, (Utah, 1982)	24
<u>Wacker vs. Wacker</u> , 688 P.2d 533 (Utah, 1983)	9, 10
<u>Watson vs. Watson</u> , 837 P.2d 1, (Utah App. 1992) . . .	15, 23

TABLE OF STATUTES

30-3-5(6) Utah Code Annotated	8
---	---

STATEMENT SHOWING JURISDICTION

This is an appeal from the Third Judicial District Court in and for Salt Lake County, State of Utah, with the Honorable John Rokich, District Court Judge Presiding, to the Utah Court of Appeals and is authorized pursuant to 78-2a-3 (2)(i) of the Utah Code Annotated as amended in 1992.

STATEMENT OF THE ISSUES

1. When the receiving spouse is residing with a member of the opposite sex, and engaging in sexual relations, no alimony whatsoever, should be ordered. The standard of review, is a question of fact and is to be reviewed for correctness, with a presumption that the lower Court was correct in its analysis. Berube vs. Fashion Centre, Ltd. 771 P. 2d 1033 (Utah 1989).

2. No alimony should be awarded to the Plaintiff as the Court made no findings supporting the basis for the same. The standard of review is a question of law, and reviewed for correctness with no deference to the lower court's determination. Berube vs. Fashion Centre Ltd. 771 P. 2d 1033, (Utah 1989).

3. Not only did the lower Court fail to make appropriate Findings of Fact, it failed to actually consider the appropriate criteria for an award of alimony. The standard of review is a question of an abuse of discretion. Burt vs. Burt, 799 P. 2d 1166, (Utah App. 1990).

4. It was a clear abuse of discretion to award the Plaintiff with permanent alimony. The Standard of Review is an abuse of discretion. Stevens vs. Stevens, 754 P. 2d 952, (Utah App. 1988).

DETERMINATIVE STATUTES:

30-3-5(6) Utah Code Annotated:

(6) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is residing with a person of the opposite sex. However, if it is further established by the person receiving alimony that that relationship or association is without any sexual contact, payment of alimony shall resume.

SUMMARY OF THE ARGUMENT

Appellant submits that it was clear abuse of discretion to award permanent alimony in a four year ten month marriage. It is true that one of the purposes of alimony is to ensure that the receiving spouse is not on the public dole. However, in this case, the receiving spouse was residing with a member of the opposite sex, and admitted to having sexual relations with him.

The lower Court failed to make appropriate FINDINGS OF FACT, supporting an award of alimony, but moreover failed to appropriately apply the said criteria in determining alimony.

Then clearly abused its discretion in making the same permanent.

STATEMENT OF THE CASE

NATURE OF THE CASE

This is an appeal to the Utah Court of Appeals from a determination in the Third Judicial District Court, that the Appellant pay permanent alimony to an ex-wife of a marriage that lasted four years and ten months, when the ex-wife is living with a member of the opposite sex, and engaging in sexual relations.

COURSE OF PROCEEDINGS

Plaintiff filed an action in the Third Judicial District Court, in and for Salt Lake County, State of Utah, to dissolve the marriage between herself and husband. The matter came on for trial for two half days on December 5, and December 6, 1991, before the Honorable John Rokich District Court Judge Presiding.

DISPOSITION AT THE TRIAL COURT

The District Court awarded the Plaintiff permanent alimony from which the Appellant now appeals.

STATEMENT OF THE FACTS

The parties began having sexual relations while in high school, (T-9.) which resulted in the Plaintiff becoming pregnant

before either party had finished high school. (T-10 and 109).

Each of the parties then completed high school after they were married and their first child was born six months after they were married. (T-10).

Plaintiff thereafter had two more children. (twins), while the Defendant went on to college part time. Defendant attended college for five years, and was a Junior at the time of divorce, and had topped out on the pay scale for a painter at \$9.00 per hour. (T-209).

Plaintiff worked during the marriage selling shoes, and was making \$5.00 an hour at the time that she stopped working, even though she would have been making as much as \$8.00 per hour had she stayed working where she was, and perhaps even become a manager and making \$18,000.00 to \$20,000.00 per year. (T. 215)

At the time of trial Plaintiff admitted that a male friend with whom she was having sex , (T-45) had moved his television into the parties home some ten months before trial, as well as other living room furniture. In addition, this male friend had moved his belongings into the garage at about the same time. (T. 47)

In addition, Plaintiff testified that his truck has been parked in the garage some five or six months before trial, and that she regularly drove the same. (T-48)

A mutual friend testified that Plaintiff and this male friend were living together, as did the Defendant testify that that was what the Plaintiff had told him.

The Court heard the testimony of the parties regarding alimony, and marital debts etc., and ultimately awarded the Plaintiff permanent alimony in the sum of \$200.00 per month.

From this determination the Defendant now appeals:

ARGUMENT ONE

WHEN THE RECEIVING SPOUSE IN RESIDING WITH A MEMBER
OF THE OPPOSITE SEX, AND ENGAGING IN SEXUAL RELATIONS
NO ALIMONY WHATSOEVER, SHOULD BE ORDERED.

In this case, there can be no question that the Plaintiff was residing with a member of the opposite sex and that they were having sexual relations.

A young man by the name of Rick Onesto, moved his furniture into the home of the Plaintiff, which has been mingled with the furniture that the Plaintiff was awarded in the divorce action. He has his television, which is used from day to day, by the Plaintiff and the parties children. (T-45), while the one that was awarded to the Plaintiff in the divorce action, is five years old, and so it is not being used. (T-201).

In addition to the television set which has been mingled into the personal property awarded to the Plaintiff in the action, this young man has other furniture which has been mingled into the same. (T-45).

In fact, this young man's furniture was moved in some ten months or so before the divorce was finalized. (T-46).

In addition to the foregoing, this young man has used the garage for storage of his personal items. (T-47).

Not only has this young man been residing in the home of Plaintiff's, as reflected in moving his furniture in, but he in fact, does his laundry there, as testified by the Plaintiff. (T-45).

At the time of trial, Defendant called as a witness a Mr. Eric Roos, who was very good friends of both the Plaintiff and the Defendant, as well as the Plaintiff's new found love, Rick Onesto.

Beginning at page 118, of the transcript, Eric Roos, testified on direct examination as follows:

Q. Do you know the parties in this action?

A. Yes.

Q. How long have you known the parties in this action?

A. Approximately five years.

Q. Five Years?

A. Getting close to that.

Q. Almost the entire marriage in this case?

A. Close. I don't know exactly how long they were married before we met.

Q. You don't take sides in this particular action, do you?

A. I care about the both of these guys and I -- They're my best friends I had, both of them.

Q. Have you had occasion to observed whether or not the Plaintiff in this case, Wendy Weaver, has had someone living in the home where she presently resides?

