

1992

Joy A. Hoagland v. Colin G. Hoagland : Addendum to Brief of Appellants

Utah Court of Appeals

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David Bert Havas; Thomas A. Blakely; Havas & Associates; Attorneys for Appellant.

Donn E. Cassity; Romney, Nelson & Cassity; Attorneys for Appellee.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO.

920340

IN THE COURT OF APPEALS OF THE STATE OF UTAH

JOY A. HOAGLAND,

:

Case No. 920340-CA

Appellant,

:

vs.

:

COLIN G. HOAGLAND,

:

Priority No. 16

Appellee.

:

ADDENDUM TO BRIEF OF APPELLANT

AN APPEAL FROM A DECREE OF DIVORCE FROM THE SECOND JUDICIAL
DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH
The Honorable Ronald O. Hyde, Presiding

David Bert Havas
Thomas A. Blakely
HAVAS & ASSOCIATES
2604 Madison Avenue
Ogden, Utah 84401
Attorneys for Appellant

Donn E. Cassity
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Salt Lake City, Utah 84111
Attorneys for Appellee

ADDENDUM INDEX

Exhibit
No.

Document

Trial Court Documents

1. Memorandum Decision
2. Decree of Divorce
3. Findings of Fact and Conclusions of Law
4. Order
5. Amended Findings of Fact and Conclusions of Law
6. Amended Order
7. Second Amended Findings of Fact and Conclusions of Law

Statutory Provisions

8. Utah Code Annotated (1953, as amended) §15-1-4.
9. Utah Code Annotated (1953, as amended) §30-3-3.
10. Utah Code Annotated (1953, as amended) §30-3-10.6.

Tab 1

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY
STATE OF UTAH

JOY A. HOAGLAND,

Plaintiff,

vs.

COLIN G. HOAGLAND,

Defendant.

}

}

}

MEMORANDUM DECISION

Case No. 890903214

NOV. 7 1991

Both parties agree this relationship has irreconcilable differences. Each of the parties is granted a divorce against the other on the grounds that there are irreconcilable differences between the parties. The divorce shall become final upon signing and entry.

The problem here is the division of property and question of alimony. Plaintiff claims the home was given to her by the defendant in exchange for any interest in the business. Defendant claim is that the title to the property was placed in the plaintiff's name in order to protect it because the business was failing. He testified that the banks wanted the home placed for additional security and he would not do this. I hold that the property was placed in the plaintiff's name to protect it from business failure and that the home is a marital asset. The

business did fail and the parties divided up some cash that was approximately \$10,000.00 as defendant's portion and neither plaintiff or defendant made the claim that this belonged to the defendant as the remains of the business. It was in fact left with the plaintiff when defendant went looking for work. The evidence does show that the initial payment on the family home came from the plaintiff's home that she had prior to this marriage. Plaintiff's claim for \$19,672.00 which was the down payment on the new home is awarded to the plaintiff. He has purchased an additional home, furniture, and vehicles since the separation. The evidence indicates that none of these has any equity as the amounts owed are equal to the value. The household furniture and fixtures in the family home in Ogden have not been valued. The furniture, fixture, and personal property in plaintiff's possession is awarded to her. The furniture, vehicles, and property in defendant's possession is awarded to him, the home is to be divided as a martial asset.

The parties were married fourteen years prior to the failure of the business and the defendant leaving and looking for employment. At the present time it is a eighteen year marriage. This is not an instance were plaintiff stayed home and raised the children while the defendant progressed through the business world to arrive at a favorable position. The

plaintiff had four children prior to her marriage to the defendant and the defendant accepted them as family and assisted in their growth and well being. Defendant's position in the business world was arrived at after his separation from the plaintiff. The evidence shows that he still looks at her children as his family. It also supports his version that he wanted her to join him in Las Vegas but she refused. She claims they did not discuss her moving, however she does acknowledge that they did discuss renting out the home here in Ogden.

This is also not a case were plaintiff has become accustomed to a high standard of living. Prior to defendant's business failing the evidence is that he was grossing \$500.00 per week. This is a gross of \$26,000.00 a year which was used for the family needs. His tax returns indicate actual income considerably less. Plaintiff is now employed part time at Internal Revenue Service as a GS-5 Step 1 with a gross yearly salary of \$16,973. Being part time her gross pay was \$8,280.00 in addition thereto she drew unemployment for ten weeks which would give her a gross \$9,780. Her testimony was that when she goes back to work this year it will be at an increased amount. Employment history indicates since she graduated from high school in 1953 she has basically worked in clerking positions or assembly line positions she has never earned high income. Her

health is good and she is suffering no disabilities. Evidence shows that by leaving the area the defendant was able to go to work for Smith's and at one time was a store manager. By reason of his contracting rheumatoid arthritis he has had to downgrade his job to that of a buyer. Evidence indicates his income will be approximately \$56,000. When defendant left he did not totally abandon plaintiff. He left between \$8,000.00 and \$10,000.00 cash which she could use for house payments and payment of bills and in addition thereto she has sold off some property like the recreational vehicle for some \$9,000.00 plus he did send her some funds. Plaintiff did obtain a temporary order of \$1,500.00 per month alimony. Defendant filed an objection to the request for temporary alimony but he was not present at the hearing and no action was ever taken on his objection to the order.

Plaintiff filed an affidavit of monthly expenses showing present monthly expense of \$1,796.00 per month, her request for alimony would cover this with the exception of approximately \$300. The problem with her affidavit is it is not a true indication of her expenses. It is more a wish list than a needs list. Example would be the transportation figure of some \$531.00 a month and her testimony is she drives very little. Her personal expenses of \$270.00 per month includes recreational

and travel of over \$130.00 and she testified she does not travel and spends very little on recreation. Her food expenses total \$350.00 a month simply is not realistic. It appears the affidavit is made more with the view to obtain high alimony than to advising the court of her actual expenses.

I hold that the home is a marital asset and is to be subject to division between the parties. The home is to be sold. The plaintiff is to be awarded the first \$19,672.00 which would be for her equity of her home prior to the marriage. After the expense of sale is deducted, the remaining equity is to be divided between the parties.

The request for all of the home plus alimony is not realistic or fair.

The plaintiff did obtain an order for temporary support of \$1,500.00 a month, plaintiff has been unable to make these payments and is delinquent in the sum of \$27,507. I order that the defendant is to pay to the plaintiff the sum of \$1,000 per month. This \$1,000.00 shall be a payment of \$600.00 per month on the back alimony that was awarded and \$400.00 per month on going. Plaintiff shall have the use and occupancy of the home until it is sold and the the defendant's lien thereon shall not draw interest. The payment of the \$27,507.00 accumulated alimony at \$600.00 a month will take 45 months to clear up and

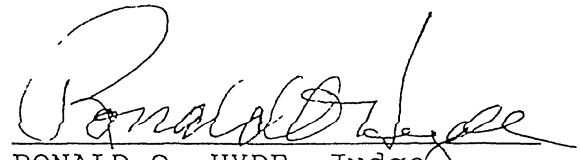
this figure also shall not draw interest. The payment of the back award will take 3.8 years and by that time plaintiff should be employed on a full time basis. The \$400.00 per month continuing alimony shall continue as an assistance fro her subsequent housing.

Neither party has much retirement accumulated, however each shall have interest in the others per the Woodward formula. Plaintiff testified she did not know if health and accident insurance was available to her through her employment. If it is she should obtain that, if it is not, then the defendant is to assist in obtaining whatever benefit he can through his employment at her expense.

His payment of \$12,000.00 a year plus her current earnings even on a part time basis of \$9,780.00 a year give her a gross income of almost \$22,000.00 per year. This equates almost to a figure equal to what the family was living on when defendant was drawing \$500.00 a week from the business prior to the separation and is a monthly amount greater than the amounts set out in the affidavit of monthly expenses as filed by the plaintiff. Therefore each party is to pay their own attorney's fees and costs.

Defendant's counsel to prepare findings, conclusion, and judgment in accordance herewith.

DATED this 2 day of November, 1991.


