

1971

## Lee C. Felt, aka Lee Craig Felt v. Robert S. Felt : Abstract of Respondent

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Gayle Dean Hunt; Attorney for Defendant and Respondent

---

### Recommended Citation

Legal Brief, *Felt v. Felt*, No. 12409 (Utah Supreme Court, 1971).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/3100](https://digitalcommons.law.byu.edu/uofu_sc2/3100)

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

# IN THE SUPREME COURT OF THE STATE OF UTAH

LEE C. FELT, a/k/a  
LEE CRAIG FELT,

*Plaintiff-Appellant,*

vs.

ROBERT S. FELT,

*Defendant-Respondent.*

Case No.  
12400

## ABSTRACT OF RECORD

Appeal from a Judgment of the  
Third Judicial District Court  
for Salt Lake County, Utah  
The Honorable Gordon R. Hall, Judge

Clifford L. Ashworth  
Richard H. Stahl  
of VanCott, Bagley  
& McCarthy

*Attorneys for Plaintiff-Appellant*

Suite 300, 141 East  
Salt Lake City, Utah

Gayle Dean Hunt

*Attorney for Defendant-Respondent*

Continental Bank Building  
Salt Lake City, Utah 84111

FILED

MAY 2 1961

# INDEX OF DOCUMENTS

	Page
Affidavit of Robert S. Felt.....	30
Clerk's Certificate .....	75
Complaint .....	1
Consent and Waiver .....	16
Decree .....	19
Defendant's Brief .....	36
Entry of Appearance, Consent and Waiver.....	15
Findings of Fact and Conclusions of Law.....	21
Findings of Fact and Conclusions of Law.....	69
Judgment .....	35
Judgment .....	38
Memorandum Decision .....	60
Memorandum in Support of Motion by Plaintiff for Protective Order.....	36
Motion to Amend Divorce Decree and Notice.....	29
Motion for a New Trial and to Amend Memorandum Decision .....	63
Notice of Appeal .....	74
Order .....	38
Order Denying Motion for New Trial .....	67
Order Modifying Divorce Decree and Respecting Contempt .....	67
Order to Show Cause .....	28
Order to Show Cause .....	37
Petition for Order to Show Cause .....	26
Property Settlement Agreement .....	4
Reply to Defendant's Affidavit .....	32
Stipulation, Motion and Order.....	17

# INDEX OF TESTIMONY

	Page
Divorce Proceeding .....	23
Lee C. Felt	
Direct Examination by Mr. Burton.....	24
Order to Show Cause and Motion to Amend	
Divorce Decree .....	39
Opening Statements .....	40
Lee C. Felt	
Direct Examination by Mr. Hunt.....	41
Cross Examination by Mr. Burton.....	45
Redirect Examination by Mr. Hunt.....	46
Robert S. Felt	
Direct Examination by Mr. Hunt.....	47
Cross Examination by Mr. Burton.....	50
Redirect Examination by Mr. Hunt.....	56
Recross Examination by Mr. Burton.....	57
Lee C. Felt	
Direct Examination by Mr. Hunt.....	57
Cross Examination by Mr. Burton.....	58
Arguments of Counsel .....	59
Motion for a New Trial and to Amend	
Memorandum Decision .....	64

# IN THE SUPREME COURT OF THE STATE OF UTAH

---

LEE C. FELT, a/k/a  
LEE CRAIG FELT,

*Plaintiff-Appellant,*

vs.

ROBERT S. FELT,

*Defendant-Respondent.*

} Case No.  
12409

---

## ABSTRACT OF RECORD

---

R. NO.

(Title of Court and Cause)

### COMPLAINT

FOR CAUSE OF ACTION AGAINST DEFEND-  
ANT, PLAINTIFF ALLEGES AS FOLLOWS:

1. Plaintiff and defendant are bona fide and actual residents of Salt Lake County, Utah, and have been for more than three months immediately prior to the commencement of this action.

2. Plaintiff and defendant are husband and wife, having been married at Salt Lake City, Utah, on or about the 17th day of September, 1949. There have been no children born as issue of said marriage.

3. During the past several months the defendant has treated the plaintiff in a cruel manner, to the extent of causing her great mental distress.

2

4. During the marriage of the parties, they have acquired the following property:

An equity in a residence known as 4147 Emigration Canyon, Salt Lake City, Utah.

Household furniture, furnishings, appliances, housekeeping equipment, and other household items

Two automobiles, consisting of a 1963 Volkswagen and a 1967 Volkswagen.

Other assets, the precise nature and extent of which are unknown to the plaintiff.

5. If it shall be shown to the satisfaction of the court that there are policies of life insurance in force on the life of the defendant, it is reasonable and necessary that defendant be required to maintain the premiums on said policies and that defendant be ordered to effect any change which may be necessary to cause the plaintiff to become the beneficiary of each of said policies or that defendant be enjoined from changing said policies so as to eliminate the plaintiff as beneficiary on the same.

6. The parties have incurred certain obligations consisting of household bills. It is necessary and reasonable that the defendant be ordered to pay all outstanding obligations of the parties.

3

7. It is reasonable and necessary that the plaintiff be awarded an equitable portion of the assets of the

parties, including real and personal property, the savings of the parties, and one of the automobiles of the parties, and that plaintiff be awarded a reasonable sum as alimony for her maintenance.

8. Defendant is a healthy and able-bodied person and is gainfully employed and without having precise knowledge, plaintiff is informed and believes that defendant's net earnings and income exceeds THIRTY-SIX THOUSAND DOLLARS (\$36,000.00) per year.

9. Plaintiff has engaged attorneys to represent her in the prosecution of this action and is obligated to pay them a reasonable attorney's fee. Defendant should be required to pay a reasonable sum for the use and benefit of plaintiff's attorneys.

WHEREFORE, PLAINTIFF PRAYS FOR JUDGMENT, as follows:

For a decree of divorce dissolving the bonds of matrimony now existing between the parties and awarding plaintiff an equitable portion of the assets of the parties, including real and personal property, the savings of the parties, and one of the automobiles of the parties; awarding plaintiff a reasonable sum as alimony for the maintenance and support of plaintiff; ordering and directing the defendant to pay all premiums on any life insurance policies now in force on his life, and to cause the plaintiff to become or remain the beneficiary of such life insurance policies, and directing the defendant to pay all the outstanding bills and obligations of the parties; awarding

plaintiff a reasonable sum for attorneys' fees, together with costs of this action, and such other and further relief as the court may deem just in the premises.

VAN COTT, BAGLEY,  
CORNWALL & McCARTHY  
*Attorneys for Plaintiff*

Duly verified and filed April 19, 1967.

(Title of Court and Cause)

#### PROPERTY SETTLEMENT AGREEMENT

5        THIS AGREEMENT, made and entered into this 16th day of May, 1967, by and between LEE C. FELT (hereinafter sometimes called "plaintiff") and ROBERT S. FELT (hereinafter sometimes called "defendant"), both of Salt Lake City, State of Utah;

#### WITNESSETH:

WHEREAS, the parties hereto are now husband and wife but have separated, and the above-named plaintiff, Lee C. Felt, has heretofore commenced a suit for divorce against the defendant, and it is desired to settle and adjust all property rights between the parties, and all other rights, save and except the marriage relationship.

6        NOW, THEREFORE, it is hereby understood and agreed:



## I.

### *PROPERTY DIVISION*

In settlement, adjustment and compromise of all property questions and rights, the property of said parties shall be divided as follows:

A. LEE C. FELT shall receive and retain as her sole and separate property:

1. The following shares of stock valued as of May 4, 1967:

(a) Four shares of Hercules stock, Certificate No. BB35279, registered in the name of Lee C. Felt, valued at \$50.75 per share.

(b) One share of Hercules stock, Certificate No. BB29829, registered in the name of Lee C. Felt, valued at \$50.75 per share.

(c) Six shares of CTS Corp. stock, Certificate No. C015939, registered in the name of Lee C. Felt, valued at \$31.63 per share.

(d) Six shares of CTS Corp. stock, Certificate No. N019209, registered in the name of Lee C. Felt, valued at \$31.63 per share.

(e) Nine shares of Gulf Oil Corp. stock, Certificate No. N0601145, registered in the name of Lee C. Felt, valued at \$65.40 per share.

(f) Nine shares of National Airlines stock, Certificate No. N0123047, registered in the name of Lee C. Felt, valued at \$77.25 per share.

(g) Nine shares of National Airlines stock, Certificate No. N0122165, registered in the name of Lee C. Felt, valued at \$77.25 per share.

(h) Four shares of National Airlines stock, Certificate No. N0124623, registered in the name of Lee C. Felt, valued at \$77.25 per share.

(i) Twelve shares of Eastman Kodak stock, Certificate No. N081504, registered in the name of Lee C. Felt, valued at \$143.87 per share.

(j) Ten shares of Johnson & Johnson stock, registered in the name of Lee C. Felt, valued at \$233.00 per share.

2. A 1964 Volkswagen, registered in the name of Robert S. Felt, who agrees that he will forthwith transfer and assign all of his right, title and interest therein to Lee C. Felt.

3. The parties to this Agreement hereby confirm and acknowledge that Robert S. Felt, is the owner of a certain life insurance Policy Number 316060, Initial Sum Insured — \$50,000.00, of which the Old Line Life Insurance Company of America, Milwaukee, Wisconsin, is the Insurer and the defendant, Robert S. Felt, is the Insured. Lee C. Felt is the beneficiary of said policy. Forthwith after the execution of this Agreement, Robert S. Felt will make an absolute assignment of all incidents of ownership in said Policy Number 316060 to Lee C. Felt. Following said absolute assignment, Lee C. Felt will from her own funds pay any and all insurance renewal premiums as long as she desires to keep said Policy in force and effect. Provided, further, Lee C. Felt will have the right to name anyone she chooses as the bene-

ficiary on said Policy No. 316060, including herself. Robert S. Felt agrees that he will at all times in the future cooperate with Lee C. Felt in keeping said Policy Number 316060 in force and effect, except Robert S. Felt will have no obligation to pay any future renewal premiums. Further, if in Lee C. Felt's discretion, said Policy Number 316060 is converted into a different type of life insurance policy or if the same is cancelled and Lee C. Felt desires to replace said Policy Number 316060 with other life insurance on the life of Robert S. Felt, the defendant agrees that he will cooperate in all ways with the plaintiff in obtaining such conversion or new insurance, including but not restricted to cooperating in submitting himself to a physical examination as may be required by the insuring company or companies.

4. Robert S. Felt herein shall forthwith assign to Lee C. Felt all right and interest in or to any insurance in force upon any personal property delivered to and/or conveyed to Lee C. Felt pursuant to the terms of this Agreement and deliver to her any and all applicable insurance policies.

B. ROBERT S. FELT shall receive and retain as his sole and separate property those properties described below:

1. The following shares of stock in and to which Lee C. Felt shall forthwith assign to Robert S. Felt, all of her right, title and interest:

(a) Any and all shares of stock of Medical Arts Building Co., of Salt Lake City, Utah, standing in the names of Robert S. Felt and/or Lee C. Felt; in this regard, Lee C. Felt shall assign and transfer to Robert S. Felt all of her right, title and interest in and to 750

shares of Medical Arts stock registered in the names of the parties and valued at approximately \$1.00 per share, as follows:

(1) One Hundred shares of stock, Certificate No. 1437, purchased October 13, 1965;

(2) Two Hundred shares of stock, Certificate No. 1223, purchased October 28, 1960;

(3) Three Hundred Fifty shares of stock, Certificate No. 1420, purchased March 15, 1965;

(4) One Hundred shares of stock, Certificate No. 1465, purchased August 9, 1966.