A. Yes. I --

Q. Over what period of time?

A. Since when I found out about the two had split up and what had --

Q. I don't want to lead you here, but let me get to the bottom line. Would that be at or about the fall of last year until now?

A. Somewhere in there, yeah.

Q. Are tell me why and how frequently that would be?

A. I have friends that live near Wendy and they watch our kids. We bring them there in the morning and pick them up in the afternoon, and we would spend weekends with them.

Q. Would you have occasion then to see cars, for example parked at the home of Wendy, and whoever, there day-to-day?

A. Yeah. The corner house, almost corner house.

Q. Are you familiar with a gentleman's truck, gentleman and truck by the name of Rick Onesto?

A. Yeah.

Q. How do you know Rick?

A. Good friends, too. We were all living together and we were all the best of friends, all of us were.

Q. Let me clarify a point, if I might. Do you have a sitter that's at or about the same general vicinity of where Wendy resides?

A. Yeah.

Q. In addition to that, are you saying that you're Rick and Wendy's as well as Tom Weaver's good friend?

A. Yes, I am.

Q. And are you telling me that you do things socially with Wendy and Rick?

A. We used to quite often. Well, not now with Wendy and Rick so much anymore. Or Tom, I haven't seen as much of Tom. I seen Wendy and Rick mostly.

Q. Are you familiar with the truck that Mr. Onesto drives?

A. Yeah.

Q. Could you describe that, quickly.

A. Ford Bronco, light blue, two-tone silver blue.

Q. How do you know that belongs to him?

A. He's had it since we lived in Villa Franche Apartments, approximately two or three years ago.

Q. When you go by to drop your children off in the mornings, what time frame are we talking about?

A. It's usually about 3 o'clock.

Q. Okay.

A. Well, probably -- usually around 7:30, sometimes 8:00.

Q. Are there times that you're there earlier than 7:30?

A. Yes.

Q. How early would that be at times?

A. Sometimes 6:30. It all depends on what time I have to get to work.

Q. Do you pick the children up as well?

A. Yes.

Q. What time did you pick the children up?

A. Sometimes about, depending on if I stay late, could be 6 o'clock.

Q. In reference to Rick Onesto and Wendy Weaver socially, what times would you have been with the two of them?

A. Mostly they came up and visited my house when they're done -- my wife, we come over and say Hi, a couple of times.

Q. When you do things socially does that ever go into the evenings?

A. No.

Q. Do you ever go over to her home and watch videos?

A. No.

Q. Okay. Let me clarify. From the fall of last year until now, has there ever been any period of time where you could conclude that their blue bronco wasn't parked at the home weird hours of the day

and night from then until now?

A. No.

Q. Have you had occasion to talk to Rick and Wendy about the fact that they are presently living together?

A. Well, they came to my place. That's where Rick stays.

Then on page 126 of the transcript, while still under direct examination, is the following:

Q. Have you had occasion to observe whether or not the Bronco was there at Wendy Weaver's home in the middle of the night?

A. Yeah.

Q. Okay. Tell me about that, real quickly.

A. Spend weekends drinking --

Mr. Searle: Your Honor, I object to the effective voir dire or --

THE COURT: He can answer.

Mr. Searle: Objection. Lack of foundation, Your Honor.

THE COURT: Okay. Lay a foundation.

Q. (BY MR. WALSH) When was this, Mr. Roos?

A. We drink every weekend, play family feud and pictionary until two, three in the morning, regularly.

Q. Okay. Late at night. So did you have occasion to go by the home then two or three in the morning, like from weekend to weekend?

A. Yeah. We drive -- we pull out of the driveway; it's right where you can see it.

Q. And did you or did you not observe the Bronco, at two or three in the morning each weekend?

A. Yeah, I seen the Bronco there. Whether he was there or not, that I can't say. But the Bronco was there.

Lastly, in reference to this witness he testified, on

redirect examination at page 131 of the transcript as follows:

Q. Do you see Wendy's car there at the same time that you see Rick Onesto's truck there?

A. Yes, I do.

Q. Do you -- as you sit here and try to best recall what you observed over this time frame over the last year plus, can you ever visualize a time when the truck or car were not both parked there at the same time?

A. I guess there would be a few times when one car is there, or either the Bronco is there.

Q. What about the majority -- excuse me?

A. The majority of time, it's there.

In an apparent effort to hide the fact that Rick Onesto, has been residing with the Plaintiff, Plaintiff testified that his truck is parked in the garage, and her car is parked on the street. (T-47).

Not only did the Plaintiff admit in court that Rick Onesto had his furniture there, and his items in storage in the garage, and that his truck was parked in the garage, and for the length of time it was, but Defendant himself stated that he refused to continue to pay for the Plaintiff, once he found out that she was residing with Rick Onesto.

At page 143, and continuing onto page 144 of the transcript when Plaintiff was being examined by his own counsel is the following:

Q. Did you pay rent after December, 1990?

A. No. I stopped paying it.

Q. Why?

A. I found out that Rick had been living there and I

felt that why should I pay for some other guy living there.

Q. How did you know Rick was living there?

A. From friends that had told me, and Wendy had told at one time.

Q. That Rick was there?

A. Yes.

Q. When did she tell you that?

A. This would be shortly after the deer hunt, October, the end of October.

Q. Of what year?

A. That she was seeing him in '90 and he really didn't -- you know how you kind of brush it off. For sure I knew in December. I found out in '90, December.

She admitted it and friends were admitting it and neighbors were admitting it, and I just wasn't going to pay anymore.

When cross examined about not paying for the utilities anymore, by the Plaintiff's Counsel, Defendant, testified at page 168 as follows:

Q. And I think your testimony was that you were being told by somebody else she was befriended by another gentlemen, is that a correct statement? That's what you said, I believe, didn't you?

A. I wasn't going to pay -- I was going to pay for my kids, but not Wendy, No, because she was living with somebody else. I was not going to pay for somebody else to eat my steak, pay for somebody else to live there.

During further cross examination by Plaintiff's Counsel, Defendant continued on page 170:

Q. So you had all this money -- now you object to taking and paying her anything because you say she had a man friend?

A. Yes.

Q. And this man friend was providing her with what services that you know?

A. I don't know whether he was providing her with anything.

Q. So you don't know anything at all about what he was doing concerning the relationship.

A. He was living there, but I don't know if he was providing anything.

Q. How do you know he was living there? In what respect?

A. She told me at one time that they were living together.

Q. Is that the only basis?

A. Somebody tells you something like that and I guess you just believe it.

Q. You assumed, right?

A. No, she told me.

Under the foregoing facts, there can be no question that the Plaintiff is barred from any alimony whatsoever.

