

1991

Mary N. Thronson v. Charles A. Thronson : Petition for Writ of Certiorari

Utah Supreme Court

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~~IN THE~~ SUPREME COURT OF THE STATE OF UTAH

910287

CLERK SUPREME COURT,
UTAH

IN THE SUPREME COURT OF THE STATE OF UTAH

MARY M. THRONSON,)	
)	Case No. 890547-CA
Plaintiff-Appellant,)	
)	
vs.)	District Court No. 87-4904318
)	
CHARLES H. THRONSON)	
)	Category No. 7
Defendant-Appellee.)	

PETITION FOR WRIT OF CERTIORARI OF APPELLEE
CHARLES H. THRONSON

* * * * *

APPEAL FROM DECREE OF DIVORCE ENTERED ON
JUNE 26, 1989, IN THE THIRD JUDICIAL
DISTRICT COURT IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH, HONORABLE DAVID S. YOUNG

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STATEMENT OF THE QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals err in, sua sponte, awarding permanent alimony instead of transitional alimony to an able-bodied, young, professionally-trained spouse who can earn a substantial professional income and who consistently worked in her profession during a relatively short marriage, where the District Court found an award of permanent alimony unnecessary and unjustified, and neither party requested permanent alimony either in the appeal briefs or in oral argument on appeal?

REPORT OF OPINION OF THE COURT OF APPEALS

The opinion of the Court of Appeals is reported at Thronson v. Thronson, 157 Utah Adv. Rep. 51 (1991) [hereinafter Thronson], and is appended hereto as Exhibit 1.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THE SUPREME COURT IS INVOKED

The date of entry of the Decision of the Court of Appeals is March 25, 1991. The date of the Order Denying Appellee's Petition for Rehearing is May 21, 1991. The Utah Supreme Court has jurisdiction to review the decision of the Court of Appeals herein pursuant to the provisions of Utah Code Ann. § 78-2-2 (1953 as amended), and Rule 45 of the Utah Rules of Appellate Procedure.

DETERMINATIVE AUTHORITY

Utah Code Ann. § 30-3-5 provides, in pertinent part:

. . . when a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property and parties.

Id. In addition, determinative authority is contained within the cases cited herein.

STATEMENT OF THE CASE

1. Statement of the Nature of the Case -- This is a divorce action. The parties, Charles H. Thronson, and Mary M. Thronson were married on September 30, 1978. One child was born of that marriage, Patrick Thronson, age 9.

Both parties were professionally educated and trained prior to their marriage. Ms. Thronson is a licensed Pharmacist and is practicing Pharmacy in the State of Utah. Mr. Thronson is an Attorney, practicing law with the firm of Parsons Behle & Latimer in the State of Utah.

After a marriage of nine years, the plaintiff filed her Complaint for divorce on November 2, 1987. (R. 2).

A trial was held in this case before the Honorable David S. Young, Third District Court Judge, beginning on April 25, 1989, and concluding on April 27, 1989. On May 9, 1989, the Court issued its Memorandum Decision, attached hereto as Exhibit 3. (R. 353-61).

On June 22, 1989, thorough Findings of Fact and Conclusions of law (R. 381-451) and a Decree of Divorce (R. 451-459) were signed and entered by the Court. Copies, and relevant appendices, are attached hereto as Exhibits 4 and 5 respectively.

Ms. Thronson's post-trial motions were denied on August 9, 1989. (R. 486).

Ms. Thronson's appeal to the Court of Appeals, filed on September 14, 1989, basically consisted of the following components:

(a) That the District Court's award of joint custody of Patrick Thronson to both parents, and the terms and conditions of that award, were improper.

(b) That the amount of child support awarded by the District Court was improper.

(c) That the District Court's award of certain financial assets and support to Ms. Thronson, including but not limited to the amount of alimony, was too low.

On March 25, 1991, the Court of Appeals affirmed the decision of the District Court on most of the financial issues, and remanded the custody and child support issues to the District Court for review based upon, inter alia, certain recent statutory amendments to the Utah Code regarding joint custody.

With respect to alimony, the Court of Appeals affirmed the District Court's award of \$800 per month, but sua sponte increased the term of that award from a transitional period of one year, as set by the District Court, to a permanent award. It is with respect to this specific portion of the Opinion of the Court of Appeals that this Petition is filed.

2. Statement of the Facts Relevant to the Issues Presented for Review -- It was undisputed at trial that Ms. Thronson had an undergraduate degree and a professional degree in Pharmacy. She had been continuously licensed to practice Pharmacy in the State of Utah since 1978, and has in fact practiced Pharmacy in Utah since that time. (Tr. 271-72). In addition, throughout the course of the marriage of the parties (as well as prior to the marriage) Ms. Thronson consistently worked either full-time or part-time in the profession of Pharmacy. Moreover, she has taken advanced courses toward a doctorate degree in Pharmacy, and has been an adjunct professor of Pharmacy at the University of Utah School of Pharmacy. (R. 388). Ms. Thronson

conceded she is young, able-bodied and fully capable of working in her profession full-time. (Tr. 275).

Neither party contributed to the financial or other aspects of the education, training or award of the other's professional degrees or licensures. Each party sought and obtained his or her own education and employment, all of which occurred prior to the marriage of the parties. Ms. Thronson made her own voluntary career decision to go into Pharmacy, as did Mr. Thronson with respect to Law. (R. 389).

The District Court, in carefully reviewing all of the facts, found that Ms. Thronson was fully capable of supporting herself in her chosen profession, and, in light of that fact, as well as in view of the substantial additional assets which Ms. Thronson had received and would receive from this relatively short marriage of nine years prior to separation, the District Court awarded her transitional alimony of \$800 per month for one year. (R. 385).

The Court of Appeals affirmed the award of \$800 per month. However, the Court of Appeals decided that the alimony award should be permanent rather than transitional, and so ordered.

ARGUMENTS

The decision of the Court of Appeals in this case, to sua sponte abrogate the District Court's award of transitional alimony and make it permanent, is in direct conflict with all of the applicable prior decisions of panels of the Court of Appeals and with the great majority of relevant decisions of this Court. The decision of the Court of Appeals to award permanent alimony, rather than transitional alimony, is in addition a substantial departure from the accepted and

usual course of judicial determinations and proceedings in cases of this type.

A. A Sua Sponte Award of Permanent Alimony by the Court of Appeals Under the Facts and Circumstances of this Case is not in Accord with Any Prior Utah Case Law

Over the years, a substantial body of case law has developed in Utah and elsewhere with respect to awards of alimony generally, and the appropriateness of an award of permanent alimony specifically. There is not any researched decision in Utah where an appellate court has unilaterally awarded permanent alimony in a fact situation even remotely comparable to this, viz: An able-bodied, young, professionally-trained spouse, capable of earning a substantial professional income, who has worked consistently full-time or part-time in her profession during a relatively short marriage.

Specifically, there has uniformly been a major distinction, both in Utah courts and in courts in other jurisdictions, as to the way alimony awards are considered, between older, minimally-trained spouses who have been married for a lengthy period of time (typically 20 years or more) and who have been out of the work force for many years, on the one hand, and young, professionally-trained spouses who have been in relatively short marriages, who have worked during all or a substantial portion of those marriages and who are capable of earning a substantial income on their own, on the other hand.

A summary recitation of the key Utah cases reflecting this uniform distinction should be helpful: See, e.g., Jones v. Jones, 700 P.2d 1072 (Utah 1985) [permanent alimony awarded to unskilled housewife in her mid-50's who possesses few marketable job skills and who has little hope of retraining after 29 years of marriage]; Anderson v.

Anderson, 757 P.2d 476 (Utah App. 1988) [34-year marriage involving housewife spouse who has no outside work skills]; and Asper v. Asper, 753 P.2d 978 (Utah App. 1988) [27-year marriage with spouse who now is working only part-time and who had a disabled minor child].

Most recently, in Howell v. Howell, 155 Utah Adv. Rep. 18 (1991), the Court of Appeals reaffirmed the criteria utilized in determining the standards in which permanent alimony in such cases is awarded:

Utah's appellate courts have considered the appropriateness of alimony after a long-term marriage, where the wife (usually) has worked primarily in the home, has limited job skills and is in her late 40's or 50's. [citations omitted].

Id. at 20. The court continued:

Defendant [Ms. Howell] fits the profile described in . . . [Jones v. Jones] and other cases: she is approximately 50 years old, has a minimal marketable job skills, and has spent most of the 30 plus years of the parties' marriage raising and caring for their five children in their home, presumably with the concurrence of . . . [Mr. Howell]. Her likelihood of achieving significant salary levels in the future is slim.