10

2. One share of stock (a social membership) and a certain note (Promissory Note dated January 5, 1967, No. F-301, Series F) in the principal amount of \$560.00, wherein Robert S. Felt is shown as the member of said University Club and plaintiff and defendant are shown as joint payees of said note. Plaintiff agrees to assign said note to the defendant.

3. A 1967 Volkswagen registered in the name of Lee C. Felt, who agrees that she will forthwith transfer and assign all of her right, title and interest therein to Robert S. Felt.

4. Except for plaintiff's personal bank account at Foothill Village Branch of Walker Bank & Trust Co., which shall belong to plaintiff, the balances outstanding as of the date of the parties' separation in all bank accounts, whether savings or checking, standing the names of either the parties jointly or Robert S. Felt alone, which balances Robert S. Felt represents are negligible.

5. All office equipment, medical equipment, supplies, fixtures, furniture and any other items used by Robert S. Felt or in any way appropriate to his practice of his profession.

6. All accounts receivable arising out of professional services rendered by Robert S. Felt, and goods sold in connection therewith.

7. Any and all other insurance policies, whether the same be life insurance, health and accident insurance or disability insurance, wherein defendant is the insured.

### C. *JOINT TENANCY PROPERTY.*

1. *Residential Property.* The residence of the parties located at 4147 Emigration Canyon, Salt Lake City, Utah, and vested in said parties in joint tenancy with right of survivorship, shall forthwith be listed for sale with a licensed broker, mutually acceptable to the parties, and sold with all dispatch compatible with realizing from such sale the reasonable market value of said realty and improvements, it being agreed that the appraised value of \$24,750.00 is reasonable. Subsequent to said sale and the payment of commissions, mortgages, taxes, closing costs, and fees normally paid by the Seller of realty and all expenses required in order to consummate the sale of the aforesaid real property, the proceeds thereafter remaining shall be divided and delivered to the parties in equal shares, share and share alike, it being understood that said equal shares of said proceeds constitute the separate properties of each party and are not held in joint tenancy,

2. *Putnam Growth Fund Stock.* Robert S. Felt shall forthwith cause to be transferred and delivered to Lee C. Felt as her sole and separate property 189 shares (valued at approximately

\$13.37 per share) out of total of 846.7 shares of the Putnam Growth Fund, all of which shares are now registered in the name of Robert S. Felt. The remaining 644.7 shares of the Putnam Growth Fund shall be and remain the sole and separate property of Robert S. Felt.

3. *Star Broadcasting Company Stock and Debenture.* The parties acknowledge and confirm that they are owners, as joint tenants, of 3,000 shares of Star Broadcasting Company, valued at \$6,000.00, a debenture in the original principal amount of \$6,500.00, wherein the parties hereto are payees and Star Broadcasting Company is the obligor, and 10 shares of stock in a company known as Pueblo Supermarkets Inc., valued at \$20.00 per share. The parties agree that the assets described in this paragraph will be divided equally between them, each to share and own one-half thereof, as his or her separate property. In this regard, each party agrees to execute and deliver to and in favor of the other party such assignments, transfers or documents as may be necessary to effectuate such equal division and separate ownership.

D. The parties acknowledge and confirm that they are the owners of certain household furniture, fixtures, equipment, paintings and miscellaneous properties. The parties further acknowledge and confirm that they have reached an understanding relative to the division of ownership of said items.

#### E. *JOINT INDEBTEDNESS.*

1. The parties shall each pay one-half ( $\frac{1}{2}$ ) of the balances remaining in charge accounts standing in the names of the parties or either of

them at Z.C.M.I. and Makoff's, of Salt Lake City, Utah, amounting to about \$750.00.

2. The parties know of no other unpaid indebtednesses contracted either before or since their separation. To the extent there are other indebtednesses, the party who contracted such indebtednesses shall pay the same. Provided, Robert S. Felt shall pay any debts incurred in connection with normal living and household expenses incurred prior to separation.

## II

### *ALIMONY SETTLEMENT*

The parties agree to an alimony settlement as follows, except that if the plaintiff should die or remarry, or if the defendant should die, the obligation of the defendant to pay alimony to the plaintiff shall immediately cease and terminate.

A. Robert S. Felt hereby agrees to pay \$500.00 to the plaintiff Lee C. Felt, upon the execution of this instrument, and thereafter to pay to the plaintiff Lee C. Felt as permanent alimony, the sum of \$1,000.00 per month, payable each and every month on or before the first day of the month, commencing on June 1, 1967.

B. It is further agreed by and between the parties that the amount of the aforesaid alimony for the support of Lee C. Felt is a reasonable sum in view of the efforts made by plaintiff in assisting defendant in his professional education and considering the present circumstances and social standing now enjoyed by Lee C. Felt; and that said amount shall not hereafter be adjusted, notwithstanding increases or decreases in any amount in the income of plaintiff, and notwith-

standing any changes in the income of the defendant unless said changes are substantial and so decrease the defendant's income so that defendant is reasonably unable to pay the alimony agreed to herein.

### III.

#### *MISCELLANEOUS PROVISIONS*

A. It is further agreed that should any instrument of conveyance or transfer or other instrument be required from either of said parties to the other or to any other person, to perfect the title to any property divided, transferred or conveyed pursuant to this Agreement, each party agrees with the other that he and/or she will execute and deliver the same.

B. Each party hereby waives any and all rights in the estate of the other and forever quitclaims to the other any and all right to share in the property of the other by the laws of succession.

C. Each of the parties hereby covenants and agrees not to contract any debt, charge or liability whatsoever for which the other of them or his or her property or estate shall or may become liable or answerable.

D. Each of the parties hereby covenants with the other, that the party making such covenant has no knowledge whatsoever as to any asset of any kind in which the party so covenanting has any legal or beneficial interest, aside from those assets already listed, identified and contained herein. In the event either party hereto is violating said covenant by concealing any asset to which he



or she has right, title, or interest, it is agreed that the party so violating such covenant shall be liable in damages to the other party for the full value of any such asset so concealed. Specifically, defendant acknowledges, confirms and represents, as an inducement in causing plaintiff to execute this Agreement, that this Agreement discloses all of the holdings and assets of defendant and that he owns no substantial assets not herein specified.

E. Minor variations in the balances in checking and savings and loan accounts, computations of interest accrued or accruing, but yet unpaid, values of stock, or other personal property which is the subject of this Agreement, shall not affect the enforceability of this Agreement.

F. The parties heretofore, before the execution of this Agreement, physically divided and took into their respective personal possession all tangible chattles in which either party hereto has any interest or in which the parties have agreed to a division of their interests and which are not hereinabove specifically referred to, and each party does hereby quitclaim to the other party his interest in and to the tangible chattles now in the possession of the other party, and each party shall retain all of the personal property that is in the possession of either of them as his or her sole and separate property, as the case may be.

G. It is hereby agreed and understood that each party hereto shall pay and be liable for his or her own costs and attorneys' fees in connection with the divorce action on file herein and any agreements, conveyances

and/or other transactions pursuant thereto or in connection therewith.

H. Each party to this Agreement herewith solemnly and specifically avers that the foregoing Agreement has been entered into without influence, fraud, coercion or misrepresentation.

#### IV

#### *INCORPORATION OF AGREEMENT IN DECREE*

Upon the granting by the court of a divorce to the plaintiff herein, it is agreed that the provisions of this Agreement shall constitute a stipulation and shall be incorporated by reference into the final decree of the court.

#### V

#### *AGREEMENT CONCERNING INCOME TAX DEFICIENCIES*

In the event any Federal or State income taxes are asserted against the parties, or either of them for the calendar year 1966, or preceding years, the defendant will pay such deficiencies for said years as either or both of the parties are legally obligated to pay.

17        IN WITNESS WHEREOF, said parties hereto, after consultation with their respective counsel relative to the matter herein set forth and agreed upon, having been advised fully and fairly as to all of the facts and circumstances herein set forth, have hereunto set their hands and seals this 16 day of May, 1967.

s/ Lee C. Felt

s/ Robert S. Felt

COUNSELS' APPROVAL OF PROPERTY  
SETTLEMENT AGREEMENT

The undersigned being counsel for the plaintiff and defendant named above do hereby acknowledge and confirm their approval of the Property Settlement Agreement contained above.

Dated at Salt Lake City, Utah, this 16th day of May, 1967.

VAN COTT, BAGLEY,  
CORNWALL & McCARTHY  
*Counsel for Plaintiff*

GRANT C. AADNESEN  
*Counsel for Defendant*

Duly verified and filed May 17, 1967.

(Title of Court and Cause)

ENTRY OF APPEARANCE, CONSENT AND  
WAIVER

DEFENDANT, ROBERT S. FELT, by and through his attorney, Grant C. Aadnesen, hereby enters his appearance in the above entitled matter and acknowledges, consents and waives as follows:

1. Acknowledges receipt of the Complaint filed in this action and acknowledges and affirms that certain Property Settlement Agreement made and entered into by and between the parties hereto.

2. Consents to the waiver of the statutory waiting period of ninety (90) days otherwise provided for under the laws of the State of Utah, and joins in the Motion of the Plaintiff to the Court requesting the same.

19 3. Consents to the hearing of said divorce proceedings forthwith and upon the merits and to the entry of a divorce in favor of the Plaintiff and against the Defendant, both in accordance with the terms of the Complaint and in accordance with the terms of the Property Settlement as such amends said Complaint.  
May 16, 1967.

GRANT C. AADNESEN  
*Counsel for Defendant*

Duly verified and filed May 17, 1967.

(Title of Court and Cause)

### CONSENT AND WAIVER

20 Plaintiff, LEE C. FELT, a/k/a LEE CRAIG FELT, by and through her attorneys, VanCott, Bagley, Cornwall & McCarthy, by Thomas M. Burton, hereby consents and waives as follows:

1. Consents to the waiver of the statutory waiting period of ninety (90) days otherwise provided for by the laws of the State of Utah.

2. Consents to the hearing of said divorce proceedings forthwith and upon the merits and to the entry of a divorce in favor of the Plaintiff and against the De-

fendant, and to the division and settlement of the properties and assets of the parties and to the payment of alimony in accordance with the terms of that certain Property Settlement Agreement on file herein.

VAN COTT, BAGLEY,  
CORNWALL & McCARTHY  
*Attorneys for Plaintiff*

Duly verified and filed May 17, 1967.

(Title of Court and Cause)

### STIPULATION, MOTION AND ORDER

It is hereby stipulated by the parties through their respective counsel and in accordance with a medical opinion attached hereto and made a part hereof, that the ninety (90) day waiting period required under Utah law may be waived and that the divorce proceedings herein may be heard forthwith and upon the merits.

