

2001

Harris v. Harris : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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CRAIG JACK HARRIS,	:	REPLY BRIEF OF APPELLEE
	:	APPELLANT BONNIE HARRIS
Appellant,	:	
BONNIE HARRIS	:	Appeal No. 20010341-CA
	:	
Appellee.	:	

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This is a frivolous and malicious appeal by Mr. Harris from the trial court's denial of his motion for an order to show cause and from the trial court's order striking the redundant claims of Mr. Harris and improper and unlawful claims of people and entities not parties to the divorce proceedings between Mr. and Mrs. Harris.

Priority of Argument: 15

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FILED
COURT

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III JURISDICTION

Original jurisdiction of this appeal is vested in the Utah Court Appeals pursuant to the provisions of UCA §78-2a-3.

IV ISSUES FOR REVIEW

1. Did the trial court commit any error of fact or law when it denied Mr. Harris' motion or an order to show cause?

Standard of Review: These issues are a mixed standard of review; the legal issues are determined under a correctness standard.

Anesthesiologist Associates of Ogden vs. St. Benedict 852 P.2d 1030 (Utah App. 1993). The factual determinations are under a marshaling standard, abuse of discretion, Marshall vs. Marshall. 915 P.2d 508 (Utah App. 1996); Breinholt vs. Breinholt, 905 P.2d 877 (Utah App. 1995); Child vs. Child 967 P.2d 942 (Utah App. 1998).

2. Did the trial court commit any error of fact or law when it ruled the third parties not parties to the divorce proceeding between Mr. and Mrs. Harris could not litigate any claims in Mr. and Mrs. Harris divorce proceeding?

Standard of Review: These issues are a mixed standard of review; the legal issues are determined under a correctness standard.

Anesthesiologist Associates of Ogden vs. St. Benedict 852 P.2d 1030 (Utah App. 1993). The factual determinations are under a marshaling standard, abuse of discretion, Marshall vs. Marshall. 915 P.2d 508 (Utah App. 1996); Breinholt vs. Breinholt, 905 P.2d 877 (Utah App. 1995); Child vs. Child 967 P.2d 942 (Utah App. 1998).

3. Is Mr. Harris entitled to the relief he seeks in this appeal?

Standard of Review: These issues are a mixed standard of review; the legal issues are determined under a correctness standard.

Anesthesiologist Associates of Ogden vs. St. Benedict 852 P.2d 1030 (Utah App. 1993). The factual determinations are under a marshaling standard, abuse of discretion, Marshall vs. Marshall. 915 P.2d 508 (Utah App. 1996); Breinholt vs. Breinholt, 905 P.2d 877 (Utah App.

1995); Child vs. Child 967 P.2d 942 (Utah App. 1998).

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DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS

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78-2a-3. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary

(a) to carry into effect its judgments, orders, and decrees, or

(b) in aid of its jurisdiction

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer,

(b) appeals from the district court review of

i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies, and

ii) a challenge to agency action under Section 63-46a-12 1,

c) appeals from the juvenile courts,

d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony,

e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony,

f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony,

g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony,

h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity,

i) appeals from the Utah Military Court, and

cases transferred to the Court of Appeals from the Supreme Court

j) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction

k) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings

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Rule 12 URCP

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Rule 12. Defenses and objections.

(a) When presented. Unless otherwise provided by statute or order of the court, a defendant shall serve an answer within twenty days after the service of the summons and complaint is complete within the state and within thirty days after service of the summons and complaint is complete outside the state. A party served with a pleading stating a cross-claim shall serve an answer thereto within twenty days after the service. The plaintiff shall serve a reply to a counterclaim in the answer within twenty days after service of the answer or, if a reply is ordered by the court, within twenty days after service of the order, unless the order otherwise directs. The service of a motion under this rule alters these periods of time as follows, unless a different time is fixed by order of the court, but a motion directed to fewer than all of the claims in a pleading does not affect the time for responding to the remaining claims.

(1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after notice of the court's action,

(2) If the court grants a motion for a more definite statement, the responsive pleading shall be served within ten days after the service of the more definite statement.

(b) How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion or by further pleading after the denial of such motion or objection. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearings and determination thereof be deferred until the trial.

(e) Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty days after the service of the pleading, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of defenses. A party who makes a motion under this rule may join with it the other motions herein provided for and then available. If a party makes a motion under this rule and does not include therein all defenses and objections then available which this rule permits to be raised by motion, the party shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (h) of this rule.

(h) Waiver of defenses. A party waives all defenses and objections not presented either by motion or by answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15(b) in the light of any evidence that may have been received.

i) Pleading after denial of a motion. The filing of a responsive pleading after the denial of any motion made pursuant to these rules shall not be deemed a waiver of such motion.

j) Security for costs of a nonresident plaintiff. When the plaintiff in an action resides out of this state, or is a foreign corporation, the defendant may file a motion to require the plaintiff to furnish security for costs and charges which may be awarded against such plaintiff. Upon hearing and determination by the court of the reasonable necessity therefor, the court shall order the plaintiff to file a \$300.00 undertaking with sufficient sureties as security for payment of such costs and charges as may be awarded against such plaintiff. No security shall be required of any officer, instrumentality, or agency of the United States.

k) Effect of failure to file undertaking. If the plaintiff fails to file the undertaking as ordered within 30 days of the service of the order, the court shall, upon motion of the defendant, enter an order dismissing the action.

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Rule 56 URCP v- vi

Rule 56. Summary judgment.

For claimant. A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the

action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof

(b) For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof

(c) Motion and proceedings thereon. The motion, memoranda and affidavits shall be filed and served in accordance with CJA 4-501. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages

(d) Case not fully adjudicated on motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly

(e) Form of affidavits; further testimony; defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

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therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect, (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party, (4) the judgment is void, (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application, or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), or (3), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

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Rule 33 Utah Rules of Appellate Procedure:	6-7, 9, 11, 16, 19, 21-23

Rule 33. Damages for delay or frivolous appeal; recovery of attorney's fees.

(a) Damages for delay or frivolous appeal. Except in a first appeal of right in a criminal case, if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs, as defined in Rule 34, and/or reasonable attorney fees, to the prevailing party. The court may order that the damages be paid by the party or by the party's attorney.

(b) Definitions. For the purposes of these rules, a frivolous appeal, motion, brief, or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law. An appeal, motion, brief, or other paper interposed for the purpose of delay is one interposed for any improper purpose such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit only the party filing the appeal, motion, brief, or other paper.

(c) Procedures.

(1) The court may award damages upon request of any party or upon its own motion. A party may request damages under this rule only as part of the appellee's motion for summary disposition under Rule 10, as part of the appellee's brief, or as part of a party's response to a motion or other paper.

(2) If the award of damages is upon the motion of the court, the court shall issue to the party or the party's attorney or both an order to show cause why such damages should not be awarded. The order to show cause shall set forth the allegations which form the basis of the damages and permit at least ten days in which to respond unless otherwise ordered for good cause shown. The order to show cause may be part of the notice of oral argument.

(3) If requested by a party against whom damages may be awarded, the court shall grant a hearing.

VI
STATEMENT OF THE CASE

A
NATURE OF THE CASE

This is a frivolous appeal, filed by Mr. Harris, filed in bad faith, without any basis in fact or law, seeking to have the trial court's denial of his motion for an order to show cause reversed. Mr. Harris is also seeking to have the trial court's order striking the redundant and previously litigated claims of Mr. Harris concerning the transfer and value of assets to Mrs. Harris reversed. Additionally, Mr. Harris is seeking to have the trial court's order striking the improper claims by third parties, who were not parties to the divorce proceeding between Mr. and Mrs. Harris reversed and Mr. Harris is asking this Court to direct the trial court to enter summary judgment in his favor on his motion for an order to show cause.

B
COURSE OF PROCEEDINGS AND DISPOSITION IN THE TRIAL COURT

On December 20, 2000, Mr. Harris filed a motion for an order to show cause alleging that Mrs. Harris had received monies for assets she was awarded as her share of marital property in her divorce proceeding with Mr. Harris that was in excess of what she was awarded in the divorce proceeding. Mr. Harris also sought to have claims of third parties, not parties to the divorce proceeding between Mr. and Mrs. Harris litigated in the divorce proceeding. Mrs. Harris filed a Motion to Strike Mr. Harris motion for an order to show cause because Mr. Harris' claims concerning assets and amounts distributed to Mrs.