Id. at 21. It cannot reasonably be disputed that Ms. Thronson does not fit this well-settled permanent alimony profile. Ms. Thronson is young, well-educated, highly-skilled and a highly-paid professional with a history of working throughout a relatively short marriage and who is jointly raising (along with Mr. Thronson) one normal child who is in a private school.

In support of its modification of the alimony award to make it permanent, the Court of Appeals cited Rasband v. Rasband, 752 P.2d 1331 (Utah App. 1988). The Rasband decision is a classic example of the type of case in which permanent alimony has typically been awarded, and it, like Howell, involves a factual situation and profile

that is at polar extremes to the undisputed facts in the instant case. Ms. Rasband had no education beyond high school and had been married for 30 years. Her income was zero and she was caring for an adult disabled daughter. The Court of Appeals stated in Rasband:

. . .[T]he record evidence indicates that appellant's [Ms. Rasband's] present and future earning capacity is minimal. She had no earnings in the year before trial; she has only a high school education and average job skills to market. Her ability to work is impaired by the disability of their adult daughter. She will have difficulty finding and retaining a full-time job. If employed, her earnings would undoubtedly be meager for a long period, given her lack of education, training or work experience. [Footnote omitted].

Id. at 1334.

In counter-distinction to the foregoing cases are the cases far more closely aligned with the instant factual situation: See, e.g., Boyle v. Boyle, 735 P.2d 669 (Utah 1987) [short marriage, prior work history and several months of temporary maintenance support denial of alimony]; Graff v. Graff, 699 P.2d 765 (Utah 1985) [no alimony awarded to wife with professional degree where parties separated after only nine years of marriage]; c.f., Peterson v. Peterson, 642 P.2d 740 (Utah 1982) [Utah Supreme Court refused to award compensation for lost wages to a wife who had voluntarily chosen to terminate her employment]. See also Bell v. Bell, 159 Utah Adv. Rep. 33, n.3 (1991) [non-permanent alimony appropriate where wife college education, in good health, and who worked throughout the marriage].

It is important to note that Boyle, Graff, and Peterson are decisions in which the Utah Supreme Court upheld the District Court's decisions to not award alimony at all, even on a transitional basis. In the instant case, after making thorough findings of fact, the District Court awarded alimony but made it transitional, in light of Ms.

Thronson's earning capability and the large number of other assets which she was awarded. All of this makes the Court of Appeals' unilateral determination to make the transitional alimony award a permanent award all the more perplexing and unsupportable. In summary, Ms. Thronson in no way fits the Jones/Rasband/Howell profile and none of the historical criteria developed in Utah for the award of permanent alimony are present in this case, facts doubtless reflected in the decision by Ms. Thronson not to even seek such an award.

Apparently, the sole case in Utah which awarded permanent alimony to a spouse that did not fully fit the Jones/Rasband/Howell profile was Davis v. Davis, 749 P.2d 647 (Utah 1988). That case is easily distinguishable from the instant case on a number of grounds: First, in Davis, this Court merely affirmed the decision of the District Court, finding that it was not "an excessive award." Id. at 649. In so doing, this Court acknowledged the broad discretion that trial courts have in divorce proceedings, stating

. . .

So long as that discretion is exercised within the confines of the legal standards we have set . . . [citations omitted] and the facts and reasons for the decision are set forth fully in appropriate findings and conclusions . . . [citation omitted] we will not disturb the resulting award. We review the findings made by a judge sitting without a jury under the 'clearly erroneous' standard of Utah Rule of Civil Procedure 52(a).

Id. at 648 (citations omitted). The affirmation of the decision of the trier of fact in Davis is a far cry from the sua sponte imposition of a permanent alimony award by an appellate court that was directly contrary to the District Court's decision, to the evidence adduced at trial, to the Findings of Fact and Conclusions of Law and to the expressed desires of the parties themselves.

Second, there is some indication in Davis that, at the time of the decree of divorce, Ms. Davis was in "a period of reconstruction" from certain emotional difficulties and instability. While it is unclear to what extent this disability may have influenced the District Court in awarding permanent alimony, it is clear that Ms. Thronson was laboring under no such disability at the time of the District Court's award of alimony in the instant case.

Finally, to the extent, if any, that the Davis decision is of any import here, it is overwhelmingly clear that the case is isolated and stands alone against the great weight of authority, in this jurisdiction and in virtually every other jurisdiction in this country, disallowing an award of permanent alimony in situations such as the instant case. As there is no relevant case support in Utah justifying an award by the Court of Appeals of permanent alimony under the facts in this case, the Court of Appeals' Opinion awarding permanent alimony, as opposed to transitional alimony, should be modified accordingly.

B. An Award of Permanent Alimony Under the Facts and Circumstances of this Case is not in Accord with the Great Weight of Applicable Researched Decisions in the United States

Counsel for Mr. Thronson has researched hundreds of decisions in virtually every jurisdiction in the United States to determine if there are cases which support an award of permanent alimony under a fact situation similar to the facts in this case. None have been found.¹ Virtually all of the researched decisions from other

¹ Louisiana, which uses a version of French Civil Law, utilizes a fault-based determination of whether or not to award permanent

jurisdictions follow the same line of demarcation with respect to an award of permanent versus transitional alimony (or no alimony) as the Utah courts. See, e.g., In re Marriage of Hall, 740 P.2d 684 (Mont. 1987) [wife trained as a nurse not entitled to alimony since she was not able to prove inability to support herself]; Briggs v. Briggs, 49 Or. App. 569, 619 P.2d 1353 (1980) [young age (38) and employment potential after earning nursing degree precluded award of alimony]; Warren v. Warren, 31 Or. App. 213, 570 P.2d 104 (1977) [no alimony provided to wife where 9-year marriage had little or no effect on wife's employment skills].

There is no support in the case law of other jurisdictions for an award of permanent alimony under the facts presented here, and the Court of Appeals' Opinion should be modified accordingly.

C. Ms. Thronson Did Not Seek Permanent Alimony Either at Trial or on Appeal

A critically important element of the case is the fact that at no time has Ms. Thronson asked the trial court, either during trial or thereafter, to award her meaningful permanent alimony,² nor did Ms. Thronson ever ask the Court of Appeals, either in the briefs or in oral argument, to award her any permanent alimony at all.

Footnote continued from previous page.

alimony. Utah, on the other hand, many years ago concluded that fault has no place in the setting of alimony, and that alimony is not meant to inflict punitive damages on a husband. English v. English, 565 P.2d 409 at 411, quoting 2 Nelson, Divorce and Annulment at 11-12 (1961).

² Ms. Thronson did ask the trial court to award nominal alimony, after 5 years, of \$1.00 per year. See infra.

There are only three possible explanations for this fact, all of which may well be operative in this case. The first is that both parties and their counsel are cognizant that there are a dearth of decisions in Utah and elsewhere which permit an award of permanent alimony under facts and circumstances of a case such as this. Second, because of Ms. Thronson's education, training and professional work history, rendering her capable of earning a substantial income on her own, it is clear that an award of permanent alimony was unnecessary. Third, because of the substantial assets which Ms. Thronson had received and was receiving in the divorce decree, as set forth herein and in Exhibit 4, Appendix A and B, an award of permanent alimony would make the ultimate financial determinations of the District Court inequitable.

During her direct examination in the trial of this case, Ms. Thronson's counsel offered into evidence plaintiff's Exhibit 5. This exhibit, which sets forth plaintiff's proposal as to, inter alia, alimony, was admitted into evidence as illustrative of her testimony, and she agreed that, if she was asked, her testimony would be the same as that contained in Exhibit 5. (Tr. 190-91). Plaintiff's proposal was that the trial court award alimony in the amount of \$2500 per month for 5 years and \$1.00 per year thereafter. The relevant page from trial Exhibit 5 is attached hereto as Exhibit 6.

In addition, in the briefs which Ms. Thronson filed with the Court of Appeals, nowhere did she ask for, or attempt to support, an award of permanent alimony. Instead, Ms. Thronson specifically requested the Court of Appeals (as she requested the trial court) to award alimony of \$1,800 per month for a period of five years. (Appeal Brief of Appellant at 46, 50).

Simply put, Ms. Thronson neither requested nor sought at any time an award of permanent alimony, instead reiterating the transitional alimony request which she had raised with the District Court and, in her briefs, with the Court of Appeals.