VAN COTT, BAGLEY,  
CORNWALL & McCARTHY  
*Attorneys for Plaintiff*

GRANT C. AADNESEN  
*Attorney for Defendant*

### MOTION

Upon stipulation and good cause appearing, Plaintiff hereby moves the Court for an order waiving the ninety (90) day waiting period for hearing of the cause

on the merits and entry of a decree. In support of this Motion, counsel represents to the Court as follows, to-wit:

1. Plaintiff and Defendant have agreed in writing to a division and settlement regarding their joint, mutual and individual rights in and to all properties and assets of the parties.

2. The complaint of Plaintiff herein has not been answered by Defendant, thereby rendering uncontested the grounds upon which Plaintiff has brought her action for divorce.

3. The Plaintiff and Defendant have each executed and filed with the Court a consent to the request contained in this Motion and a waiver of said ninety (90) day waiting period.

4. Plaintiff and Defendant have been and presently are represented by counsel.

5. Plaintiff and Defendant do not have any children born of the union of said marriage.

6. As is more particularly evidenced by the statement of Plaintiff's doctor, which is attached to this Motion and submitted herewith, the Plaintiff has been suffering and continues to suffer serious health problems as a result of the emotional involvements and disturbances connected with the divorce matters and proceedings herein, and the Plaintiff's health will be impaired by awaiting the elapse of the ninety (90) day waiting period.

Dated this 17th day of May, 1967.

VAN COTT, BAGLEY,  
CORNWALL & McCARTHY  
Attorneys for Plaintiff

## ORDER

Upon stipulation and motion duly made and good cause appearing therefor and the parties respectively having filed herein their written consent to waiver the ninety (90) day waiting period, the Court, being satisfied that no good purpose shall be served in awaiting the elapse of said waiting period and that such may cause irreparable harm to the Plaintiff.

NOW, THEREFORE, IT IS HEREBY ORDERED that the hearing in this cause may proceed forthwith and that the customary ninety (90) day waiting period be and the same is hereby waived.

MADE AND ENTERED this 17th day of May, 1967.

D. FRANK WILKINS, JUDGE

Duly attested and filed May 17, 1967.

(Title of Court and Cause)

## DECREE

THIS MATTER came on regularly for hearing before the Honorable D. Frank Wilkins, Judge, on the 17th day of May, 1967. The Plaintiff appeared in person and by her attorney, Thomas M. Burton, of the firm VanCott, Bagley, Cornwall & McCarthy. The Defendant has been served with a Summons herein and filed herein his written entry of appearance, but did not file answer to the complaint or other pleadings, and his default was duly entered according to law. Each of the parties filed a

written consent to the waiver of the usual ninety (90) day waiting period for the entry of a decree and said ninety (90) day waiting period was waived by the Court for good cause shown. The parties have filed herein their written Property Settlement Agreement. The cause has been submitted to and considered by the Court and the Court being fully advised in the premises and having heretofore made and entered its Findings of Fact and Conclusions of Law.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff, Lee C. Felt, a/k/a Lee Craig Felt, be and she is hereby granted a Decree of Divorce dissolving the bonds of matrimony existing between Plaintiff and Defendant, said decree to become final and absolute upon the expiration of three (3) months from date hereof, and that Plaintiff be and is hereby awarded certain real and personal property and also the sum of \$1,000.00 alimony payable monthly, pursuant to and as provided by the terms of that certain Property Settlement Agreement entered into by and between the parties herein, and by this reference incorporated herein as is fully and completely set forth, which Property Settlement Agreement the Court hereby adopts as fair and reasonable.

MADE AND ENTERED this 17th day of May, 1967.

D. FRANK WILKINS, JUDGE

Duly attested and filed May 17, 1967.



(Title of Court and Cause)

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

27 THIS MATTER came on regularly for hearing before the Honorable D. Frank Wilkins, Judge, on the 17th day of May, 1967. The Plaintiff appeared in person and by her attorney, Thomas M. Burton, of the firm Van Cott, Bagley, Cornwall & McCarthy. The Defendant has been served with a Summons herein and filed herein his written entry of appearance, but did not file answer to the complaint or other pleadings, and his default was duly entered according to law. Each of the parties filed a written consent to the waiver of the usual (90) day waiting period for the entry of a decree and said ninety (90) day waiting period was waived by the Court for good cause shown. The parties have filed herein their  
28 written Property Settlement Agreement. The cause has been submitted to and considered by the Court and the Court being fully advised in the premises now makes the following:

### *FINDINGS OF FACT*

1. Plaintiff and Defendant are bona fide and actual residents of Salt Lake County, Utah, and have been for more than three months immediately prior to the commencement of this action.

2. Plaintiff and Defendant are husband and wife, having been married at Salt Lake City, Utah, on or about the 17th day of September, 1949. There have been no children born as issue of said marriage.

3. During the past several months the Defendant has treated the Plaintiff in a cruel manner, to the extent of causing her great mental distress.

4. The customary ninety (90) day waiting period for the entry of a decree herein should be waived for the reason that the continuance of the marriage during said waiting period may result in irreparable harm to the Plaintiff.

5. During the marriage, the parties have acquired assets, the precise nature, extent and division of which are contained in that certain Property Settlement Agreement between the parties, the original of which is on file herein and by this reference incorporated herein and made a part hereof as if fully and completely set forth. The Court hereby finds that said Property Settlement Agreement is fair and reasonable and the same is hereby adopted and approved by the Court.

29           From the foregoing Finding of Fact, the Court makes the following:

### CONCLUSIONS OF LAW

The Plaintiff should be awarded a Decree of Divorce dissolving the bonds of matrimony existing between Plaintiff and Defendant. The properties of the parties should be divided in accordance with that certain Property Settlement Agreement incorporated herein by reference as aforesaid, and the Plaintiff should be awarded the

sum of \$1,000.00 per month alimony as provided by the terms of said Property Settlement Agreement.

MADE AND ENTERED this 17th day of May, 1967.

D. FRANK WILKINS, JUDGE

Duly attested and filed May 17, 1967.

(Title of Court and Cause)

REPORTER'S TRANSCRIPT OF HEARING ON PLAINTIFF'S COMPLAINT SEEKING A DECREE OF DIVORCE, HELD ON MAY 17, 1967, BEFORE THE HONORABLE D. FRANK WILKINS, DISTRICT JUDGE OF THE THIRD JUDICIAL DISTRICT.

214

The record shows that Plaintiff's Complaint was filed on April 19, 1967 and that a Consent and Waiver was submitted by the Plaintiff wherein she consented that the matter be heard prior to the expiration of the 90-day waiting period. There was a Stipulation and Motion filed and an Entry of Appearance, Consent and Waiver for the Defendant by and through his attorney, whereby the Defendant acknowledged receipt of the Complaint and consented that the 90-day period be waived if the Court granted Plaintiff's motion and consented to hearing the matter without further notice to him.

215

Mrs. Lee C. Felt, the Plaintiff, was presented to the Court by her attorney. Reference was made by the Court to Plaintiff's motion to shorten the 90-day waiting period for hearing the matter on the grounds that delay would

216 cause the Plaintiff additional physical and emotional disturbance. The Plaintiff testified that she agreed with her doctor's report to the effect that waiver of the 90-day waiting period would alleviate some of the physical and emotional disturbance from which she had been suffering. Plaintiff's motion to shorten the 90-day period was granted and the default of the Defendant was entered on the basis of the pleadings previously filed.

### DIRECT EXAMINATION

217 Mrs. Lee C. Felt testified that she was the Plaintiff in the divorce action on file, that she was married to Robert S. Felt, the Defendant, on September 17, 1949, and that she and her husband had been bona fide residents of Salt Lake County, Utah, for more than three months immediately preceding the divorce action. No children had been born of the marriage. Mrs. Felt declared that her husband had treated her in a cruel manner causing her great mental distress during the past several months. She stated her husband had indicated he no longer loved her, that he remained absent from their home for substantial periods of time, that he came in late without suitable explanation, and that he was constantly critical of her and her household management.

218 During their marriage, Mrs. Felt had been employed all but two years and was the main source of income for the first seven years while her husband was completing his medical training. Mrs. Felt stated that she was familiar with a document entitled, "Property Settlement Agreement" which she had read, consulted counsel about

and signed. She testified that she was familiar with her husband's signature and that the same appeared on page 13 of said Agreement. The Agreement was offered and received by the Court as part of the file in the matter. Mrs. Felt was satisfied with the division of assets set forth in the Agreement and felt the same to be fair and reasonable. She also felt that the provision in said Agreement which specified an alimony payment of \$1,000.00 per month was reasonable and agreed with all other aspects of said Agreement.

In response to questions by the Court, it was the opinion of Plaintiff and her counsel that after division of the assets pursuant to said Agreement, each party would receive between \$10,000 and \$15,000. The Court asked if there was any cut-off date on the alimony, to which Plaintiff's counsel replied that the alimony payments would only terminate in the event of Plaintiff's death or remarriage or if the Defendant was unable because of some change of circumstances to earn the type of money he is now earning. It was stated by Plaintiff's counsel that the Defendant had gross income in the neighborhood of \$60,000.00 in 1966. Mrs. Felt commented that Defendant's gross income was more than that and her counsel agreed.

The Court asked Mrs. Felt if she worked now and if she intended to work, to which she replied, "I work part time. I do radio and TV commercials part time, and I hope to work again." The Court responded, "That wouldn't surprise me . . . So you can supplement your income, this one thousand, to some extent?" Mrs. Felt answered "Yes."

222

The Plaintiff then stated that she did not condone the actions of her husband in staying away for periods of time and that they had never had marriage counseling. She did not feel that marriage counseling would be of help in this matter if ordered.

The divorce was then granted to the Plaintiff according to the prayer of the Complaint except where the prayer was modified by the Property Settlement Agreement which was on file and approved by the Court.

BETH N. RENSHAW

CERTIFIED SHORTHAND REPORTER

Duly certified November 17, 1970 and filed December 3, 1970.

(Title of Court and Cause)

### PETITION FOR ORDER TO SHOW CAUSE

33

Petitioner respectfully represents unto the court and petitions as follows:

1. On or about the 17th day of May, 1967, the court herein awarded to the plaintiff, Lee C. Felt, a/k/a Lee Craig Felt, a divorce dissolving the bonds of matrimony existing between plaintiff and defendant and ordering the division of real and personal property pursuant to the terms of that certain Property Settlement Agreement entered into by and between the plaintiff and the defend-

ant on the 16th day of May, 1967, and specifically approved by the court herein and incorporated in the Decree by reference. Paragraph II of said Settlement Agreement contains the following provisions regarding alimony payable by the defendant to the plaintiff:

A. Robert S. Felt hereby agrees to pay \$500.00 to the plaintiff, Lee C. Felt, upon the execution of this instrument, and thereafter to pay to the plaintiff Lee C. Felt, as permanent alimony, the sum of \$1,000 per month, payable each and every month on or before the first day of the month, commencing on June 1, 1967.

2. Defendant has without explanation failed and refused to make said payments of \$1,000 per month as a result of which there is presently past due and owing to plaintiff under the terms of said Decree the amount of \$3,100.

3. It has been necessary for plaintiff to employ counsel to prosecute this petition and a reasonable sum for the services of said attorneys is \$100.

