

2001

# Jeanny Louise Davis v. Johnny Mack Davis : Brief of Appellant

Utah Court of Appeals

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James Woodall; Littlefield & Peterson.

Rosemond G. Blakelock.

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IN THE UTAH COURT OF APPEALS

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**JEANNY LOUISE DAVIS,**  
Petitioner/appellee,  
vs.

VS.

**JOHNNY MACK DAVIS,**  
Respondent/appellant.

Priority No. 15

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**BRIEF OF APPELLANT**

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On Appeal from Decree of Divorce  
entered in the Eighth Judicial District Court  
of Uintah County, Utah  
Judge John R. Anderson

Rosemond G. Blakelock  
305 East 300 South  
Provo, Utah 84606

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	)	
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	)	<b>BRIEF OF APPELLANT</b>
Petitioner/appellee,	)	
	)	
vs.	)	
	)	Appellate No. 20010226
<b>JOHNNY MACK DAVIS,</b>	)	
	)	
Respondent/appellant.	)	
	)	

VS.

## BRIEF OF APPELLANT

Appellate No. 20010226

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Rosemond G. Blakelock  
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## **JURISDICTION**

The Court of Appeals has jurisdiction over this matter pursuant to Utah Code Ann., Sec. 78-2a-3(2)(i).

## **STATEMENT OF ISSUES**

Issue on Appeal. The issues presented to the Court for review are (1) whether the trial Court abused its discretion in awarding petitioner alimony in excess of her needs, (2) in failing to divide the retirement assets equally, and (3) in ordering respondent to pay petitioner's attorney's fees.

Standard of Review. Awards of spousal support are reviewed for abuse of discretion. Paffel v. Paffel, 732 P.2d 96, 100 (Utah 1986). The same standard is applicable to the trial court's division of property. Sorensen v. Sorensen, 769 P.2d 820, 823 (Utah App. 1989). The standard of review of the reasonableness of an award of attorney's fees is "patent error or clear abuse of discretion." Valcare v. Fitzgerald, 961 P.2d 305, 316 (Utah 1998).

## **STATUTORY AND CONSTITUTIONAL PROVISIONS**

A. Section 30-3-5(1), Utah Code Ann.: "When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties."

B. Section 30-3-5(7), Utah Code Ann.:

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

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

### **STATEMENT OF THE CASE**

The parties were married on September 4, 1964. They had five children, all of whom were emancipated prior to the parties' separation. At the time of trial, petitioner ("Jeanny") was employed by the Bureau of Land Management. She earned \$2,274 per month. Respondent ("Johnny") was employed as a cabinet maker. He earned \$4,507 per month.

Following bifurcation, the parties stipulated to a partial division of real and personal property, leaving five issues unresolved for trial:

- a. Jeanny's request for an eight acre parcel of the farm property awarded to Johnny;
- b. the division of retirement assets;
- c. the disposition of a bank account with approximately \$10,000 on deposit;
- d. Jeanny's request for alimony; and
- e. attorney's fees.

Except for the retirement assets, the Court divided the real and personal property in a manner that favored Jeanny, and then attempted to equalize this

discrepancy by giving Johnny \$33,400 in "credits" against his alimony obligation, which the Court ordered Johnny to pay at the rate of \$1,000 per month for ten years.

Addressing the retirement assets separately, the Court awarded each party his or her retirement accounts. This left Johnny with his 401(k) account valued at \$6,731. Jeanny received her Thrift Savings Account, which was valued at \$51,385, her pension with an anticipated value of \$150 per month.<sup>1</sup> This division gave Jeanny 88% of the retirement assets that existed at the time of trial, plus her pension.

The Court then ordered Johnny to pay \$2,500 of Jeanny's attorney's fees.

## **ARGUMENT**

1. The Court abused its discretion in awarding Jeanny alimony in excess of her needs.

The Court has broad discretion in making an alimony award, but it must exercise that discretion within appropriate legal standards. In Bell v. Bell, 810 P.2d 489 (Utah App. 1991), the Utah Court of Appeals held that it is an abuse of discretion for a court not to consider each of three factors set forth in Jones v. Jones, 700 P.2d 1072 (Utah 1985) in determining a spouse's need for alimony. Those factors are (1) the receiving spouse's reasonable and necessary needs, (2) the receiving spouse's ability to support him- or herself, and (3) the paying spouse's ability to make up the

---

<sup>1</sup>. Both parties had also liquidated retirement assets postseparation. Johnny cashed in an annuity worth \$5,766. Jeanny liquidated a joint IDS account worth \$17,501. No consideration was given to any of the funds that had been spent.



shortfall, if any. In considering these factors, the trial court is required to make adequate factual findings on all material issues unless the facts in the record are "clear, uncontroverted, and capable of supporting only a finding in favor of the judgment." Haumont v. Haumont, 793 P.2d 421, 424 (Utah App. 1990) (quoting Throckmorton v. Throckmorton, 767 P.2d 121, 124 (Utah App. 1988)).