It may be argued that the Court of Appeals has the inherent authority to modify an alimony award to any extent that it desires. Whether or not that is correct, the actual effects of that portion of the Opinion from the Court of Appeals in this case are truly staggering. The maximum total value of the alimony award which Ms. Thronson sought from the Court of Appeals is \$108,000.00. The effect of the unrequested and unilateral modification (assuming Ms. Thronson lives her statistical life expectancy of 47.2 years (Appendix 7 attached hereto)) is a permanent alimony award of \$453,120.00. This amount exceeds by over 4 times the maximum value of the most that Ms. Thronson was asking for.

Since Ms. Thronson had voluntarily chosen, for whatever reason, not to earn meaningful income in her profession during most of the pendency of the divorce, the District Court was required to impute income to Ms. Thronson of \$35,000.00. This figure represented the mid-point between \$31,000.00 and \$39,000.00, which figures the Court of Appeals found were based upon competent evidence. Thronson at 55. Based solely upon this mid-point "attribution of earnings," the Court of Appeals found an income "shortfall" of \$800 per month.³ However, the Court of Appeals did not acknowledge that Ms. Thronson was also

³ The Court of Appeals ignored the finding of the District Court that Ms. Thronson's salary range at the time of the divorce could be as high as \$39,000.00, when employed full-time as a retail pharmacist, which figure would result in an income "shortfall" of only \$450 per month.

receiving an additional \$989.41 of income from Mr. Thronson, in the form of annuity payments from Western National Insurance Company, representing deferred income which was being paid as a result of a personal injury case settled by Mr. Thronson's law firm. (Tr. 295) (R. 392).⁴ This is all in addition to the substantial financial support which Ms. Thronson received from Mr. Thronson, during the pendency of this divorce, for the one-and-one-half year period when Ms. Thronson decided not to seek meaningful employment. (Tr. 295).

In the divorce decree, Ms. Thronson also received a substantial cash payment, ownership in a limited partnership (which has paid substantial income to her), the annuity mentioned above, the portion of Mr. Thronson's pension and profit sharing plan valued to her at over \$120,000.00, whatever funds she had retained (after receiving a substantial inheritance) that she did not spend to support herself when she chose not to be employed in her profession, an IRA account, a fully-paid for Mercedes Benz automobile, the residence of the parties, among many other things. In addition, Ms. Thronson receives child support payments from Mr. Thronson,⁵ and Mr. Thronson pays for the entirety of Patrick's private school education. All of these sources of income, property and payments, taken together, provide Ms. Thronson with a standard of living which is in excess of the standard of living

⁴ This annuity expires in January, 1992. However, Ms. Thronson has been receiving annuity income of this type since the parties separated in early 1988, through the present time, for a period of three-and-one-half years.

⁵ The District Court ordered child support in the amount of \$900 per month. Ms. Thronson receives less than that, reflective of her own substantial income-earning capabilities and the fact that Patrick Thronson currently spends over 40% of his time with Mr. Thronson.

the parties enjoyed during the course of this relatively short marriage. This income, along with the transitional alimony payments which Mr. Thronson paid, results in a total attributable income figure to her which is far in excess of her actual and necessary monthly living expenses.

Again, there is no factual or legal support for such a profound departure from what the parties advocated or requested in this case, and the Court of Appeals' Opinion should be modified accordingly.

D. An Award of Permanent Alimony Under the Facts and Circumstances of this Case is Inequitable, Unfair and Violative of Public Policy

This Court is aware that, in years past, alimony was widely awarded in many if not most divorce decrees to provide for permanent or nearly permanent support to spouses, who typically had no real income-earning capabilities and few, if any, meaningful job prospects. However, over the years, women have entered both the work force generally and the professions specifically in large numbers, allowing them in many cases to become financially self-sufficient. During this evolutionary phase, the concern of the courts has shifted to one of fostering this self-sufficiency. Alimony is now designed primarily to assist the formerly dependent or semi-dependent spouse to achieve or re-achieve financial self-sufficiency, so as to vitiate further need for alimony. In other words, the purpose of alimony has shifted from that of the provision of a "lifetime pension" to that of an interim award to promote the transition of the parties from a joint married state to a separate single state. See, e.g., Hull v. Hull, 83 Md. App. 218, 574 A.2d 20 (1990).

The decision of the Court of Appeals, with respect to the issue of permanent alimony, undercuts the specific societal interests of rehabilitation and self-sufficiency. Rather than encourage a spouse, who is otherwise educationally and professionally fully capable of earning a substantial income, to earn that income, the Court of Appeals' award of permanent alimony encourages exactly the sort of fiscal gerrymandering which occurred in the trial phase of the instant case: Substantial underemployment during the pendency of the divorce, coupled with an effort to inflate living expenses, in an attempt to obtain a court order compelling the working spouse to make up the income/expense "shortfall" for the rest of his or her life.

CONCLUSION

The Court of Appeals' award of permanent alimony is inconsistent with all previous decisions of other panels of that Court and the great weight of the decisions of this Court. Moreover, the Court of Appeals' sua sponte modification, of the award of transitional alimony to permanent alimony, is inconsistent with virtually all comparable decisions in every other jurisdiction in the United States.

Further, the modification of the District Court's decision by the Court of Appeals creates an award of alimony far in excess of what was ever requested or urged by Ms. Thronson.

Finally, the magnitude of the permanent alimony modification, in light of the facts and circumstances of this case, makes such a modification manifestly inequitable and unfair.

For the foregoing reasons, petitioner requests this Court to grant this Petition for Writ of Certiorari.

DATED this 20th day of June, 1991.

A handwritten signature in black ink, appearing to read "Clark W. Sessions", written over a horizontal line.

CLARK W. SESSIONS
CAMPBELL, MAACK & SESSIONS
170 S. Main, #400
Salt Lake City, Utah 84101
Attorneys for Petitioner

MAILING CERTIFICATE

I HEREBY CERTIFY that I caused to be mailed, postage pre-paid, true and correct copies of the foregoing PETITION FOR WRIT OF CERTIORARI OF APPELLEE CHARLES H. THRONSON to the following on this 20th day of June, 1991:

Frederick N. Green
GREEN AND BERRY
Attorneys for Plaintiff-
Appellant
10 Exchange Place
Suite 528
Salt Lake City, Utah 84111

A handwritten signature in black ink, appearing to read "Fred N. Green", is written over a horizontal line.

Tab 1

FILED

MAR 25 1991

IN THE UTAH COURT OF APPEALS

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Mary M. Thronson,
Plaintiff and Appellant,
v.
Charles H. Thronson,
Defendant and Appellee.

) OPINION
) (For Publication)
)
) Case No. 890547-CA
)
)
) F I L E D
) (March 25, 1991)
)

Mary T. Noonan
Mary T. Noonan
Clerk of the Court
Utah Court of Appeals

Third District, Salt Lake County
The Honorable David S. Young

Attorneys: Paul H. Liapis, Helen E. Christian, and Kim M.
Luhn, Salt Lake City, for Appellant
Clark W. Sessions and Dean C. Andreasen, Salt Lake
City, for Appellee

Before Judges Bench, Garff and Jackson.

JACKSON, Judge:

Mary Thronson appeals provisions of a divorce decree and separate order awarding joint legal custody of a child, child support, alimony, and property. We remand for further proceedings regarding child custody and support. We modify the alimony award and affirm the remainder of the decree.

FACTS

The parties were married on September 30, 1978. Their marriage was the first for both. She was a full-time pharmacist and he a full-time attorney. A son was born to them on September 11, 1981. She became the child's primary caretaker and a part-time pharmacist. He became a shareholder in his law firm. She filed a complaint for divorce. He filed a counterclaim for divorce. They were divorced by a decree entered June 23, 1989. A separate order of joint legal custody was also entered. Further relevant facts will be set forth below in our treatment of the respective issues.

CHILD CUSTODY AWARD

Ms. Thronson challenges the joint legal custody decree and order on two grounds: (1) She did not agree to the order of joint legal custody and Utah Code Ann. § 30-3-10.2 (1989) required the agreement of both parents at the time of this decree and order. (2) The provision for an automatic award of sole custody to one parent when the other moves from the state was error.

CHILD CUSTODY IN UTAH

Prior to 1988, Utah did not have a statute expressly authorizing an award of "joint legal custody"¹ of a child. Our

1. Custody terminology: Many legislators, judges and writers have been loose with their "joint" custody language. Early articles identified this vexing problem as follows:

Both the forms of custody [sole, divided, split, joint] following divorce and the terms which describe them are vague and overlapping. The lack of standard definitions and the courts' tendency to use certain terms interchangeably have created confusion.