Harris had previously been litigated at a May 31, 2000, evidentiary hearing on Mr. Harris' contempt.

The trial court stuck all of Mr. Harris' claims but one and denied his motion for an order to show cause on that claim.

C

STATEMENT OF FACTS

1. Mr. Harris filed for divorce against Mrs. Harris September 20, 1995. (Record at page(s) 2).

2. By Stipulation of the parties, Norman/Loebbecke and Associates (hereinafter, "Norman/Loebbecke") of Salt Lake City, was appointed to do an evaluation of the marital assets of Mr. and Mrs. Harris. (Record at page(s) 270-273).

3. Norman/Loebbecke, was to perform the evaluation from information provided to them by the parties. (Record at page(s) 270-273).

4. Norman/Loebbecke subsequently issued a report that listed Mr. and Mrs. Harris' marital assets and liabilities and the values of the various assets. Based on this information, the court found that the net value of Mr. and Mrs. Harris' marital estate was \$975,273.00. Record at page(s) 629)

5. The Court used the net value after taxes as found by Brad Townsend of Norman/Loebbecke in making its property distribution. The court incorporated a Schedule A, Proposed Marital Asset and Liability Distribution, "as per Craig Harris," prepared by Norman/Loebbecke into its Supplementary Findings of Fact and Supplementary Decree of Divorce

when making its property distribution. (Record at page(s) 624)

6. Mr. Harris failed and refused to abide by the provisions of the Supplementary Decree of Divorce and refused to transfer to Mrs. Harris the assets she had been awarded by the trial court as her share of the marital property in the divorce proceeding with Mr. Harris. Because Mr. Harris failed and refused to transfer to Mrs. Harris the assets she was awarded by the trial court, Mrs. Harris filed a motion for an order to show cause, which was granted, and an evidentiary hearing was held on the order to show cause on May 31, 2001. (Record at page(s) 795).

7. At the May 31, 2001, evidentiary hearing, the trial court found Mr. Harris in contempt. (Record at page(s) 901)

8. At the May 31, 2001, evidentiary hearing, Mrs. Harris presented evidence and testimony concerning the values of the assets she was awarded by the trial court as her portion of the marital property and the amount of money in various accounts she was awarded as a part of her portion of the marital property. (Record at page(s) 900-901)

9. The trial court accepted the evidence and testimony offered by Mrs. Harris and ordered Mr. Harris to transfer to Mrs. Harris the assets and monies sought by Mrs. Harris in her Motion for an Order to Show Cause. (Record at page(s) 900-901)

10. Mr. Harris did not object to the substance or form of the order memorializing Mr. Harris' contempt and requiring Mr. Harris to transfer to Mrs. Harris the assets and monies sought by Mrs. Harris in her Motion for an Order to Show Cause, but rather he attempted to make

a part of the record documents specifically excluded by the trial court from the May 31, 2001, evidentiary hearing by attaching them to a document entitle Objection. (Record at page(s) 914-971)

11. Mr. Harris did not file a motion under Rule 50 URCP challenging the transfer of the assets and monies to Mrs. Harris. Likewise, Mr. Harris did not file a motion under Rule 60 URCP challenging the validity of the transfer of assets or monies to Mrs. Harris pursuant to the trial court's finding of contempt on the part of Mr. Harris. (Record at page(s) 12-95-1296)

12. On December 20, 2000, Mr. Harris filed a motion for an order to show cause a memorandum in support of the motion and a notice of hearing on the order to show cause. (Record at page(s) 1097-1246)

13. No order to show cause was ever issued with respect to Mr. Harris' motion for an order to show cause. (Record at page(s) 1285-1295)

14. In his motion for an order to show cause, Mr. Harris again attempted to litigate the distribution of assets to Mrs. Harris, the value of those assets and to pursue claims of his brother, sons, Aid Equipment and some unknown person or entity against Mrs. Harris. (Record at page(s) 1097-1244)

15. Mr. Harris and his counsel had been repeatedly told by the trial court that Mrs. Harris was awarded assets not a dollar value and that Mr. Harris could not litigate the claims of third parties in the divorce proceeding with Mrs. Harris. (Record at page(s) 628, 1282)

16. Because Mr. Harris was again seeking to re-litigate the validity of the transfer of assets to Mrs. Harris, seeking again to

argue that Mrs. Harris was awarded a dollar value in specific assets, rather than the assets themselves and seeking yet another time to litigate the claims of third parties in the divorce proceeding, Mrs. Harris filed a Motion to Strike Mr. Harris' motion for an order to show cause. (Record at page(s) 1247-1259)

17. A hearing was held on February 14, 2001, on Mr. Harris' motion for and order to show cause and on Mrs. Harris Motion to Strike the redundant claims of Mr. Harris. (Record at page(s) 1247-1259)

18. At the February 14, 2001 hearing, the trial court struck all of Mr. Harris' claims contained in his memorandum in support of his motion for an order to show cause and again informed Mr. Harris and his counsel that Mr. Harris could not litigate the claims of his brother, sons, Aid Equipment and, some unidentified person or entity in the divorce proceeding with Mrs. Harris. The trial court reiterated for the nth time that Mrs. Harris was awarded specific assets, not dollar value in assets. The trial court further informed Mr. Harris and his counsel that the values of the assets and propriety of the transfer of those assets had been litigated and established at the June 2000 evidentiary hearing and that the court would not revisit that ruling. (Record at page(s) 1327-1330)

19. The trial court then denied Mr. Harris' motion for an order to show cause with respect to personal property allegedly taken by Mrs. Harris. In denying Mr. Harris' motion on that single claim, all of the other claims having been previously stricken, the trial court made a factual determination that it would be useless to have an evidentiary hearing on that claim because there was no list of the

property, allegedly taken by Mrs. Harris, previously filed with the court, that would enable the court to determine if in fact anything Mr. Harris had previously claimed as personal property had been taken.
(Record at page(s) 1327-1330)

20. Subsequent to the entry of the order on Mr. Harris' motion for an order to show cause, Mr. Harris filed the instant appeal.
(Record at page(s) 1408)

VII

SUMMARY OF ARGUMENT

THE TRIAL COURT DID NOT COMMIT ANY ERROR OF FACT OR LAW WHEN IT DENIED MR. HARRIS' MOTION FOR AN ORDER TO SHOW CAUSE OR WHEN IT STRUCK MATTERS FROM MR. HARRIS' MOTION FOR AN ORDER TO SHOW CAUSE THAT HAD BEEN DETERMINED AT A PREVIOUS EVIDENTIARY HEARING. THE DECISION OF THE TRIAL COURT SHOULD BE AFFIRMED, MR. HARRIS' APPEAL SHOULD BE SUMMARILY DISMISSED AND MRS. HARRIS SHOULD BE AWARDED HER DOUBLE HER COSTS AND ATTORNEY'S FEES INCURRED IN RESPONDING TO MR. HARRIS' APPEAL THAT IS A PER SE VIOLATION OF RULE 33 OF THE UTAH RULES OF APPELLATE PROCEDURE.

POINT I

MR. HARRIS APPEAL IS TOTALLY DEVOID OF ANY LOGIC FACTS OR LAW . THE APPEAL IS SO INCOHERENT THAT IT IS ALMOST IMPOSSIBLE TO RESPOND THE INCOHERENT RAMBLING AND LUDICROUS ASSERTIONS.

A. THE TRIAL COURT DID NOT ENTER SUMMARY JUDGMENT AGAINST MR. HARRIS.

B. AT THE HEARING ON MRS. HARRIS' MOTION TO STRIKE, THE TRIAL COURT CORRECTLY AND PROPERLY STRUCK THE REDUNDANT CLAMS OF MR. HARRIS.

C. MR. HARRIS WAIVED ANY RIGHT HE MAY HAVE HAD TO APPEAL THE TRIAL COURT'S DENIAL OF HIS MOTION FOR AN ORDER TO SHOW CAUSE RE: MR. HARRIS CLAIM THE HE DID NOT RECEIVE THE PERSONAL PROPERTY HE WAS AWARDED IN THE DIVORCE PROCEEDING WHEN HE DECLINED TO HAVE THE TRIAL COURT HOLD AN EVIDENTIARY HEARING ON THAT ISSUE.

D. MR. HARRIS' APPEAL IS SO TOTALLY DEVOID ON ANY FACTS OR LOGIC THAT IT IS VIRTUALLY IMPOSSIBLE TO RESPOND ASCERTAIN WHAT HE IS

ASSERTING OR TO RESPOND TO HIS INCOHERENT RAMBLING.