WHEREFORE, petitioner prays that an order be entered requiring the defendant to show cause, if any he has, why judgment should not be entered against him in the amount of \$3,100 due under the terms of said Decree and, if the same is not paid forthwith, to show cause why the defendant should not be held in contempt of court, and that said order further provide for payment

by defendant to plaintiff of the sum of \$100 attorney's fees and petitioner's costs incurred herein.

DATED this 7th day of October, 1969.

s/ Lee C. Felt  
Petitioner

VAN COTT, BAGLEY, CORWNALL & McCARTHY  
Attorney for Petitioner

Duly verified and filed October 8, 1969.

(Title of Court and Cause)

### ORDER TO SHOW CAUSE

30        BASED UPON the verified petition of the plaintiff herein, a copy of which is attached hereto, and good cause appearing therefor,

IT IS HEREBY ORDERED that the defendant, Robert S. Felt, be and appear before the Honorable Emmett L. Brown, one of the Judges of the above-entitled court, at room 1, New Courts Building, 240 East 4th South, Salt Lake City, Utah, on the 21st day of October 1969, at 10:00 o'clock a.m. then and there to show cause, if any he has, why judgment should not be entered against the defendant and in favor of the plaintiff in the sum of \$3,100 together with interest thereon, attorney's fees in the sum of \$100 and costs of this proceeding.

IT IS FURTHER ORDERED that defendant appear at said time and place to show cause, if any he has,



why he should not be held in contempt of court for failing to abide by the terms of the Decree entered in the above-entitled cause on the 17th day of May, 1967.

31 MADE AND ENTERED this 8th day of October, 1969.

EMMETT L. BROWN, JUDGE

Duly attested and filed October 14, 1969.

(Title of Court and Cause)

MOTION TO AMEND DIVORCE DECREE AND  
NOTICE

37 MOTION

Based on the file herein and the Affidavit attached and documents and evidence that will be obtained by discovery and presented herein, defendant moves the court for an Order eliminating alimony herein and terminating plaintiff's rights to maintain life insurance policies on defendant's life, and to amend the divorce decree herein accordingly.

DATED this 13th day of November, 1969.

GAYLE DEAN HUNT  
Attorney for Defendant

Duly verified and filed November 14, 1969.

(Title of Court and Cause)

AFFIDAVIT OF ROBERT S. FELT

43      STATE OF UTAH  
COUNTY OF SALT LAKE

ROBERT S. FELT, being first duly sworn, deposes and says that he is the defendant in the above named action and that the Divorce Decree in the above named action should be altered to substantially reduce alimony now set at \$1,000.00 per month or to eliminate the same for the following reasons:

1. At the time of the Divorce Decree herein, defendant was prevailed upon by plaintiff and counsel—both her's and his — and urged to consent to an alimony decree which he was persuaded he could maintain and that was fair under the circumstances, however circumstances since, including his health conditions, have demonstrated that it is not only impossible for him to maintain such an amount of alimony but that the same was unreasonable and unfair at the time and at the present time is not only unfair and unreasonable but impossible.

2. Since said Divorce Decree the defendant has remarried and now has two additional dependents: his wife and a child.

3. The work load necessary to maintain in order to make the payments in question is professionally inadvisable and unwise and impossible from the standpoint of defendant's mental and physical health.

4. Since the date of said divorce in May, 1967, the defendant's income is either less or approximately the same, however costs of doing business, professional costs of various kinds, and living costs have drastically increased.

5. Defendant has substantial indebtedness and has not been able to reduce the same since said divorce and this principally because of said enormous alimony payments.

4 6. The plaintiff, on the other hand, at the time of the said divorce was employed only part time with modest income, however she has, since said time, become fully employed with part time fees and income in addition to full time employment.

7. Furthermore, the plaintiff has substantial stock and investments including substantial amounts of blue chip securities—for instance, Hercules Powder Company, CTS Corporation, Gulf Oil Corporation, National Air Lines, Eastman Kodak, Johnson & Johnson, Putnam Growth Fund Stock, Star Broadcasting Company stock and other stocks in addition to stock purchased since said divorce; also plaintiff realized in the divorce settlement substantial cash, personal property and automobile, etc.

8. The plaintiff is in good health, employed and employable and, in good conscience, from any standpoint, ought no longer to be dependent upon the defendant for any portion of her livelihood. The plaintiff has a masters degree in speech and a minor college degree in English

and is well qualified to earn a substantial livelihood in a variety of different fields.

9. At the time of the said divorce the defendant was prevailed upon to allow the continuance upon his life for plaintiff's benefit, of two life insurance policies and, whether or not there was reason at the time of said divorce for the maintenance of such insurance for the benefit of plaintiff, at the present time there is no reason whatsoever, in law or justice, to allow the maintenance and continuance of said life insurance policies.

DATED this 15 day of November, 1969.

s/ Robert S. Felt

Duly verified and filed November 19, 1969.

(Title of Court and Cause)

## REPLY TO DEFENDANT'S AFFIDAVIT

53 COMES NOW the plaintiff, Lee C. Felt, a/k/a Lee Craig Felt, and being first duly sworn, deposes and replies to defendant's Affidavit filed herein in support of Motion to Amend Divorce Decree as follows:

## FIRST DEFENSE

Defendant's Affidavit fails to state any ground upon which modification of the Decree herein could be granted.

## SECOND DEFENSE

The defendant agreed upon and the court approved as fair and reasonable alimony of \$1,000 per month in consideration of the efforts made by the plaintiff in assisting the defendant in his professional education, and in view of the circumstances and social standing of the plaintiff. The agreement was signed and the Decree was entered in contemplation of the likelihood of future employment by the plaintiff and with knowledge of her education, training, experience and ability and accordingly, the same do provide that said alimony should not thereafter be adjusted, notwithstanding increases or decreases in any amount in the income of plaintiff, and notwithstanding any changes in the income of the defendant unless said changes were substantial and so decreased the defendant's income as to render him reasonably unable to pay said alimony.

## THIRD DEFENSE

1. Denies each and every statement contained in paragraph 1. Defendant is a highly educated, trained and experienced physician. Both defendant and his counsel read and approved the Property Settlement Agreement on May 16, 1967, as evidenced by their signatures affixed in witness thereof. On May 17, 1967, the Honorable D. Frank Wilkins, judge of the above-entitled court, entered Findings of Fact, Conclusions of Law, and Decree incorporating therein said Property Settlement Agreement and approving the same as fair and reasonable. Defendant's health is in no manner substantially or per-

manently impaired so as to render it impossible or substantially more difficult for defendant to maintain the alimony payments as decreed.

2. Plaintiff admits that defendant has remarried since the entry of said decree but denies each and every other statement contained in paragraph 2 of defendant's Affidavit.

55           3. Denies paragraph 3 of defendant's Affidavit.

4. Admits that since May 1967 the cost of living has increased, because of which the alimony amounts should not be reduced. Plaintiff denies each and every other statement contained in paragraph 4.

5. Denies paragraph 5 of defendant's Affidavit.

6. Admits paragraph 6 of defendant's Affidavit.

7. Replying to paragraph 7, plaintiff received certain personal property pursuant to and as enumerated in said Property Settlement Agreement and has thereafter purchased further items of personal property. Plaintiff denies that she has substantial stock or investments.

8. Replying to paragraph 8, plaintiff admits that she has educational degrees as stated, is in good health, and employed, but denies each and every other statement therein contained.

9. Replying to paragraph 9, plaintiff admits that she is the beneficiary of two insurance policies on the defendant's life but denies each and every other state-

ment therein contained. As to said policies, plaintiff has paid since said Decree and now does pay the premiums.

DATED this 21st day of November, 1969.

s/LEE C. FELT

Duly verified and filed November 21, 1969.

(Title of Court and Cause)

### JUDGMENT

The above-entitled matter came on regularly for hearing before the Honorable D. Frank Wilkins, judge, on the 2nd day of December, 1969, pursuant to an Order to Show Cause on behalf of the plaintiff. The plaintiff appeared by her attorney Thomas M. Burton and the defendant appeared by his attorney Gayle Dean Hunt. Upon stipulation of the parties and the Court being fully advised in the premises, now therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the plaintiff be and she is hereby awarded judgment against the defendant in the sum of \$4,600.00 for unpaid alimony pursuant to Decree herein computed through the month of December, 1969, with interest thereon at the legal rate of 8 percent from date hereof, and for the further sum of \$100.00 attorney's fees, plus her costs incurred.

DATED this 9th day of December, 1969.

D. FRANK WILKINS, JUDGE

Duly attested and filed December 9, 1969.

(Title of Court and Cause)

DEFENDANT'S BRIEF

Respondent's attorney filed a short brief with the court setting forth arguments in support of modification of the alimony decree. These arguments are not summarized herein as they will most likely be contained in Respondent's brief in this matter.

Filed January 23, 1970.

(Title of Court and Cause)

MEMORANDUM IN SUPPORT OF MOTION  
BY PLAINTIFF FOR PROTECTIVE ORDER

Appellant filed the captioned Memorandum setting forth arguments in opposition to Respondent's motion to modify the alimony decree. These arguments are not reproduced here as they will be contained in Appellant's brief.

VAN COTT, BAGLEY,  
CORNWALL & McCARTHY

Attorney for Plaintiff

Filed January 23, 1970.



(Title of Court and Cause)

## ORDER TO SHOW CAUSE

136

BASED UPON the verified petition of the plaintiff herein, a copy of which is attached hereto, and good cause appearing therefor,

IT IS HEREBY ORDERED that the defendant Robert S. Felt be and appear before the Honorable Emmett L. Brown, one of the Judges of the above-entitled Court, New Courts Building, 240 East Fourth South, Salt Lake City, Utah, on the 6th day of August, 1970, at 9:00 o'clock a.m., then and there to show cause, if any he has, why judgment should not be entered against the defendant and in favor of the plaintiff in the amount of \$8,000.00 together with interest thereon, attorney's fees in the sum of \$250.00 and costs.

IT IS FURTHER ORDERED that the defendant appear and show cause, if any he has, why he should not be found in contempt for failing to abide by the terms of the decree entered in the above-entitled cause on the 17th day of May, 1967, and the judgment entered in the above-entitled cause on the 9th day of December, 1969.

MADE AND ENTERED this 28th day of July, 1970.

EMMETT L. BROWN, JUDGE

Duly attested and filed July 30, 1970.

(Title of Court and Cause)

### JUDGMENT

139

The above entitled matter came on regularly for hearing before the Honorable Gordon R. Hall, Judge, on the 6th day of August, 1970, pursuant to an Order to Show Cause on behalf of the plaintiff. The plaintiff appeared with her attorney, Thomas M. Burton, and the defendant appeared with his attorney, Gayle Dean Hunt. Evidence was offered on behalf of the parties and the court having heard argument and being fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Decree herein, the plaintiff be and she is awarded judgment against defendant in the sum of \$8,000.00 for unpaid alimony from January 1, 1970 through August 31, 1970, with interest thereon at the legal rate of 8% from date hereof, and her costs incurred.

DATED this 18th day of August, 1970.

GORDON R. HALL, JUDGE

Duly attested and filed August 18, 1970.