Folberg & Graham, Joint Custody of Children Following Divorce, 12 U.C. Davis L. Rev. 523, 525 (1979).

Often, when referring to one of these custody arrangements, courts use vague language or inadequately defined terms.

Bratt, Joint Custody, 67 Ky. L.J. 271, 283 (1978-79).

One author points out that considerable semantic confusion has resulted possibly because the "term" joint custody predates the "concept" of joint custody as it is known today. He states: "I have encountered at least fifteen terms used to refer to various alternatives to sole custody: joint legal custody, joint physical custody, divided custody, separate custody, alternating custody, split custody, managing conservatorship, possessory conservatorship, equal custody, shared custody, partial custody, custody 'given to neither party to the exclusion of the other,' temporary custody, shifting custody, and concurrent custody." Miller, Joint Custody, 13(3) Fam. L.Q. 345, 360 n. 79 (1979).

divorce statutes have contained various child custody provisions since 1903. For many years Utah Code Ann. § 30-3-5 (1989) has authorized district courts to include in divorce decrees "equitable orders relating to the children, property and parties." Further, Utah Code Ann. § 30-3-10 has contained various specific provisions regarding factors to be considered in awarding sole custody of a child. See Lembach v. Cox, 639 P.2d 197 (Utah 1981); 1 Utah L.Rev. 363 (1989) (historical development of child custody factors and preferences in Utah).

"Joint Legal Custody" was specifically added to the sole custody statute in 1988, and designated as § 30-3-10.1 to -10.4. We emphasize that this is a joint "legal" custody statute and not a joint "physical" custody statute. In the 1988 Utah legislative session, Senator Hillyard stated: "This is not joint physical custody. The child obviously can't live in two homes. But it's joint legal custody which would give the non-custodial parent more involvement in the decisions of child raising." Floor Debate, (Feb. 3, 1988) Sen. Recording No. 42, side 2. In section 10.1 the legislature provided its definition of joint legal custody:

In this chapter, "joint legal custody"

(1) means the sharing of the rights, privileges, duties, and powers of a parent by both parents, where specified;

(2) may include an award of exclusive authority by the court to one parent to make specific decisions;

(3) does not affect the physical custody of the child except as specified in the order of joint legal custody;

(4) is not based on awarding equal or nearly equal periods of physical custody of and access to the child to each of the parents, as the best interest of the child often requires that a primary physical residence for the child be designated; and

(5) does not prohibit the court from specifying one parent as the primary caretaker and one home as the primary residence of the child.

Utah Code Ann. § 30-3-10.1 (1989). Subsections (1) and (2) define joint legal custody: both parents share the authority and responsibility to make basic decisions regarding their

child's welfare. Subsections (3), (4) and (5) tell us what joint legal custody is not -- it is not joint physical custody. We note that this statute does not contain a definition of nor a provision for "joint physical custody."

Subsection 10.2(1) created a "rebuttable presumption" that joint legal custody is in the best interest of a child. But, that presumption was made subject to subsection (2) which provided:

The court may order joint legal custody if it determines that:
(a) both parents agree to an order of joint legal custody;
(b) joint legal custody is in the best interest of the child; and
(c) both parents appear capable of implementing joint legal custody.

Utah Code Ann. § 30-3-10.2 (1989).

The order remains discretionary with the court, not mandatory, even when all three conditions are satisfied, i.e., (1) parental agreement, (2) best interests, and (3) parents capable of implementation. Further sections of the statute emphasize its "parental agreement" posture. We note that section 10.3 -- terms of joint legal custody order -- contains two further subsections dealing with parental agreement:

(2) The court shall, where possible, include in the order the terms agreed to between the parties; . . .
(5) The agreement may contain a dispute resolution procedure the parties agree to use
. . . .

Utah Code Ann. § 30-3-10.3 (1989). Moreover, the termination provisions, section 10.4, confer upon one parent the right to unilaterally terminate the order of joint legal custody. The order can be terminated simply by filing and serving a motion. Once the motion is filed, the court is required to replace the order "with an order of sole legal custody under Section 30-3-10." Utah Code Ann. § 30-3-10.4 (1989). This provision emphasizes the parental agreement stance of the statute as initially adopted and in force at the time of this divorce.

We return to section 10.2(3) to point out that the legislature created a list of factors the court shall consider in determining the best interest of a child in the context of joint legal custody (not joint physical custody). Those factors are:

- (a) whether the physical, psychological, and emotional needs and development of the child will benefit from joint legal custody;
- (b) the ability of the parents to give first priority to the welfare of the child and reach shared decisions in the child's best interest;
- (c) whether each parent is capable of encouraging and accepting a positive relationship between the child and the other parent;
- (d) whether both parents participated in raising the child before the filing of the suit;
- (e) the geographical proximity of the homes of the parents;
- (f) if the child is 12 years of age or older, any preference of the child for or against joint legal custody; and
- (g) any other factors the court finds relevant.

Utah Code Ann. § 30-3-10.2(3) (1989). On the other hand, the legislature did not offer any guidance to trial courts to assist in determining the "capability" of the parents. The term is not defined. Section 10.4 contains provisions for (1) modification of a joint legal custody order, (2) termination of the order discussed above, and (3) attorneys fees based on frivolous pleadings and harassment. Utah Code Ann. § 30-3-10.4 (1989). The modification provisions appear to be a codification of the Hogge v. Hogge, 649 P.2d 51 (Utah 1982) bifurcated procedure used in sole custody modifications. Prior to adoption of this statute in 1988, the only reported Utah case dealing directly with an initial award of "joint custody" was Lembach v. Cox, *supra*. There, the court stated "a custody arrangement, joint or otherwise, is within the broad equitable powers of the court." Further, the court said "[t]he fact that the father and the mother could not negotiate a joint custody arrangement demonstrates the inappropriateness of ordering joint custody." 639 P.2d at 200.²

2. Other Utah reported cases involving joint custody are: Moody v. Moody, 715 P.2d 507 (Utah 1985) (modification hearing of an initial award of joint custody); Becker v. Becker, 694 P.2d 608 (Utah 1984) (on modification hearing, it was noted that trial court considered joint custody but did not order it in initial decree).

Prior to 1980, a handful of states including California had adopted various forms of "joint custody" statutes. During the 1980's "joint custody" was in vogue and a second wave of states adopted "joint custody" statutes. Utah became the thirty-second state (and apparently the last) caught up in this wave. 2 Family Law and Practice, § 32.04 (A. Rutkin ed. 1990 & Supp.) (hereinafter "Fam. Law").³

California, the acknowledged pioneer of no-fault divorce and joint custody, retrenched in 1988 regarding joint custody. California's 1979 statute contained a "presumption . . . that joint custody is in the best interests of a minor child where the parents have agreed to an award of joint custody." Cal. Civ. Code § 4600.5(a) (West 1979). In 1983, California amended its joint custody statute to include a specific definition of both "physical" custody and "legal" custody. The California Legislature recognized the need to be more specific when in 1983 it defined joint legal custody to mean "both parents shall share the right and responsibility to make decisions relating to the health, education and welfare of the child," Cal. Civ. Code § 4600.5(d), and defined joint physical custody as "each of the parents . . . [have] significant periods of physical custody." Cal. Civ. Code § 4600.5(d)(5) (West 1988). A team

3. The child custody reform of the eighties gained impetus from ongoing no-fault divorce legislative reform. Utah added "irreconcilable differences" to its list of nine fault-based grounds in 1987. Utah Code Ann. § 30-3-1(3)(a) (1987). "Both reforms took place with no public commitment or private initiative for the systematic assessment of the legal changes on patterns of custody or on child welfare. As fashions change and new interest groups emerge, family law is at risk of becoming a series of experiments that never report results in ways that can help inform the legislative process." Zimring, Foreword to Sugarman & Kay, Divorce Reform at the Crossroads, at viii (1990). As no-fault made divorce virtually automatic, fathers' groups began to protest a pro-mother bias in child custody decisions. At the same time, feminist groups began attacking legal standards which were gender-specific as inherently discriminatory. Then, fathers' groups turned the idea of gender-neutrality to their advantage in the child custody arena. These opposing forces set the stage for "joint custody" statutes based on the rationale of "equality" rather than "equity" and children end up taking a back seat to the drivers, i.e., their divorcing parents. One writer succinctly summed up the result: "This modern trend illustrates a move backward toward the more explicit treatment of children as property -- only this time the property is to be divided equally." Fineman, Dominant Discourse, Professional Language, and Legal Change In Child Custody Decisionmaking, 101 Harv. L. Rev. 727, 739-40 (1988).

of Stanford professionals proposed the need to consider "joint custody" as having a third form -- the actual residential arrangement for the child.⁴ Later, a California Task Force recommended that existing joint custody provisions be clarified to indicate that no statutory presumption exists in favor of joint custody. In response, subsection (d) was added:

This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the courts and the family the widest discretion to choose a parenting plan which is in the best interests of the child or children.