POINT II

THE TRIAL COURT CORRECTLY RULED THAT PEOPLE AND/OR ENTITIES NOT PARTIES TO THE DIVORCE PROCEEDING BETWEEN MR. AND MRS. HARRIS COULD NOT SEEK ANY RELIEF FROM THE COURT AGAINST MRS. HARRIS IN THEIR DIVORCE PROCEEDING.

A. PEOPLE OR ENTITIES NOT PARTIES TO A DIVORCE PROCEEDING CANNOT HAVE THEIR CLAIMS LITIGATED IN A DIVORCE PROCEEDING.

B. MR HARRIS WAIVED ANY RIGHT HE MAY HAVE HAD TO APPEAL THE TRIAL COURT'S DENIAL OF HIS MOTION FOR AN ORDER TO SHOW CAUSE WHEN HE TOLD THE COURT THAT HE WITHDREW THE CLAIM FOR RELIEF TO THIRD PARTIES.

POINT III

MR. HARRIS IS NOT ENTITLED TO THE RELIEF HE SEEKS FROM THIS COURT.

POINT IV

MR. HARRIS APPEAL IS A PER SE VIOLATION OF RULE 33 OF THE UTAH RULES OF APPELLATE PROCEDURE, FILED FOR THE PURPOSES OF HARASSING MRS. HARRIS AND TO INCREASE THE COST OF LITIGATION TO HER.

VII

ARGUMENT

THE TRIAL COURT DID NOT COMMIT ANY ERROR OF FACT OR LAW WHEN IT DENIED MR. HARRIS' MOTION FOR AN ORDER TO SHOW CAUSE OR WHEN IT STRUCK MATTERS FROM MR. HARRIS' MOTION FOR AN ORDER TO SHOW CAUSE THAT HAD BEEN DETERMINED AT A PREVIOUS EVIDENTIARY HEARING.

POINT I

MR. HARRIS APPEAL IS TOTALLY DEVOID OF ANY LOGIC FACTS OR LAW . THE APPEAL IS SO INCOHERENT THAT IT IS ALMOST IMPOSSIBLE TO RESPOND THE INCOHERENT RAMBLING AND LUDICROUS ASSERTIONS.

The assertions set forth in Mr. Harris brief are so incoherent and ludicrous that it is nearly impossible to respond the meaningless rambling contained in Mr. Harris' brief. Nonetheless, Mrs. Harris will attempt to respond to what she believes are the arguments Mr.

Harris and his counsel are attempting to make.

A. THE TRIAL COURT DID NOT ENTER SUMMARY JUDGMENT AGAINST MR. HARRIS.

Contrary to the inane, spurious and disingenuous assertions of Mr. Harris and his counsel, the trial court did not enter summary judgment against Mr. Harris. There was no motion for summary judgment before the trial court on which it could enter summary judgment against Mr. Harris. The February 14, 2001 hearing was on Mr. Harris' "Motion Re: Order to Show Cause and Other Related Matters" (hereinafter, "Order to Show Cause") and on Mrs. Harris' Motion to Strike.

The trial court correctly and properly struck all of the claims set forth in Mr. Harris' Order to Show Cause, with the exception of Mr. Harris' assertion that he did not receive certain personal property. Those claims were stricken because those matters had been previously litigated at the May 31, 2000 evidentiary hearing or because the claims involved third parties who were not parties to the divorce proceeding between Mr. and Mrs. Harris. (Record at page(s) 1327-1330)

The trial court denied Mr. Harris' motion for an order to show cause with respect to personal property allegedly taken by Mrs. Harris. In denying Mr. Harris' motion on that single claim, the trial court made a factual determination that it would be useless to have an evidentiary hearing on that claim because there was no list of the property, allegedly taken by Mrs. Harris, previously filed with the court, that would enable the court to determine if in fact anything

Mr. Harris had previously claimed as personal property had been taken.
(Record at page(s) 1384)

The denial of Mr. Harris' Order to Show Cause and the court's granting of Mrs. Harris Motion to Strike does not constitute a grant of summary judgment and any assertion that it does is a spurious and specious argument at best. Mr. Harris has not, and cannot, cite this Court to any authority declaring that a denial of an order to show cause or granting a motion to strike is tantamount to a grant of summary judgment.

Mr. Harris' and his counsel's assertion that the trial court granted, much less, improperly granted summary judgment in favor of Mrs. Harris is a deliberate, knowing and willful misrepresentation to this Court and is a per se violation of Rule 33(a) of the Utah Rules of Appellate Procedure.

B. AT THE HEARING ON MRS. HARRIS' MOTION TO STRIKE, THE TRIAL COURT CORRECTLY AND PROPERLY STRUCK THE REDUNDANT CLAIMS OF MR. HARRIS.

At the February 14, 2000 hearing on Mr. Harris' order to show cause and Mrs. Harris Motion to Strike, the trial court correctly and properly struck the redundant claims of Mr. Harris regarding the values and amounts of the assets awarded to Mrs. Harris in the divorce proceeding with Mr. Harris. (Record at page(s) 1327-1330) At the evidentiary hearing on Mr. Harris' contempt, the trial court specifically entered rulings on the values of assets awarded to Mrs. Harris in the divorce proceeding with Mr. Harris.

Evidence and testimony concerning the values of the various

assets was presented to the trial court and the trial court entered a ruling and order concerning the value of those assets. Mr. Harris did not appeal that ruling. Therefore, it stands even if other portions of the trial court's order should be reversed. All rulings not appealed from remain in full effect and force even if other portions of a judgment are reversed or modified. See: D'Aston v. D'Aston, 844 p.2d 345 (Ut App. 1992).

If Mr. Harris did not agree with the trial court's findings concerning the amounts and values awarded to Mrs. Harris during the May 31, 2000 evidentiary hearing, he was obligated to file a motion under Rule 59 URCP or a motion under Rule 60(b) URCP. (Record at page(s) 1329) Mr. Harris did not file any motion under Rule 59 URCP or 60(b) URCP. Therefore, he was estopped from attempting to re-litigate any assertions that Mrs. Harris received more in assets than she was awarded by the trial court. (Record at page(s) 1333-1358)

The trial court also properly struck the claims of third parties not parties to the divorce proceeding from Mr. Harris' Order to Show Cause. This issue is addressed in detail in Point II of this brief.

Because Mr. Harris and his counsel were improperly and unlawfully attempting to re-litigate the trial court's previous determination and award of assets to Mrs. Harris, the trial court correctly struck any claims concerning the distribution of assets from Mr. Harris "Motion Re: Order to Show Cause and Other Related Matters." (Record at page(s) 1327-1330) Mr. Harris', and his counsel's, assertions that the trial court improperly struck Mr. Harris' redundant, spurious and disingenuous claims to re-litigate the values of the assets awarded

Mrs. Harris, is a deliberate, knowing and willful misrepresentation to this Court and is a per se violation of Rule 33(a) of the Utah Rules of Appellate Procedure.

C. MR. HARRIS WAIVED ANY RIGHT HE MAY HAVE HAD TO APPEAL THE TRIAL COURT'S DENIAL OF HIS MOTION FOR AN ORDER TO SHOW CAUSE RE: MR. HARRIS CLAIM THAT HE DID NOT RECEIVE THE PERSONAL PROPERTY HE WAS AWARDED IN THE DIVORCE PROCEEDING WHEN HE DECLINED TO HAVE THE TRIAL COURT HOLD AN EVIDENTIARY HEARING ON THAT ISSUE.

At the February 14, 2001 hearing on Mr. Harris' motion for an order to show cause, the trial court determined that it could not grant Mr. Harris' motion for an order to show cause with respect to his claim that he did not receive certain personal property because the trial court had no list of the items of personal property Mr. Harris was then claiming he did not receive. (Record at page(s) 1284, 36-37) In response to the trial court's assertion that it could not determine what property Mr. Harris was claiming he did not receive, Mr. Harris and his counsel told the trial court that they did not want an evidentiary hearing on that issue. (Record at page(s) 1284, 56) The most Mr. Harris would have been entitled on his motion for an order to show cause is an evidentiary hearing on whether or not Mrs. Harris was in contempt of the trial court's orders for allegedly failing to give Mr. Harris certain items of personal property he claimed he did not receive. By waiving the opportunity to have an evidentiary on his claim that Mrs. Harris failed to permit him to have certain items of personal property, Mr. Harris waived any right he may have had to appeal the trial court's denial of his motion for an order to show cause on that claim, and he is now estopped to claim that the

trial court committed prejudicial and reversible error when it denied his motion for an order to show cause.