Here the Court made no findings regarding the Jones factors. Rather, it simply stated that "alimony of \$1,000 per month is appropriate." This arbitrary figure was inconsistent with the evidence presented at trial, which established that Jeanny's unmet needs were no more than \$178 per month.

Viewing the evidence in a light most favorable to Jeanny, her needs were \$1,775 per month. This was set forth in her Financial Declaration, which was "received as a pleading" (Tr. 29). In it, she claimed to need \$2,210 per month, but she admitted that this figure included the \$335 payment on the farm property that was awarded to Johnny (Tr. 70). Ignoring all of the challenges Johnny made to the rest of Jeanny's claims, her monthly needs were therefore no more than \$1,775.

Jeanny's income was established by her wage stub (Exh. 5). It showed that she netted \$632.08 every two weeks, or \$1,369.51 per month. In addition to this figure, however, Jeanny was making voluntary contributions to her Thrift Savings Plan of \$104.96 every two weeks, or \$227.41 per month (Tr. 58 and 71). Adding this to her net income, she had \$1,596.92 available to meet her monthly needs.

Subtracting Jeanny's income of \$1,596.92 from her budget of \$1,775.00, she would be left with unmet needs of \$178.08. This is the maximum amount of alimony that could have been awarded based on the evidence presented to the Court.

For the purposes of this appeal, Johnny's ability to pay is conceded.

2. The Court abused its discretion in failing to divide the retirement assets equally.

Absent special circumstances, property accumulated by the parties during the marriage should be equally divided. Maxwell v. Maxwell, 754 P.2d 84, 86-87 (Utah App. 1990). The court ignored this principle, apparently deciding to give Jeanny virtually all of the retirement assets because she had earned them: "She's put that money in her retirement. To divide that equitably, I'm going to give it to her ... perhaps he ought to get some credit for that, but I'm just not going to give him any." Tr. 129-30.

Johnny was an equal partner in this marriage; the distribution of marital assets, including retirement assets, should reflect that fact. The trial court's division of retirement assets, in which Jeanny received 88% of the total, was an abuse of discretion.

3. The Court abused its discretion by ordering Johnny to pay \$2,500 of Jeanny's attorney's fees.

The decision to award attorney's fees must be based on evidence of the reasonableness of the requested fees, the financial need of the receiving spouse, and the ability of the other spouse to pay. Bell v. Bell, 810 P.2d 489, 493 (Utah App. 1991).

Here the court ordered Johnny to pay \$2,500 of Jeanny's fees without addressing any of these factors. Jeanny testified that she had paid \$3,000 in fees (Tr. 44). During closing arguments, her counsel indicated that this figure was actually \$2,500, and this was the total amount that had been billed (Tr. 113-14).

There was no evidence of Jeanny's need. To the contrary, the evidence was that Jeanny had virtually all of the marital funds in her possession, and no need for assistance from Johnny.

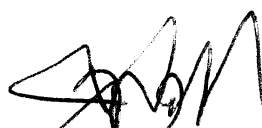
Jeanny testified that since the parties' separation, she had sold Johnny's boat and swather for \$26,000 (Tr. 53). Half of this money was unaccounted for. The other half was placed "in escrow" for Johnny (Tr. 52). By the time of trial, however, Jeanny had changed her mind and decided to keep it all for herself (Tr. 52-53). In addition to this, she withdrew \$11,000 and \$6,501 from a joint mutual fund account in November 1998 (Tr. 55) by forging Johnny's name to the checks (Tr. 56, Exh. 10).

Jeanny was allowed to keep all of this money. In the absence of established need, it was error for the court to order Johnny to pay any of Jeanny's fees.