Cal. Civ. Code § 4600(d) (West Supp. 1989).

Coincidentally, while this appeal was pending, the 1990 Utah Legislature substantially amended its two year-old joint legal custody statute deleting the "rebuttable presumption" favoring joint legal custody. See Utah Code Ann. § 30-3-10.2 (1989 & Supp. 1990). However, the legislature retained its initial definition of "joint legal custody," section 30-3-10.1, and the list of seven factors courts are required to consider in determining the best interests of the child in the context of joint legal custody. Section 30-3-10.2(3)(a-g). Also retained in the statute is some language regarding parental agreement: "The court shall, where possible, include in the order [joint legal custody order] the terms agreed to between the parties [parents]," § 30-3-10.3(2) (emphasis added), and, "The agreement may contain a dispute resolution procedure the parties agree to use" § 30-3-10.3(5) (emphasis added). Utah Code Ann. § 30-3-10.3 (1989). Our legislature's change of position on the "rebuttable presumption" in favor of joint legal custody and the

4. "There are actually three aspects of joint custody: the legal custody agreement, the physical custody agreement and the actual residential arrangement for the child. It is important to investigate the three forms of joint custody separately to understand the implications of each for the functioning of the post-divorce family." Albiston, Maccoby, & Mnookin, Does Joint Legal Custody Matter?, Stan. L. & Pol'y Rev. 167, 168 (1990).

necessity of parental agreement creates confusion concerning the public policy basis for the joint legal custody statute. Utah and California appear to be the first and only states to retrench from a presumption in favor of joint (legal) custody after having adopted the presumption. Due to the paucity of pre-statute and absence of post-statute joint custody reported decisions in Utah, plus the fact that Utah's statute is not like that of any other state, we are left to decide an issue of first impression with little useful precedent. Ms. Thronson argues that we should apply the 1990 version of the joint legal custody statute, i.e., apply the amendments retroactively. We decline to do so. The 1990 amendments did not make a mere procedural change or simply clarify how the 1988 statute should have been understood originally. The amendments were substantial and substantive, thus retroactive application is not appropriate. See In re J.P., 648 P.2d 1364, 1369 n. 4 (Utah 1982).

ANALYSIS OF JOINT LEGAL CUSTODY AWARD UNDER § 30-3-10.1 to -10.4

As noted above, the majority of states have adopted statutes expressly authorizing some form of "joint custody" award. Those statutes come in four basic forms:

1. joint custody as an option only where the parties petition or agree;
2. joint custody as an option;
3. joint custody as a presumption or preference;
4. joint custody split into joint legal custody and joint physical custody.

Fam. Law, § 32.06[2]. Initially, Utah combined forms 1 and 3. Now, Utah is form 2, but only as to joint "legal" custody. Here, the trial court faced Utah's initial statute with a favorable presumption on one hand and the requirement of parents' agreement on the other. Ms. Thronson opposed a joint custody order. The trial court failed to meet the parental agreement requirement head-on. Instead, the court found "there exists substantial difficulty between the parties" and "it is in the best interests of the child for the parties to be

awarded joint legal custody." The court failed to find whether the parents agreed or disagreed as to an order of joint legal custody. At the time the court ruled, the statute stated:

The court may order joint legal custody if
it determines that:

(a) both parents agree to an order of
joint legal custody . . .

§ 30-3-10.2(2)(a) (1989).

The form of the statute required a threshold finding of parental "agreement." The trial court implicitly found "disagreement" but proceeded with the order. Moreover, the record reveals opposition to the order, i.e., no agreement. Several states have adopted the "parental agreement" form of joint custody statute, including Colorado, Texas and Kansas.⁵ The Colorado statute, for example, requires that any motion for joint custody be filed by both parties, Colo. Rev. Stat. § 14-10-124(5) (1973), and that any plan for joint custody must be jointly agreed to by the parties, Colo. Rev. Stat. § 14-10-124.5(5) (1973). In Colorado, a trial court ordered joint custody over the objection of the mother. The appellate court ruled that the award in the absence of agreement of the parties was an abuse of discretion. In re Marriage of Posinoff, 683 P.2d 377, 378 (Colo. Ct. App. 1984). See also Gonzalez v. Gonzalez, 672 S.W.2d 887 (Tex. Ct. App. 1984)(court has no authority to award joint custody without agreement); Larsen v. Larsen, 5 Kan. App. 2d 284, 615 P.2d 806 (1980)(without agreement, joint custody award unauthorized).

We hold that the trial court abused its discretion by imposing the order of joint legal custody on the parents and child. The statute required parental agreement. Here, there was parental opposition. See Lembach v. Cox, 639 P.2d 197, 200 (Utah 1981)(inappropriate to order joint custody where parents not in agreement). Thus, we vacate the order of joint legal custody. Due to our ruling and remand, we need not reach Ms. Thronson's challenge to the provision for automatic change of custody when one parent moves from the state.

5. Illinois, Massachusetts, Ohio, and Wisconsin have also adopted similar statutes. Fam. Law § 32.06[2] at n. 45.

**ANALYSIS OF CHILD CUSTODY
UNDER § 30-3-10**

Our vacating of the order of joint legal custody is not necessarily dispositive of the issues of child custody, including legal custody, i.e., decision-making, and physical custody, i.e., caregiving and visitation rights. The trial court's findings might support a "best interests" custody award under § 30-3-10, although an award of joint legal custody was improper. However, both the court's memorandum decision and formal findings specify the court's reliance on the legislature's list of best interest factors in the joint legal custody statute § 30-3-10.2(3) enumerated above. On the other hand, § 30-3-10 provides:

In determining custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties.

Utah Code Ann. § 30-3-10 (1989) (emphasis added).

Our Supreme Court has developed the best interest factors to be considered under this provision.

We believe that the choice in competing child custody claims should instead be based on function-related factors. Prominent among these, though not exclusive, is the identity of the primary caretaker during the marriage. Other factors should include the identity of the parent with greater flexibility to provide personal care for the child and the identity of the parent with whom the child has spent most of his or her time pending custody determination if that period has been lengthy. Another important factor should be the stability of the environment provided by each parent.

Pusey v. Pusey, 728 P.2d 117, 120 (Utah 1986) (emphasis added). See also Hutchison v. Hutchison, 649 P.2d 38, 41 (Utah 1982); Rule 4-903(3) Utah Code of Jud. Admin. (1989) (requiring custody evaluators to consider and respond to a list of factors).

Our comparison of the two lists of factors reveals that they are not identical, although some similarities appear. Moreover, the context of the respective factors point the thrust of the trial court's inquiry in two different directions. As a result, the findings herein will not support an ultimate finding under § 30-3-10 that child custody should be placed with one parent or the other. Further, the findings contain internal disagreement. The memorandum decision states "the court desires the parties to arrange between themselves for reasonable and liberal visitation which they determine." To the same effect is formal finding number 61: "[i]t is in the best interests of the parties and their minor child to attempt to arrange between themselves reasonable and liberal visitation If the parties are unable to do so, the court will set a specific schedule." But, the court in formal finding number 65 took that promised privilege away from the parties stating -- "[i]n light of an appropriate reasonable and liberal visitation schedule, it is reasonable that the parties' minor child will spend 57% of his time with plaintiff, who has primary physical custody, and 43% of his time with the defendant." The 57% visitation award to the mother provides the basis for the "primary physical custody" statement. This was the only time the trial court mentioned physical custody. This specification of visitation time surreptitiously imposed an award of joint physical custody upon the parties without proper consideration of the best interest factors under § 30-3-10. We hold the findings to be inadequate to support any award of child custody because:

- (1) The trial court utilized best interest factors related to joint legal custody § 30-3-10.2(3) and not the factors related to child custody § 30-3-10;
- (2) The findings are in conflict as to the determination of visitation rights, i.e., by the court or the parents;
- (3) The findings do not support any award of physical custody; and
- (4) Custody was awarded on the basis of a court imposed visitation time allocation.