The Utah State Legislature considered this very problem of the receiving spouse having a member of the opposite sex free loading on the ex-spouse paying alimony, and mandated the following in 30-3-5(6) Utah Code Annotated as amended in 1991:

- (6) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is residing with a person of the opposite sex. However, if it is further established by the person receiving alimony that that relationship or association is without any sexual contact.

payment of alimony shall resume.

Defendant submits that once the evidence established that Plaintiff was residing with a member of the opposite sex, the burden shifted to her, to prove that there was no sexual contact between herself and her live-in lover, Rick Onesto.

In the case of Wacker vs. Wacker, 688 P.2d 533 (Utah 1983) The Utah Supreme Court, stated on page 534, regarding this statute as follows:

The statute placed the initial burden of proof on the person seeking to avoid alimony to show that the former spouse is "residing" with a person of the opposite sex. Once residence with a person of the opposite sex is established, alimony obligations are terminated unless the person receiving alimony can show that the relationship is "without any sexual contact."

At trial, the Plaintiff did not come forward with any evidence that there was no sexual contact, and put no evidence, whatsoever to that effect.

Rather, Plaintiff herself testified that she had engaged in sexual relations with Rick Onesto on page 46, on cross examination by Defendant's Counsel:

Q. In fact you have had relations with this guy, have you not?

A. Yes, I have.

Defendant submits that all he need do to prevail on the issue of alimony is establish that Plaintiff is residing with a member of the opposite sex.

That is to say, he does not need to come forward and establish that in addition to residing with a member of the

opposite sex she is having sexual relations with him.

Rather it is her burden to establish that the relationship is " without any sexual contact, " after Defendant has established that Rick Onesto resides with her.

In this case, Defendant not only established that she was residing with a member of the opposite sex, but Defendant also established by way of the Plaintiff herself, that she and Rick Onesto were having sexual relations.

Surely, there is no basis to award her alimony at all.

The case at bar, is easily distinguishable from the case of Knuteson vs. Knuteson, 619 P.2d 1387, (Utah, 1980), decided by the Utah Supreme Court three years earlier than the Wacker case cited above.

In Knuteson, the husband refused to pay Court ordered alimony leaving the wife in a destitute set of circumstances, where she had to reach out for help from a male friend, and in fact never resided with the said male friend, even though they had engaged in sexual relations.

At page 1389, the Utah Supreme Court stated:

Other and perhaps more cogent and realistic reasons to affirm the trial court's decision to the effect that Mrs. Knuteson was not a "resident" in Gay Conder's home in the statutory sense, is that she expended much of her efforts in the daytime at her own home doing chores and yard work; and secondly, the wording of the statute does not appear to cover a temporary stay at another's house. This latter reason is furnished by defendant's counsel himself, who says in his brief that Webster's new Twentieth Century Dictionary, 2nd Edition, defines the word "reside" as: To dwell permanently or for a length of time; to have a settled abode for a time. (emphasis original).

In the case at bar, the Plaintiff herself testified that Rick Onesto had his furniture in her home since February, had stored his things in the garage since that time, and that she had been driving his truck since July. Trial in this case occurred on December 5 and 6, 1991, so the furniture would have been in her home for going on ten months, and the personal items in the garage for going on ten months, and driving his vehicle had been going on for more than five months.

There can be no question that Rick Onesto resided with the Plaintiff in the statutory sense, and that no alimony should be awarded. This is particularly so, because in addition to the fact that Mr. Onesto is residing in the home of the parties, Plaintiff and Mr. Onesto, are living as man and wife, having sexual relations.

The very policy that the State Legislature intended is perhaps best noted in the testimony of the Defendant where he stated on page 168:

I wasn't going to pay -- I was going to pay for my kids, but not Wendy, because she was living with somebody also. I was not going to pay for somebody else to eat my steak, pay for somebody else to live there.

That by virtue of the foregoing, the Defendant requests that this Court reverse the lower Court, and eliminate alimony all together in this action.

ARGUMENT TWO

NO ALIMONY SHOULD BE AWARDED TO THE PLAINTIFF AS
THE COURT MADE NO FINDINGS SUPPORTING THE BASIS FOR
THE SAME

The lower Court made the following FINDINGS OF FACT, as they apply to the payment of alimony by the Defendant:

- #3. Plaintiff and defendant were married to each other on the 30 day of November, 1985, in Boise, Idaho, and are presently husband and wife.
- #8. That the defendant is gainfully employed and earned as an employee of Universal Painting during 1990, the gross yearly sum of \$15,296 and presently earns the gross amount of \$1387.00 monthly.
- #10. Plaintiff is entitled to child support and alimony.

The FINDINGS OF FACT are totally void of any determination by the lower Court as to (1) the financial conditions and needs of the receiving spouse and (2) the ability of the receiving spouse to produce sufficient income for herself.

For the purposes of appeal, the "findings of fact must show that decree follows logically from, and is supported by the evidence." Morgan vs. Morgan, 795 P.2d 684 (Utah App. 1990).

The lower Court is required to go through a three prong analysis, in awarding alimony:

1. The financial conditions and needs of the receiving spouse;

2. The ability of the receiving spouse to produce a sufficient income for herself, and

3. The ability of the responding spouse to provide support.

Note Thomson vs. Thomson, 810 P.2d 428 (Utah App. 1991).

In the case of Bell vs. Bell, 810 P.2d 389, 492, (Utah App. 1991), this court stated:

Failure to consider the (three material) factors in fashioning an alimony award constitutes an abuse of discretion. See Stevens vs Stevens, 754 P.2d 952, 958 (Utah Ct. App. 1988) (citing Paffell vs. Paffel,) trial court must make sufficiently detailed findings of fact on each factor to enable a reviewing court to ensure that the trial court's discretionary determination was rationally based upon these three factors. See Davis vs. Davis, 749 P.2d 647, 648, (Utah, 1988); Stevens vs. Stevens, 754 P.2d at 958-59; see also Acton vs. Deliran, 737 P.2d 996 999 (Utah 1987). If sufficient findings are not made, we must reverse unless the record is clear and uncontroverted such as to allow us to apply the Jones factors as a matter of law on appeal. See Asper vs. Asper, 753 P.2d 978, 981 (Utah Ct. App. 1988).

The failure of the lower Court to analyze the needs of the wife, and the failure of the lower Court to analyze her ability to provide for herself, each independently, constitute an abuse discretion.

"Failure to analyze the parties' circumstances in light of these three factors constitutes an abuse of discretion."

Thomson vs. Thomson, 810 P.2d 428 (Utah App. 1991.)

Not only must the lower Court specifically make the requisite FINDINGS for the Appellate Court to ensure that the trial Court's discretionary determination was rationally based on the three stated criteria, it is critically necessary for

the lower Court to make the said FINDINGS with sufficient detail, and which consist of enough subsidiary facts to reveal the steps the Court took to reach its conclusion on each factual issue presented. Sampinos vs. Sampinos, 750 P.2d 615 (Utah App. 1988).