RONALD O. HYDE, Judge

CERTIFICATE OF MAILING

I hereby certify that on the 7 day of November, 1991, I sent a true and correct copy of the foregoing Memorandum Decision to counsel as follows:

David B. Havas
2604 Madison Avenue
Ogden, Utah 84401

Don E. Cassity
115 Social Hall Avenue
Salt Lake City, Utah 84111


Deputy Court Clerk

Tab 2

DONN E. CASSITY (#594)
ROMNEY, NELSON & CASSITY
Attorneys for Defendant
115 Social Hall Avenue
Salt Lake City, Utah 84111
Telephone: (801) 328-3261

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

JOY A. HOAGLAND,)	
	)	DECREE OF DIVORCE
Plaintiff,)	
)	
vs.)	
	)	CASE NO. 890903214
COLIN G. HOAGLAND,	)	RONALD O. HYDE, JUDGE
)	
Defendant.)	

The above-entitled matter having come on for Trial on the 28th day of November, 1991, before the Honorable Ronald O. Hyde, Judge, sitting without a jury, and the Court having heard the evidence presented in behalf of and by the Plaintiff, and in behalf of and by the Defendant, and the Court having heretofore entered its Findings of Fact and Conclusions of Law, and good cause appearing therefore, it is now,

ORDERED, ADJUDGED AND DECREED as follows:

1. That the Plaintiff and the Defendant should be and hereby are divorced from each other, said Decree of Divorce to become final upon execution by the Court and upon entry of the Decree of Divorce.

2. That the real estate and improvements thereon accumulated by the parties, Plaintiff and Defendant, during the marriage,

commonly described as 151 West 5400 South, Washington Terrace,
Weber County, State of Utah, and more particularly described as

Lot 163, South Ridge Subdivision No.
7 located in Weber County, State of
Utah as Recorded in the Weber County
Recorder's Office

should be and hereby is determined to be a marital asset.

3. It is hereby ordered that the said real estate and improvements is to be forthwith listed for sale, and is to be sold, and the Plaintiff and Defendant are ordered to execute any and all documents both with respect to the offering of the property for sale, and the closing and deeding of the property to the buyer, as will become necessary on a timely and appropriate basis, consistent with the need of sales persons, title company personnel, and the terms of the Sales Agreement between the Seiler and the Buyer. The Plaintiff and Defendant are both ordered to be cooperative in all respects with regard to the offering of sale, and the closing of the sale of the said real estate and improvements.

4. The Plaintiff should be and hereby is awarded from the net sale proceeds of the said real estate the first \$19,672.00, and it is ordered that the balance of the proceeds from the sale of the real estate is to be paid one-half to the Plaintiff and one-half to the Defendant.

5. Judgment for unpaid temporary alimony in the sum of \$27,507.00 is hereby awarded to the Plaintiff, and against the Defendant, said sum to be paid to the Defendant at the rate of \$600.00 per month, until the full sum of \$27,507.00 has been paid to the Plaintiff.

6. That ongoing alimony should be and hereby is ordered to be paid by the Defendant to the Plaintiff in the sum of \$400.00 per month.

7. That Plaintiff shall be permitted to use and occupy the residence of the parties until it is sold. Plaintiff is ordered to cooperate in all reasonable manner with the sales persons engaged in obtaining a qualified buyer for the said real estate.

8. The Defendant shall have a lien for his portion of the equity in the real estate described in paragraph 3 above, which lien shall not draw interest, nor shall interest be incurred as to the Plaintiff's \$19,672.00 sum to be paid out of the sale proceeds, nor shall interest be paid or accumulate on the past due alimony awarded to the Plaintiff, in the sum of \$27,507.00.

9. That it is hereby ordered that based upon Woodward vs. Woodward, and the formula setforth therein for division of retirement income, that each of the parties shall have claim in the other parties retirement income to the extent it was earned by Plaintiff and Defendant as of October 28, 1991.

10. It is ordered that the Plaintiff shall, if health and accident insurance is available to her through her employment, to obtain said insurance, and it is further ordered that in the event that it is not available to the Plaintiff at her employment, that the Defendant is to assist the Plaintiff in obtaining whatever insurance benefit, if any, he can for the Plaintiff through his own employment, at the expense of the Plaintiff.

11. That the Plaintiff and the Defendant should, and it is

hereby Ordered that each party shall pay their own attorneys fees and costs incurred herein.

DATED this 4th day of December, 1991.

BY THE COURT:

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RONALD O. HYDE, JUDGE

CERTIFICATE OF MAILING

On this 27th day of November, 1991, I certify that I mailed, postage prepaid, a copy of the foregoing Decree of Divorce to the Plaintiff by mailing a copy thereof to her attorney, David Burt Havas, at his office at 2604 Madison Avenue, Ogden, Utah 84401.

Angie H. Cassidy

Tab 3

DONN E. CASSITY (#594)
ROMNEY, NELSON & CASSITY
Attorneys for Defendant
115 Social Hall Avenue
Salt Lake City, Utah 84111
Telephone: (801) 328-3261

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

JOY A. HOAGLAND,)	
)	
Plaintiff,	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
vs.)	
)	
COLIN G. HOAGLAND,	)	CASE NO. 890903214
	)	JUDGE: RONALD O. HYDE
Defendant.)	

The above-entitled matter came on for Trial before the Honorable Ronald O. Hyde, Second Judicial District Court Judge for Weber County, sitting without a Jury, at 9:30 a.m. on the 28th day of October, 1991, and the Plaintiff, Joy A. Hoagland, and her attorney, David Burt Havas, were present, and the Defendant, Colin G. Hoagland, and his attorney, Donn E. Cassity, were present, and the Plaintiff having presented her testimony, exhibits and evidence, and the Defendant having presented his testimony, exhibits and testimony, and the attorneys having made their closing arguments, and the Court now being fully informed in the premises, now makes its

FINDINGS OF FACT

1. That the Plaintiff, Joy A. Hoagland, resided in Weber

County, State of Utah in excess of 90 days prior to the filing of the Complaint in the above-entitled matter by the Plaintiff.

2. That the Plaintiff and Defendant were married in Elko, Nevada on the 5th day of September, 1973.

3. That no children were born as issue of the marriage, but at the time of the marriage of the Plaintiff and the Defendant four children, siblings of the Plaintiff from another marriage lived in the home and were raised substantially by the Plaintiff and Defendant, with the Defendant, Step-Father, providing a substantial part of the support economically for the children, and which Defendant developed a very close and loving relationship with each of Plaintiff's children, which relationship has continued to the present.

4.. That during the year of 1986 marital problems arose between the parties, and they were separated twice for a few weeks but were reunited near the end of 1986, at which time the Defendant who was unemployed, and, whose grocery business had been closed, and gone through Bankruptcy, left the residence of the parties in Ogden Utah to seek employment, which he found in Las Vegas, Nevada.

5. That when the Plaintiff married the Defendant he was an employee of Smiths, a grocery company business, but later Defendant quit his employment at Smiths and opened his own grocery store, which business was operated until August of 1986, at which time the Defendant and his brother closed the business and filed the Business Corporation in Bankruptcy.

6. That prior to the closing of the business the Defendant

conveyed title to the residence and lot of the parties to the Plaintiff as a security against the possibility that Creditors might claim against the real and/or personal property of the Plaintiff and Defendant. No such claim was ever made by any Creditor, however.

7. That during 1986 the parties developed serious problems in their marriage relationship.

8. That the Defendant in January of 1987 found gainful employment in Las Vegas, Nevada, again working for Smiths in the grocery business. After being settled in Las Vegas in his new employment, Defendant purchased a newly constructed residence and lot and, invited the Plaintiff to come to Las Vegas. At the time of the visit the Defendant showed the Plaintiff the house, but when the Defendant asked her to move to Nevada so they could live together in the new home, she refused, stating, "My home is in Ogden, Utah". The Defendant told the Plaintiff that they could lease the home in Ogden and thus retain it, and that a good business friend in Ogden would manage it and make certain that it was protected in their absence. The Plaintiff refused to move to Nevada, and effectively the parties were then separated and have never since that period lived together. The marital parties have, and have had irreconcilable differences since at least April of 1987.