## CONCLUSION

Johnny requests that this matter be remanded with specific instructions to the trial court to enter findings which are consistent with the evidence. Jeanny's entitlement to alimony is no more than \$178 per month. Johnny is entitled to one-half of the retirement assets, including the pension. Finally, because there was no evidence of need on Jeanny's part, she has no entitlement to attorney's fees.

DATED this 11 day of May 2001.



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JAMES H. WOODALL  
Attorney for appellant

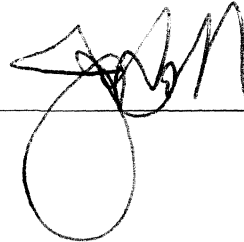
### **ADDENDUM**

1. Decree of Divorce dated February 22, 2001.
2. Findings of Fact and Conclusions of Law dated February 22, 2001
3. Transcript of Court's ruling from the bench dated July 6, 2000.

**CERTIFICATE OF DELIVERY**

I certify that I caused two copies of the foregoing **BRIEF OF APPELLANT** to be delivered to the following on May 12, 2001:

Rosemond G. Blakelock  
305 East 300 South  
Provo, Utah 84606



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## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Case No. 98-4800202 DA

Judge John R. Anderson

\* \* \* \* \*

The parties advised the Court that they had reached a partial stipulation, which included the following terms:

### **Real Property**

1. Jeanny shall be awarded as her sole and exclusive property the residence located at 3067 South 500 West, Vernal, Utah, including approximately 3 acres of land. This property is unencumbered by debt, and is valued at \$174,000.

2. Johnny shall be awarded as his sole and exclusive property the farm located at 2900 South 500 West, Vernal, Utah, which consists of approximately 46.57 acres, subject to Jeanny's request for an eight acre parcel of this property. This property is valued at \$134,000. Pursuant to the agreement of the parties, the farm is to be sold, with all proceeds awarded to Johnny.

### **Personal Property**

3. Johnny shall be awarded as his sole and exclusive property the following:

- a. The bale wagon, valued at \$3,000
- b. The hay baler, valued at \$4,000
- c. The Case 1070 tractor, including the disc, plows, and brush hog. These items are owned by Johnny's parents, and no value is assigned to them.
- d. The horse trailer, valued at \$1,000
- e. The utility trailer, valued at \$1,000
- f. All power and hand tools, and all woodworking equipment in the shop at the residence, valued at \$5,000.
- g. The parties' four horses, saddles, and tack
- h. The grand piano
- i. .50 caliber muzzleloading rifle, valued at \$175
- j. Winchester .22 lever action rifle, valued at \$225
- k. Winchester .32 lever action rifle, valued at \$200
- l. Marlin 12 gauge shotgun, valued at \$150
- m. Smith & Wesson 7mm magnum rifle, valued at \$500
- n. Craig 30-40 rifle, valued at \$125



- o. Smith & Wesson .357 magnum pistol, valued at \$300
- p. The leasehold interest in the 2000 GMC pickup truck
- q. The 1958 Chevrolet Impala automobile, valued at \$4,500
- r. The 1985 Pontiac Fiero automobile, valued at \$3,232.50

4. Jeanny shall be awarded as her sole and exclusive property the

following:

- a. The tiller, weed eater, and two mowers, valued at \$500
- b. Household furniture, valued at \$5,000
- c. The large freezer, valued at \$200
- d. The small freezer, valued at \$200
- e. The upright piano, valued at \$1,000
- f. The 1995 Chevrolet pickup truck, valued at \$11,132.50.

5. The Court approved the partial stipulation. The parties advised the

Court that the following items remained in dispute:

- a. Jeanny's request for an eight acre parcel of the farm;
- b. The division of retirement assets;
- c. The disposition of a bank account with approximately \$10,000 on deposit;
- d. Jeanny's request for alimony; and
- e. Jeanny's request for attorney's fees.

The Court, having heard the testimony of the parties, and having considered the evidence presented, makes the following Findings of Fact:

6. Jeanny's request for a portion of the farm is denied.

7. The Court finds that the value of the real and personal property awarded to Jeanny is \$192,000, and the real and personal property awarded to Johnny is \$165,000.

The difference is \$27,000, which shall be characterized as a credit to Johnny.

8. Jeanny may retain the \$6,100 that remains on deposit in the American Express IDS account, but Johnny shall be awarded that amount as an additional credit, plus \$300 for the appraisal fees.