(Title of Court and Cause)

### ORDER

182

IT IS HEREBY ORDERED that Order to Show Cause why defendant should not be found in contempt of court for failure to pay alimony to plaintiff from and

after January 1, 1970, is hereby continued until Thursday, October 1, 1970, at the hour of 2:00 o'clock p.m., at which time said matter shall be further heard and considered by the court.

IT IS FURTHER ORDERED that defendant's Motion to Modify Divorce Decree is hereby set for hearing on Thursday, October 1, 1970, at the hour of 2:30 o'clock p.m.

DATED this 18th day of August, 1970.

GORDON R. HALL, JUDGE

Duly attested and filed August 18, 1970.

(Title of Court and Cause)

REPORTER'S TRANSCRIPT OF HEARING  
ON PLAINTIFF'S ORDER TO SHOW  
CAUSE WHY THE DEFENDANT SHOULD  
NOT BE HELD IN CONTEMPT AND DE-  
FENDANT'S MOTION TO AMEND DI-  
VORCE DECREE RESPECTING ALIMONY  
PAYMENTS, HELD BEFORE THE HONOR-  
ABLE GORDON R. HALL, A JUDGE OF  
THE THIRD JUDICIAL DISTRICT COURT,  
SALT LAKE COUNTY, UTAH, ON THE 1ST  
DAY OF OCTOBER, 1970.

227

The case for hearing before the court was Case Number 171633, LEE C. FELT, Plaintiff, vs. ROBERT S. FELT, Defendant. Mr. Thomas M. Burton represented the plaintiff, and Mr. Gayle Dean Hunt acted as counsel for the defendant.

## OPENING STATEMENTS

228 Mr. Hunt stated that he intended for the hearing to be a broad examination into the file back to and including the Divorce Decree and Property Settlement Agreement. He said that he did not intend the court to be confined to the matter of whether there had been a change of circumstances on the part of either party, but intended and hoped to show that the decree itself prescribed an unreasonable burden on the defendant and was basically unfair and founded upon erroneous premises that should be examined. Mr. Burton objected to the scope of Mr. Hunt's statement on the grounds of irrelevancy and immateriality and of res judicata. He argued that the decree on its face was signed by Dr. Felt and was approved by the court as to its form and fairness, both in the Findings of Fact and Conclusions of Law and in the decree itself. The objection was specifically directed to any attempt to broaden the preceding into an inquiry into the basic fairness of the Divorce Decree itself.

227 In response to a question by the court, Mr. Hunt answered that there was originally a written stipulation of the parties termed "Property Settlement Agreement" upon which the Divorce Decree was based. The court indicated it was not going to unnecessarily restrict Mr. Hunt in the proceeding. It was admitted by the court that it had some reservations about whether the scope of the hearing could be as broad as indicated in Mr. Hunt's opening remarks since there was a written stipulation in the matter which had been adopted and approved by the court.

233 The plaintiff, Lee C. Felt, was examined directly by  
Mr. Burton and cross-examined by Mr. Hunt on matters  
pertaining to the plaintiff's Order to Show Cause Why  
234 the Defendant Should Not be held in Contempt. Robert  
S. Felt, the defendant, and Marge Kiddle were directly  
examined by Mr. Burton in regard to the same issue.

#### DIRECT EXAMINATION OF LEE CRAIG FELT BY MR. HUNT

283 The plaintiff testified that she was presently single  
and employed full time by Circuit & Eddington Adver-  
tising. Mr. Hunt asked plaintiff her present salary and  
Mr. Burton objected on the grounds of irrelevancy. He  
declared that the plaintiff and defendant had agreed to  
the Property Settlement Agreement which had been  
adopted and incorporated into the Divorce Decree. Said  
agreement provided that no change in Mrs. Felt's income  
or circumstances would have any bearing on the obliga-  
tion of the defendant to make alimony payments. The  
court referred to the Property Settlement Agreement  
mentioned by Mr. Burton which allowed the plaintiff's  
284 income to fluctuate without affecting defendant's obliga-  
tion. Discussion between Mr. Hunt, Mr. Burton and the  
court followed as to whether an inquiry into the plain-  
tiff's salary was proper. Mr. Hunt argued that Judge  
Wilkins had permitted discovery of the plaintiff's salary  
and Mr. Burton contended that although discovery may  
have been permitted, that did not necessarily mean the  
information obtained therefrom could be admitted as  
285 evidence. Mr. Hunt asserted that the Utah Supreme  
Court case of *Callister v. Callister* and others permitted

the court to increase or decrease alimony payments upon a showing of a substantial change in circumstances. Mr.  
286 Burton countered by stating that the cases did not apply where a Decree and Property Settlement Agreement had been entered into in contemplation of the wife's future employment. At the time of this hearing, the transcript of the divorce proceeding before Judge Wilkins had been lost by the reporter in the move from the old courthouse building to the new. Efforts were being  
287 made to locate the same and have the reporter's notes transcribed. The court overruled Mr. Burton's objection and allowed Mr. Hunt to proceed with his examination.

Mrs. Felt stated that at the time of the divorce in the Spring of 1967, she was employed part-time doing free lance talent work. At the date of the present hearing, she was employed full time by Circuit & Eddington at a salary of approximately \$8,400.00 per year. In addition to her full time employment, Mrs. Felt engaged in some part-time free lance work and had done so for the past year. Furthermore, Mrs. Felt occasionally read a commercial for radio station KSXX which resulted in some  
288 income. Her income from stocks and bonds amounted to \$100.00 a year or less.

Mrs. Felt declared that she possessed a Master's Degree and Bachelor of Arts Degree from the University and had extensive training in the radio and TV field. She further stated that she was able to earn a livelihood and was trying hard to earn enough money to secure her  
289 future and, therefore had chosen to work. The plaintiff  
290 responded that she was in good health for a woman of

age 43½ and had been able to hold a good skilled job. She expressed a concern that her employment may not be secure in the future in view of the fact that her employer had recently hired a number of young people and had put an emphasis on young people with new ideas.

No dependents were reported by Mrs. Felt on her income tax returns. In addition to her salary, her employer furnished some medical coverage by paying one-half the cost of Blue Cross-Blue Shield Medical Insurance. The employer also provided two weeks of paid vacation and furnished a membership in the Advertising Club. Mrs. Felt owned her own furniture and was purchasing an annuity from the Pollack Fund. Mrs. Felt stated that she had savings account, various charge and credit accounts, that her clothing costs approximated \$800.00 a year, that her apartment rental was \$178.00 a month, that she spent round \$110.00 a month for food, that her utilities were paid, that she spent \$35.00 a month on life insurance, spent \$5.00 to \$10.00 a month for recreation, \$3.00 a month for membership in the American Women Radio and Television Society, and incurred medical and dental expenses of \$25.00 per month. She admitted the she was not really living high in view of her personal living expenses.

The plaintiff's 1968 Income Tax Return showed income from wages and salaries of \$8,091.00 and other income of \$12,078.00, which included the \$1,000.00 a month alimony payments received from her husband. Her total income for the year 1968 before taxes amounted to \$20,968.00.

297 Mrs. Felt's 1969 Income Tax Return showed a total  
income of \$17,168.00 with an adjustment of \$1,800.00, leav-  
ing an adjusted gross income of \$15,000.00. During the  
year 1969, Dr. Felt had paid only part of his alimony obli-  
gation. It was admitted that without any alimony from  
Dr. Felt, Mrs. Felt would earn in the neighborhood of  
\$8,500.00 or \$8,600.00 a year. Mr. Burton again objected  
to the line of questioning concerning the plaintiff's in-  
298 come and expenses, which objection was overruled by the  
court.

The only borrowing engaged in by Mrs. Felt was  
borrowing on her Walker Bank Card. No vacations had  
been taken by the plaintiff although she had made several  
299 trips in connection with work to Las Vegas, Michigan,  
Arizona and Los Angeles, plus a week-end conference  
300 in Denver. Mr. Hunt questioned the plaintiff whether  
she chose to work voluntarily, to which she responded,  
"yes," that she worked at her particular job to earn a  
living. She stated that if she had no financial stress to  
consider, she would quit her current job and find one  
she liked better and only work part-time. It was further  
301 stated by Mrs. Felt that she did not have any savings  
and did not have the same opportunity to increase her  
earnings she would have if younger. Therefore, she chose  
to work to provide for some kind of security in the event  
of an accident or unemployment for some period of time.

302 Mrs. Felt further stated that she desired to provide  
for her own retirement and, therefore, wanted to work as  
hard as she could to try and earn something for retire-  
ment years and to provide for herself in the case of sick-



303 ness. She admitted that at present she was in vigorous  
health, fully employed and capable of earning a living  
from day to day if nothing went wrong. Plaintiff de-  
clared that she did not want to eliminate the alimony  
payments until such time as she was sick or unemployed,  
because at such time Dr. Felt may also be sick or un-  
employed. She did not feel that the \$1,000.00 a month  
which had been agreed upon by her husband and herself  
was unreasonable or unfair in light of his earnings and  
304 the after tax cost of making such payments. It was stated  
Mrs. Felt did not like to receive alimony and wished that  
she did not have to, but that such alimony payments were  
accepted because she needed the money to provide for her  
future.

### CROSS-EXAMINATION

305 The plaintiff testified that she married Dr. Felt in  
December of 1949 and that at the time of said marriage  
she was employed part-time and completing college. Fol-  
lowing Dr. Felt's graduation from Medical School, he  
went to Detroit, Michigan for his internship. Mrs. Felt  
stayed in Salt Lake City for three months and worked  
at two full time jobs. At the end of three months she  
joined her husband in Detroit for the remaining period  
of his internship and was employed full time in Detroit,  
Michigan.

306 Upon completion of the internship, the plaintiff and  
the defendant moved to Denver, Colorado, where Dr. Felt  
completed his residency period of three years training.  
During the three year residency in Colorado, Mrs. Felt

was employed full time, being a teacher at the Colorado Women's College, a Secretary to the Dean of Women for a year, and then the Continuity Director for KFEL TV. Mrs. Felt earned an amount of salary equal to or in excess of the money earned by Dr. Felt during the period of internship and residency.

307        Upon completion of his residency, Dr. Felt entered the Armed Forces for a period of two years. During said period, Mrs. Felt did not work. After completion of his service time, Dr. Felt and the plaintiff moved to Salt Lake City where Dr. Felt was employed in his specialty. Mrs. Felt worked full time for approximately 2½ years after they returned to Salt Lake City and was employed part-time for another seven years. Mrs. Felt testified that she worked until approximately the time of the divorce. She further said that at the time of the divorce she contemplated returning to full time employment thereafter. No discussions were had between Dr. and Mrs. Felt after she left home in 1967 regarding employment but Mrs. Felt again returned to full time employment about four months later.

### REDIRECT EXAMINATION

325        Mrs. Felt was asked whether the work pattern that she had followed existed before the time of the divorce, to which she answered yes. She further testified that at the time of her marriage to Dr. Felt, he was within one quarter of graduating from Medical School. Dr. Felt had not, however, completed his internship or residency.