Mr. Harris' appeal of this claim is simply a frivolous and malicious act on the part of Mr. Harris and his attorney to increase the cost of litigation to Mrs. Harris. Therefore, Mr. Harris appeal should be summarily dismissed and Mrs. Harris should be awarded double her costs and attorney's fees incurred in responding to this appeal.

D. MR. HARRIS' APPEAL IS SO TOTALLY DEVOID ON ANY FACTS OR LOGIC THAT IT IS VIRTUALLY IMPOSSIBLE TO RESPOND ASCERTAIN WHAT HE IS ASSERTING OR TO RESPOND TO HIS INCOHERENT RAMBLING.

In his final paragraph under Point 1 of his argument, Mr. Harris claims he is entitled to have this Court reverse the trial court's denial of his Order to Show Cause and have a judgment on the pleadings entered in his favor. For some inexplicable reason Mr. Harris and his counsel have concluded that Mr. Harris is entitled to judgment on the pleadings when Mr. Harris filed a motion for an order to show cause. They do not explain how they came to this extraordinary conclusion. They do not cite any authority for this extraordinary proposition. They simply state "*Once Bonnie decided to not meet the requirements of Rule 4-501, Craig was entitled to "Judgment on he Pleadings" in his favor "* (S1c) However, three paragraphs preceding their assertion that "*Craig was entitled to "Judgment on he Pleadings" in his favor ..*", Mr. Harris and his counsel assert that "*Craig's motion met all of the requirements of Rule 40501(2) "Motions for Summary Judgment"*", and on page 11 of his brief, Mr. Harris asserts "*Under the facts of the case Craig was entitled to*

¹ Brief of Appellant, page 14, ¶ 5

summary judgment in his favor on his motion.”-

Mr. Harris and his counsel cannot decide if they are asking this Court to instruct the trial court to enter summary judgment in their favor or judgment on the pleadings in their favor. But no matter which option they choose, they still have not and cannot explain to this Court how and why they are entitled to either summary judgment or judgment on the pleadings when all they filed was a motion for an order to show cause. Even assuming, arguendo, that Mr. Harris’ assertions contained a modicum of fact, law or reason, the most Mr. Harris would be entitled to is to have the trial court issue an order to show cause and hold an evidentiary hearing on Mr. Harris’ motion for an order to show cause. Mr. Harris is not entitled to have any type of judgment entered in his favor based on his motion for an order to show cause.

Mr. Harris and his counsel also make the ridiculous assertion that Mrs. Harris’ *“Motion to Strike must be interpreted as a Motion for Judgment on the Pleadings.”*³ Mr. Harris and his counsel apparently have come to the ludicrous conclusion that because Mrs. Harris did not cite any cases, rules or statutes in her Motion to Strike, her Motion to Strike has to be treated as a motion for judgment on the pleadings under Rule 12 URCP. This amazing conclusion and novel legal ruling by Mr. Harris and his counsel is curiously not supported by any citation to any case law, any statutes, any codes, any rules or any other type of

² Appellant’s Brief, page 11, ¶ 4

³ Appellant’s Brief, page 13, ¶ 2

authority. Mr. Harris and his counsel have not, and cannot, cite this Court to any authority declaring that a motion to strike becomes a motion for judgment on the pleadings because no specific rule, statute or case is cited in the motion to strike. Such an assertion is totally ridiculous.

Mr. Harris' and his counsel's assertions that Mrs. Harris' "*Motion to Strike must be interpreted as a Motion for Judgment on the Pleadings*"⁴ is made even more curious by their later assertion that "*The substance of Bonnie's Motion to Strike must be interpreted as a Motion for Summary Judgment*"⁵ Well at least Mr. Harris and his counsel are consistent. They assert that Mr. Harris' motion for an order to show cause is both a motion for judgment on the pleadings⁶ and a motion for summary judgment.⁷ Likewise, Mr. Harris and his counsel assert that Mrs. Harris' Motion to Strike is both a motion for summary judgment⁸ and a motion for judgment on the pleadings.⁹

The remainder of Mr. Harris argument contained in Point 1 of his Brief is so incoherent that it is impossible to even attempt to respond to it. It is devoid of any logic or coherent reasoning.

The only things that are clear about Mr. Harris' appeal is that it is not based in any fact, law or legal reasoning and that Mr.

⁴ Appellant s Brief, page 13, ¶ 2

⁵ Appellant's Brief, page 14, ¶ 1

⁶ Appellant s Brief, page 14, ¶ 5

⁷ Appellant's Brief, page 11, ¶ 4

⁸ Appellant s Brief, page 14, ¶ 1

⁹ Appellant's Brief, page 13, ¶ 4

Harris and his counsel filed this appeal in bad faith for the purposes of harassing Mrs. Harris and to increase the cost of litigation to her. Mr. Harris' appeal of the trial court's ruling is a per se violation of Rule 33 of the Utah Rules of Appellate Procedure.

Mr. Harris' appeal was filed without any basis in fact for law. Mr. Harris and his counsel have not, and cannot, cite this Court to any fact, statute, rule, or case law that supports their frivolous appeal of this issue. Because Mr. Harris and his counsel's appeal is frivolous, Mrs. Harris should be awarded double her costs and attorney's fees incurred in responding to this frivolous and bad faith appeal, as provided.

POINT II

THE TRIAL COURT CORRECTLY RULED THAT PEOPLE AND/OR ENTITIES NOT PARTIES TO THE DIVORCE PROCEEDING BETWEEN MR. AND MRS. HARRIS COULD NOT SEEK ANY RELIEF FROM THE COURT AGAINST MRS. HARRIS IN THEIR DIVORCE PROCEEDING.

A. PEOPLE OR ENTITIES NOT PARTIES TO A DIVORCE PROCEEDING CANNOT HAVE THEIR CLAIMS LITIGATED IN A DIVORCE PROCEEDING.

Mr. Harris and his counsel falsely and speciously represent to this Court that the case of D'Aston v. D'Aston, supra, holds that a third party not a party to a divorce proceeding can seek and obtain relief from a court in a divorce proceeding. That assertion is blatant misrepresentation of the facts and the law as applied in D'Aston v. D'Aston. The facts of D'Aston v. D'Aston, and the law applied therein, are inapplicable to the facts of this case. There is nothing in D'Aston v. D'Aston that holds or remotely suggests that people or entities not parties to a case may obtain any relief

whatsoever in a case. In D'Aston v. D'Aston, Bruno D'Aston claimed he was in possession of certain coins and silver bullion by virtue of a consignment agreement with Michael Graham and Al Schaefer. Dorothy D'Aston and her son Eryck D'Aston allegedly stole those coins and silver bullion from Bruno D'Aston.

During the trial of the case, Bruno D'Aston presented evidence and testimony from several witnesses verifying the consignment of coins and bullion from both Michael Graham and Al Schaefer. Based on the evidence and testimony presented by Bruno D'Aston, the trial court awarded Bruno D'Aston possession of the coins and silver bullion he had on consignment from Michael Graham and Al Schaefer.

The D'Aston court did not award Michael Graham and/or Al Schaefer possession of the coins and silver bullion. Neither Michael Graham nor Al Schaefer asked the D'Aston court to award to them, or return to them, the coins and bullion they had consigned to Bruno D'Aston. Neither Michael Graham nor Al Schaefer sought any relief from the D'Aston court.

In the instant matter, Mr. Harris does not claim that he was in possession of anything belonging to his sons, brother or Aid Equipment by virtue of any assignment, consignment, bail, receivership, loan, or other type of agreement whereby he would be entitled to custody and control over anything allegedly belonging to any third party. In his complaint, Mr. Harris did not seek to have anything allegedly belonging to any third party returned to him or claim. Nor did Mr. Harris claim he was in possession of anything allegedly belong to any third party.

The trial court correctly ruled that persons or entities not a party to the divorce proceeding between Mr. and Mrs. Harris, i.e., Mr. Harris' brother, sons and Aid Equipment, did not have standing to seek any relief from the court in the divorce proceeding. Mr. Harris has not, and cannot, cite this Court to any authority that permits a trial court to grant relief to people or entities that are not parties to the action pending before the court.

Mr. Harris' brother, sons and Aid Equipment were not parties to the divorce proceeding between Mr. and Mrs. Harris. The trial court correctly determined it did not have the authority to provide Mr. Harris' brother, sons and Aid Equipment with any type of relief in the divorce proceeding between Mr. and Mrs. Harris and it so ruled.