9. The Court believes that alimony of \$1,000 per month is appropriate, beginning with the month of July 2000 and continuing until the first of the parties attains the age of sixty-five years. As of the date of trial, both parties are fifty-five years old, making this a ten year alimony award. Johnny shall have the option of paying this in a lump-sum, discounted to present value at the Federal Funds rate of 6.54%, or paying it monthly. Johnny shall have until July 6, 2001 to make this election. In any event, Johnny is entitled to credits of \$33,400, which shall be characterized as prepaid alimony.

10. Each party shall retain the retirement and pension accounts in his or her name. Specifically, Johnny shall be awarded his 401(k) account at Utah Retirement Systems, valued at \$6,730.95, the Horace Mann annuity, valued at \$5,765.80, and his Utah Retirement Systems pension. Jeanny shall be awarded her Federal Retirement Thrift Savings account, valued at \$51,385.40, the American Express IDS account, subject to Johnny's credit as set forth above, and her Federal Retirement Systems pension. Equitably, perhaps Johnny ought to get a portion of Jeanny's retirement assets, but the Court declines to give him any of it based on the Court's finding that Johnny is trained in many trades and capable of working, where Jeanny, after thirty-five years of marriage, is at a point in her life where she needs that retirement for her security.

11. All remaining Series EE Savings Bonds shall be divided equally. The parties shall be ordered to cooperate with each other in identifying these bonds and dividing them equally, to include requesting an itemized list of bonds issued in the names of both parties from the Treasury Department.

12. Johnny is ordered to pay Jeanny \$2,500 for the attorney's fees she has incurred in this matter.

DATED this 16 day of Feb 2001.

BY THE COURT:

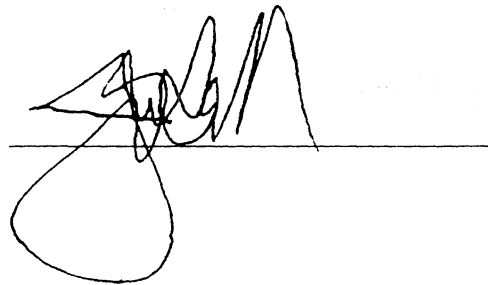
A handwritten signature in black ink, appearing to read "John R. Anderson", is written over a horizontal line. The signature is fluid and cursive.

JOHN R. ANDERSON  
DISTRICT COURT JUDGE

### **CERTIFICATE OF MAILING**

I certify that I mailed a true and correct copy of the foregoing FINDINGS OF  
FACT AND CONCLUSIONS OF LAW to the following on January 29, 2001:

Rosemond G. Blakelock  
305 East 300 South  
Provo, Utah 84606

A handwritten signature in black ink, appearing to read "Rosemond G. Blakelock", is written over a horizontal line. The signature is stylized with large, sweeping loops and a prominent circular flourish at the bottom left.

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DISTRICT COURT  
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FEB 3 1964  
copy

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## DECREE OF DIVORCE FOLLOWING BIFURCATION

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Case No. 98-4800202 DA

Judge John R. Anderson

\* \* \* \* \*

1. Jeanny is awarded as her sole and exclusive property the residence 7 South 500 West, Vernal, Utah, including approximately 3 acres of land. This encumbered by debt, and is valued at \$174,000.

2. Johnny is awarded as his sole and exclusive property the farm located at 2900 South 500 West, Vernal, Utah, which consists of approximately 46.57 acres. This property is valued at \$134,000. The farm is to be sold, with all proceeds awarded to Johnny.

3. Johnny is awarded as his sole and exclusive property the following:

- a. The bale wagon, valued at \$3,000
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- d. The horse trailer, valued at \$1,000
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- f. All power and hand tools, and all woodworking equipment in the shop at the residence, valued at \$5,000.
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4. Jeanny is awarded as her sole and exclusive property the following:

- a. The tiller, weed eater, and two mowers, valued at \$500
- b. Household furniture, valued at \$5,000
- c. The large freezer, valued at \$200
- d. The small freezer, valued at \$200
- e. The upright piano, valued at \$1,000
- f. The 1995 Chevrolet pickup truck, valued at \$11,132.50.

5. Johnny is awarded a credit of \$27,000, representing the difference between the value of the real and personal property he has been awarded, and the value of the real and personal property Jeanny has been awarded. Jeanny may retain the \$6,100 that remains on deposit in the American Express IDS account, but Johnny shall be awarded that amount as a additional credit, plus \$300 for the appraisal fees.