Appellant respectfully submits that there can be no question that this Court must reverse the lower Court. Note Burt vs. Burt, 799 P.2d 1166, (Utah App. 1990.), also Canning vs. Canning, 744 P.2d 325, (Utah App. 1987) also Noble vs. Noble, 761 P.2d 1369, (Utah, 1988), also Ruhsam vs. Ruhsam, 742 P.2d 123, (Utah App. 1987) and lastly Rudman vs. Rudman, 812 P.2d 73 (Utah Ct. App. 1991).

Not only did the lower Court fail to even make a reference in the FINDINGS as to the financial conditions and needs of the receiving spouse as well as the ability of the receiving spouse to produce a sufficient income for herself the FINDINGS are absolutely void of any factors that enable a reviewing Court to determine if the trial court's discretionary determination was rationally based.

In addition there are no detail whatsoever nor any subsidiary facts to reveal the steps the Court took to reach its conclusion regarding the needs and ability of the receiving spouse.

Appellant submits that this Court must reverse the determination made by the lower Court, as there is no basis

As to the first criteria, the Court failed to consider the financial conditions and needs of the receiving spouse.

In this case the Plaintiff was to begin her life after the divorce, with no debt whatsoever. While the Defendant was to pay of all of the marital debt of the parties in the sum of \$12,434.35, which was to pay off at the rate of \$322.15 per month, as reflected on Defendant's Exhibit 9-D.

In addition, the Plaintiff was awarded the personal property in the sum of \$4,955.00, which did not include the award of the car to her. While the Defendant was awarded personal property in the sum of \$600.00, which sum included his Mazda Pickup Truck, in the sum of \$500.00. Note Defendant's Exhibit #13-D and Defendant's Exhibit 14-D.

Defendant was awarded his 1986 Mazda Pickup Truck, which had 130,000 miles on it, subject to the indebtedness if any on the same, (T-153), and the Plaintiff in turn was awarded her 1980 Buick Skylark, free and clear of any debt, and the Defendant was to pay the \$3,100.00 owing on the same. (T-19)

Hence, wholly in addition to the foregoing debt service of \$12,434.35, the Defendant was required to pay the \$3,100.00 for the car at \$50.00 per month, to Defendant's father. (T-20)

Since the Plaintiff failed to disclose all the sums she received from the Defendant to Recovery Services, he not only ended up paying her substantial sums to support herself and the children, he ended up owing the sum of \$3,300.00 to Recovery Services. (T-69)

In addition to the foregoing the Court did not get a

clue from the Plaintiff as to her real needs, as Plaintiff's Exhibit #21-P reflects needs, etc., based on the fact that the Plaintiff is on public assistance, with Medicaid supplying medical and dental care.

This coupled with the fact, that the Court was never given any evidence of what was required to maintain the Plaintiff's household, as through the marriage of the parties the Defendant's folks contributed "assistance and help" as did the Plaintiff's folks.

In fact, a fair amount of the trial surrounded the various loans that the Defendant had taken out with his father. (T-48)

As noted on page 156-157, the Defendant testified on examination by his own counsel as follows:

Q. Now, you heard her testify yesterday that she has \$410 coming for your children from welfare, is that correct?

A. Yes.

Q. She's getting another \$60.00 over and above what she gets for child care. So total welfare payments are approximately \$470 a month.

A. Yes.

Q. Is that correct?

A. Yes.

Q. In addition she has \$300 in food stamps. Did you hear her testify about that?

A. Yes.

Q. Approximately \$700, plus or minus?

A. Correct.

- Q. Are you telling me that on top of that you are paying her \$6,000 from August 1 until now that has nothing to do with that \$700 that she's getting from public assistance?
- A. Yes.
- Q. It is your testimony that on top of all that, she's run up accounts which are the subject of these other exhibits here where she gets demand letters from the University of Utah Credit Union, and Sears, etcetera, etcetera, etcetera?
- A. That's correct.

In additional places it was clearly established at the time of trial that the Plaintiff was getting money or having her rent paid, etc., at the same time that she was getting public assistance from Recovery Services. Note for example the transcript at page 169 and 170.

Bottomline, the Court was totally in the dark as to what the needs were of the receiving spouse, because she was getting so much money and from so many sources, yet testifying in her own behalf that she was getting little or nothing, and that was why she was on welfare.

When questioned with cancelled checks, however, the Plaintiff admitted that she had in fact received various sums but could not just remember the same.

On page 64 of the transcript, on cross examination she stated:

Q. So when you testified earlier today that he didn't give you any money either immediately before the time or after the time you separated, that is not true, is it Wendy?

A. You could say, no, it's not true. He did give me a certain portion of funds until -- as you notice that they stopped in December.

Q. Can you tell me what other funds he paid you?

A. What other funds he paid me? I don't remember.

Hence, the lower Court heard evidence that he paid nothing, by the Plaintiff. Then the Court heard that he paid various amounts, but Plaintiff could not remember all of what they were. Then the Defendant testified that he gave her as much as \$6,000.00. In addition, the Defendant presented Exhibit #9-D showing that she had run up certain bills with charge cards, etc., in the sum of \$12,434.35. In addition, the lower Court heard that she was receiving \$410.00 for public assistance for the children, and an additional \$60.00 for herself, coupled with food stamps in the sum of \$308.00. (T-41)

Bottomline, the Court heard not only conflicting evidence that one would expect in any trial, but testimony that was recanted, almost completely. All from the Plaintiff.

In addition thereto, the Defendant placed into evidence substantial sums that the Defendant has been receiving, but not disclosing to the State.

Through the two versions of the evidence, it was not disputed that the Plaintiff was receiving \$778.00 in public assistance and food stamps.

As a result, with this great divergence in the evidence the Court was faced with deciding what "the financial conditions and needs of the receiving spouse" were.

However, nowhere in the FINDINGS OF FACT, CONCLUSIONS OF LAW or DECREE OF DIVORCE is there a clue.

Hence, there is no basis as a matter of practicality, for an award of \$200.00 per month alimony to the Plaintiff, based upon the financial conditions and needs of the Plaintiff.

Not only did the lower Court fail to address the financial conditions and needs of the Plaintiff, the Court similarly failed to address the ability of the receiving spouse to produce sufficient income for herself.

As a matter of fact, Plaintiff became pregnant while in high school, however, graduated from high school after the parties were married. (T-9 and 10)

Plaintiff was not only capable of working, she worked during the parties marriage, as reflected on Exhibit 3-P. In fact, she worked even while was pregnant. (T-38) At times she worked a full 40 hour week. (T-38)

Plaintiff started out working at \$4.50 an hour, but increased in salary to \$5.00 per hour in 1989, when she stopped working.