B. MR HARRIS WAIVED ANY RIGHT HE MAY HAVE HAD TO APPEAL THE TRIAL COURT'S DENIAL OF HIS MOTION FOR AN ORDER TO SHOW CAUSE WHEN HE TOLD THE COURT THAT HE WITHDREW THE CLAIM FOR RELIEF TO THIRD PARTIES.

At the February 14, 2001 hearing Mr. Harris' counsel specifically represented to the trial court that Mr. Harris was withdrawing any claim of any third party with respect to Mr. Harris' motion for an order to show cause. Mr. Harris counsel stated:

With respect to Respondent's second argument that the Petitioner is not attempting—where am I here?—Respondent is arguing that Petitioner is attempting to litigate the alleged claims of non-parties to this action. That, again, is not the case. If that is in any way alleged in the documents, and I'm not sure it is, then I will withdraw that, because I completely understand. I actually came into this after the order to show cause had been filed. And if that's the case, I understand that argument.

(Emphasis added) (record at page(s) 1284, page 15)

Having withdrawn any claim of third parties with respect to his motion for an order to show cause, Mr. Harris is estopped from

asserting any error on the part of the trial court for failing to issue and order to show cause relative to any such third parties. Mr. Harris cannot withdraw his frivolous claim for third parties and then claim on appeal that the trial court erred for allowing him to withdraw the claim.

Mr. Harris and his counsel's appeal of the trial court's ruling on this issue is a per se violation of Rule 33 of the Utah Rules of Appellate Procedure. Mr. Harris is appealing this issue without any basis in fact for law for the appeal. Mr. Harris and his counsel have not, and cannot, cite this Court to any fact, statute, rule, or case law that supports their frivolous appeal of this issue.

POINT III

MR. HARRIS IS NOT ENTITLED TO THE RELIEF HE IS SEEKING FROM THIS COURT.

Even assuming, arguendo, that any of Mr. Harris' claims of error on the part of the trial court are true, Mr. Harris is not entitled to the relief he seeks from this Court. Mr. Harris is asking this Court to reverse the trial court's denial of his motion for an order to show cause and enter summary judgment in his favor on his motion for an order to show cause.¹⁰

Again, assuming, arguendo, that any of Mr. Harris' claims of error on the part of the trial court are true, the most he would be entitled to from this Court is to have the trial court grant his motion for an order to show cause and hold an evidentiary hearing to determine if Mrs. Harris is in contempt of court for allegedly

¹⁰ Appellant's Brief, page 17, ¶ 1 under "Relief Sought "

violation of any order of the trial court. There is no circumstance under which Mr. Harris is entitled to summary judgment on a motion for an order to show cause. Mr. Harris and his counsel have not, and cannot, cite this Court to any authority supporting Mr. Harris' assertion that his motion for an order to show cause somehow became a motion for summary judgment. Nor has Mr. Harris or his counsel cited this Court to any authority supporting Mr. Harris' assertion that the trial court's denial of his motion for an order to show cause in any way whatsoever entitles him to have this Court direct the trial court to enter summary judgment in Mr. Harris' favor. Such an assertion defies all logic and reason.

Mr. Harris' request to have summary judgment entered in his favor on his motion for an order to show cause is just more evidence that Mr. Harris' appeal is nothing more than an attempt to further harass Mrs. Harris and to increase the costs of litigation to her. Mr. Harris' appeal and his request to have summary judgment entered in his favor on his motion for an order to show cause is a per se violation of Rule 33 Utah Rules of Appellate Procedure, and both Mr. Harris and his counsel should be appropriately and severely sanctioned for both filing the appeal and for seeking relief for which Mr. Harris is not entitled.

POINT IV

MR. HARRIS APPEAL IS A PER SE VIOLATION OF RULE 33 OF THE UTAH RULES OF APPELLATE PROCEDURE, FILED FOR THE PURPOSES OF HARASSING MRS. HARRIS AND TO INCREASE THE COST OF LITIGATION TO HER.

Mr. Harris and his counsel filed this appeal in bad faith for the purposes of harassing Mrs. Harris and to increase the cost of

litigation to her. Mr. Harris' appeal is not based in any fact or law.

Mr. Harris previously told Mrs. Harris that unless she accepted his settlement offer he would fight her in court until she spent every cent received in the divorce settlement to pay attorney's fees.

(Record at page(s) 1301-1306) Throughout their divorce proceeding and throughout the appeal process, Mr. Harris has kept that promise and has done everything possible to increase the cost of litigation to Mrs. Harris.

Mr. Harris filed a motion to dismiss Mrs. Harris' appeal in case No. 200037-CA, falsely claiming that Mrs. Harris had not timely filed her notice of appeal and had not timely filed her docketing statement and/or her brief.¹¹ Now, Mr. Harris his doing it again with this frivolous appeal in this case.

Mr. Harris' appeal of his claim on behalf of third parties, and his assertion that the trial court committed error in not granting his motion for an order to show cause after he had withdrawn the claim on behalf of those third parties, is beyond belief. Mr. Harris appeal of this issue is proof beyond any doubt that Mr. Harris and his counsel are fulfilling Mr. Harris' promise to fight Mrs. Harris in court until she spent every cent received in the divorce settlement to pay attorney's fees.

Mr. Harris and his counsel's appeal of this issue is more than frivolous, it is malicious. Because Mr. Harris appeal is frivolous

¹¹ A copy of Mr Harris' Motion to Dismiss filed in case No 200037-CA is included in the Addendum to this Brief

and malicious, Mrs. Harris should be awarded double her costs and attorney's fees incurred in responding to this frivolous and bad faith appeal, as provided in Rule 33(a) of the Utah Rules of Appellate Procedure.

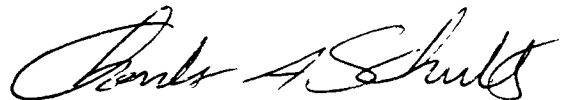
VIII

CONCLUSION AND REQUEST FOR RELIEF

Mr. Harris appeal is frivolous and is a per se violation of Rule 33 of the Utah Rules of Appellate Procedure. The appeal was filed in bad faith, without any basis in fact or law, for the purposes of harassing Mrs. Harris and to increase the cost of litigation to her.

Because Mr. Harris and his counsel's appeal is frivolous and malicious, this Court should affirm the trial court's rulings granting Mrs. Harris' Motion to Strike and denying Mr. Harris' Motion for an Order to Show Cause. Because Mr. Harris and his counsel's appeal is frivolous and malicious, this Court should also awarded Mrs. Harris double her costs and attorney's fees incurred in responding to this frivolous and malicious appeal, as provided in Rule 33(a) of the Utah Rules of Appellate Procedure.

Respectfully submitted this 30th day of June 2002.



Charles A. Schultz
Attorney for Bonnie Harris

IX
CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July 2002 I served a true and correct copy of the foregoing Brief to the persons specified below by depositing a copy(s) in the United States Mail, Postage Prepaid, addressed as follows:

Loren D. Martin
MARTIN & NELSON
139 South Temple, Suite 400
SLC, UT 84111

A handwritten signature in cursive script, appearing to read "Charles A. Schultz", written over a horizontal line.

Charles Schultz
Attorney for Bonnie Harris

X
ADDENDUM

1. Supplemental Decree of Divorce
2. Selected paged of February 14, 2001 hearing on order to show cause
3. Ruling on motion for order to show cause
4. Affidavit of Jeanne Langston
5. Affidavit of Bonnie Harris

J. Grant Moody, P.C. Bar No. 6282
336 West Main Street
American Fork, UT 84003
Telephone: (801) 756-4181
Facsimile: (801) 756-3940
Attorney for Defendant

JUDGMENT

33
11/87

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

CRAIG JACK HARRIS,)	SUPPLEMENTARY
)	DECREE OF DIVORCE
Petitioner,)	
vs.)	
)	
BONNIE HARRIS)	
)	Civil No. 954402034DA
)	
Respondent.)	Judge: Ray Harding, Jr.