6. Johnny is ordered to pay Jeanny \$1,000 per month as alimony, beginning with the month of July 2000 and continuing until the first of the parties attains the age of sixty-five years. As of the date of trial, both parties are fifty-five years old, making this a ten year alimony award. Johnny shall have the option of paying this in a lump-sum, discounted to present value at the Federal Funds rate of 6.54%, or paying it monthly. Johnny shall have until July 6, 2001 to make this election. In any event, Johnny is entitled to credits of \$33,400, which shall be characterized as prepaid alimony.

7. Each party shall retain the retirement and pension accounts in his or her name. Specifically, Johnny shall be awarded his 401(k) account at Utah Retirement Systems, valued at \$6,730.95, the Horace Mann annuity, valued at \$5,765.80, and his Utah Retirement Systems pension. Jeanny shall be awarded her Federal Retirement Thrift Savings account, valued at \$51,385.40, the American Express IDS account, subject to Johnny's credit as set forth above, and her Federal Retirement Systems pension.

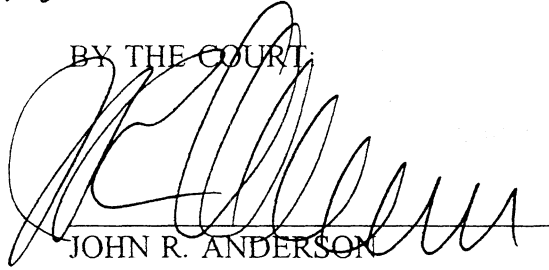
8. All remaining Series EE Savings Bonds shall be divided equally. The parties are ordered to cooperate with each other in identifying these bonds and dividing them

equally, to include requesting an itemized list of bonds issued in the names of both parties from the Treasury Department.

9. Johnny is ordered to pay Jeanny \$2,500 for the attorney's fees she has incurred in this matter.

DATED this 16 day of Feb 2001.

BY THE COURT:



JOHN R. ANDERSON  
DISTRICT COURT JUDGE



5       THE COURT: I appreciate the way this case has  
6 been handled, counsel, and I appreciate your  
7 professionalism on this.

8       Substantively, what I'm going to do is dissolve  
9 or--dissolve the marriage or award the property by  
10 determining that alimony is appropriate, but somehow .  
11 calculate the future worth of the difference in  
12 incomes, based on a present award, and somehow factor  
13 that into the difference of the division of the marital  
14 assets.

15       It seems to the Court that a 35-year marriage, and  
16 with the abilities shown here by the Respondent that he  
17 has many trades, he has had a successful career with  
18 Chevron and with Costal. He's also pretty adept at  
19 running a swather for--in the summer months. He's got  
20 many trades. The woodworking is probably something  
21 that appeals to him and probably something that he will  
22 continue to do. My estimate is that's what he likes to  
23 do and probably, at his age, that's what he'll continue  
24 to do. I think that, if he wanted to, he could make  
25 more income--that's subjective, though, and there's no

1 real evidence in the record to support that.

2 A 35-year marriage, I think that the standard of  
3 living and the difference in income justifies an  
4 alimony award in this case. There's been a divergence  
5 of testimony in terms of the cash that was given over,  
6 but absent receipts or canceled checks, or so forth, I  
7 can only believe the side that's telling me it didn't  
8 happen. If, during the course of a divorce, an  
9 estranged husband is going to be paying cash to a  
10 spouse, his attorney should have advised him, or he'd  
11 better have enough common sense to put it in the form  
12 of a check or a receipt. He says he paid her a bunch  
13 of cash, she says he may or may not have--or he didn't,  
14 flat out. I'm going to give the Petitioner the benefit  
15 of the evidence on that one.

16 I think that attorney's fees award are  
17 appropriate. I think the fee is entirely reasonable,  
18 given the situation. I think that the Respondent has a  
19 lot more ability to earn income and to choose the way  
20 he'll earn the income than does the Petitioner. The  
21 Petitioner's stuck in her BLM job. I didn't hear any  
22 evidence about her educational background or other  
23 skills, but it's my belief, based on the evidence, that  
24 that's probably what she's going to do the rest of her  
25 life.