9. That at the time Defendant left the parties home in his pursuit of employment in Nevada the Defendant took with him some \$300.00 plus dollars, together with a pick-up truck that was

encumbered and a motorcycle. He left in the possession of the Plaintiff approximately \$8,000.00 to \$10,000.00 in cash, a motor home of the parties, which the Defendant believed had a value of \$12,000.00 to \$15,000.00, but which at a later time the Plaintiff sold for \$9,000.00 cash. The Defendant also left with the Plaintiff all of the furniture, the house, lot, swimming pool, and a 1980 Lincoln Town Car, and a 1976 Chevrolet. None of the vehicles were encumbered at that time. That none of the \$8,000.00 - \$10,000.00 cash, or the \$9,000.00 received by the Plaintiff from sale of the motor home was shared by Plaintiff with the Defendant.

10. That after it became obvious by April of 1987 that the Plaintiff was flatly refusing to rejoin the Defendant, as his wife, the Plaintiff and Defendant agreed upon a divorce, and the Defendant proposed that the Plaintiff retain as her sole property all of the vehicles, money, house and lot, furniture and household furnishings, and other personal property that he had left with Plaintiff at the time Defendant went to Nevada, and that the Plaintiff forego any claim to alimony from the Defendant. The Defendant believed, until the Complaint for Divorce was filed by Plaintiff that Plaintiff had agreed to accept the marital assets as her own, in lieu of any claim for alimony from the Defendant.

By the time the Complaint in the above matter was filed by the Plaintiff the Defendant had been transferred by his employer from Las Vegas to Reno, Nevada.

11. A Hearing on an Order to Show Cause was held in the absence of the Defendant, he being in Nevada at his work, and an

Order for temporary alimony was ordered by the Court in the sum of \$1,500.00 per month. That at the time of Trial of the case, temporary unpaid alimony had accrued in the total sum of \$27,507.00.

12. That at the time of the marriage of the Plaintiff and the Defendant the Plaintiff had an equity in a house and lot and the Plaintiff and Defendant lived in the said house for a period of time. The Plaintiff house was sold. During the time that the Plaintiff and the Defendant lived in the Plaintiff's home the Defendant made the mortgage payments. Defendant also essentially paid all of the mortgage payments on the home that the parties own at the present time, and which was purchased by the parties subsequent to the sale of the Plaintiff's home.

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13. That since the separation of the parties the Plaintiff temporarily had a daughter and a child live with her, but otherwise Plaintiff has lived in the home, alone, since the separation of the parties. The home is a four bedroom, two level home, with swimming pool, patio and covered porch, two car garage within the house, and no mortgage is owing on the said real estate. The house and lot have been appraised twice, for \$97,000 and for \$85,000.00

14. That neither the Plaintiff nor Defendant has much retirement benefits accumulated, if any.

15. That since the filing of the divorce the Defendant has been transferred from Reno, Nevada by his employer to Phoenix, Arizona, and Defendant has purchased a house and lot in Glendale, Arizona, and a pick-up truck and a boat in which there is

essentially no equity.

16. That the Plaintiff has had the sole use of the parties real estate, furniture, fixtures and all of the other personal property accumulated by the parties during the marriage since the separation of the parties in December of 1986.

17. That the Plaintiff had not become accustomed to a high standard of living during the marriage, it appearing from the evidence that prior to Defendant's business failing in 1986 he was grossing approximately \$500.00 per week which was used for family needs. The parties income tax returns for years prior thereto indicate actual income considerably less.

18. Plaintiff is employed currently as she has been for some time with the United States Treasury Department, Internal Revenue Services as a GS-5 Step One with a gross yearly salary of \$16,973.00, and a part-time gross pay of \$8,280.00, plus unemployment for ten weeks giving her a gross income of \$9,780.00 per year.

19. Plaintiff testified that she would receive an increased income when she returns to work in 1992.

20. That the Plaintiff's employment history indicates that she graduated from High School in 1953 and has basically worked in clerking positions or assembly line positions, and has never earned a high income.

21. Plaintiff's health is good and she suffers no disabilities.

22. Defendant after reobtaining employment with Smiths became

a Store Manager, but he developed Rheumatoid Arthritis and has had to down grade his job to that of a buyer, and his income will be approximately \$56,000.00 per annum.

23. That Plaintiff filed an Affidavit of monthly expenses showing present monthly expenses of \$1,796.00 per month, however, Plaintiff's Affidavit is more a wish list than a needs list.

An example of that fact is that the transportation figure that the Plaintiff uses in her monthly expenses list shows \$531.00 for transportation expense though her testimony is that she drives very little. She also indicates that her personal expenses of \$270.00 per month includes recreational and travel of over \$130.00, and she testified that she does not travel and spends very little money on recreation. In addition, she recites that her food expenses totalled \$350.00 per month which is not a realistic sum to spend for one person, and reflects a desire on the part of the Plaintiff to obtain high alimony rather than reasonably advising the Court of the Plaintiff's actual expenses.

24. That the Plaintiff claims that the house and lot in Washington Terrace was deeded to her in exchange for any claim she had against ownership of the grocery store business that was operated by the Defendant and his brother.

25. The Court finds, however, that the Deed was conveyed at a time when the grocery business of the Defendant and his brother was closing down and near Bankruptcy and ultimately went into Bankruptcy, and that there was little, or no value in the business at the time of the conveyance by Defendant of title by Quit Claim

Deed to the Plaintiff.

26. The evidence shows that the Defendant still, at this date, looks at the Plaintiff's children as his family, which fact supports Defendants version that he wanted Plaintiff to join him in Las Vegas to continue the marriage, but that Plaintiff refused to do so.

27. The Plaintiff claims that no such discussion of her moving to Nevada took place, but Plaintiff does acknowledge that Plaintiff and Defendant did discuss renting out the residence and lot in Washington Terrace, Ogden, Utah.

The Court having entered its Findings of Fact now enters its

CONCLUSIONS OF LAW

1. That the Court has jurisdiction in the above-entitled matter.

2. That the parties have irreconcilable differences one with the other, and they should be divorced from each other, and the divorce should be final upon execution and entry by the Court.

3. That the residence and lot located at 151 West 5400 South, Washington Terrace, Weber County, State of Utah, is a marital asset.

4. That the said real estate should be sold.

5. That from the sale proceeds, the Plaintiff should be awarded, the first \$19,672.00, without interest, representing Plaintiff's equity from her home prior to the marriage of the parties.

6. That after the expenses of sale are deducted the balance of the remaining equity should be divided, one-half to the Plaintiff, and one-half to the Defendant.

7. That the Court determines that there is delinquent alimony owed to the Plaintiff in the sum of \$27,507.00.

8. That the Plaintiff should be awarded on going alimony.

9. That the Defendant should pay to the Plaintiff the sum of \$600.00 per month in liquidation of the delinquent alimony sum of \$27,507.00, which the Court calculates will take 45.845 months, and the Defendant should not be required to pay interest on the delinquent alimony.

10. The payment of the back alimony will take Defendant 3.82 years, and by that time the Plaintiff should be employed on a full time basis.

11. That the Plaintiff should have the use and occupancy of the parties house and lot until it is sold, and the Defendant's lien on the equity in the real estate should not draw interest.

12. That neither party has much retirement benefits accumulated, but each should have an interest in the others retirement per the Woodward v. Woodward formula.

13. If the Plaintiff can obtain health and accident insurance through her employment she should obtain that, but if the said insurance is not available to the Plaintiff then the Defendant should assist the Plaintiff in obtaining whatever medical benefit, if any, she can through Defendants employment, at the Plaintiff's expense.

14. The Plaintiff in receiving \$12,000.00 a year for 3.8 years from the Defendant, plus her current earnings on a part time basis of \$9,780.00 or more, will provide Plaintiff with a gross income of almost \$22,000.00 per year, which is almost equal to the income which the parties were living on when the Defendant was drawing \$500.00 per week from his business prior to the separation of the parties, and represents a monthly amount greater than the amounts set out in the Affidavit of monthly expenses as filed by the Plaintiff. Therefore, the Plaintiff and the Defendant should each pay their own attorneys fees and costs.

DATED this _____ day of _____, 1991.

BY THE COURT:

RONALD O. HYDE, JUDGE

CERTIFICATE OF MAILING

On this 27 day of November, 1991, I certify that I mailed, postage prepaid, to the Plaintiff's attorney, David Burt Havas, at his Office at 2604 Madison Avenue, Ogden, Utah 84401, a copy of the foregoing Findings of Fact and Conclusions of Law in the above-entitled case.