DIRECT EXAMINATION OF ROBERT S. FELT  
BY MR. HUNT

324 The defendant was questioned concerning his income  
325 during the period of internship and residency and asked  
why he signed the Property Settlement Agreement which  
provided that the alimony payments were being made "in  
view of the efforts made by plaintiff in assistance of de-  
fendant in his professional education." Mr. Burton ob-  
jected to the question on the grounds that the question  
was entering the area of impeaching the court's divorce  
decree which had been agreed to, read, understood and  
326 approved by the defendant, his counsel, and the court.  
He stated that said agreement had been incorporated into  
the decree and was part and parcel of the decree. Mr.  
Burton further argued that he had previously stated  
his objection to the defendant's attempt to go behind the  
face of the decree and impeach it by saying he didn't  
understand the terms or that he was under duress. The  
court indicated that it intended to be flexible about this  
matter. The court stated that it fully appreciaed Mr.  
Burton's position and admitted that he may very well  
be right, however, his objection was overruled without  
prejudice and Mr. Hunt was allowed to continue.

327 In response to Mr. Hunt's question, Dr. Felt testified  
that the reason he signed the Property Settlement Agree-  
ment was he was under such mental and physical duress  
that he did not contest the agreement as being in fact the  
best that his counsel could secure. Defendant stated that  
he questioned the alimony payment provision of the  
agreement along with other provisions but was told by

his counsel that this was proper and that he should sign it. The Property Settlement Agreement was signed by Dr. Felt at his home with only his counsel present. He declared that he had never seen the agreement prior to the time that he signed it and that he spent only approximately ten minutes in reviewing said agreement. Defendant commented that he executed the agreement the first and only time that he saw it.

Defendant declared that in his opinion it was impossible to maintain the alimony payments of \$1,000.00 per month because his circumstances had changed considerably and that he had remarried. He stated that he managed to maintain the alimony payments as long as he could during 1968 but it became physically and mentally impossible to maintain the burden on himself or his patients. The overhead costs and business costs associated with his practice were stated to be on the inflationary rise although his fee structure had remained the same. In the latter part of 1967 and the early part of 1968, Dr. Felt said he was forced to rush through more people, work long and demanding hours and undertake a heavier surgical schedule in order to meet the alimony payments. Because of the increased work load, Dr. Felt claimed to have become increasingly tired physically and to have developed some neurological problems. He consulted doctors concerning the neurological problems and was told that he should cut down on his work. Dr. Felt further stated that he thought it was professionally inadvisable to undertake the work load he had in 1968 and 1969.

336 Dr. Felt next testified concerning changes which had  
337 occurred in his income and expenses for the years 1967,  
1968, and 1968. Defendant's Exhibit 14-D was admitted  
into evidence and the defendant was questioned as to the  
information thereon. Said exhibit consisted of an account-  
ing breakdown of the income and expenses for Dr. Felt  
during the years 1967 through 1969. Said exhibit showed  
gross income from medical practice of \$70,108.00 in 1967,  
\$72,481.00 in 1968, and \$67,648.00 in 1969. The expenses  
for the corresponding years were \$38,973.00, \$38,490.00,  
and \$43,213.00. Adjusted gross income before taxes,  
alimony payments and interest on a house loan was \$34,-  
040.00 in 1967, \$38,186.00 in 1968, and \$28,014.00 in 1969.  
The net income figures listed in said Exhibit 14-D re-  
vealed net income in 1967 of \$17,317.00, in 1968 of \$17,-  
573.00 and in 1969 of \$14,395.00.

Defendant's Exhibit 15-D consisted of a graph show-  
ing defendant's net income after disbursements and ali-  
mony for the years 1966 through 1969. Said exhibit was  
admitted over Mr. Burton's objection that the informa-  
tion was already before the court and that the manner  
338 of graphing the information may be exaggerated. Exhibit  
16-D was also admitted over Mr. Burton's objection. Said  
exhibit illustrated defendant's gross overhead costs ex-  
cluding alimony for the years 1964 through 1969. As  
graphed, the exhibit indicated an increase in gross over-  
340 head costs from \$19,500.00 in 1964, to \$49,000.00 in 1969.  
Exhibit 17-D was admitted into evidence, said exhibit  
purporting to show the costs of post-graduate meetings,  
seminars and conventions and the number attended by  
Dr. Felt each year. Said graph indicated that Dr. Felt

attended approximtaily five to six such seminars per year and that the cost had increased somewhat over the years. Dr. Felt then commented upon the increase in personal living expenses he had experienced since 1967. The court took judicial notice of the fact that the cost of living has increased during the past years. Exhibit 22-D was admitted to evidence over plaintiff's objection, said exhibit indicating that the estimated living expenses of Dr. Felt were \$1,604.44 per month.

### CROSS EXAMINATION

Dr. Felt admitted that during the period of his residency and internship Mrs. Felt was employed and the money she earned was not placed in a separate fund but that all earnings were kept in the kitty and both lived off the money in the kitty. The defendant also stated that at the time he married his present wife, Mrs. Verla Felt, that he was fully aware of the obligation he had agreed to perform of paying \$1,000.00 per month to Mrs. Lee C. Felt as alimony.

Mr. Burton questioned the defendant in regard to the expenses for attending conventions over the years 1967 through 1969. The graph admitted to evidence as Exhibit 17-D, showed a drop in the expenditures for convention attendance in the year 1967 although the total number of meetings attended each year remained about the same. Dr. Felt stated that the drop in expenditures may be attributable to the conventions themselves costing less or being held closer to Salt Lake City. Mr. Burton next questioned Dr. Felt regarding the breakdown in ex-

368 penses listed on Exhibit 14-D. One of the expenses listed  
as a deduction from gross income was referred to as  
Keogh. In 1967 there was no deduction, in 1968 \$1,500.00  
was deducted, and in 1969 \$2,500.00 was deducted from  
369 gross income. Dr. Felt admitted that the Keogh account  
is to provide for his retirement and that in effect he was  
paying himself an amount for later use. Under such cir-  
cumstances, the defendant admitted he did not know  
whether the Keogh contributions were a proper deduc-  
tion from gross income.

It was admitted by the defendant that the plaintiff  
had been employed off and on full and sometimes part-  
time during the entire years of their marriage. He stated  
that he assumed she worked because she enjoyed it and  
that even after he was established as a specialist in Salt  
Lake City, she still worked occasionally. Dr. Felt com-  
370 mented that he didn't know whether the plaintiff anti-  
cipated working after the divorce. He stated that he never  
specifically discussed this with the plaintiff and did not  
recall discussing it with his counsel.

371 Defendant admitted signing the Property Settlement  
Agreement which was incorporated into the divorce de-  
cree on May 17, 1967. At the time of his signing said  
Property Settlement Agreement, Mr. Grant Aadnesen  
was declared to be his counsel of his own free choosing.  
Said counsel had not been suggested to Dr. Felt by the  
372 plaintiff or any person connected with her. Defendant  
further responded that to his knowledge his counsel had  
held several discussions with counsel representing plain-  
tiff. He then admitted that he had discussions on more

than one occasion with Mr. Aadnesen, his counsel, concerning conversations which Mr. Aadnesen had had with plaintiff's counsel.

The defendant declared that he received phone calls from his counsel with reference to possible settlement aspects of the case. He testified that he couldn't recall the exact conversations regarding settlement, only that when settlement had been reached he was notified by Mr. Aadnesen that he would be up to the house to show him the settlement. Concerning the amount of alimony, Dr. Felt admitted the only amount of alimony ever discussed was \$1,000.00 per month.

373 Mr. Burton referred to paragraph one of defendant's affidavit which had been filed with the court in support of his motion to amend the divorce decree. Said affidavit set forth as a ground for modification that defendant had been prevailed upon by plaintiff and counsel, both hers and his, and urged to consent to an alimony decision which he was persuaded he could maintain and that was fair under the circumstances. Mr. Burton asked the defendant what he meant by prevailed upon, to which he replied he was approached by Mr. Aadnesen after Mr. Aadnesen had held discussions with plaintiff's counsel concerning the possibility of settlement. The defendant stated that by prevailed upon he meant that he was requested to consent to the details of the Property Settlement Agreement which he signed. It was admitted that the request made by Mr. Aadnesen was that the details were finally to be worked out, the document had been dictated and transcribed in his office, was ready for



signature, and that defendant should look it over and sign it.

In response to the question of whether he discussed the terms and provisions of the decree with his counsel, Dr. Felt replied that he went through it as he had indicated in earlier testimony and questioned some of the items. He said he questioned the alimony item as being over generous. Mr. Aadnesen, his counsel, purportedly said that any Third District Court Judge would agree that this was fair and equitable and that he thought it was too. Therefore, Dr. Felt claimed he relied upon counsel's advice because he had to, meaning that when he questioned the alimony provision the answer was that any other judge would have done the same. The defendant admitted that he was not prevented from obtaining other counsel at that time but that it had never occurred to him to do so. He also stated that he could have sought other advice to see if Mr. Aadnesen's representation concerning the alimony payment was correct but he didn't.

Mr. Burton asked whether defendant and his counsel had discussed the possibility of the alimony amount being greater in the event of a trial. Dr. Felt commented that he asked his counsel whether he was to appear, if there was going to be a judge and jury, and how this thing is going to operate. Mr. Aadnesen allegedly replied that in cases of this type ordinarily the attorneys draw up the agreements between themselves and if they are satisfactory to their individual clients it is carried no further. Defendant also said he questioned the propriety of the plaintiff being immune from the court reviewing the ali-

mony from time to time and that Mr. Aadnesen stated that this is the way we handle it. It was admitted by defendant, however, that plaintiff was not immune, that if his income went down she was not immune under the terms of the agreement from having the alimony reduced.

375 He also responded that if plaintiff's income was reduced the court would look at the decree and if his income increased the plaintiff had no right to have the alimony adjusted upward.

The following exchange then occurred between Mr. Burton and defendant:

Q. Well, at any rate, you discussed this alimony provision with him, and at the conclusion of your discussion you signed the agreement?

A. Yes.

Q. And you didn't in any way, suggest that you weren't a free agent, that you were compelled to do it in this way?

A. No.

Q. So you really weren't prevailed upon in any manner to sign this agreement rather than not to sign it?

A. Only to the extent that that was the best we could do, therefore, ergo, write your name. The answer was always the same, well, there it is.

Q. This was the settlement, that was the best settlement that could be made under the circumstances, what he represented to you?

A. Anybody else sitting on the bench, it was the same thing.

\* \* \* \*

376

Q. You had discussed, I take it, with your counsel the facts and circumstances of all conduct involving you, your wife, and all the manifestations of that conduct?

A. To a degree.

Q. I see. And this agreement was all part of that discussion in regard to the divorce wasn't it?

A. Yes.

The defendant was then questioned concerning the allegation in his affidavit that he was prevailed upon to sign the Property Settlement Agreement. Reference was made to page 4, line 3 of defendant's deposition, where he was asked what he meant by the statement that he was prevailed upon by plaintiff and her counsel in regard to the Property Settlement Agreement. The defendant admitted in his deposition that he hadn't had any contact with the plaintiff or her counsel except in conversations through his counsel. Again, in court, the defendant admitted that he never had any discussion with Mrs. Felt after the divorce was filed or with the lawyers representing her. Referring to the deposition of defendant, Mr. Burton next requested defendant to refer to page 5, line 2, where he was asked what he meant by the statement in his affidavit that he was prevailed upon by plaintiff and her counsel in connection with the decree. Dr. Felt read his answer as it appeared in the deposition which stated, "Since the language is not my own, I am going to have to pass because I didn't write this."