This matter came on regularly for trial on August 16, 17 and September 23, 1999 with a final hearing being held on October 12, 1999. Petitioner, Craig Harris, was present and was represented by Loren D. Martin of Martin & Nelson. Respondent, Bonnie Harris, was also present and was represented by J. Grant Moody of J. Grant Moody, P.C. Following closing arguments on September 23, 1999 the Court made several rulings from the bench, including ruling on the valuation of the marital estate. The Court reserved ruling on the issues of the division of property, the Norman Loebbecke fees, and attorney's fees until the October 12, 1999 hearing date to allow the parties to present proposals for the division of property and further argument on the fee issues. The Court subsequently issued a written ruling dated October 22, 1999. The parties previously were granted a Decree of Divorce by the Court entered on January

26, 1999. The Court heard the evidence presented by the parties both verbally and through documents offered and received at trial including each parties proposed property division presented to the Court. The Court having entered its Findings of Fact and Conclusions of Law, and the Court having reviewed the evidence and the record, and being fully advised in the premises, now enters the following:

SUPPLEMENTARY DECREE OF DIVORCE

Property Division

1. At the time of the parties marriage, the Petitioner's premarital assets were \$141,800.00 and that Respondent's premarital assets were \$96,500.00.
2. The property shall be valued at the time the Decree of Divorce was entered being January 26, 1999.
3. The following deductions shall be subtracted from the Respondents premarital assets:
 - a. \$14,602.00 for a post-separation credit card debt paid by the marital estate;
 - b. \$3,094.00 for draws on the line of credit for Respondent prior to January 26, 1999.
4. The Respondent's premarital assets are reduced to a total of \$78,804.00.
5. The total net divisible value of the estate at the time the Decree of Divorce was entered was \$975,273.00 as stated in Petitioner's Exhibit 1, Schedule A. A copy of said Schedule A is attached hereto and by this reference incorporated herein.
6. Included in this total value is Respondent's Signetics retirement account listed with a

value of \$28,754.00. The Signetics retirement account is to be divided according to the formula stated in Woodward v. Woodward, 656 P.2d 431 (Utah 1982). The parties shall enter a Qualified Domestic Relations Order on the account if they so desire.

7. Subtracting the value of the Signetics retirement leaves a total divisible net asset value of \$946,519.00. Subtracting Petitioner's premarital assets of \$141,800.00 and Respondent's premarital assets of \$78,804.00 from the net marital asset value subject to equal division is thus \$725,915.00. Dividing this value by two results in a net marital asset value distributable to each party of \$362,957.50. The total value distributable to Petitioner is \$362,957.50 plus his premarital assets of \$141,800.00 for a total of \$504,757.50. The total asset value distributable to Respondent is \$362,957.50 plus her premarital assets of \$78,804.00 for a total of \$441,761.50.

8. After considering the parties' property proposals, the Court awards Petitioner the business, AID Equipment Company, Inc., and the Commercial building, house and lot located at 172 West 9400 South in Sandy, Utah where the business is located. The value of the business is \$147,533.00, and the value of the commercial building and lot is \$425,196.00. Therefore, Petitioner is awarded property with a total value of \$572,729.00.

9. The Respondent is awarded all remaining assets of the marital estate listed in Schedule A of Petitioner's Exhibit 1 prepared by Norman Loebbecke Associates, with the exception of the Signetics retirement which is to be divided under Woodward as set forth above. Therefore, Respondent is awarded property with a total value of \$373,790.00. Because the total value distributable to Respondent is \$441,761.50, Respondent is entitled to a credit of \$67,971.50.

ALIMONY

10. The Respondent is not entitled to receive alimony from the Petitioner.

ATTORNEY'S FEES

11. Each party should bear their own attorney's fees in this matter, with the exception of the Court's Order dated January 26, 1999, wherein the Court awarded Petitioner a reasonable attorney's fee for bringing the October 19, 1998, Order to Show Cause.

12. The Petitioner's counsel filed an affidavit of attorney's fees totaling \$5,711.48, however, pursuant to the Court's Findings, only \$2,564.16 of the fees set forth in counsel's affidavit were related to the Order to Show Cause and the Court thus awards the Petitioner \$2,564.16 in attorney's fees for the October 19, 1999 Order to Show Cause pursuant to its January 26, 1999 Order.

NORMAN LOEBBECKE FEES

13. Norman Loebbecke Associates' fees in this case total \$22,443.17.

14. Respondent is ordered to bear \$1,744.00 of this total as her sole and separate obligation as required by the Court's Order of July 22, 1999 in which the Court allowed Respondent an extension to submit information to Norman Loebbecke Associates.

15. The Court orders that both parties shall equally bear the remaining fees of \$20,699.17, such that each party is required to pay \$10,349.58. The Respondent is required to pay \$12,093.59 of the Norman Loebbecke fees and Petitioner is required to pay \$10,349.58.

16. The Petitioner has already paid the majority of the Norman Loebbecke fees, the Court orders that the Petitioner be responsible to pay the entire \$22,443.17 owing, and the Petitioner is entitled to an offset of Respondent's obligation of \$12,093.59 against her credit for

the property division

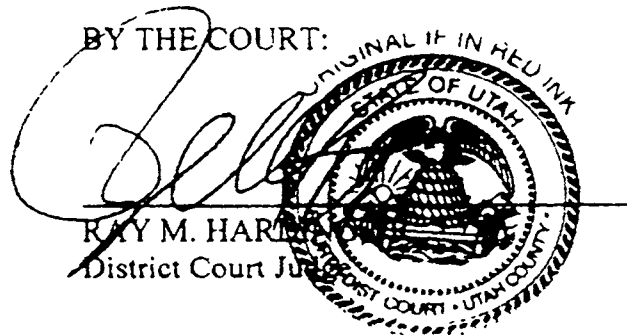
17. The Respondent is awarded a credit of \$67,971.50, offset by an award of \$2,564.16 to Petitioner for attorney's fees and offset by \$12,093.59 for her share of the Norman Loebbecke fees. The total credit for Respondent is \$53,313.75.

18. Each party is ordered to cooperate with each other in executing and delivering the necessary documents and property required to effectuate the real property and personal property division as ordered by the Court.

19. The Court orders that execution of the judgment against the Petitioner be stayed sixty (60) days after the entry of this Order to allow the Petitioner time to secure funds to pay the judgment.

DATED this 22nd day of November, 1999.

BY THE COURT:



Approved as to Form:

Loren D. Martin
Attorney for Petitioner

I CERTIFY THAT THIS IS A TRUE COPY OF
AN ORIGINAL DOCUMENT ON FILE IN THE
FOURTH JUDICIAL DISTRICT COURT, UTAH
COUNTY, STATE OF UTAH

DATE: March 5, 2000

[Signature]
DEPUTY COURT CLERK

Proposed Marital Asset and Liability Distribution
per Craig Harris

Description	Net Value	Proposed Distribution	
		Bonnie	Craig
Cash & Cash Equivalents			
BankOne 1250-0221 Checking	\$ 1,090	\$	\$ 1,090
Northwest Credit Union 7592 0 Savings	1,279		1,279
Northwest Credit Union 7592 1 Checking	235		235
Zion's Bank 560-30939-5 Personal Checking	554	554	
Zion's Bank 560-31378-5 Special Checking	3		3
	3,161	554	2,607
Stocks and Bonds			
InterWest Medical stock	14,409		14,409
	14,409		14,409
Retirement Accounts			
Dean Witter 124-100296 IRA Standard	36,923		36,923
Dean Witter 179 039509 IRA Standard	48,918	48,918	
Prudential Securities OUQ-R68840-41 Simple IRA	2,666		2,666
Signetics Retirement ^A	28,754	28,754	
	117,262	77,672	39,589
Life Insurance			
MONY Whole Life 1347-24-19W	16,042		16,042
New York Life 42594539 Term Life			
	16,042		16,042
Land/Residence			
House and Lot located at 692 S Juniper St , Pleasant Grove, UT ^B	103,591		103,591
Commercial Bldg and House located at 172 W. 9400 S., Sandy, UT	425,196		425,196
House and Lot located at 1328 N. Locust Lane, Provo, UT	46,443	46,443	
Building and Lot located at 725 E Orchard Drive, Pleasant Grove, UT	41,116		41,116
Vacant Lot located at 721 E Orchard Drive, Pleasant Grove, UT	28,053		28,053
Vernal, UT - 10 Acres, Uintah County Property	4,160	4,160	
	648,559	50,603	597,956
Businesses			
AiD Equipment Company, Inc.	147,533		147,533
	147,533		147,533
Vehicles			
1994 Ford Taurus GL	6,613	6,613	
1983 26' Komfort 5th Wheel Trailer	3,100	3,100	
1978 26' Sea Ray Motor Boat	2,500		2,500
	12,213	9,713	2,500
Furniture/Furnishings/Appliances			
Furniture and Personal Property - Craig	5,000		5,000
Jewelry	2,200	2,200	
Furniture and Personal Property - Bonnie	8,395	4,198	4,198
	15,595	6,398	9,198
Other Assets			
Gun reloading equipment	500		500
	500		500
Debts and Liabilities			
	\$975,273	\$144,940	\$830,333

1 attempting to change the values--we're simply
2 attempting to enforce what the Court ordered.