Gayle M. Cassidy

Tab 4

DONN E. CASSITY (#594)
ROMNEY, NELSON & CASSITY
Attorneys for Defendant
115 Social Hall Avenue
Salt Lake City, Utah 84111
Telephone: (801) 328-3261

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

JOY A. HOAGLAND,)	
	)	ORDER
Plaintiff,)	
)	
vs.)	
	)	CASE NO. 890903214
COLIN G. HOAGLAND,	)	RONALD O. HYDE, JUDGE
)	
Defendant.)	

On the 9th day of January, 1992, at the hour of 10:00 a.m. the Motion of the Plaintiff to Amend Findings of Fact in the above-entitled matter came on for Hearing, and the Plaintiff was present and represented by her counsel, David Burt Havas, and the Defendant was not present but was represented by his counsel, Donn E. Cassity, and after argument in behalf of Plaintiff's Motion by Plaintiff's counsel, and the objection and argument of counsel for the Defendant, Donn E. Cassity, the Court now being fully advised in the premises does now

ORDER that the Findings of Fact heretofore executed by the Court on the 4th day of December, 1991, be amended as to Paragraph 9 of the Findings of Fact wherein on page 4, third line down, the words "which the Defendant believed had a value of \$12,000.00 to \$15,000.00, but" be deleted and the balance of said sentence in

said Paragraph 9 be left as written, and it is further Ordered the Paragraph 10 of the Findings of Fact be amended by deleting the first three lines of Paragraph 10 including the first word of the fourth line of Paragraph 10, and insert in place of those words as follows "That the parties had conversation regarding distribution of the marital assets, and the Defendant", and starting with the word "proposed" in the fourth line of the Findings of Fact the balance of the Paragraph 10 is to remain as previously written.

IT IS FURTHER ORDERED that the last sentence of Paragraph 12 on Page 5 of the Findings of Fact shall be amended by deleting the said sentence beginning with the word "Defendant" and ending with the word "home".

IT IS FURTHER ORDERED that no further amendments proposed by the Plaintiff are approved, and are hereby denied.

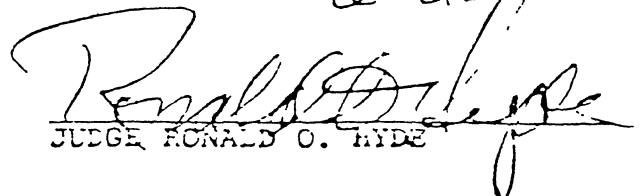
IT IS FURTHER ORDERED that in the event sale of the marital real estate and division of the net proceeds thereof are upheld by the Utah Court of Appeals, that in view of the fact that the real estate of the parties commonly known as 151 West 5400 South Washington Terrace, Weber County, State of Utah, is by decree of divorce ordered to be sold, and since the Defendant's equity in the said marital real estate will not, because of Plaintiff's appeal, be timely paid to Defendant, due to Plaintiff's appeal of the Court's decision, that interest on the net equity of the Defendant in the said real estate, when it is sold, shall bear interest from date of Plaintiffs Notice of Appeal at the rate of ten (10%) percent per annum, which interest shall be paid to the Defendant in

addition to the principal amount of the net sales price awarded to Defendant, following sale of the marital real estate, so long as the Defendant pays the Plaintiff alimony consistent with the provisions of the Decree of Divorce, executed and entered by the Court on December 4, 1991.

The motion of the Plaintiff that she be awarded interest on the Plaintiff's Judgment for delinquent alimony that has been awarded Plaintiff by the Court should be and hereby is denied, it appearing that any delay in the performance of the terms of the Decree of Divorce with respect to payment of past due alimony to the Plaintiff, by the Defendant, will be caused, if at all, solely by the Appeal of this case by the Plaintiff.

The Order of the Court as to payment of interest to the Defendant, is not intended by the Court to limit any right Defendant otherwise has with respect to the marital estate.

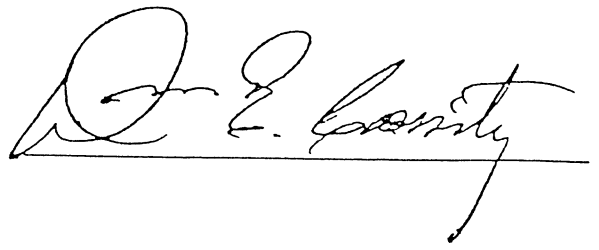
BY THE COURT:

2-25-92

JUDGE RONALD O. HYDE

CERTIFICATE OF MAILING

I certify that on the 16th day of January, 1992, I mailed, postage prepaid, a copy of the foregoing Order in the above-entitled case to the Plaintiff by mailing a copy thereof to her

counsel, David Burt Havas, at his office at 2604 Madison Avenue,
Ogden, Utah 84401.

A handwritten signature in cursive script, appearing to read "D. E. Gentry", is written over a horizontal line. The signature is fluid and stylized, with the first letter of each word being capitalized and prominent.

Tab 5

DONN E. CASSITY (#594,
ROMNEY, NELSON & CASSITY
Attorneys for Defendant
115 Social Hall Avenue
Salt Lake City, Utah 84111
Telephone: (801) 328-3261

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

JOY A. HOAGLAND,	)	AMENDED FINDINGS
	)	OF FACT AND
Plaintiff,	)	CONCLUSIONS OF LAW
)	
vs.)	
	)	CASE NO. 890903214
COLIN G. HOAGLAND,	)	JUDGE: RONALD O. HYDE
)	
Defendant.)	

The above-entitled matter came on for Trial before the Honorable Ronald O. Hyde, Second Judicial District Court Judge for Weber County, sitting without a Jury, at 9:30 a.m. on the 28th day of October, 1991, and the Plaintiff, Joy A. Hoagland, and her attorney, David Burt Javaz, were present, and the Defendant, Colin G. Hoagland, and his attorney, Donn E. Cassity, were present, and the Plaintiff having presented her testimony, exhibits and evidence, and the Defendant having presented his testimony, exhibits and testimony, and the attorneys having made their closing arguments, and the Court now being fully informed in the premises, now makes its

FINDINGS OF FACT

1. That the Plaintiff, Joy A. Hoagland, resided in Weber

County, State of Utah in excess of 90 days prior to the filing of the Complaint in the above-entitled matter by the Plaintiff.

2. That the Plaintiff and Defendant were married in Elko, Nevada on the 5th day of September, 1973.

3. That no children were born as issue of the marriage, but at the time of the marriage of the Plaintiff and the Defendant four children, siblings of the Plaintiff from another marriage lived in the home and were raised substantially by the Plaintiff and Defendant, with the Defendant, Step-Father, providing a substantial part of the support economically for the children, and which Defendant developed a very close and loving relationship with each of Plaintiff's children, which relationship has continued to the present.

4. That during the year of 1986 marital problems arose between the parties, and they were separated twice for a few weeks but were reunited near the end of 1986, at which time the Defendant who was unemployed, and, whose grocery business had been closed, and gone through Bankruptcy, left the residence of the parties in Ogden Utah to seek employment, which he found in Las Vegas, Nevada.

5. That when the Plaintiff married the Defendant he was an employee of Smiths, a grocery company business, but later Defendant quit his employment at Smiths and opened his own grocery store, which business was operated until August of 1986, at which time the Defendant and his brother closed the business and filed the Business Corporation in Bankruptcy.

6. That prior to the closing of the business the Defendant

conveyed title to the residence and lot of the parties to the Plaintiff as a security against the possibility that Creditors might claim against the real and/or personal property of the Plaintiff and Defendant. No such claim was ever made by any Creditor, however.

7. That during 1986 the parties developed serious problems in their marriage relationship.

8. That the Defendant in January of 1987 found gainful employment in Las Vegas, Nevada, again working for Smiths in the grocery business. After being settled in Las Vegas in his new employment, Defendant purchased a newly constructed residence and lot and, invited the Plaintiff to come to Las Vegas. At the time of the visit the Defendant showed the Plaintiff the house, but when the Defendant asked her to move to Nevada so they could live together in the new home, she refused, stating, "My home is in Ogden, Utah". The Defendant told the Plaintiff that they could lease the home in Ogden and thus retain it, and that a good business friend in Ogden would manage it and make certain that it was protected in their absence. The Plaintiff refused to move to Nevada, and effectively the parties were then separated and have never since that period lived together. The marital parties have, and have had irreconcilable differences since at least April of 1987.