Defendant next testified concerning his present health conditions which he claimed made it impossible for him to maintain the alimony payments. The specific health

378 problem was stated to be a depression syndrome resulting  
in a partial paralysis of the right shoulder. The physical  
abnormality was determined to be a verticulus of one of  
the roots stemming out of the neck. No particular injury  
or trauma could be isolated as the cause of the problem.  
The physicians consulted by Dr. Felt were of the opinion  
that he should curtail his work load and physical activity  
in an effort to relieve the problem. Dr. Felt further ad-  
379 mitted that the problem was not a question of emotion  
but there was a physical lesion to which the syndrome  
was related. It was further established that the syndrome  
had subsided and that the defendant had no further  
problems of any sort with reference to it. Dr. Felt did  
state that his Doctors felt that the same problem could  
occur again at any time and that he should avoid any  
strenuous physical activity which may cause the disc in  
his neck to slip again. In spite of this recommendation by  
380 the doctors, Dr. Felt continued to ski regularly during  
the year, his justification being that he had to weigh  
the risk of aggravating the health condition with the risk  
of sitting around and becoming fat and degenerated.

382 The defendant was questioned regarding his mental  
health and he commented that there was nothing presently  
wrong with his mental health. At one time he had con-  
sulted a psychiatrist but the problem had been cleared  
up.

### REDIRECT EXAMINATION

387 The defendant testified that the reason for his steril-  
ization was because of hereditary muscular dystrophy in

his ancestry. Sterilization was accomplished about a week or two after he married the plaintiff, Mrs. Lee Felt. He declared that he discussed the matter of sterilization with the plaintiff, that she was in favor of it and helped him make the decision.

## RECROSS EXAMINATION

Defendant testified that during the five years of his residency and internship that Mrs. Felt's salary contributed to the overall treasury. He admitted that her salary was in excess of his while they were in Denver for his residency. After Dr. Felt was discharged from the Air Force he came to Salt Lake City to establish his practice. During the first year to 2½ years of practice he admitted that there were various expenses for the purchase of equipment and to establish himself in business. The plaintiff was employed full time throughout this period of time.

## DIRECT EXAMINATION OF LEE CRAIG FELT BY MR. BURTON

Mrs. Felt testified that in spite of her present academic qualifications, she was unable to secure a teaching position because she did not have a teaching certificate. To acquire such a certificate would require her to quit work and return to school. The plaintiff further responded that she would like to change from her present job because of the pressure that she must work under. Her employer required that for each 15 minute segment of her time, the plaintiff account for something she has

406 produced which is billable to a client. Mrs. Felt admitted  
that she held an executive position with her employer and  
that she had seen other younger persons hired after her.  
407 Many of the persons hired subsequent to Mrs. Felt were  
employed at a greater compensation, especially in the  
case of men. She did not feel that a woman had the same  
chance to become a Vice-President for her employer and  
make the same money as a man. Mrs. Felt said that she  
had not actually sought other employment in Salt Lake  
City because her salary was commensurate with what a  
person could make at her job. She responded that she  
had considered seeking employment in other cities but  
that she could not afford to take the time off to travel  
to other cities in search of a job.

#### CROSS EXAMINATION

409 During the time of Mrs. Felt's employment while  
married to the defendant, there were no dependents in  
their home. She admitted that the cost of Dr. Felt's  
attending Medical School was paid for by his parents.  
Also, Dr. Felt's parents assisted plaintiff and defendant  
in the purchase of a duplex in which they resided during  
their residency in Denver. Dr. Felt's parents further pro-  
vided plaintiff and defendant with an automobile during  
their residency.

410- Mrs. Verla Felt, the defendant's present wife, and  
441 Mrs. Olive S. Felt, the defendant's mother, were examined  
about matters pertaining to the contempt issue which was  
before the court.

## ARGUMENTS OF COUNSEL

41 Following presentation of the foregoing testimony, the plaintiff and defendant rested their cases. Thereupon, the court instructed Mr. Burton to proceed with his argument which should include both the question of contempt which was before the court and the question of amending the divorce decree. Mr. Burton asserted that under the doctrine of clean hands the defendant was not entitled to proceed with the modification of the divorce decree until the arrearage was made up. Mr. Hunt requested to see the law on that point. The court stated that it had opened the matter up and let it be fully aired to the satisfaction of both parties. Therefore, the court had suggested that the arguments go to both matters if that met with the approval of counsel. Mr. Hunt then  
42 requested that the arguments ought to be reported because he felt they would have a bearing if the court was going to explore what is an appropriate alimony in modifying the decree. He asserted that it was inappropriate to confine the inquiry to the economic proceedings and conditions of the respective status of the parties.

42- Mr. Burton then reviewed the testimony which had  
460 been given at the proceeding and argued that the facts elicited supported the plaintiff's position that the defendant was in contempt and that the divorce decree should not be amended. Numerous cases were cited by Mr. Burton in support of his contentions that employment of the plaintiff was not a sufficient change in circumstances to warrant modification of the decree. It was also asserted that there had been no change in the defendant's circumstances sufficient to require modification of the decree.

460-        Mr. Hunt responded by contending that there had  
467        been a change in circumstances and that the alimony pro-  
vision of the divorce decree should be changed. He was  
of the opinion that the decree was unfair and that the  
agreement should be re-examined and the alimony re-  
duced. He asserted that the divorce decree and Property  
Settlement Agreement came very close to being a fraud  
on the court. Mr. Hunt cited various cases in support of  
his arguments and referred to testimony which he felt  
supported his theories.

At the conclusion of the arguments of counsel the  
case was submitted to the court, at which time the matter  
was taken under advisement.

HAL M. WALTON  
Third Judicial District Court  
Official Court Reporter

Duly certified March 6, 1971.

(Title of Court and Cause)

### MEMORANDUM DECISION

185        Plaintiff's Order to Show Cause in re Contempt, and  
Defendant's Motion for Modification of Decree came on  
for hearing on October 1, 1970, and not being completed  
on that day were again heard on October 2 and October  
5, 1970, the plaintiff appearing in person and by counsel,  
Thomas M. Burton, and the defendant appearing in per-  
son and by counsel, Gayle Dean Hunt.



The matter having been fully presented, argued and submitted and the Court now being fully advised in the premises finds and concludes as follows:

1. That the defendant is in contempt of the Court's prior alimony order as set forth in the Decree of Divorce, said order having been based on a stipulation of the parties. The contempt is based on defendant's failure and refusal to pay the designated amounts, when he at all times had sufficient earnings to do so. Further, defendant has made transfers of property without consideration and held large sums of cash to defeat plaintiff's efforts to execute on prior judgments obtained for delinquent alimony.

2. That the plaintiff is well qualified both from the standpoint of formal education and years of experience in her chosen field of endeavor to earn sufficient funds to adequately maintain herself. This was demonstrated throughout the time of the marriage and is particularly true now that she has again taken full-time employment, her employment at the time of the Decree having been only part-time.

3. That the agreement of the parties and the subsequent award of alimony was based in part on the recognition of plaintiff's efforts to assist defendant in obtaining his medical education and the Court find that her efforts were substantial in this regard since defendant's internship and residency years are deemed to be just as important to his over-all education as the more formal education obtained while in medical school.

4. That the plaintiff is reasonably entitled to alimony for a given period of time sufficient to permit her to properly adjust to single life; however, to allow permanent alimony in the amount provided for in the Decree is unjust, unnecessary, and not equitable and the Decree is consequently modified to provide for the payment of said amounts of alimony through the month of May, 1971, a period of four years in all, said payments to cease thereafter, except for the payment of the nominal sum of \$1.00 per year necessary to preserve the right of plaintiff to future assistance should a true need arise.

5. That the defendant is sentenced to ten (10) days in the County Jail as punishment for his contempt; however, a stay of execution is entered and he is given an opportunity to purge himself of said contempt by making all future payments of alimony promptly when due, and provided further, that he make immediate arrangements to pay all of the alimony arrearage due to plaintiff, including the amounts thereof represented by judgments obtained.

6. The plaintiff is restrained from levying execution on any and all of defendant's property so long as he abides by the conditions set forth in paragraph 5 above.

7. That plaintiff is awarded attorney fees in the amount of \$250.00 in connection with the contempt matter.

Dated this 5th day of November, 1970.

GORDON R. HALL, JUDGE

Duly attested and filed November 5, 1970.

(Title of Court and Cause)

MOTION FOR A NEW TRIAL AND TO AMEND  
MEMORANDUM DECISION

7 The plaintiff, Lee C. Felt, by her counsel Thomas M. Burton and pursuant to Rule 59 of the Utah Rules of Civil Procedure, hereby moves the above-entitled Court for a new trial only on the issue of the modification of this Court's Decree, on the ground of newly discovered evidence material to plaintiff's position in the case, which she could not, with reasonable diligence, have discovered and produced at trial, and to amend its Memorandum Decision dated November 5, 1970, by vacating its finding and conclusion that that certain Property Settlement Agreement executed by the parties on May 16, 1967 and approved by the Court on May 17, 1967, was unjust, and by vacating its order reducing the alimony provision therein contained to \$1.00 a year as of May 1971 and by denying in its entirety defendant's motion to modify decree herein. This Motion is made upon the further ground that one of the issues before this Court in the October 1, 1970 trial was the basis upon which this Court heretofore entered its default judgment and approved the aforesaid Property Settlement Agreement as fair and reasonable. The reporter's notes of the default proceedings were ordered transcribed by D. Frank Wilkins, Judge, pursuant to one of plaintiff's previous motions for an Order to Show Cause, but could not, at that time, be located by the Clerk's office. Subsequent to the said October 1, 1970 trial of plaintiff's motion to hold defendant in contempt and defendant's motion to amend decree, the reporter's

88

notes of the May 17, 1967 default proceedings were found, have been transcribed and the transcript is filed herewith. Said motion is further based upon the affidavit of Thomas M. Burton attached hereto and by this reference incorporated herein.

DATED this 3rd day of December, 1970.

VAN COTT, BAGLEY,  
CORNWALL & McCARTHY  
Attorneys for Plaintiff

Duly verified and filed December 3, 1970.

(Title of Court and Cause)

REPORTER'S TRANSCRIPT OF HEARING  
ON PLAINTIFF'S MOTION FOR A NEW  
TRIAL AND TO AMEND MEMORANDUM  
DECISION, HELD BEFORE THE HONOR-  
ABLE GORDON R. HALL, A JUDGE OF  
THE THIRD JUDICIAL DISTRICT COURT,  
SALT LAKE COUNTY, UTAH, ON THE 18th  
DAY OF JANUARY, 1971

468       The record showed that the respective counsel for Lee C. Felt, the plaintiff, and Robert S. Felt, the defendant, were present in court. Mr. Burton first presented his arguments as to why a new trial should be granted and the court's previous Memorandum Decision modified.

The first reason advanced for the granting of plaintiff's motion was that the issue of modification of the

divorce decree was not timely heard. Mr. Burton contended that defendant's motion to have the decree modified should not have been heard until the arrearage in alimony payments was cured through payment by defendant to plaintiff.