At the end of trial, the parties stipulated to Defendant's father's testimony, as was proffered into evidence, as follows at page 215 of the transcript:

Mr. Tom Weaver, Sr., would testify he employed Wendy Weaver at times and found her to be an outstanding employee with qualifications in sales. And he would testify she would draw a wage at \$8.00 an hour, and by now, if she continued to work for him, she would be making in excess of what Tom Weaver makes, and she would be a manager drawing between 18 and \$20,000.00.

The lower Court totally ignored the Plaintiff's ability to work, and assist in the total financial picture.

However, the lower Court heard the Plaintiff testify in several places that she needed the marital car, so she could get a job. Note for example the transcript at page 21 and 58.

The lower Court then gives her the car, so she can get a job, but totally ignores her own ability to produce sufficient income for herself and then on top of all of this makes the Defendant pay for her car. (T-52)

Plaintiff even testified that she was attempting to find work, at page 59 is the following on Cross Examination:

Q. Are you applying now for work?

A. Yes, I have.

Q. Where have you applied?

A. I have applied at Zions First National bank and applied at West One bank, and I would have had the job at West One Bank, but they did not hire relatives. I applied at key Bank. I walked through the mall and applied at malls, Shcpko. I'm willing to take just about anything.

Q. If you would have been accepted at West One, what would you have done at West One?

A. Bank Telling.

Q. And how much would you make as a Bank Teller?

A. How much would I make as a Bank Teller? Six dollars to start.

Q. Would that be a 40-hour week?

A. Forty-hour week.

Defendant respectfully submits that there is not even a clue, that the lower Court considered these facts, in awarding a permanent alimony to the Plaintiff of \$200.00 per month.

Lastly, as to the last inquiry of the three prong test, ie "the ability of the responding spouse to provide support;" the only clue is a blank statement of his gross earnings as found in FINDING OF FACT #8, which states:

8. That the defendant is gainfully employed and earned as an employee of Universal Painting during 1990, the gross yearly sum of \$15,296 and presently earns the gross amount of \$1,387.00 monthly.

The court made no finding as to his net income, nor is there any basis to conclude that the Court considered the fact that the Defendant's wages were being garnished for back child support from Recovery Services, for a time when he was paying the Plaintiff directly, but she did not disclose the same.

Futhermore, there is no clue that the Court considered what his income had done historically. It is interesting to note that by the Plaintiff's own exhibits, Defendants income actually decreased from the years 1989 to 1990. Note Exhibit #3-P which shows income for 1989 from wages, etc. at \$16,457.44, and Exhibit #4-P which shows income for 1990 for wages, etc. at \$15,296.50.

As a result, it appears that With the \$1,387.00 per month

as reflected in FINDING OF FACT #8, which was a gross wage, the Defendant was to pay child support of \$410.00, pay for recovery services in the sum of \$3,300.00 total; pay insurance for the minor children (T-221); pay for the car that the Plaintiff was awarded in the sum of \$3,100.00 (although she is awarded the car); pay for all of the marital debt that the parties had accumulated in the sum of \$12,434.35, and then before he had one dime for himself, he was to pay the Plaintiff the sum of \$200.00 per month as permanent alimony.

This is not a case like the Court sees all of the time, where there just is not enough to go around.

This is a case where the Plaintiff just has to work, and there is no question about it.

If she had continued to work, she would be making more than the Defendant at upwards of \$20,000.00 per year, which was all undisputed. (T-215)

On the otherhand, here is a young man that is already struggling to get back, working just as much as he possibly can. (T-95)

This young man has been driving without car insurance since April, some eight months plus before trial (T-99).

Defendant respectfully submits that in applying the standards set down in Watson supra, this is not a case where alimony is appropriate, and absolutely not a case for permanent alimony.

ARGUMENT FOUR

IT WAS CLEAR ABUSE OF DISCRETION TO AWARD THE PLAINTIFF WITH PERMANENT ALIMONY

From the time that the parties had to get married, November 1985 (t-187) to the time that she filed for divorce, September 1990, (T-7), the parties were married some 4 years and ten months, or so.

During that period of time the parties had done a lot of growing up, as they both were in High School when they got married. (T-10 and 109).

Plaintiff had completed High School after getting married, (T-10) and the Defendant was still a Junior and had not even began working on his major, ie: Accounting. (T-192).

Defendant submits that it was clear abuse of discretion to award permanent alimony.

It is true that length of the marriage is not the only factor in considering alimony. Surely it is a factor however. Note Boyle vs. Boyle, 735 P. 2d 669, (Utah App. 1987)

In addition, alimony was never intended to be a punishment nor a reward. Note Gramme vs. Gramme, 587 P.2d 144, (Utah 1978) also Turner vs. Turner, 649 P.2d 6, (Utah 1982).

One of the purposes of alimony, is to "enable the receiving spouse to maintain, as nearly as possible, the standard of living enjoyed during the marriage, and (prevent) the receiving spouse from becoming a public charge." Munns vs. Munns, 790 P2d 116, 121 (Utah App. 1990).

Note also, Paffel vs. Paffel, 732 P. 2d 96, (Utah 1986) Busshell vs. Busshell, 649 P. 2d 85, (Utah 1982); Burt vs. Burt, 799 P.2d 1166, (Utah App. 1990); Talley vs. Talley, 739 P. 2d 83, (Utah App. 1987); Georgedes vs. Georgedes, 627 P.2d 44, (Utah 1981) and Fletcher vs. Fletcher, 615 P.2d 1218, (Utah 1980).

Defendant respectfully submits that this may be exactly what the Court has caused rather than cured.

In this case the Plaintiff was receiving \$410.00 for the three children on public assistance. (T-40) and she was receiving \$60.00 for herself from public assistance, (T-40).

In addition to the same she was receiving \$308.00 in food stamps, (T-41), for a total of \$778.00 from public assistance.

Defendant on the other hand is ordered to pay \$410.00 as and for child support, and the sum of \$200.00 permanent alimony.

On the conclusion of the trial, at page 220, of the transcript is the following:

MR. WALSH: Your Honor, are you going to make a determination on alimony and for how long?

THE COURT: Alimony would be permanent. That will be permanent is this case. I make the --

MR. WALSH: For the rest of her life?

THE COURT: So long as she's unmarried.

MR. WALSH: And in what amount?

THE COURT: I said I wouldn't make that determination until I have had an opportunity to go--

I'm going to do through this, and she'll be awarded alimony, no question about that. I just want to know whether it can be retroactive or not.

Then as noted in paragraph #2 of the Decree of Divorce, the Defendant was to pay alimony in the sum of \$200.00 forever:

#2. Plaintiff is awarded the sum of \$200 a month permanent alimony due and payable each month commencing and payable on or before the 6th day of each month with first payment payable on or before the 6th of January, 1992.