9. That at the time Defendant left the parties home in his pursuit of employment in Nevada the Defendant took with him some \$300.00 plus dollars, together with a pick-up truck that was

encumbered and a motorcycle. He left in the possession of the Plaintiff approximately \$8,000.00 to \$10,000.00 in cash, a motor home of the parties, which at a later time the Plaintiff sold for \$9,000.00 cash. The Defendant also left with the Plaintiff all of the furniture, the house, lot, swimming pool, and a 1980 Lincoln Town Car, and a 1976 Chevrolet. None of the vehicles were encumbered at that time. That none of the \$8,000.00 - \$10,000.00 cash, or the \$9,000.00 received by the Plaintiff from sale of the motor home was shared by Plaintiff with the Defendant.

10. That the parties had irreconcilable differences. That the parties had conversation regarding distribution of the marital assets, and the Defendant proposed that the Plaintiff retain as her sole property all of the vehicles, money, house and lot, furniture and household furnishings, and other personal property that he had left with Plaintiff at the time Defendant went to Nevada, and that the Plaintiff forego any claim to alimony from the Defendant. The Defendant believed, until the Complaint for Divorce was filed by Plaintiff that Plaintiff had agreed to accept the marital assets as her own, in lieu of any claim for alimony from the Defendant.

By the time the Complaint in the above matter was filed by the Plaintiff the Defendant had been transferred by his employer from Las Vegas to Reno, Nevada.

11. A Hearing on an Order to Show Cause was held in the absence of the Defendant, he being in Nevada at his work, and an Order for temporary alimony was ordered by the Court in the sum of \$1,500.00 per month. That at the time of Trial of the case,

temporary unpaid alimony had accrued in the total sum of \$27,507.00.

12. That at the time of the marriage of the Plaintiff and the Defendant the Plaintiff had an equity in a house and lot and the Plaintiff and Defendant lived in the said house for a period of time. The Plaintiff house was sold. During the time that the Plaintiff and the Defendant lived in the Plaintiff's home the Defendant made the mortgage payments. That following the separation of the parties the Defendant sent monies to the Plaintiff for some time thereafter.

13. That since the separation of the parties the Plaintiff temporarily had a daughter and a child live with her, but otherwise Plaintiff has lived in the home, alone, since the separation of the parties. The home is a four bedroom, two level home, with swimming pool, patio and covered porch, two car garage within the house, and no mortgage is owing on the said real estate. The house and lot have been appraised twice, for \$97,000 and for \$85,000.00

14. That neither the Plaintiff nor Defendant has much retirement benefits accumulated, if any.

15. That since the filing of the divorce the Defendant has been transferred from Reno, Nevada by his employer to Phoenix, Arizona, and Defendant has purchased a house and lot in Glendale, Arizona, and a pick-up truck and a boat in which there is essentially no equity.

16. That the Plaintiff has had the sole use of the parties real estate, furniture, fixtures and all of the other personal

property accumulated by the parties during the marriage since the separation of the parties in December of 1986.

17. That the Plaintiff had not become accustomed to a high standard of living during the marriage, it appearing from the evidence that prior to Defendant's business failing in 1986 he was grossing approximately \$500.00 per week which was used for family needs. The parties income tax returns for years prior thereto indicate actual income considerably less.

18. Plaintiff is employed currently as she has been for some time with the United States Treasury Department, Internal Revenue Services as a GS-5 Step One with a gross yearly salary of \$16,973.00, and a part-time gross pay of \$8,280.00, plus unemployment for ten weeks giving her a gross income of \$9,780.00 per year.

19. Plaintiff testified that she would receive an increased income when she returns to work in 1992.

20. That the Plaintiff's employment history indicates that she graduated from High School in 1953 and has basically worked in clerking positions or assembly line positions, and has never earned a high income.

21. Plaintiff's health is good and she suffers no disabilities.

22. Defendant after reobtaining employment with Smiths became a Store Manager, but he developed Rheumatoid Arthritis and has had to down grade his job to that of a buyer, and his income will be approximately \$56,000.00 per annum.

23. That Plaintiff filed an Affidavit of monthly expenses showing present monthly expenses of \$1,796.00 per month, however, Plaintiff's Affidavit is more a wish list than a needs list.

An example of that fact is that the transportation figure that the Plaintiff uses in her monthly expenses list shows \$531.00 for transportation expense though her testimony is that she drives very little. She also indicates that her personal expenses of \$270.00 per month includes recreational and travel of over \$130.00, and she testified that she does not travel and spends very little money on recreation. In addition, she recites that her food expenses totalled \$350.00 per month which is not a realistic sum to spend for one person, and reflects a desire on the part of the Plaintiff to obtain high alimony rather than reasonably advising the Court of the Plaintiff's actual expenses.

24. That the Plaintiff claims that the house and lot in Washington Terrace was deeded to her in exchange for any claim she had against ownership of the grocery store business that was operated by the Defendant and his brother.

25. The Court finds, however, that the Deed was conveyed at a time when the grocery business of the Defendant and his brother was closing down and near Bankruptcy and ultimately went into Bankruptcy, and that there was little, or no value in the business at the time of the conveyance by Defendant of title by Quit Claim Deed to the Plaintiff.

26. The evidence shows that the Defendant still, at this date, looks at the Plaintiff's children as his family, which fact

supports Defendants version that he wanted Plaintiff to join him in Las Vegas to continue the marriage, but that Plaintiff refused to do so.

27. The Plaintiff claims that no such discussion of her moving to Nevada took place, but Plaintiff does acknowledge that Plaintiff and Defendant did discuss renting out the residence and lot in Washington Terrace, Ogden, Utah.

The Court having entered its Findings of Fact now enters its

CONCLUSIONS OF LAW

1. That the Court has jurisdiction in the above-entitled matter.

2. That the parties have irreconcilable differences one with the other, and they should be divorced from each other, and the divorce should be final upon execution and entry by the Court.

3. That the residence and lot located at 151 West 5400 South, Washington Terrace, Weber County, State of Utah, is a marital asset.

4. That the said real estate should be sold.

5. That from the sale proceeds, the Plaintiff should be awarded, the first \$19,672.00, without interest, representing Plaintiff's equity from her home prior to the marriage of the parties.

6. That after the expenses of sale are deducted the balance of the remaining equity should be divided, one-half to the Plaintiff, and one-half to the Defendant.

7. That the Court determines that there is delinquent alimony owed to the Plaintiff in the sum of \$27,507.00.

8. That the Plaintiff should be awarded on going alimony.

9. That the Defendant should pay to the Plaintiff the sum of \$600.00 per month in liquidation of the delinquent alimony sum of \$27,507.00, which the Court calculates will take 45.845 months, and the Defendant should not be required to pay interest on the delinquent alimony.

10. The payment of the back alimony will take Defendant 3.82 years, and by that time the Plaintiff should be employed on a full time basis.

11. That the Plaintiff should have the use and occupancy of the parties house and lot until it is sold, and the Defendant's lien on the equity in the real estate should not draw interest.

12. That neither party has much retirement benefits accumulated, but each should have an interest in the others retirement per the Woodward v. Woodward formula.

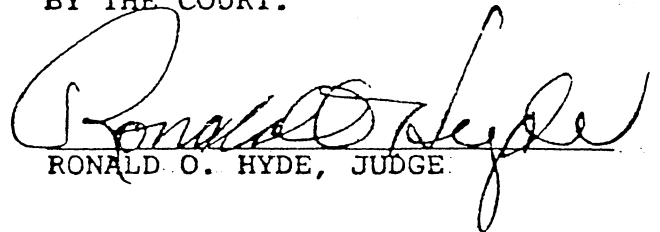
13. If the Plaintiff can obtain health and accident insurance through her employment she should obtain that, but if the said insurance is not available to the Plaintiff then the Defendant should assist the Plaintiff in obtaining whatever medical benefit, if any, she can through Defendants employment, at the Plaintiff's expense.