Our task is to act in the best interests of the child. We must vacate and remand the custody and visitation award. We do not remand simply for revision of the findings or with directions to modify the decree regarding these matters. During the interim, the facts regarding the parents and their

child and their relationships might have been dramatically changed. Further, the joint legal custody statute has been substantially amended. The current factual and legal circumstances should be examined before this matter is finalized. Thus, we remand for further fact finding and a new legal determination, utilizing whatever procedures and hearings the trial court deems necessary -- consistent with this opinion.

CHILD SUPPORT AWARD

Child support will have to be reconsidered in connection with the above remand. Utah Code Ann. § 78-45-7.4 (Supp. 1990) reveals that the support obligation is intended to be a shared obligation of both parents. This obligation must be allocated in proportion to the parties' adjusted gross income pursuant to Utah Code Ann. § 78-45-7.5 to -7.7. Subsection 7.5 lists the items of income to be included in gross income. It also lists two items to be subtracted from gross income to calculate adjusted gross income: alimony previously ordered and paid and child support previously ordered. Neither of those items is applicable here. Thus, gross income is the same as adjusted gross income in this case. But, the trial court failed to include income from nonearned sources as required by § 78-45-7.5(1)(a). Moreover, the trial court averaged Mr. Thronson's earned income for several years rather than using "current earnings." Section 78-45-7.5(5)(b) indicates that current earnings are to be used. On remand, child support calculations should properly account for these items pursuant to the statutory requirements.

ALIMONY AWARD

The trial court awarded Ms. Thronson alimony of \$800 per month for one year. Three factors must be considered by the trial court in making an alimony award:

1. the financial condition and needs of the party seeking alimony;
2. that party's ability to produce sufficient income for him or herself; and
3. the ability of the other party to provide support.

Naranjo v. Naranjo, 751 P.2d 1144, 1147 (Utah Ct. App. 1988) (citing English v. English, 565 P.2d 409, 410 (Utah 1977)).

"Failure to analyze the parties' circumstances in light of these three factors constitutes an abuse of discretion." Id. (citing Paffel v. Paffel, 732 P.2d 96, 100 (Utah 1986)). As long as the trial court exercises its discretion within the bounds and under the standards we have set and has supported its decision with adequate findings and conclusions, we will not disturb its rulings. Davis v. Davis, 749 P.2d 647, 649 (Utah 1988).

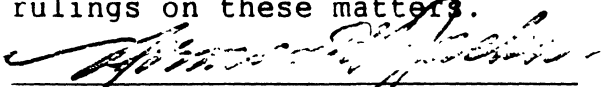
Here, the trial court considered each of the alimony factors and entered findings. Ms. Thronson's actual and necessary monthly living expenses were found to be \$3,700. She presented a higher figure, but the court heard evidence challenging certain items and found them to be overstated. Ms. Thronson's current earning capacity, as a full-time pharmacist, was found to be \$35,000 a year gross. This finding was based on competent evidence and represents the midpoint of an annual gross salary range of \$31,000 to \$39,000. The final factor, Mr. Thronson's ability to provide support, i.e., his earning capacity, was considered by the trial court. He submitted a thirteen year summary of his income. The trial court used an average of the last eight years, after excluding some contingent fee income in three of those years. Thus, the court found Mr. Thronson's average gross income to be \$71,376 annually. This calculation and finding was in error. Mr. Thronson's schedule showed his current gross earning capacity to be \$94,476 annually. Nevertheless, we cannot say that an award of \$800 per month in alimony is an abuse of discretion given the above factors and other financial circumstances of the parties. But, we do hold that the trial court abused its discretion in making the alimony non-permanent, i.e., for one year.

The trial court found that "an annual income of \$35,000 should be imputed" to Ms. Thronson, i.e., she could earn that amount, assuming she was employed on a full-time basis. But, the court found her needs to be \$3,700 per month, i.e., \$44,400 annually. Accordingly, she is not capable of meeting her needs, she requires \$9,400 annually to meet her needs, even when employed on a full-time basis. Thus, she will require the \$800 per month (\$9,600 annually) alimony for the foreseeable future. Otherwise, she will face a substantial income shortfall compared to her needs. Further, the trial court found Mr. Thronson's actual and necessary monthly living expenses to be \$4,300 per month, i.e., \$51,600 annually. This leaves him with some discretionary income. These findings warrant an award of permanent alimony. The trial court abused its discretion in limiting the alimony award to one year. Rasband v. Rasband, 752 P.2d 1331, 1335 (Utah Ct. App. 1988).

We remand for modification of the alimony award to be permanent alimony of \$800 per month.

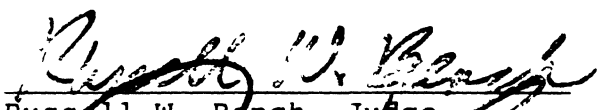
**OTHER FINANCIAL AND
PROPERTY AWARDS**

There is no fixed formula upon which to determine a division of property in a divorce action. The trial court has considerable latitude in adjusting financial and property interests, and its actions are entitled to a presumption of validity. See Naranjo, 751 P.2d at 1146. Ms. Thronson claims the trial court erred by failing to restore to her inheritance monies expended by her while the parties were separated prior to divorce; by failing to replace certain furniture removed by Mr. Thronson; and by failing to restore certain funds spent by Mr. Thronson after they separated. We have examined these items and find no abuse of trial court discretion. This court will not disturb a determination of financial and property interests unless it is clearly unjust or a clear abuse of discretion. Rasband, 752 P.2d at 1335. Thus, we affirm the rulings on these matters.

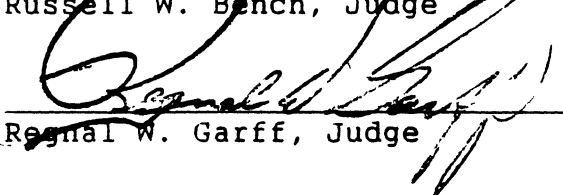


Norman H. Jackson, Judge

WE CONCUR:



Russell W. Bench, Judge



Reginal W. Garff, Judge

Tab 2

FILED

MAY 21 1991

IN THE UTAH COURT OF APPEALS

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Mary T. Noonan
Clerk of the Court
Utah Court of Appeals

Mary M. Thronson,
Plaintiff and Appellant,
v.
Charles H. Thronson,
Defendant and Appellee.

ORDER DENYING PETITION
FOR REHEARING

Case No. 890547-CA

THIS MATTER having come before the Court upon Appellee's
Petition for Rehearing, filed March 25, 1991.

IT IS HEREBY ORDERED that the Appellee's Petition for Rehearing is denied.

Dated this 21st day of May, 1991

FOR THE COURT:

Mary T. Noonan
Clerk of the Court

Tab 3

MAY 9 1989

[Signature]
SALT LAKE COUNTY
Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MARY M. THRONSON,	:	MEMORANDUM DECISION
Plaintiff,	:	CIVIL NO. D-87-4318
vs.	:	
CHARLES H. THRONSON,	:	
Defendant.	:	

The above-entitled matter came on for trial on the 25th of April, 1989, and continued for three days thereafter. The plaintiff was represented by her attorneys Paul H. Liapis and Helen Christian, and the defendant was represented by his attorney Clark W. Sessions. The Court heard testimony from the parties and their respective witnesses, received exhibits, and following trial received each party's proposal for distribution of the marital estate and ruling on the other issues in dispute. The Court now being advised in the premises, renders this

MEMORANDUM DECISION

1. Jurisdiction

The Court finds that the above-entitled Court has jurisdiction. The parties were residents of Salt Lake County for

more than three months immediately preceding the filing of this cause of action and Answer and Counterclaim.

2. Grounds

The Court finds that each party has stated sufficient facts to establish grounds upon which the Decree may be granted on the basis of irreconcilable differences.

3. Custody

The Court finds each parent to be fit and proper for an award of custody and that while there exists substantial difficulty between the parties, consistent with the intent and language of Section 30-3-10.2, Utah Code Ann. (1988), it is in the best interests of the child Patrick Thronson for the parties to be awarded joint legal custody. The Court finds that both parents are capable of implementing joint legal custody.

The Court has reviewed each of the aspects of paragraph 3 (a) through (g) of Section 30-3-10.2, Utah Code Ann., and finds that the factors there stated exist in the relationship of each of the parties to their son Patrick that this joint legal custody determination is appropriate under the circumstances.

Further, the Court finds that it is in the best interests of the child that each parent remain in Utah in a proximity sufficiently close to Patrick that the joint custody and close parental relationship may continue. If either parent determines to leave the state of Utah, it is the Court's considered opinion,

at this time, that custody should transfer to the remaining parent so that minimal disruption to Patrick would occur.