1       What I'm going to do, though, is--and I'll allow  
2 counsel to invite me to rule on issues I haven't  
3 covered--I've given you the substance of what I want to  
4 do. I think she's entitled to at least \$1,000 a month  
5 alimony. And based on that figure, I want counsel to  
6 go to your actuarial tables. I didn't hear in the  
7 record the ages of the parties, but I think that  
8 alimony should continue until one of the parties is  
9 able to retire at the age of 62 or 65--probably 65, in  
10 his case. Give me the present value of that kind of  
11 money, payable now. Work that into the difference on  
12 the marital asset equation of about--and I'll find the  
13 difference is \$192, as compared to \$165. That figure  
14 will have to come from the--if--I guess there's a tax  
15 benefit to awarding it that way. There's some  
16 advantage to the Petitioner in getting a lump sum,  
17 that's what she's asked for. She'll have a credit of  
18 the first year or two, or two and a half years, at  
19 least, of the difference in marital assets. That other  
20 figure, I guess, needs to be paid. I'll give him a  
21 credit for the \$6,100 cash that remains in the bank  
22 account. I'll give him a credit for half of the  
23 appraisal fee. And I guess, off the top of my head,  
24 without knowing the ages of the parties, I have no  
25 realm of what that number would be, and I'll either

1 convert that to a monthly payment or a lump sum payment  
2 and give the Petitioner the option of exercising that,  
3 giving the Respondent enough time to be able to finance  
4 that, sell the farm, or get it paid.

5 MS. BLAKELOCK: Your Honor, just for your record,  
6 both parties are 55, so you're talking 10 years.

7 THE COURT: Okay. Well, present value then of  
8 \$120,000 would probably be around \$75,000, \$80,000--I  
9 don't know, I'm guessing.

10 MR. WOODALL: What kind of discount rate would the  
11 Court use?

12 THE COURT: You've got to use the one in *The Wall*  
13 *Street Journal* that everybody uses.

14 MR. WOODALL: Okay.

15 MS. BLAKELOCK: And can I ask a question? When  
16 you're saying a credit of 6,100 to him and half the  
17 appraisal fee, so it's--and the difference between 192  
18 and 65, which is 27,000, what I'm understanding you to  
19 say is, the difference between 192,000, 165,000 is  
20 27,000, plus you add into that 6,100 for the credit of  
21 the money in the account, plus 300, and then that would  
22 be the first amount of alimony he has paid to her. And  
23 then following that--

24 THE COURT: I'm not following you.

25 MS. BLAKELOCK: Okay. Well, I'm just trying to

1 restate what you said--

2 THE COURT: Okay.

3 MS. BLAKELOCK: --so I know if I understand it.

4 THE COURT: Conceptually, I think, if you compare  
5 165 with 192, she's ahead "x" dollars.

6 MS. BLAKELOCK: Is 27,000.

7 THE COURT: All right.

8 MR. WOODALL: That didn't include the 10,000 or  
9 the retirement money. We still need to talk about  
10 that, but--

11 THE COURT: Oh, okay.

12 MR. WOODALL: Yeah, right.

13 THE COURT: Yeah. And my intent is to give her  
14 the retirement.

15 MS. BLAKELOCK: Okay.

16 MR. WOODALL: Okay.

17 MS. BLAKELOCK: Okay.

18 THE COURT: And he doesn't get--he gets credit for  
19 the retirement that he's taken out and spent.

20 MR. WOODALL: Okay.

21 THE COURT: I didn't take that into account.

22 She's put that money in her retirement. To divide that  
23 equitably, I'm going to give it to her. The federal  
24 government has a formula to divide that--neither one of  
25 them would be entitled to it. I don't know. I've

1 worked through that before and it seems to me that,  
2 equitably, perhaps he ought to get some credit for  
3 that, but I'm just not going to give him any. He  
4 doesn't get any credit for the profit sharing--I'm  
5 going to give her that.

6 MS. BLAKELOCK: Okay.

7 THE COURT: She doesn't get it 'til she retires.  
8 There's no way she can cash it out. The federal  
9 government doesn't even like to divide it or deal with  
10 it now.

11 MR. WOODALL: Excuse me. What does the Court mean  
12 by no credit? We don't even consider it in the totals?

13 THE COURT: No.

14 MS. BLAKELOCK: Okay.

15 THE COURT: Correct me if I'm wrong, but I assume  
16 that that was not--is that part of the evaluation and  
17 the comparison you quoted, counsel, of 192, as opposed  
18 to 165?