14. The Plaintiff in receiving \$12,000.00 a year for 3.8 years from the Defendant, plus her current earnings on a part time basis of \$9,780.00 or more, will provide Plaintiff with a gross

income of almost \$22,000.00 per year, which is almost equal to the income which the parties were living on when the Defendant was drawing \$500.00 per week from his business prior to the separation of the parties, and represents a monthly amount greater than the amounts set out in the Affidavit of monthly expenses as filed by the Plaintiff. Therefore, the Plaintiff and the Defendant should each pay their own attorneys fees and costs.

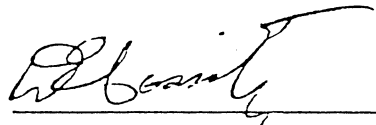
DATED this 25 day of ^{Feb}~~January~~, 1992.

BY THE COURT:


RONALD O. HYDE, JUDGE

CERTIFICATE OF MAILING

On this 16th day of January, 1992, I certify that I mailed, postage prepaid, to the Plaintiff's attorney, David Burt Havas, at his office at 2604 Madison Avenue, Ogden, Utah 84401, a copy of the foregoing Amended Findings of Fact and Conclusions of Law in the above-entitled case.



Tab 6

DONN E. CASSITY (#594)
ROMNEY, NELSON & CASSITY
Attorneys for Defendant
115 Social Hall Avenue
Salt Lake City, Utah 84111
Telephone: (801) 328-3261

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

JOY A. HOAGLAND,)	
	)	AMENDED ORDER
Plaintiff,)	
)	
vs.)	
	)	CASE NO. 890903214
COLIN G. HOAGLAND,	)	RONALD O. HYDE, JUDGE
)	
Defendant.)	

On the 9th day of January, 1992, at the hour of 10:00 a.m. the Motion of the Plaintiff to Amend Findings of Fact in the above-entitled matter came on for Hearing, and the Plaintiff was present and represented by her counsel, David Burt Havas, and the Defendant was not present but was represented by his counsel, Donn E. Cassity, and after argument in behalf of Plaintiff's Motion by Plaintiff's counsel, and the objection and argument of counsel for the Defendant, Donn E. Cassity, the Court now being fully advised in the premises does now

ORDER that the Findings of Fact heretofore executed by the Court on the 4th day of December, 1991, be amended as to Paragraph 3 so as to be factually and grammatically correct, amended as to Paragraph 9 of the Findings of Fact, wherein on page 4, third line down, the words "which the Defendant believed had a value of

\$12,000.00 to \$15,000.00, but" be deleted and the balance of said sentence in said Paragraph 9 be left as written, and it is further Ordered the Paragraph 10 of the Findings of Fact be amended by deleting the first three lines of Paragraph 10 including the first word of the fourth line of Paragraph 10, and insert in place of those words as follows "That the Defendant testified that the parties had conversation regarding distribution of the marital assets, and that the Defendant", and starting with the word "proposed" in the fourth line of the Findings of Fact the balance of the Paragraph 10 is to remain as previously written, excepting that the last sentence of Paragraph 10 will read as follows: "The Defendant testified that until the Complaint for divorce was filed by the Plaintiff that the Defendant believed that Plaintiff had agreed with him to accept the marital assets as her own in lieu of Plaintiff making any claim for alimony from the Defendant."

IT IS FURTHER ORDERED that the third and fourth sentences of Paragraph 12 on Page 5 of the Findings of Fact shall be deleted.

IT IS FURTHER ORDERED that no further amendments proposed by the Plaintiff are approved, and are hereby denied.

IT IS FURTHER ORDERED that in the event sale of the marital real estate and division of the net proceeds thereof are upheld by the Utah Court of Appeals, that in view of the fact that the real estate of the parties commonly known as 151 West 5400 South Washington Terrace, Weber County, State of Utah, is by decree of divorce ordered to be sold, and since the Defendant's equity in the said marital real estate will not, because of Plaintiff's appeal,

be timely paid to Defendant due to Plaintiff's appeal of the Court's decision that interest on the net equity of the Defendant in the said real estate, when it is sold, shall bear interest from date of Plaintiff's Notice of Appeal at the rate of ten (10%) percent per annum, which interest shall be paid to the Defendant in addition to the principal amount of the net sales price awarded to Defendant, following sale of the marital real estate, so long as the Defendant pays the Plaintiff alimony consistent with the provisions of the Decree of Divorce, executed and entered by the Court on December 4, 1991.

The Motion of the Plaintiff that she be awarded interest on the Plaintiff's Judgment for delinquent alimony that has been awarded Plaintiff by the Court should be and hereby is denied.

The Order of the Court as to payment of interest to the Defendant, is not intended by the Court to limit any right Defendant otherwise has with respect to the marital estate.

DATED this ____ day of _____, 1992.

BY THE COURT:

JUDGE RONALD O. HYDE

CERTIFICATE OF MAILING

I certify that on the 17th day of April, 1992, I mailed,

postage prepaid, a copy of the foregoing Order in the above-entitled case to the Plaintiff by mailing a copy thereof to her counsel, David Burt Havas, at his office at 2604 Madison Avenue, Ogden, Utah 84401.

Gayle N Cassidy

Tab 7

DONN E. CASSITY (#594)
ROMNEY, NELSON & CASSITY
Attorneys for Defendant
115 Social Hall Avenue
Salt Lake City, Utah 84111
Telephone: (801) 328-3261

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR WEBER COUNTY, STATE OF UTAH

JOY A. HOAGLAND,	)	SECOND AMENDED FINDINGS
	)	OF FACT AND
Plaintiff,	)	CONCLUSIONS OF LAW
)	
vs.)	
	)	CASE NO. 890903214
COLIN G. HOAGLAND,	)	JUDGE: RONALD O. HYDE
)	
Defendant.)	

The above-entitled matter came on for Trial before the Honorable Ronald O. Hyde, Second Judicial District Court Judge for Weber County, sitting without a Jury, at 9:30 a.m. on the 28th day of October, 1991, and the Plaintiff, Joy A. Hoagland, and her attorney, David Burt Havas, were present, and the Defendant, Colin G. Hoagland, and his attorney, Donn E. Cassity, were present, and the Plaintiff having presented her testimony, exhibits and evidence, and the Defendant having presented his testimony, exhibits and evidence, and the attorneys having made their closing arguments and the Court now being fully informed in the premises, now makes its

FINDINGS OF FACT

1. That the Plaintiff, Joy A. Hoagland, resided in Weber

County, State of Utah in excess of 90 days prior to the filing of the Complaint in the above-entitled matter by the Plaintiff.

2. That the Plaintiff and Defendant were married in Elko, Nevada on the 5th day of September, 1973.

3. That no children were born as issue of the marriage, but from the time of the marriage of the Plaintiff and the Defendant four children, each borne of the Plaintiff from a prior marriage lived in the parties home and were raised by the Plaintiff and Defendant, with the Defendant, Step-Father, providing the substantial part of the support economically for the children, during which time the Defendant developed a very close and loving relationship with each of Plaintiff's children, which relationship has continued to the present.

4. That during the year of 1986 marital problems arose between the parties, and they were separated twice for a few weeks but were reunited near the end of 1986, at which time the Defendant who was unemployed and whose grocery business had been closed, and gone through Bankruptcy, left the residence of the parties in Ogden Utah to seek employment, which he found in Las Vegas, Nevada.

5. That when the Plaintiff married the Defendant he was an employee of Smiths, a grocery company business, but later Defendant quit his employment at Smiths and opened his own grocery store, which business was operated until August of 1986, at which time the Defendant and his brother closed the business and filed the Business Corporation in Bankruptcy.

6. That prior to the closing of the business the Defendant

conveyed title to the residence and lot of the parties to the Plaintiff as a security against the possibility that Creditors might claim against the real and/or personal property of the Plaintiff and Defendant. No such claim was ever made by any Creditor, however.

7. That during 1986 the parties developed serious problems in their marriage relationship.

8. That the Defendant in January of 1987 found gainful employment in Las Vegas, Nevada, again working for Smiths in the grocery business. After being settled in Las Vegas in his new employment, Defendant purchased a newly constructed residence and lot, and invited the Plaintiff to come to Las Vegas. At the time of the visit the Defendant showed the Plaintiff the house, but when the Defendant asked her to move to Nevada so they could live together in the new home, she refused, stating, "My home is in Ogden, Utah". The Defendant told the Plaintiff that they could lease the home in Ogden and thus retain it, and that a good business friend in Ogden would manage it and make certain that it was protected in their absence. The Plaintiff refused to move to Nevada, and effectively the parties were then separated and have never since that period lived together. The marital parties have, and have had irreconcilable differences since at least April of 1987.