4. Visitation

Consistent with the Court's ruling that joint custody be the status, the Court desires the parties to arrange between themselves for reasonable and liberal visitation which they determine. In the event either party is unable to agree with an informal but liberal schedule, the Court will set a specific schedule. However, in advance the Court would indicate that it prefers the parties to arrange the ongoing relationship consistent with Patrick's best interest.

5. Alimony and Child Support

The Court finds that each party is an able-bodied person, capable of earning sufficient income to support themselves. The plaintiff is a licensed pharmacist, able to find employment on a part-time and full-time basis at hourly rates between \$15.00 and over \$19.00 per hour, which would yield an annual income between \$31,000.00 and over \$39,000.00. Even though Patrick is in school full-time and can be cared for at the school at nominal cost, the plaintiff has continued to work only part-time. The Court finds this choice to be inconsistent with the plaintiff's financial needs, but certainly a choice the plaintiff may elect to make. Considering all of the asset division and income sources from the property division, the Court believes alimony should be set on a

transitional basis, and sets the same in the amount of \$800.00 per month for a period of one year, beginning in May of 1989 and concluding in April of 1990. Thereafter, alimony shall terminate.

Child support shall be set above the level of the child support obligation worksheet as compared to that worksheet set by the legislature to become effective July 1, and that support shall be set at the level of \$900.00 per month.

6. Life Insurance

The defendant has agreed to and the Court affirms the naming of a corporate fiduciary as the beneficiary to an unfunded life insurance trust, which trust shall maintain a policy currently available to the defendant through his employment in the amount of \$200,000.00, and which policy shall never during the child's minority be less than the present value of the unpaid child support obligations of the defendant. The trustee should be a corporate fiduciary disinterested in the family of either party.

7. Medical Insurance

The defendant shall be ordered to maintain the child Patrick on his medical insurance and cooperate in all respects in the presentation of claims. Portions not covered by the medical insurance shall be borne equally by the parties.

8. Real and Personal Property Distribution

The Court finds the real and personal property should be divided between the parties as follows:

TO THE PLAINTIFF MARY M. THRONSON:

(a) The residence at 2063 Hubbard Avenue, subject to the plaintiff's payment of the unpaid mortgage;

(b) The 1986 Mercedes;

(c) All furniture, furnishings, fixtures, etc. contained in the home at this time;

(d) A portion of value in the retirement plan at Parsons, Behle & Latimer in the present value amount of \$105,000.00;

(e) The plaintiff is further entitled to one-half of the pro rata annual contribution to be made to the retirement plan to cover any period prior to May 1, 1989 whenever that contribution is made;

(f) The IRA at Continental Bank;

(g) The Western Mutual annuity;

(h) The Dual Asset Fund #V;

(i) The two First Security accounts presently utilized by the plaintiff;

(j) One-half of the account in the trust fund at Sessions & Moore;

(k) \$2,002.00 as a cash payment from the defendant to compensate for the defendant's value represented in the Parsons, Behle & Latimer stock;

(l) All other personal clothing, apparel, effects, objets d'art, etc. currently in the plaintiff's possession not otherwise dealt with.

TO THE DEFENDANT IS AWARDED THE FOLLOWING:

(a) The residence at 1940 South 2500 East, purchased with separate inherited funds;

(b) The 1986 Toyota Landcruiser;

(c) The 1983 Honda XR500R; the 1986 Honda XLV750R; the three bike trailer;

(d) All furniture, furnishings, fixtures and appliances currently in the possession of the defendant;

(e) All office furniture located both at the defendant's residence and PB&L office;

(f) All PB&L stock;

(g) One-half of the Sessions and Moore trust account funds;

(h) The Valley Bank account utilized by the defendant;

(i) The remainder of the retirement plan at Parsons, Behle & Latimer;

(j) The Zions Bank IRA;

(k) The Aetna annuity;

(1) All personal effects, clothing, apparel, objets d'art, etc. currently in the possession of the defendant.

9. Debts and Obligations of the Parties

The Court finds that the parties should be individually responsible for the following debts and obligations:

(a) The plaintiff shall be responsible for the unpaid mortgage on the residence at 2063 Hubbard Avenue; the Nordstrom's account; ZCMI account; bill due to Naomi Maddis; Key Bank Visa card balance; First Security Bank Quickline balance; Zions First National Bank loan balance; First Security Bank Visa balance; and any and all other liabilities incurred by the plaintiff since separation not otherwise dealt with directly herein.

(b) The defendant shall be responsible for the unpaid mortgage on the residence at 1940 South 2500 East; the R.C. Willey account; the MBNA Mastercard account; First Security Bank account; SL Family Therapy account; Valley Bank Visa card account; the balance due on the 1988 taxes; and any and all other obligations incurred by the defendant since separation not otherwise dealt with.

10. Payment of Attorney's Fees

The Court finds that each party should be responsible for payment of their own attorney's fees as incurred, with the exception that the defendant should pay toward the plaintiff's attorney's fees the sum of \$5,000.00.

11. Education costs to Patrick

The defendant should be responsible for tuition costs for Patrick's attendance at Rowland Hall through the 6th grade, however, this may be re-evaluated upon the occurrence of either or both of the following:

(a) The tuition costs increase more than 30% over present levels; or

(b) The defendant's income decreases by more than 30% over present levels.

It is anticipated that after the 6th grade, the parties will determine the future education as to Patrick, and the defendant will, as reasonably possible, maintain a significant contribution to that future cost.

12. Restoration of Maiden Name

The plaintiff shall be restored to her maiden name of Mary Elizabeth Moriarty.

13. Counseling for Patrick

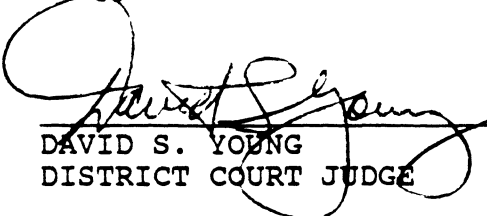
If counseling for Patrick is continued, each party shall bear one-half of the cost.

14. Other Matters.

The Court has endeavored to deal with all issues and property in dispute. However, the evidence involved many items and was presented in such a way that some matters may have been overlooked. Counsel are invited, without the invitation to retry

the case, to inform the Court of such matters, if any, overlooked or in need of clarification.

Dated this 9th day of May, 1989.


 DAVID S. YOUNG
 DISTRICT COURT JUDGE

Tab 4

JUN 23 1989

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SALT LAKE COUNTY
By CP

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

MARY THRONSON,	:	
	:	
Plaintiff,	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW
	:	
vs.	:	
	:	
CHARLES THRONSON,	:	Civil No. D87-4318
	:	
Defendant.	:	Judge David S. Young

The above-entitled matter came on regularly for trial on the 25th day of April, 1989, and continued thereafter for three days before the Honorable David S. Young, one of the Judges of the above-entitled Court. The Plaintiff was present in person and was represented by Paul H. Liapis and Helen Christian of Gustin, Green, Stegall & Liapis, her attorneys. The Defendant was present in person and was represented by his attorney, Clark W. Session of Sessions & Moore. The Court heard the evidence adduced, reviewed and considered the issues and stipulations presented and, after taking the matter under advisement rendered its Memorandum Decision on the 9th day of May, 1989, and being

fully advised in the premises, does now make and adopt the following Findings of Fact and Conclusions of Law.

FINDINGS REGARDING DECREE OF DIVORCE

1. The Court finds that both of the parties were residents of Salt Lake County, State of Utah, for a period in excess of three (3) months prior to the commencement of the above-entitled action.

2. The Court finds that the Plaintiff and Defendant were married on September 30, 1978. Plaintiff filed her Complaint for Divorce on November 2, 1987 and the parties were thereafter separated in February, 1988.

3. The Court finds that there is one child born as the issue of the marriage, Patrick Thronson, age 7½ years.

4. The Court finds that significant differences and disputes arose between the parties during their marriage as to their relationship with each other and that such differences became irreconcilable and further, that while various attempts at counseling and reconciliation were undertaken by the respective parties, such were to no avail, making continuation of the marriage under the circumstances impossible. The Court further finds that the Decree of Divorce to be entered herein should become final upon its entry as by law provided.

FINDINGS REGARDING ALIMONY

5. The Court finds that Plaintiff has been employed in her profession as a Pharmacist, in either a full-time or

part-time capacity, during the majority of the marriage of the parties. The Court in addition finds that Plaintiff has pursued graduate studies in Pharmacy through the College of Pharmacy at the University of Utah.