19 MR. WOODALL: No.

20 MS. BLAKELOCK: You--that was not your--

21 MR. WOODALL: No.

22 MS. BLAKELOCK: --you did not include that, am I  
23 correct?

24 MR. WOODALL: No, no.

25 MS. BLAKELOCK: Yeah. No. He just add--I think

1 we both agreed that that was the difference in the real  
2 personal property--

3 THE COURT: Okay.

4 MS. BLAKELOCK: --which is 27,000. If I might  
5 rephrase my question--so, assuming that that's 27,000  
6 then that's credited, there's a difference of that,  
7 then you also want credited to him 6,100 that's left in  
8 the account, and half of the appraisal fee, which is  
9 300, correct?

10 THE COURT: Yes.

11 MS. BLAKELOCK: And then we--are we to take the  
12 27,000, plus the 6,100, plus the 300--that's a total of  
13 33,427 difference between them. Do I then divide that  
14 in half to get the amount that he's credited for his  
15 alimony, which is \$16,713? Is that what you're saying?  
16 The total difference between them being 34,000, half of  
17 that would be 16,000, so he gets 16,000 credit for  
18 alimony payments--future alimony payments? I'm not  
19 trying to argue, I'm just trying to understand your  
20 ruling, so that opposing counsel and I are both on the  
21 same page here.

22 THE COURT: Okay.

23 MR. WOODALL: If we're--

24 MS. BLAKELOCK: I just--

25 MR. WOODALL: I don't understand why we're giving

1 her all of the 51,000, without any consideration, but  
2 charging him half of 6,000?

3 MS. BLAKELOCK: No, I'm just--I'm not arguing,  
4 I'm just trying to understand what the Court's saying.

5 THE COURT: Okay. All right.

6 MS. BLAKELOCK: I'm just trying to get--to repeat  
7 it back, because I'm going to write the document,  
8 that's all.

9 THE COURT: I think he gets a full credit.

10 MS. BLAKELOCK: Okay.

11 THE COURT: He gets a full credit for--

12 MS. BLAKELOCK: Okay.

13 THE COURT: --the 6,100 cash and one-half the  
14 appraisal fee.

15 MS. BLAKELOCK: Okay, so that's 33,400. So he  
16 gets--just to repeat to the Court--33,400 credit for  
17 alimony payments?

18 THE COURT: Yes.

19 MS. BLAKELOCK: Okay. All right. Jay, is that  
20 clear to you, so we can work on this?

21 MR. WOODALL: Yeah, just add it up.

22 MS. BLAKELOCK: Okay. Yeah, make sure. 27,000,  
23 6,100 and 300.

24 THE COURT: She gets the federal profit-sharing  
25 plan--



1 MS. BLAKELOCK: Okay.

2 THE COURT: --totally. And I'm going to rely on  
3 counsel to give me a number coming from each camp.

4 MS. BLAKELOCK: Okay.

5 THE COURT: Or if you can agree on one, fine, and  
6 then that can be payable subject to agreement by the  
7 parties at the Petitioner's option. Let's say he's got  
8 a--let's--I'll give the Respondent a year to get his  
9 finances arranged to exercise the option to either pay  
10 it monthly or in a lump sum, at the discounted rate.  
11 That isn't what I said before--

12 MS. BLAKELOCK: Okay.

13 THE COURT: --because I think that--but I think  
14 I've changed my mind, and I ought to--

15 MS. BLAKELOCK: Okay.

16 THE COURT: --I ought to leave that as an option.

17 MS. BLAKELOCK: Okay. Then--

18 THE COURT: There'll be tax--there'll be a tax  
19 difference to both parties, but I think that probably  
20 the Petitioner has asked for that because she doesn't  
21 want to deal with him. He may have some distress in  
22 getting the farm sold in that length of time, there may  
23 be some other problems, so I'm going to leave it in the  
24 form of an option that's available--I'll give him a  
25 year to exercise it.

1 MS. BLAKELOCK: Okay. To restate, for both  
2 counsel, Respondent's given--there's an award of  
3 alimony in the amount of \$1,000 a month for 10 years,  
4 assuming that they're both 55 now and it's until the  
5 age of 65. He's given a credit on the first \$33,400  
6 for alimony. He's given a year to exercise, at  
7 Petitioner's option, within one year, whether it's  
8 payable at one lump sum, the discounted figure, which  
9 we're both going to agree on and provide to the Court,  
10 or if we disagree, we'll provide those figures to the  
11 Court, or--that's a lump sum payout, perhaps at the  
12 time of the sale of the property, or the payments will  
13 then continue on, if there's no buyout, at \$1,000 a  
14 month for the next 10 years. Is that stated properly?