9. That at the time Defendant left the parties home in his pursuit of employment in Nevada the Defendant took with him some \$300.00 plus dollars, together with a pick-up truck that was

encumbered and a motorcycle. 'He left in the possession of the Plaintiff approximately \$8,000.00 to \$10,000.00 in cash, the motor home of the parties, which at a later time the Plaintiff sold for \$9,000.00 cash. The Defendant also left with the Plaintiff all of the furniture, the house lot, swimming pool, and a 1980 Lincoln Town Car, and a 1976 Chevrolet. None of the vehicles were encumbered at that time. That none of the \$8,000.00 - \$10,000.00 cash, or the \$9,000.00 received by the Plaintiff from sale of the motor home was shared by Plaintiff with the Defendant.

9K 10. That the parties had irreconcilable differences. That the Defendant testified that the parties had conversation regarding distribution of the marital assets, and that the Defendant proposed that the Plaintiff retain as her sole property all of the vehicles, money, house and lot, furniture and household furnishings, and other personal property that he had left with the Plaintiff at the time Defendant went to Nevada, and that the Plaintiff forego any claim to alimony from the Defendant. The Defendant testified that until the Complaint for Divorce was filed by the Plaintiff that he believed that Plaintiff had agreed with him to accept the marital assets as her own, in lieu of Plaintiff making any claim for alimony from the Defendant.

By the time the Complaint in the above matter was filed by the Plaintiff the Defendant had been transferred by his employer from Las Vegas to Reno, Nevada.

11. A Hearing on an Order to Show Cause was held in the absence of the Defendant, he being in Nevada at his work, and an

Order for temporary alimony was ordered by the Court in the sum of \$1,500.00 per month. That at the time of Trial of the case, temporary unpaid alimony had accrued in the total sum of \$27,507.00.

12. That at the time of the marriage of the Plaintiff and the Defendant the Plaintiff had an equity in a house and lot and the Plaintiff and Defendant lived in the said house for a period of time. The Plaintiff's house was sold. That following the separation of the parties the Defendant sent monies to the Plaintiff for some time thereafter.

13. That since the separation of the parties the Plaintiff temporarily had a daughter and a child live with her, but otherwise Plaintiff has lived in the home, alone, since the separation of the parties. The home is a four bedroom, two level home, with swimming pool, patio and covered porch, two car garage within the house, and no mortgage is owing on the said real estate. The house and lot have been appraised twice, for \$97,000.00 and for \$85,000.00.

14. That neither the Plaintiff nor Defendant has much retirement benefits accumulated, if any.

15. That since the filing of the divorce the Defendant has been transferred from Reno, Nevada by his employer to Phoenix, Arizona, and Defendant has purchased a house and lot in Glendale, Arizona, and a pick-up truck, and a boat in which there is essentially no equity.

16. That the Plaintiff has had the sole use of the parties real estate, furniture, fixtures and all of the other personal

property accumulated by the parties during the marriage since the separation of the parties in December of 1986.

17. That the Plaintiff had not become accustomed to a high standard of living during the marriage, it appearing from the evidence that prior to Defendant's business failing in 1986 he was grossing approximately \$500.00 per week which was used for family needs. The parties income tax returns for years prior thereto indicate actual income considerably less.

18. Plaintiff is employed currently as she has been for some time with the United States Treasury Department, Internal Revenue Service as a GS-5 Step One with a gross yearly salary of \$16,973.00, and a part-time gross pay of \$8,280.00, plus unemployment for ten weeks giving her a gross income of \$9,780.00 per year.

19. Plaintiff testified that she would receive an increased income when she returns to work in 1992.

20. That the Plaintiff's employment history indicates that she graduated from High School in 1953 and has basically worked in clerking positions or assembly line positions, and has never earned a high income.

21. Plaintiff's health is good and she suffers no disabilities.

22. Defendant after reobtaining employment with Smiths became a Store Manager, but he developed Rheumatoid Arthritis and has had to down grade his job to that of a buyer, and his income will be approximately \$56,000.00 per annum.

23. That Plaintiff filed an Affidavit of monthly expenses showing present monthly expenses of \$1,796.00 per month, however, Plaintiff's Affidavit is more a wish list than a needs list.

An example of that fact is that the transportation figure that the Plaintiff uses in her monthly expenses list shows \$531.00 for transportation expense though her testimony is that she drives very little. She also indicates that her personal expenses of \$270.00 per month includes recreational and travel of over \$130.00, and she testified that she does not travel and spends very little money on recreation. In addition, she recites that her food expenses totalled \$350.00 per month which is not a realistic sum to spend for one person, and reflects a desire on the part of the Plaintiff to obtain high alimony rather than reasonably advising the Court of the Plaintiff's actual expenses.

24. That the Plaintiff claims that the house and lot in Washington Terrace was deeded to her in exchange for any claim she had against ownership of the grocery store business that was operated by the Defendant and his brother.

25. The Court finds, however, that the Deed was conveyed at a time when the grocery business of the Defendant and his brother was closing down and near Bankruptcy and ultimately went into Bankruptcy, and that there was little, or no value in the business at the time of the conveyance by Defendant of title by Quit-Claim Deed to the Plaintiff.

26. The evidence shows that the Defendant still, at this date, looks at the Plaintiff's children as his family, which fact

supports Defendant's version that he wanted Plaintiff to join him in Las Vegas to continue the marriage, but that Plaintiff refused to do so.

27. The Plaintiff claims that no such discussion of her moving to Nevada took place, but Plaintiff does acknowledge that Plaintiff and Defendant did discuss renting out the residence and lot in Washington Terrace, Ogden, Utah.

The Court having entered its Findings of Fact now enters its

CONCLUSIONS OF LAW

1. That the Court has jurisdiction in the above-entitled matter.

2. That the parties have irreconcilable differences one with the other, and they should be divorced from each other, and the divorce should be final upon execution and entry by the Court.

3. That the residence and lot located at 151 West 5400 South, Washington Terrace, Weber County, State of Utah, is a marital asset.

4. That the said real estate should be sold.

5. That from the sale proceeds, the Plaintiff should be awarded, the first \$19,672.00, without interest, representing Plaintiff's equity from her prior home prior to the marriage of the parties.

6. That after the expenses of sale are deducted the balance of the remaining equity should be divided, one-half to the Plaintiff, and one-half to the Defendant.

7. That the Court determines that there is delinquent alimony owed to the Plaintiff in the sum of \$27,507.00.

8. That the Plaintiff should be awarded on going alimony.

9. That the Defendant should pay to the Plaintiff the sum of \$600.00 per month in liquidation of the delinquent alimony sum of \$27,507.00, which the Court calculates will take 45.845 months, and the Defendant should not be required to pay interest on the delinquent alimony.

10. The payment of the back alimony will take Defendant 3.82 years, and by that time the Plaintiff should be employed on a full time basis.

11. That the Plaintiff should have the use and occupancy of the parties house and lot until it is sold, and the Defendant's lien on the equity in the real estate should not draw interest.

12. That neither party has much retirement benefits accumulated, but each should have an interest in the others retirement per the Woodward v. Woodward formula.

13. If the Plaintiff can obtain health and accident insurance through her employment she should obtain that, but if the said insurance is not available to the Plaintiff then the Defendant should assist the Plaintiff in obtaining whatever medical benefit, if any, she can through Defendant's employment, at the Plaintiff's expense.

14. The Plaintiff in receiving \$12,000.00 a year for 3.8 years from the Defendant, plus her current earnings on a part time basis of \$9,780.00, or more, will provide Plaintiff with a gross

income of almost \$22,000.00 per year, which is almost equal to the income which the parties were living on when the Defendant was drawing \$500.00 per week from his business prior to the separation of the parties, and represents a monthly amount greater than the amounts set out in the Affidavit of monthly expenses as filed by the Plaintiff. Therefore, the Plaintiff and the Defendant should each pay their own attorneys fees and costs.