3 With respect to Respondent's second
4 argument that the Petitioner is not attempting-
5 where am I here?--Respondent is arguing that
6 Petitioner is attempting to litigate the allege
7 claims of non-parties to this action. That,
8 again, is not the case. If that is in any way
9 alleged in the documents, and I'm not sure it
10 is, then I will withdraw that, because I
11 completely understand. I actually came into th
12 after the order to show cause had been filed.
13 And if that's the case, I understand that
14 argument.

15 Again, what happened there, Your
16 Honor, is that subsequent to the trial, after
17 the trial, there was disagreement between the
18 parties on what the Court actually ordered with
19 respect to the personal property. Petitioner
20 filed a motion for reconsideration. The Court
21 heard the argument on March 1st. During that
22 argument, the Court took a recess, gave the
23 parties an opportunity to stipulate. They came
24 back, they did reach a stipulation. That
25 stipulation was read into the record. What the



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1 stipulation--take what tools she wants and return
2 the rest. And just as a side note, for no other
3 reason than a side note, it should be noted that
4 the insurance company has--they--a claims
5 adjuster has come out and has filed a complaint
6 against Ms. Harris for defrauding the insurance
7 company, with respect to filing a claim for
8 stolen property that wasn't actually stolen. I
9 don't have anything for that--that's more of a
10 side note than anything else.

11 THE COURT: How do I know--the
12 parties' stipulation on March 1, 2000, as to the
13 disputed personal property, stated, on the
14 personal property, Mrs. Harris will take what
15 personal tools that she would like to have out
16 of the shop by the 15th of March. Then the
17 Petitioner will have until that weekend, I
18 believe it's the 19th of March, to remove the
19 rest of the possessions out of the shop, and
20 then he will agree to pay \$5,000 for the
21 personal property and he retains possession of
22 all of the personal property. Now, how am I to
23 know what items of personal property he had in
24 the shop, which were part of the stipulation,
25 and which he believes are in the Respondent's



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1 police. That's with respect with the personal
2 property. Now--

3 THE COURT: The interest--this whole
4 case then is replete really with attempts to
5 agree or agreements and--

6 MR. NELSON: It is.

7 THE COURT: --problems.

8 MR. NELSON: And I will state, on
9 behalf of Craig, I do not want another
10 evidentiary hearing. I do not want to call the
11 insurance person here.

12 THE COURT: Yeah.

13 MR. NELSON: If we can get around that
14 in any way possible, I think we've had enough
15 evidentiary hearings.

16 So, he didn't take the personal
17 property, because, allegedly, it was stolen. Now,
18 the \$5,000 did include, as the order states, not
19 only his personal things in the apartment or
20 wherever it was he was living at the time, but
21 also included some of the things in the shed.
22 Was it all his personal property in the shed?
23 No, absolutely not. That is exactly how all of
24 his relatives have come into play in all this.
25 There were bikes, four-wheelers, Aid Equipment



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1 possession? How do I come to that conclusion or
2 make that determination, with that stipulation?

3 MR. NELSON: Well, I agree. As I
4 reviewed the record, there's nothing that
5 establishes what was in the shop.

6 THE COURT: That's--

7 MR. NELSON: There's no list of
8 anything, other than it seems to me that if--
9 that that issue has been narrowed drastically by
10 the parties' stipulation that says she would take
11 what tools she wants. It seems to me that if
12 she would be able to take what tools she wants,
13 she could take the tools, essentially agreeing
14 that the rest then would go to Mr. Harris.

15 THE COURT: Well, what is "the rest"?

16 MR. NELSON: Oh, well again, there's
17 nothing. It included some reload--gun reloading
18 equipment, it included some fishing tackle, it
19 included some--there was some shelving that Aid
20 Equipment owned that they were storing there.
21 Again, there's nothing in evidence--I'm just
22 telling you what my client has told me. And
23 there was--there were some dirt bikes in there
24 that were the boys'. I mean that's how the sons
25 come into this. They're not coming in today,



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FILED
Fourth Judicial District Court
of Utah County, State of Utah

2-15-01 SW

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

Deputy

CRAIG JACK HARRIS,

Petitioner,

v.

BONNIE HARRIS,

Respondent.

RULING

Case No. 954402034

Judge Ray M. Harding

This matter comes before the Court on the Petitioner's Order to Show Cause and Respondent's Motion to Strike. The Court has reviewed the file, considered the parties' memoranda, heard oral arguments, and being fully advised in the premises issues the following:

RULING

The Court notes that some of the claims raised in Petitioner's Order to Show Cause are spurious and will be dealt with summarily. Petitioner would only be entitled to his own personal property kept in the storage unit (shop) in question. Yet, in addition to a claim for \$4,600.00 for his own personal property, Petitioner prays for \$23,000.00 of "items 'missing'" and for several thousand dollars for property alleged to belong to third parties. Petitioner has no standing to claim recovery for items belonging to relatives. Respondent is correct in asserting that affected individuals or business entities would have to file their own claims.

Petitioner also makes claims against the IRA accounts awarded Respondent. The Supplementary Decree of Divorce stated,

The property should be valued at the time the Decree of Divorce was entered being January 26, 1999.

Petitioner cannot recover the difference in value between the time Respondent actually received the asset awarded and the value on January 26, 1999. Petitioner attacks the Order on Contempt Evidentiary Hearing stating that some of what Respondent was awarded came from separate retirement accounts set up after the divorce. Sentencing on Contempt was June 21, 2000. The Order regarding Contempt was filed July 17, 2000. Petitioner's position is not well taken. The time to attack that Order under Rules 59 and 60(b)(1)-(3) has passed. Petitioner's Order to Show Cause was filed over five months after the July Order. The Court notes that even had a proper challenge been filed, it would likely have failed.

Petitioner makes fairness claims to seek recovery of part of the value of the life insurance policy and the retirement accounts. Petitioner's claim is really one of equity. Neither party comes before the Court with clean hands. Petitioner has been found to be in contempt. The Court declines to alter the awards as they stand based on equity.

Each side has attacked the other's Motion for procedural flaws. As neither side has strictly complied with the Utah Rules of Civil Procedure and the Rules of Judicial Administration, the Court will not decide the matter solely on procedural grounds.

The most troubling allegation the Court must deal with is the allegation that Petitioner did not receive items of his own personal property awarded by the stipulated agreement. The shop was awarded to Respondent. Some of its contents and other items of personal property were in dispute. The parties' stipulation March 1, 2000 as to disputed personal property stated,

On the personal property, Mrs. Harris will take what personal tools that she would like to have out of the shop by the 15th of March. And then the Petitioner will have until that weekend, I believe it's the 19th of March, to remove the rest of the possessions out of the shop. . . . And then he will agree to pay \$5000.00 for the personal property and he retains possession of all the personal property.

The Order signed by the Court and filed on April 4, 2000, states,

The parties have agreed that the Respondent shall have until March 15, 2000 to select and remove what personal property she desires to have from the building located on the Pleasant Grove lot. The Petitioner shall remove the remaining personal property he desires out of the building on or before March 30, 2000. Any

personal property left in the building after March 30, 2000 shall be the property of the Respondent. The Petitioner shall pay \$5,000.00 to the Respondent on or before April 4, 2000, for the personal property located in his personal possession and from the personal property received from the building located on the Pleasant Grove lot. The Respondent shall provide access to the building at the lot to the Petitioner from March 16, through March 30, 2000 upon the Petitioner giving Respondent 24 hour notice of the times in which he intends on removing the property.

The language of the Order is very broad. Petitioner has failed to provide the Court with sufficient information to find that the Respondent did not comply with the Order. Specifically, the Court did not have before it a list of specific items from the shop belonging to Petitioner still in the possession of the Respondent and their values. Nor did Petitioner show that Respondent lacked the discretion under the Order to hold those items back. Petitioner did not desire another evidentiary hearing. The Court agrees that another hearing would be fruitless absent a limit to Respondent's discretion under the Order.