15 THE COURT: Yeah, except retroactive to this--to  
16 probably today.

17 MS. BLAKELOCK: Okay. Okay.

18 THE COURT: Is there anything else that you want  
19 me to rule on?

20 MS. BLAKELOCK: Just an understanding, Your Honor.  
21 You said--so I can put it in the figure--you said--

22 THE COURT: Okay, the farm, the farm. I didn't  
23 talk about the farm.

24 MS. BLAKELOCK: Yes.

25 THE COURT: She doesn't get the lot.

1 MS. BLAKELOCK: Okay.

2 THE COURT: That would be impractical, I think--

3 MS. BLAKELOCK: Okay.

4 THE COURT: --and probably affect the  
5 marketability of the property and, if we believe what  
6 he said, he may have a problem with the salinity  
7 financing.

8 MS. BLAKELOCK: Okay. And if I just might ask one  
9 more question? I apologize. You said attorney's fees  
10 were appropriate. Her testimony was 3,000--was that  
11 the award? You never actually said the amount.

12 THE COURT: I said your statement--

13 MS. BLAKELOCK: But--

14 THE COURT: --\$2,500 was reasonable.

15 MS. BLAKELOCK: Okay. Okay, those were my fees--  
16 she also had an additional 500. I was just trying to  
17 clarify that. So, it's 2,500? Okay. Thank you. I'll  
18 prepare the documents and send them over to opposing  
19 counsel, and my figures on the present-day value.

20 THE COURT: Okay. I think, for the reasons I've  
21 stated, that that--I could support the ruling, and if  
22 there's any other questions you have, counsel, that  
23 would help you at this time, feel free to ask.

24 MR. WOODALL: Can I have some sort of a finding on  
25 the Court's reasoning behind awarding her the full

1 \$51,000 thrift savings, without any consideration?

2 THE COURT: Yes. My feeling is that he is trained  
3 in many trades, and he's going to work. He is going to  
4 be having to work, health permitting, and not relying  
5 on retirement. And maybe that's--now, based on my  
6 thinking, she is to a point in her life where, after  
7 35 years of marriage, she needs that retirement for her  
8 security. That's my reasoning, subjectively.

9 Mathematically, for the Court of Appeals' benefit, I  
10 would think that, all factors considered, I'm still  
11 coming out with a fairly equal division, given the tax  
12 benefit that he's going to get from paying the alimony,  
13 either monthly or in a lump sum.

14 MR. WOODALL: Okay. One further question--she did  
15 testify that, to the extent there are any double "E"  
16 savings bonds, she'll split them. Could that be part  
17 of the (inaudible)?

18 THE COURT: Sure, yeah.

19 MS. BLAKELOCK: If any are found by either party?

20 MR. WOODALL: We'll just get a statement from the  
21 Treasury, whatever (inaudible).

22 MS. BLAKELOCK: Okay. But if any are held or  
23 found, it could be either one of them lost some?

24 THE COURT: What do you have to do to get lost  
25 ones replaced?

1 MR. WOODALL: Well, I've never done this, but I--  
2 you can notify the Treasury Department and they'll give  
3 you an accounting of what they've issued in your name  
4 and what's been surrendered (inaudible).

5 MS. BLAKELOCK: And I just--we'll word it, if any  
6 treasury or "T" bonds are held by either party, they'll  
7 be split equally.

8 THE COURT: She was buying some series "E" bonds,  
9 I think.

10 MS. BLAKELOCK: Series "E"?

11 THE COURT: Yeah. Whatever the bonds are, through  
12 her work.

13 MS. BLAKELOCK: Any bonds held by either party,  
14 they'll--in either party's name, will be split equally?  
15 Thank you.

16 THE COURT: Okay.

17 MS. BLAKELOCK: I'll prepare the documents, Your  
18 Honor.

19 THE COURT: If I get this back from the Court of  
20 Appeals because I did not make findings sufficient to  
21 award her her entire profit-sharing amount, I'll have  
22 time to think about it.

23 MS. BLAKELOCK: I'm sure we'll have additional  
24 hearings, if that occurs, Your Honor. Thank you.

25 THE COURT: Thank you, counsel.