DATED this _____ day of _____, 1992.

BY THE COURT:

RONALD O. HYDE, JUDGE

CERTIFICATE OF MAILING

On this 17th day of April, 1992, I certify that I mailed, postage prepaid, to the Plaintiff's attorney, David Burt Havas, at his office at 2604 Madison Avenue, Ogden, Utah 84401, a copy of the foregoing Second Amended Findings of Fact and Conclusions of Law in the above-entitled case.

Gayle N Casady

Tab 8

15-1-2, 15-1-2a. Repealed.

Repeals. — Sections 15-1-2, 15-1-2a (L. 1907, ch. 46, § 2; C.L. 1907, § 1241x; C.L. 1917, § 3321; R.S. 1933, 44-0-2; L. 1935, ch. 42, § 1; C. 1943, 44-0-2; L. 1953, ch. 24, §§ 1, 2; 1955, ch. 20, § 1; 1965, ch. 25, § 1), relating to maximum interest rates on loans and conditional sales contracts, were repealed by Laws 1969, ch. 18, § 9.103.

15-1-3. Calculated by the year.

Whenever in any statute or deed, or written or verbal contract, or in any public or private instrument whatever, any certain rate of interest is mentioned and no period of time is stated, interest shall be calculated at the rate mentioned by the year.

History: L. 1907, ch. 46, § 7; C.L. 1907, § 1241x5; C.L. 1917, § 3326; R.S. 1933 & C. 1943, 44-0-3.

COLLATERAL REFERENCES

C.J.S. — 47 C.J.S. Interest § 42.
Key Numbers. — Interest ⇌ 40.

15-1-4. Interest on judgments.

Any judgment rendered on a lawful contract shall conform thereto and shall bear the interest agreed upon by the parties, which shall be specified in the judgment; other judgments shall bear interest at the rate of 12% per annum.

History: L. 1907, ch. 46, § 11; C.L. 1907, § 1241x9; C.L. 1917, § 3330; R.S. 1933 & C. 1943, 44-0-4; L. 1981, ch. 73, § 2.

Amendment Notes. — The 1981 amendment increased the interest rate from 8% to 12%.

Cross-References. — Interest to be included in judgment entry, Rules of Civil Procedure, Rule 54(e).

NOTES TO DECISIONS

ANALYSIS

Allowance of interest before judgment.
 Amendment of judgment.
 Collection of interest.
 Eminent domain.
 Estates of decedents.
 Federal court judgment.
 Interest during pendency of appeal.
 Late payment of property division in divorce action.
 Personal judgments.
 Prejudgment interest.
 Reinstatement of judgment.
 Renewal of judgment.

Tab 9

NOTES TO DECISIONS

ANALYSIS

Both parties at fault.
Cruel treatment.

Both parties at fault.

Marriage may be dissolved by making a grant of divorce to each party where each was equally at fault. *Mullins v. Mullins*, 26 Utah 2d 82, 485 P.2d 663 (1971).

Cruel treatment.

Acts constituting cruel conduct sufficient to cause great mental distress need not be aggravated and more severe when directed toward the husband than when directed toward the wife. *Hansen v. Hansen*, 537 P.2d 491 (Utah 1975).

30-3-3. Temporary alimony and suit money.

The court may order either party to pay to the clerk a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute or defend the action.

History: R.S. 1898 & C.L. 1907, § 1210; C.L. 1917, § 2998; R.S. 1933 & C. 1943, 40-3-3.

NOTES TO DECISIONS

ANALYSIS

Appealability of order.
Appeal from order.
Attorney fees.
Attorney fees for appeal.
Attorney's lien on alimony.
Contempt proceedings.
Contesting petitioner for modification.
Costs and expenses on appeal.
Discretion of trial court.
Enforcement of order or decree.
Jurisdiction.
Mandamus.
Order of court.
Stipulation and effect thereof.

Appealability of order.

Formal order made in divorce action, called a "judgment" directing that judgment be entered for benefit of defendant's attorneys, is not final and appealable. *Rolando v. District Court*, 72 Utah 459, 271 P. 225 (1928).

Appeal from order.

Where there were no findings or evidence in record as to attorney's fees, Supreme Court remanded issue for disposition by trial court but allowed wife's attorney \$100 for services rendered with reference to husband's appeal from judgment modifying divorce decree. *Parish v. Parish*, 84 Utah 390, 35 P.2d 999 (1934).

Supreme Court assumed that evidence supported award of suit money to wife where no testimony as to wife's need was before the court on appeal on judgment roll from the decree of no cause of action in husband and awarding of expenses of suit, attorney's fees

and temporary alimony to wife. *Weiss v. Weiss*, 111 Utah 353, 179 P.2d 1005 (1947).

Attorney fees.

Allowance of \$200 as wife's attorney's fee in divorce proceeding was not inadequate even though husband was worth approximately \$40,000, where proceedings from time of commencement until entry of decree lasted less than two months and trial itself was completed in less than two days. *Blair v. Blair*, 40 Utah 306, 121 P. 19, 38 L.R.A. (n.s.) 269, 1914D Ann. Cas. 989 (1912).

Where decree of divorce was obtained by mother of minor children against father, who was required to pay certain sum periodically for support, care, maintenance, and education of such children, and he, without sufficient cause, refused to comply with decree, as result of which mother was compelled to bring proceedings against him, father was required to pay counsel fees in such proceedings. *Tribe v. Tribe*, 59 Utah 112, 202 P. 213 (1921).

Court properly awarded attorney's fees to wife in subsequent proceeding on application of wife for arrears in alimony. *Christensen v. Christensen*, 65 Utah 597, 239 P. 501 (1925).

Fifty dollars was a reasonable fee where wife petitioned to require husband to show cause why he should not be punished for contempt for failure to pay support money and husband filed cross-petition for modification of decree and where it was shown that wife was without means to prosecute the cause or pay counsel. *Scott v. Scott*, 105 Utah 376, 142 P.2d 198 (1943).

While fact that wife is able to pay expenses

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in the order or decree shall be due one-half by the 5th day of each month, and the remaining one-half by the 20th day of that month.

History: C. 1953, 30-3-10.5, enacted by L. 1985, ch. 78, § 1.

30-3-10.6. Payment under child support order — Judgment.

(1) Each payment or installment of child or spousal support under any child support order, as defined by Subsection 62A-11-401(3), is, on and after the date it is due:

- (a) a judgment with the same attributes and effect of any judgment of a district court, except as provided in Subsection (2);
- (b) entitled, as a judgment, to full faith and credit in this and in any other jurisdiction; and
- (c) not subject to retroactive modification by this or any other jurisdiction, except as provided in Subsection (2).

(2) A child or spousal support payment under a child support order may be modified with respect to any period during which a petition for modification is pending, but only from the date notice of that petition was given to the obligee, if the obligor is the petitioner, or to the obligor, if the obligee is the petitioner.

(3) For purposes of this section, "jurisdiction" means a state or political subdivision, a territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(4) The judgment provided for in Subsection (1)(a), to be effective and enforceable as a lien against the real property interest of any third party relying on the public record, shall be reduced to an administrative or judicial judgment for a specific amount and docketed in the district court in accordance with Sections 78-22-1 and 62A-11-309.

History: C. 1953, 30-3-10.6, enacted by L. 1987, ch. 117, § 1; 1988, ch. 1, § 3; 1988, ch. 203, § 1. 1988, in the introductory paragraph of Subsection (1) substituted "62A-11-401" for "78-45d-1."

Amendment Notes. — The 1988 amendment, by Chapter 1, effective January 19, 1988, added Subsection (4).

30-3-11. Repealed.

Repeals. — Section 30-3-11 (L. 1957, ch. 55, § 2), declaring a public policy to foster marital and family relationships, was repealed by Laws 1961, ch. 59, § 2.

30-3-11.1. Family Court Act — Purpose.

It is the public policy of the state of Utah to strengthen the family life foundation of our society and reduce the social and economic costs to the state resulting from broken homes and to take reasonable measures to preserve marriages, particularly where minor children are involved. The purposes of this act are to protect the rights of children and to promote the public welfare by preserving and protecting family life and the institution of matrimony by providing the courts with further assistance for family counseling, the recon-