Under the facts of this case, one hundred per cent of any and all sums paid by the Defendant go to the State of Utah, to recover the \$778.00 they supply in public assistance.

As noted above Defendant pays \$410 for child support and the sum of \$200.00 alimony, for a total support obligation of \$610.00.

However, Plaintiff actually gets more from public assistance and therefore would take the \$778.00 from public assistance than the \$610.00 from the Defendant as support.

Under the present arrangement by the Court, the Plaintiff has a motive in which to remain on public assistance, and the Defendant is forever strapped where he can not complete his education, and struck at \$9.00 per hour.

Defendant called Dennis Boyd as an Expert Witness, who testified on page 209 as follows:

Q. In reference to pay, excuse me, if Tom Weaver were to say he made \$9.00 an hour, would you say that's on the bottom or top of the pay scale?

A. I would say that's on the top of the pay scale.

Q. Do you have employees yourself?

A. Yes, I do.

Q. How many employees?

A. At different times I have had as many as 32 working

for me at one time. Presently, right now, I have three employees.

Q. Do you have any employees that make \$9 or more?

A. No, I do not.

As noted above, alimony should not be a punishment or reward and is intended to prevent the receiving spouse from becoming a public charge.

Alimony on the other hand, should enable the Plaintiff to maintain, nearly as possible, a standard of living that was enjoyed during the marriage.

Note Davis vs. Davis, 740 P. 2d 647, (Utah 1988), Fletcher vs. Fletcher, 615 P. 2d 1213, (Utah 1980); Gardner vs. Gardner, 748 P. 2d 1076, (Utah 1983); Georgedes vs. Georgedes, 627 P. 2d 44, (Utah 1981); Paffel vs. Paffel, 732 P. 2d, 69, (Utah 1986); Jeppson vs. Jeppson, 684 P. 2d 69, (Utah 1984); Bushell vs. Bushell, 649 P. 2d 35, (Utah 1982); Burt vs. Burt, 799 P. 2d 1166, (Utah App. 1990) and Talley vs. Talley, 739 P. 2d 33, (Utah App. 1987).

The difficulty that this Court has is in determining what the standard of living was during the course of the parties marriage, because the parties from the very beginning were in debt beyond their control, and both sets of parents helped in no small way.

Each of the parties testified how they had borrowed more money and more money, from the respective parents.

At page 20 of the transcript, the Plaintiff testified:

We borrowed \$6,000.00 from his father and he put us on a time payment of \$50.00 a month for the next ten years. And we paid off several other outstanding bills with that also.

Again on page 57, the Plaintiff testified on cross examination:

Q. Now, it's also fair to say that Tom had a loan with his parents to help with school, did he not?

A. School and family expenses.

Q. And it's fair to say that Tom had been going to school and paying for tuition and books and other things out of that account, isn't that correct?

A. Yes. And we also paid other things from that account.

Defendant Tom Weaver, testified in reference to Exhibit #8-D on page 101 and 102 as follows:

Q. Let's go over this real quickly. It has already been admitted, so we have it clear as to what this represents. It shows a loan or a beginning money amount of \$6,000 on the 26th day of June of last year. Do you recall that?

A. Yes, I do.

Q. Where did you borrow the money?

A. From my father.

Q. Did you normally sign a written agreement with your father with reference to this loan?

A. Yes.

Q. Have you been making payments on that loan?

A. I have. For a while I couldn't make payments. I

just didn't have the money so-- but I think three months ago I started making payments again. There's payments made all along. Part of it was from this money. I have to take out of this because I can't make it off my payroll.

Q. I'll come back to that in a minute. What did the \$6,000.00 go for?

A. It was a consolidation of, I think, our Sears, Master card and University Credit Union overdraft and stereo, home stereo and the car.

Not only did the parties borrow from the Defendant parents to maintain their standard of living, the Plaintiff's folks also helped substantially. (T-15).

Defendant respectfully submits that it is impossible to determine alimony based upon the standard of living analysis, since the standard of living was based upon borrowing money from the respective parents, writing bad checks, credit cards to the limit, etc.

Defendant submits that the correct analysis is for the Court to equalize the parties standard of living after divorce.

Note Maxwell vs. Maxwell, 754 P. 2d 84, (Utah App. 1988) Olson vs. Olson, 704 P.2d 564, (Utah 1985) Higley vs. Higley, 676 P. 2d 379, (Utah 1983); Rasband vs. Rasband, 752 P. 2d 1331, (Utah App. 1988) and Howell vs. Howell, 806 P. 2d 109 (Utah App. 1991.).

Under this analysis the Court should look at his present income of \$1,387.00 gross per month. After appropriate taxes, F.I.C.A., which are required by law to be withdrawn, are taken into account, the Defendant then pays the sum of \$410.00 as and for child support.

Defendant would be required to pay for insurance for the minor children under 30-3-5, as well as for one half of all work or education related child care costs.

Plaintiff in turn is contributing to the financial situation between the parties as best she can.

If she is making minimum wage, then she has a gross income per month of approximately \$772.00 per month, which after taxes etc., places her almost exactly where the Defendant is after paying his taxes, etc., and the \$410.00 per month as and for child support.

This approach does not penalize or reward either party in the divorce, and creates a situation where Plaintiff is no longer on public assistance, as she has between \$900.00 a month and \$1,000.00 a month to live on instead of the \$778.00 she gets through public assistance.

Defendant respectfully submits that it was an abuse of discretion to reward the Plaintiff with the permanent alimony of \$200.00 per month, instead of analyzing the parties financial condition and then equalizing the same.

CONCLUSION

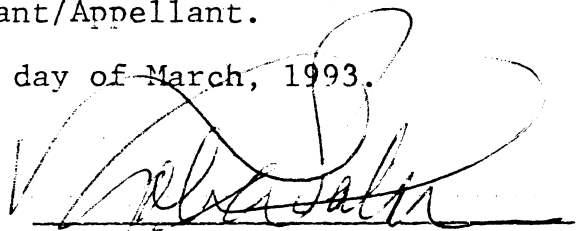
Defendant/Appellant submits that there is no basis for an award of alimony in this case, and especially an award of permanent alimony.

The parties were married for too short of time, and each of the parties are in a relative equal position financially.

The only appropriate way to determine alimony is based upon the equality of standard of living, after the divorce, and in using this analysis one gets the same result, as they do, if they consider that she is residing with a member of the opposite sex and in fact have sexual relations, ie: no alimony at all.

Defendant/Appellant respectfully requests that this Court reverse the lower Court determination and hold that no alimony be required of the Defendant/Appellant.