The second ground for granting plaintiff's motion for a new trial advanced by Mr. Burton was that the agreement entered into between the parties and incorporated into the divorce decree providing for payment by defendant to plaintiff of \$1,000.00 a month was in essence a Property Settlement Agreement and not an agreement providing for the payment of alimony. Therefore, the court was without authority to modify said agreement.

The third ground for granting the plaintiff's motion for a new trial advanced by Mr. Burton was that the newly discovered reporter's transcript of the divorce proceeding would make it clear that the parties and the court anticipated that the plaintiff would seek full time employment following the granting of the divorce. Therefore, the plaintiff's subsequent full time employment is not a change of circumstances which merits modification of alimony in the decree.

The final argument asserted by Mr. Burton was that there was no basis for the court's finding that the original divorce decree was unreasonable since both parties were represented by counsel and that the court specifically found at the time of the default proceeding that the decree was reasonable.

Mr. Hunt argued that the transcript of the original divorce hearing added nothing to the matters before the court. He argued that the welfare of the parties involved impelled a change and that the court had jurisdiction to 93 make a change in the alimony arrangement. He contended that the court had continuing jurisdiction in the matter of modifying the alimony payment set out in the decree. Mr. Burton then submitted the Utah Supreme Court case of *Allen v. Allen*, 475 P.2d 1021, in support of his arguments. Mr. Hunt and Mr. Burton thereafter submitted the matter to the court. The court commented that in regards to Mr. Burton's final argument that the court in rendering its decision for defendant did not intend to imply that the prior decision rendered by the court in the divorce hearing was unjust or inequitable. The court stated that by reason of a change in circumstances, the court has found that the decree has become unjust and unreasonable and that it didn't imply that such decree was ever unjust or inequitable at the time it was first entered. Citation of the Allen case was acknowledged by the court but distinguished on the basis that the facts and circumstances were not the same as the matter before the court. The plaintiff's motion for a new trial and to amend the Memorandum Decision was then denied.

HAL M. WALTON  
Official Court Reporter  
Third Judicial District Court

Duly Certified March 6, 1971. Filed March 30, 1971.

(Title of Court and Cause)

### ORDER DENYING MOTION FOR NEW TRIAL

93

The above case was scheduled for hearing and heard January 8th and January 18, 1971, on plaintiff's Motion for New Trial, plaintiff being represented by counsel, Thomas M. Burton, and defendant by counsel, Gayle Dean Hunt, whereupon arguments of counsel were heard and the Court being fully advised in the premises and having determined that said Motion for New Trial should be denied, NOW, THEREFORE,

IT IS HEREBY ORDERED, that the Motion for New Trial of plaintiff, Lee C. Felt, herein be, and the same is hereby denied.

DATED this 2nd day of February, 1971.

GORDON R. HALL, JUDGE

Duly attested and filed February 2, 1971.

(Title of Court and Cause)

### ORDER MODIFYING DIVORCE DECREE AND RESPECTING CONTEMPT

207

The above case was scheduled for hearing and was heard October 1, 2, and 5, 1970, before the Hon. Gordon R. Hall, one of the Judges of the above entitled Court on plaintiff's Order to Show Cause in re Contempt and on

defendant's Motion for Modification of Divorce Decree, plaintiff appearing in person and by her counsel, Thomas M. Burton, and defendant appearing in person and by his attorney, Gayle Dean Hunt. Testimony was taken evidence introduced and arguments heard and the Court being fully advised in the premises and having made and entered herein its Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant is ordered to make future payments of alimony as required in this Order, promptly when due.

2. That defendant is hereby ordered to pay \$250.00 to plaintiff for attorney's fees.

3. That the Divorce Decree herein is modified as follows: monthly alimony payments are provided for in the Divorce Decree herein shall be paid by defendant to plaintiff through the month of May, 1971, a period of four years in all, said payments to cease thereafter, except for the payment of a nominal sum of \$1.00 per year necessary to preserve the right of plaintiff to future assistance should a true need arise.

DATED this 2nd day of February, 1971.

GORDON R. HALL, Judge

Duly attested and filed February 2, 1971.



(Title of Court and Cause)

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

8 The above case was scheduled for hearing and was heard October 1, 2, and 5, 1970, before the Hon. Gordon R. Hall, one of the Judges of the above entitled Court on plaintiff's Order to Show Cause in re Contempt and on defendant's Motion for Modification of Divorce Decree, plaintiff appearing in person and by her counsel, Thomas M. Burton, and defendant appearing in person and by his attorney, Gayle Dean Hunt. Testimony was taken, evidence introduced and arguments heard and the Court being fully advised in the premises now makes the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

1. That the defendant is in contempt of the Court's prior alimony order as set forth in the Decree of Divorce, said order having been based on a stipulation of the parties. The contempt is based on defendant's failure and refusal to pay the designated amounts, when he at all times had sufficient earnings to do so. Further, defendant has made transfers of property without consideration and held large sums of cash to defeat plaintiff's efforts to execute on prior judgments obtained for delinquent alimony.

2. The court made a memorandum decision herein dated November 5, 1970, indicating that defendant be sentenced to ten days in jail for contempt, a stay of exe-

cution to be entered and defendant given an opportunity to purge himself of said contempt by payment of future payments of alimony as ordered, thereby, and of arrearages including sums represented by judgments then due.

209        3. Between that time and the present time, defendant has paid said arrearages and current sums owing and has therefore, purged himself of said contempt subject only to said order as it relates to future payments required thereby.

4. Plaintiff has been required to engage an attorney to prosecute her petition herein.

5. A reasonable fee for the services of said attorney is \$250.00.

6. That the plaintiff is well qualified both from the standpoint of formal education and years of experience in her chosen field of endeavor to earn sufficient funds to adequately maintain herself. This was demonstrated throughout the time of the marriage and is particularly true now that she has again taken full-time employment, her employment at the time of the Decree having been only part-time, and the record of the default divorce hearing revealing that at said time plaintiff was under a doctor's care and presented a doctor's statement in support of a motion to shorten time for obtaining a divorce because of illness. At the present time plaintiff is in good health.

7. That the agreement of the parties and the subsequent award of alimony was based in part on the recog-

nition of plaintiff's efforts to assist defendant in obtaining his medical education and the Court finds that her efforts were substantial in this regard since defendant's internship and residency years are deemed to be just as important to his over-all education as the more formal education obtained while in medical school, however, defendant's formal education was substantially completed prior to marriage to the plaintiff, the marriage having occurred near Christmas of 1949 and the defendant having graduated from medical school the following Spring.

8. That the plaintiff was reasonably entitled to alimony for a given period of time sufficient to permit her to properly adjust to single life; as to the award and amount thereof at the time of the divorce decree, this Court makes no finding; however, to continue to allow permanent alimony in the amount provided for in the Decree in light of the present situation and circumstances of parties is unjust, unnecessary, and not equitable and the Decree should be consequently modified to provide for the payment of said amounts of alimony through the month of May, 1971, a period of four years in all, said payments to cease thereafter, except for the payment of the nominal sum of \$1.00 per year necessary to preserve the right of plaintiff to future assistance should a true need arise.

9. Plaintiff's actual earnings from employment from consultation work or fees as the same might be designated and from investments are sufficient to adequately maintain her without dependence upon defendant.

10. Since the Divorce Decree herein, the defendant is remarried to a woman who has one child whose father is deceased, and defendant supports said wife and child; and at the present time the plaintiff is a single woman.

11. Since the Divorce Decree herein, defendant's costs of doing business has substantially increased; his income has increased but not commensurate with the increase in cost of doing business.

12. Plaintiff's income from employment, consultation work and investments is substantially higher than at the time of the Divorce Decree.

13. Plaintiff, by the Divorce Decree, was assigned life insurance policy No. 316060 in the sum of \$50,000.00, double indemnity, on defendant's life with permission by the property settlement agreement to "convert" or "replace" the same with a different type, or other insurance policy; subsequently plaintiff purportedly acting under this clause but with defendant's consent, obtained a new \$60,000.00 double indemnity life insurance policy with a different insurance company on defendant's life retaining the old policy and neither replacing nor canceling the old policy. Defendant has requested the Court to terminate plaintiff's rights under the Divorce Decree to maintain policies on defendant's life; however, defendant has failed to present adequate evidence to justify the Court in so doing.

14. Substantial changes in the circumstances and situation of parties hereto have occurred since the date of the Divorce Decree.

## CONCLUSIONS OF LAW

(1) That the defendant is in contempt of the Court's prior alimony order as set forth in the Decree of Divorce.

(2) That the plaintiff was reasonably entitled to alimony for a given period of time sufficient to permit her to properly adjust to single life; however, to continue to allow permanent alimony in the amount provided for in the Decree in light of the present situation and circumstances of parties, is unjust, unnecessary, and not equitable and the Decree should be consequently modified to provide for the payment of said amounts of alimony through the month of May, 1971, a period of four years in all, said payments to cease thereafter, except for the payment of the nominal sum of \$1.00 per year necessary to preserve the right of plaintiff to future assistance should a true need arise.

(3) This court determined that defendant should be sentenced to ten days in the County Jail as punishment for contempt, a stay of execution to be entered and defendant given an opportunity to purge himself of said contempt by making all future payments of alimony promptly when due, and provided further, that he make immediate arrangements to pay all of the alimony arrearage due to plaintiff, including the amounts thereof represented by judgments obtained. Since the date of the hearing and decision herein, defendant has paid such arrearage and judgments and should consequently be purged of such contempt subject only to making future payments in accordance with said decision.

(4) The plaintiff should be restrained from levying any execution herein so long as defendant abides by the conditions set forth in paragraph three above.

(5) That plaintiff should be awarded attorney fees in the amount of \$250.00 in connection with the contempt matter.

(6) Plaintiff's maintenance of life insurance on defendant's life should not, at this time, be altered or prevented by the Court.

DATED this 2nd day of February, 1971.

GORDON R. HALL, JUDGE

Duly attested and filed February 2, 1971.

(Title of Court and Cause)

#### NOTICE OF APPEAL

198        The plaintiff, Lee C. Felt, hereby appeals to the Supreme Court of the State of Utah from an Order of the Court, modifying the Decree herein in favor of the defendant and against the plaintiff and from this Court's Order denying plaintiff's timely motion for a new trial entered on February 2, 1971.

DATED this 16th day of February, 1971

VAN COTT, BAGLEY,  
CORNWALL & McCARTHY  
Attorneys for Plaintiff

Duly verified and filed February 17, 1971.

## CLERK'S CERTIFICATE

2 I, W. STERLING EVANS, Clerk of the above entitled Court, do hereby certify that the hereto attached files contain all the original papers as requested by Designation on file herein, filed in the Court in the above entitled case, including the Notice of Appeal filed on February 17, 1971. I further certify that the above described documents constitute the Judgment Roll and that the same is a true and correct transcript of the record as it appears in my office.

I further certify that an Undertaking on Appeal in due form has been properly filed and that the same was filed on February 17, 1971.

I further certify that said Judgment Roll is this date transmitted to the Supreme Court of the State of Utah, pursuant to such appeal.

WITNESS my hand and the seal of said Court at Salt Lake City, Utah, this 30th day of March, 1971.

s/W. Sterling Evans  
Clerk Third District Court

Duly certified and filed March 30, 1971.