The Court will not at this late date revalue the assets or reassess distribution. The Court notes the plethora of Orders it has had to enter since the initial Decree of Divorce. It is time to bring finality. Respondent's Motion to Strike is granted as to all matters except for claims for the Personal Property from the shed. Those personal property claims were not subject to a motion to strike, but failed after oral arguments. Therefore, Petitioner's Order to Show Cause is denied and Respondent's Motion to Strike is granted in part and denied in part.

CONCLUSION

For the above reasons, the Court hereby rules as follows:

1. Respondent's Motion to Strike is GRANTED in part and DENIED in part.
2. Petitioner's Order to Show Cause is DENIED.
3. Attorney fees are DENIED.

J. Grant Moody, (6282)
J GRANT MOODY, P.C.
336 West Main Street
American Fork, Utah 84003
Telephone: (801) 756-4181
Facsimile: (801) 756-3940
Attorney for Respondent

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

CRAIG JACK HARRIS,

Petitioner,

BONNIE HARRIS

Respondent

AFFIDAVIT OF JEANNE LANGSTON

Civil No 954402034 DA

Judge: Ray Harding, Jr

STATE OF UTAH }
 SS
COUNTY OF SEVERE }

Jeanne Langston, being duly first sworn, deposes and states as follows:

- 1 I, Jeanne Langston, have personal knowledge of the facts set forth in this Affidavit. I am competent to testify as to these matters and would so testify if called upon to testify at trial of this matter.
2. On November 13, 1999, I was staying with Bonnie Harris in Pleasant Grove for the weekend.
3. Bonnie and I and another friend, Sharon Maxfield, were having breakfast at the K&V Restaurant in Pleasant Grove that morning (approx. 9:30 am or 10:00 am) when Craig Harris (Bonnie's X-husband) came in and sat down and started talking with us.

- 4 Craig made the comment that he was going to go to the shed and pick up one of their four wheelers to take out to the motor cycle race their grandson was in.
- 5 Bonnie told Craig that she had the locks changed on the shed door and that she would have to let him in.
- 6 At that point Craig got extremely mad He stated he would break the door down
- 7 Bonnie said there was no reason for that, she would be glad to let him in, Craig made more threats and then left the restaurant.
- 8 Sharon and I were going shopping Bonnie was going to the race track to watch her grandson race. However, Bonnie did not want to be left alone with Craig when he came to pick up the four wheeler, and she asked me to stay with her until he left.
- 9 Craig and his son Scot were not far behind us getting to Bonnie's house
- 10 Craig said he had called Scot and told him to come and get his belongings out of the shed.
- 11 Bonnie and I walked over to the shed to let Scot and Craig in
- 12 Craig and Scot were mad, both Scot and Craig were extremely rude and ignorant in their talk and actions toward Bonnie.
- 13 All that Bonnie said to them was, "I am not going to fight with any of you," "I have video taped everything in the shed, I have proof of what was in here, and we will have to let the Judge make another decision " Then Bonnie and I went back to her home
- 14 We had not been there five minutes when Craig came to the door, Craig offered Bonnie \$5,500 for his personal belonging and the reloading equipment.
- 15 Bonnie said she felt it was worth more, that he had under evaluated everything. Craig was yelling and screaming threats at Bonnie. Craig left and returned a few minutes later with a different proposal \$60,000 and he wouldn't mortgage the house that the Judge

gave to Bonnie.

16. Bonnie said she was not going to take his offer it was less than what the Judge had awarded her.
17. Craig was real mad and he made more threats. Craig stated that if Bonnie did not take his offer he would keep fighting her in court until she used up all the money awarded to her. He said that she would spend it all in attorneys fees before he got through with her.
18. After about ½ hour of his demands he left, because Bonnie would not give in and agree.
19. Bonnie repeatedly stated that she was not going to go against the Judges decision.
20. After Craig went back to the shed, Bonnie called Mr. Moody, her attorney, and asked what she should do. They discussed all that had happened. Mr. Moody advised Bonnie to stay completely away from the shed until Craig and Scot had left.
21. At approx. 12:30 P.M. Bonnie said she was fine and I should go with Sharon.
22. As I left Bonnie's home, I could see Craig and Scot were still loading things into Scot's truck and had hooked a boat onto Scot's truck.
23. I was gone until late afternoon (6:00 PM) and when I went back to Bonnie's she told me of an incident that had happened at the race track.
24. Bonnie stated that she had been standing 30 or 40 feet from Craig when Kara Harris, who is Scot's wife, pulled up to the race track. She did not see Bonnie standing there when she started yelling to Craig "I got it, I got it, I did not steal it I just borrowed it, I did what you said and it worked I got in." Bonnie said that Craig had run to the truck telling Kara to keep quiet.
25. That same evening, Bonnie also let me hear Scot's message that he had left on her answering machine. Scot states after Bonnie had looked up the shed and had left for the

race he broke into the building to get his and Kara's Mt bikes, and that he had removed the devices Bonnie had put in the door and put the door lever to keep the door from opening.

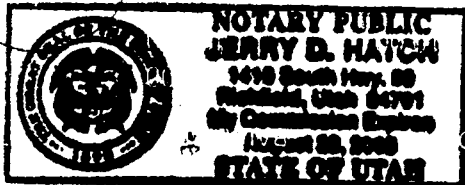
26. The next day Bonnie, Ben McKinney and I walked over to the shed. We took long bolts and put two in each door lever, one on each side of the main beam and bolted them to the doors so that nobody would be able to move or slide the lever and get into the shed. The doors were bolted shut at that time.
27. Upon examining the main door, it was our belief that it would be impossible to ever get it open using a credit card, it was tightly secured. We left the building believing everything was secure.

Dated this 29 day of March, 2000.

Jeanne Langston
Jeanne Langston

Subscribed and Sworn to this 29th day of March, 2000.

Jerry D. Hatch
Notary Public



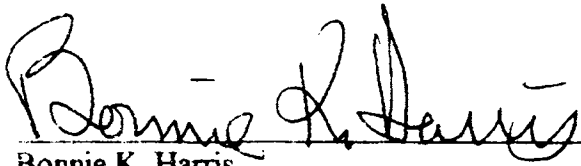
STATE OF UTAH }
.ss
COUNTY OF UTAH }

Bonnie Harris being first sworn on her oath, deposes and states as follows:

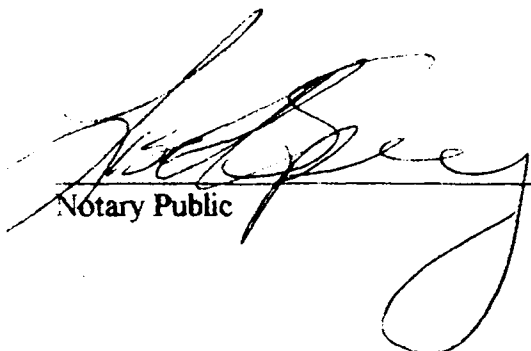
1. I, Bonnie Harris, have personal knowledge of the facts set forth in this Affidavit.
2. On November 13, 1999 I was having breakfast with two of my friends Jeanie Langston and Sharon Maxfield. We were eating at K&V Restaurant in Pleasant Grove, when Craig Harris came and started talking to us.
3. Craig said he was going to the shed on Orchard Drive to get some things, including one of our four wheelers.
4. I told Craig that I had changed the locks on the shed so he could not get in. Craig got very hostile and obnoxious and said he would break down the door.
5. I told him that there was no need to do that because I would let him in the shed.
6. When Jeanie and I got back to my house, Craig called and said he called his son Scot and told him to get his stuff out of the shed.
7. Jeanie and I walked over to the shed to let Craig and Scot into the shed.
8. Craig and Scot were very rude and obnoxious and Jeanie and I left and went back to my house.
9. Craig came back to the house about five minutes later and offered me \$5,500.00 for his personal property and reloading equipment.
10. I told Craig that the reloading equipment was worth more than that and that he had undervalued everything.
11. Craig was yelling and screaming at me and making all sorts of threats.
12. A few minutes later, Craig returned and offered me \$60,000.00 for everything and said that he would not mortgage the house if I accepted \$60,000.00.
13. I told Craig that I would not accept his offer and that I was only going to accept what the judge awarded me.

14. Craig got even more angry and made more threats, and he told me that if I did not accept his offer he would keep fighting me in court until I spent everything in attorney's fees and that I would end up with nothing. He said he had plenty of money to pay his attorney but that I would have to spend everything the court gave me on attorney's fees to fight him.

Dated this 25th day of January 2001.


Bonnie K. Harris

Sworn and subscribed to this 25 day of January 2001.


Notary Public