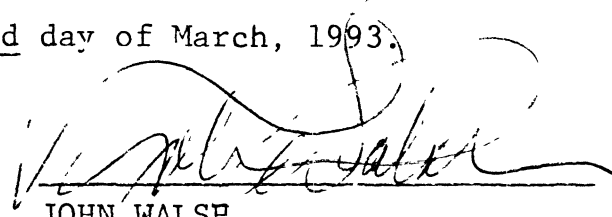
Respectfully submitted this 3rd day of March, 1993.

A handwritten signature in black ink, appearing to read "John Walsh", is written over a horizontal line.


JOHN WALSH
ATTORNEY AT LAW

CERTIFICATE OF DELIVERY

I hereby certify that I personally delivered two true and correct copies of the BRIEF OF THE APPELLANT, to the Plaintiff/Appellee, by personally delivering the same to GEORGE H. SEARLE, ATTORNEY AT LAW, 2805 SOUTH STATE STREET, SALT LAKE CITY, UTAH, 84115, this 3rd day of March, 1993.



JOHN WALSH
ATTORNEY AT LAW



ADDENDUM

George H. Searle 2903
Attorney for plaintiff
2805 South State
Salt Lake City, Utah 84115
Tele 466-8656

Y-93

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

WENDY E. WEAVER,

Plaintiff,

-vs-

THOMAS A. WEAVER, JR.,

Defendant.

---00000000---

:

:

:

:

:

:

---00000000---

D E C R E E

Third Judicial District

FEB 07 1992

Case No. 904903802 DA

Judge John Rokich

2171943

2-11-92-820

am

The above entitled matter having come on regularly for hearing in the above entitled Court before the Honorable John Rokich on the 5 and 6 days of December, 1991, and the plaintiff appearing in person and represented by counsel, George H. Searle, and defendant appearing in person and represented by counsel, John Walsh, and both parties having presented testimony and evidence in support of the allegations set forth in their respective pleadings, the Court now being fully advised in the premises and having heretofore made and entered its Findings of Fact and Conclusions of Law herein:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the plaintiff, Wendy Weaver be and she is hereby and herewith granted and awarded a divorce, dissolving the marriage contract and bonds of matrimony heretofore existing between plaintiff and defendant, Thomas A. Weaver, Jr., said Decree to become

absolute and final upon entry by the Court in the register of actions.

2. Plaintiff is awarded the sum of \$200 a month permanent alimony due and payable each month commencing and payable on or before the 6 day of each month with first payment payable on or before the 6 January, 1992.

3. Plaintiff is hereby and herewith awarded the care, custody and control of the three minor children: Ashley Elaine Weaver, Amy Lynn Weaver and Emily Elizabeth Weaver, subject to reasonable rights of visitation by the defendant therewith at reasonable times and places.

4. Defendant is ordered to pay directly to plaintiff child support money in the amount as currently or hereafter in the future determined by the Utah Child Support Guidelines presently amounting for the three children to be the sum of \$410 each month based upon defendants income of \$1387 gross a month. If defendant becomes delinquent in his child support obligation, in an amount at least equal to child support payable for one month, then plaintiff shall be entitled to mandatory income withholding relief pursuant to State law. This income withholding procedure shall apply to existing and future payors.

5. Further, the defendant shall provide for the maintenance and support of the said minor children until each attain the age of majority as follows:

(a) Obtain, carry and provide reasonable Hospital, medical,

and dental insurance for the benefit and future protection of the said minor children.

6. During the course of the marriage relationship, the parties have acquired personal property. Said personal property of the parties is awarded and shall be distributed as follows:

(a) To the plaintiff, free and clear of any right, title or claim of title by the defendant therein, to-wit:

1980 Buick Skylark vehicle. Serial No. 4B695AW2824233.

Kitchen table and chairs.

Lawn Mower

Living room couch.

Electric Carpet Sweeper

Table lamp.

Camera

Lamp with stand.

Television

Micro wave oven

Stereo

Ashleys dresser

Twins cribs

Clothes washer

Clothes dryer

(b) To the defendant free and clear of any right, title or claim of title by the plaintiff therein, to-wit:

Mazda Pickup Truck

Love Seat Couch

Living room stuffed chair

Toaster

Coffee Table

Living room chair

(c) All remaining personal property is awarded to each of the parties as they now have possession thereof.

7. Defendant be and he is hereby and herewith ordered and required to pay and hold plaintiff harmless on ~~any and all debts~~ ^{Following} ~~including but not limited to payment of the following~~ ^{debts}

(1) University of Utah Credit Union debt.

(2) Bill Consolidation loan.

(3) Citi Corp Bank Card

(4) Investment loan.

(5) Sears charge account.

(6) State of Utah Recovery Service Judgment rendered on 19 August, 1991, in office of Recovery Services, Case No. 62236425 R1 plus accrued amounts owed thereon.

(7) Debt owed to Bonneville Billing & Collections for non-payment of three unhonored \$10 checks.

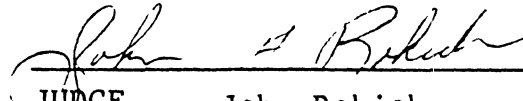
8. Plaintiff is awarded Judgment for and defendant is ordered to pay the plaintiffs court costs in the amount of \$77 for cost of Complaint filed and the further sum of \$ 2000 ⁰⁰ being a reasonable amount to be awarded for the purpose of assisting the plaintiff in payment of attorney fees incurred and legal services rendered in this matter.

9. Each party is ordered to execute and deliver to the other such documents as are required to implement the provisions of the Decree of Divorce entered herein by the Court, including all documents conveying title to plaintiff of the 1980 Buick Skylark

Automobile.

Dated this ^{February} 27th day of ~~December~~, 1992

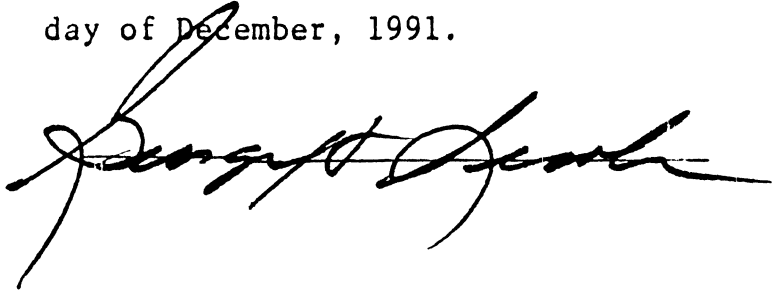
BY THE COURT


JUDGE John Rokich

Mailed a copy of the foregoing Decree of Divorce to:-

John Walsh
Attorney at Law
Suite 202 Cove Point Plaza
3865 South Wasatch Blvd.
Salt Lake City, Utah 84109

postage prepaid this 23 day of December, 1991.



George H. Searle 2903
Attorney for plaintiff
2805 South State
Salt Lake City, Utah 84115
Tele 466-8656

THIRD JUDICIAL DISTRICT COURT
Salt Lake County

JAN 07 1992

SALT LAKE COUNTY

Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

WENDY E. WEAVER,
Plaintiff,
-vs-
THOMAS A. WEAVER, JR.,
Defendant.

---ooo0ooo---
: FINDINGS OF FACT AND
: CONCLUSIONS OF LAW
: Case No. 904903802 DA

Judge John Rokich
Third Judicial District

FEB 07 1992

SALT LAKE COUNTY

Deputy Clerk

The above entitled matter having come on regularly for trial in the above entitled Court before the Honorable Judge John Rokich, on the 5 and 6 days of December, 1991, and the plaintiff appearing in person and represented by counsel, George H. Searle, and the defendant appearing in person and represented by counsel, John Walsh, and all that appears by the files and records herein, each of the parties having presented testimony and evidence in support of the allegations alleged in the Complaint and their respective pleadings, the Court now being fully advised in the premises, makes the following:

FINDINGS OF FACT

1. That this action was commenced more than ninety (90) days prior to the hearing on the 5 and 6 days of December, 1991.

2. Plaintiff has now and for more than three (3) months immediately prior to the commencement of this action been a bona

fide and actual resident of Salt Lake County, State of Utah.

3. Plaintiff and defendant were married to each other on the 30 day of November, 1985, at Boise, Idaho, and are presently husband and wife.

4. Plaintiff and defendant have had three children born to them as issue of their marriage, to-wit: Ashley Elaine Weaver, born 18 May, 1986, and twins, Amy Lynn Weaver and Emily Elizabeth Weaver, born the 18 July, 1990, presently residing with the plaintiff.



X 5. That for some time prior hereto, the defendant has treated the plaintiff cruelly, causing irreconcilable differences to arise as a result of associating with other women in a manner inconsistent with his marriage obligation to the plaintiff and failing, after the birth of the twins, to adequately financially support the plaintiff and the minor children.

6. That plaintiff and defendant have accumulated the following property, to-wit:

Kitchen table and chairs	Living room couch
Table lamp	Lamp with stand
Television	Micro Wave Oven
Stereo	Ashleys dresser
Twins Cribs	Clothes dryer
Lawn Mower	Lawn and garden tools
Camera	Electric Blender
Electric Carpet Sweeper	1980 Buick Skylark Serial No. 4B695AW2824233.
Love seat couch	Living Room stuffed chair
Coffee table	Living room chair
Toaster and other miscellaneous personal property in the	

possession of each.

7. That the parties have incurred some mutual and joint family financial obligations ~~including but not limited to the~~ *which are as follows*



~~following~~, to-wit: (1) University of Utah Credit Union Debt

(2) Bill Consolidation Loan

(3) City Corp Bank Card

(4) Investment Loan

(5) Sears Charge Account

(6) State of Utah Recovery Service Judgment
rendered on 19 August 1991, in office of
Recovery Service, Case No. 62236426 RI.

(7) Debt owed Bonneville Billing and Collections
for Non payment of three unhonored \$10 checks.

8. That the defendant is gainfully employed and earned as an employee of Universal Painting during 1990, the gross yearly sum of \$15,296 and presently earns the gross amount of \$1387 monthly.

9. Plaintiff is a fit and proper person to have the care, custody and control of aforesaid referred to children, subject to reasonable rights of visitation by the defendant therewith at all reasonable times and places.

10. Plaintiff is entitled to child support and alimony.

11. The minor children will be in need of future medical, dental, hospital and health insurance coverage for their benefit and protection.

12. Defendant will have a retirement benefit and the plaintiff is entitled to half the retirement benefit accrued during the marriage of the parties.

13. Plaintiff has been compelled to employ an attorney to represent her in this matter, and is without financial means or ability to pay for services rendered.

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

CONCLUSIONS OF LAW

1. That the marital status of the plaintiff and defendant be terminated and a Decree of Divorce be granted to the plaintiff as provided by law, as no useful purpose will be accomplished by prolonging the marriage longer.

2. The care, custody and control of the three (3) minor children of the parties should be awarded to the plaintiff subject to the right of the Defendant to visit said children at reasonable times and places.

3. Plaintiff is entitled to be awarded all the defendants right, title and interest in and to the following property free and clear of any claim of the defendant to-wit:

Kitchen table and chairs, Living room couch, Table lamp, Lamp with stand, Television , Micro Wave oven, Stereo, Ashleys dresser, Twins cribs, Cloth es dryer, Clothes Washer Lawn mower, Electric Carpet Sweeper, Lawn and Garden tools, Camera, 1980 Buick Skylark, Serial No. 4B695AW2824233.

and other personal property in her possession and control.

4. Defendant is entitled to be awarded all the plaintiffs right, title and interest in and to the following, to-wit:

Mazda Pickup Truck, Love seat couch, Living room stuffed chair, Coffee table, Living room chair, Toaster and other miscellaneous personal property in his possession and control.

5. Plaintiff is entitled to receive and defendant should

be ordered to pay permanent alimony in the sum of \$200 a month and child support money to plaintiff in the sum of \$410 a month.

6. Defendant should pay any and all mutual and joint family financial obligations incurred by the parties hereto during their marriage and save the other harmless from any and all

Following listed debts:
~~creditors thereof included and not limited to the following.~~

University of Utah Credit Union debt,

Bill Consolidation Loan

Citi Corp Bank Card

Investment Loan

Sears Charge Account

State of Utah Recovery Service Judgment rendered on

Aug. 19, 1991, in office of Recovery Service, Case No.
62236426 R1

Debt owed Bonneville Billing and Collections for non
payment of three unhonored \$10 checks.

7. The defendant should be obligated to provide for the benefit and protection of the minor children adequate future medical, dental, hospital and health insurance coverage.

8. Plaintiff should be awarded one half of his Retirement funds accrued during the marriage of the parties.

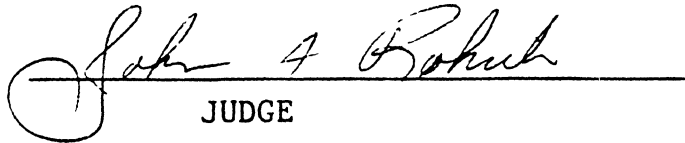
9. Plaintiff is entitled to be awarded a reasonable attorney fee and costs of Court.

10. Each party should be ordered to execute and deliver to

the other such documents as are required to implement the provisions of the Decree of Divorce entered by the Court.

Dated this 7 day of ^{February}~~December~~, 1992

BY THE COURT


JUDGE

Mailed a copy of the foregoing Findings of Fact and Conclusions of Law to:

John Walsh, Attorney at Law
Suite 202 Cove Point Plaza
3865 South Wasatch Blvd.
Salt Lake City, Utah 84109

postage prepaid this 23rd day of December, 1991.