6. The Court finds that Plaintiff is currently employed at the Intermountain Poison Control Center at the University of Utah, on a part-time basis.

7. The Court finds that employment opportunities exist for the Plaintiff in the field of retail or hospital pharmacy on a full-time or part-time basis, at hourly rates between \$15.00 and over \$19.00 per hour, which would yield an annual gross income between \$31,000.00 and in excess of \$39,000.00 on a full-time basis.

8. The Court finds that the Plaintiff is an able-bodied person, with an undergraduate and graduate professional education and considerable work experience, who is fully capable of earning sufficient income to support herself.

9. The Court finds that the parties' minor child, Patrick, is in first grade and is a full-time student at Rowland Hall St. Mark's School, and that child care for other than school hours is available for Patrick at his school at a nominal cost.

10. The Court finds that, despite the foregoing, Plaintiff has voluntarily chosen to work only on a part-time basis, a choice which the Court finds to be inconsistent with Plaintiff's actual financial needs.

11. The Court finds that Plaintiff has over-stated her actual necessary monthly living expenses and further finds the same to be \$ 3,700⁰⁰. The Court further finds, that Defendant's actual necessary monthly living expenses total \$ 4300⁰⁰ per month.

12. The Court finds that Plaintiff's actual necessary monthly living expenses represent an amount which is consistent with the historical earnings of the parties during the course of their marriage and which is not based upon one or two years of inordinately high monthly living expenses based upon inordinately high income during such years.

13. The Court finds that the necessary monthly living expenses presented by Plaintiff at trial to be exaggerated and not in accord with the historical earnings of the parties nor the weight of the other evidence adduced at trial.

14. The Court finds that the evidence indicates that rather than seeking to obtain gainful full-time employment, Plaintiff has instead sought to avoid full-time employment by utilizing the temporary support and maintenance ordered to be provided by Defendant, utilizing one of two annuities which the parties were receiving, and by utilizing funds from a separate inheritance which Plaintiff had received after the death of a family member.

15. The Court finds that an annual income of \$35,000.00 (representing the midpoint between \$31,000.00 and

\$39,000.00 which the Court finds Plaintiff is capable of earning on a full-time basis) should be imputed to Plaintiff by reason of her voluntary choice to work only part-time, for purposes of consideration and computation of alimony, and for purposes of consideration and computation of child support.

16. The Court finds that while the Plaintiff is able to provide for her own support and maintenance, an award of alimony on a transitional basis is appropriate under the facts and circumstances of this case, which amount the Court finds to be \$800.00 per month to commence June 1, 1989, and to conclude on May 1, 1990, following which alimony shall cease and terminate.

17. The Court finds that it is likely Plaintiff will be able to obtain, as a fringe benefit, health, accident, hospitalization and dental insurance coverage through full-time employment as a licensed Pharmacist in the State of Utah, or in the alternative that Plaintiff may be able to arrange for individual insurance coverage after she is removed as a named insured from Defendant's insurance plan through his employment. Accordingly, the Court finds that Defendant is not required to maintain health or other insurance coverage for the benefit of Plaintiff after entry of the Decree of Divorce herein.

18. The Court finds that the Defendant is employed full-time as an attorney in a Salt Lake City law firm, and that during the time period 1981 thru the date of trial hereof Defendant has been a shareholder in the law firm and has been paid a

salary and quarterly bonuses on a fairly regular basis, although no bonus has been paid to him for certain quarters, including the first quarter of 1989. The Court finds that Defendant's annual gross earnings, including salary and quarterly bonuses, during the time Defendant has been a shareholder at the law firm, have averaged \$71,373 per annum.

19. The Court finds that on only five occasions over the past 12 years in which Defendant has been practicing law, Defendant has received additional contingent fee origination income from law firm contingent fee cases on which the Defendant has worked. The Court specifically finds that contingent fee origination income to Defendant from the law firm's contingent fees cases was paid in 1984 and in 1986, with an additional payment made for tax purposes in 1987 on a contingent fee case which the law firm actually settled in 1986. The Court finds in addition that this contingent fee origination income is unpredictable, irregular and rare and has not been and should not be considered to be part of regular or reasonably expected salary or bonus income for purposes of alimony consideration or computation, or for purposes of child support consideration or computation.

20. The Court finds that the Plaintiff has previously enjoyed the benefits of the contingent fee origination income paid to Defendant from the law firm's contingent fee cases, which enjoyment was in the form of travel, additional purchases,

property, investments, pension and profit sharing contributions and the like, much of which inures to the benefit of the Plaintiff in the division of property set forth below. Through these cases, the parties have also obtained two annuity contracts, the larger of which contracts in terms of total payout is awarded to Plaintiff as hereinafter set forth.

21. The Court finds that there is no evidence to support any claim to any interest in any existing or future contingent fee contracts between the law firm and the clients of the law firm, nor has any legal authority to support any such claim been presented. The Court further finds that, because such contingent fee contracts on such cases are the property of the law firm and because any such future income would be uncertain, hypothetical and/or speculative at best, there is no factual or legal basis for any such award in this case.

FINDINGS REGARDING PLAINTIFF'S CLAIM FOR
"EQUITABLE RESTITUTION"

22. The Court finds that the Plaintiff had completed her undergraduate and graduate education at Creighton University in Omaha, Nebraska in 1977, prior to the marriage of the parties. Plaintiff had been awarded her professional degree in Pharmacy, had become licensed as a Pharmacist in the State of Utah and had commenced employment in her profession as a Pharmacist on a full-time basis prior to the marriage of the parties.

23. The Court finds that the cost of Plaintiff's professional education was financed in part by her parents and in part from bank, university and student loans, some of which were repaid by the Defendant but most of which were paid either by her parents or by Plaintiff.

24. The Court finds that Plaintiff was employed on either a full-time or part-time basis throughout the majority of the marriage of the parties and that Defendant encouraged and supported Plaintiff's employment. The Court further finds that the Plaintiff attended in addition a graduate program in Pharmacy at the College of Pharmacy, University of Utah for approximately six months, which course of study Defendant encouraged.

25. The Court finds that the Defendant had completed his undergraduate education at the University of Washington, and his graduate education at the School of Law at Creighton University in Omaha, Nebraska, prior to the marriage of the parties. Defendant received his Juris Doctor degree in 1977, also prior to the marriage of the parties.

26. The Court further finds that the Defendant's education in both undergraduate and graduate school was financed by Defendant's own efforts, by scholarships which Defendant had obtained and by contributions by Defendant's grandparents, and that Plaintiff did not contribute either financial or other support to the completion of Defendant's education.

27. The Court finds that the Defendant had secured employment as an attorney in a Salt Lake City, Utah law firm and became licensed to practice law in the State of Utah as a result of his own efforts and without financial or other contribution or assistance from the Plaintiff, all prior to the marriage of the parties.

28. The Court finds that the parties voluntarily and independently chose their own professions and independently pursued and secured graduate degrees, professional licensing and employment in their respective professions without assistance or contribution from the other, excepting some contribution by Defendant to Plaintiff's loan repayment, as hereinabove set forth.

29. The Court finds that Plaintiff has not provided a significant, substantial or unusual level of support or assistance to Defendant's professional career, apart from that typically provided by a professional working spouse, nor has Plaintiff made significant, substantial or unusual sacrifices with respect to her own professional employment, education or other achievements in deference to or in support of Defendant's professional career.

30. The Court finds that Plaintiff has not suffered a reduction of wages during the course of the marriage of the parties as a result of Defendant's employment, or as a result of any conduct or requirement of Defendant, nor does the Court find

evidence to support Plaintiff's claim that she has sacrificed or lost wages during the course of the marriage, or failed to pursue her career on a full-time basis, as a result of any imposition by Defendant upon Plaintiff, or as a result of the requirements of Defendant's employment.

31. The Court finds that the Defendant has not worked excessive or lengthy hours during the day, or at night or on weekends, nor has the Defendant spent an excessive or unusual amount time out of town pursuant to his employment.

32. The Court therefore finds that, based upon the testimony and other evidence adduced herein, there is no factual or legal basis to support an award to the Plaintiff of any amount under the doctrine of "equitable restitution."

FINDINGS REGARDING DISTRIBUTION OF PROPERTY

33. The Court finds that much of the personal property of the parties was carefully valued and divided by the parties, by mutual consent and agreement and without duress, after the parties had separated. The Court further finds that Plaintiff voluntarily agreed to and assented to this property distribution by herself writing out one of the pages of the distribution memoranda and by initialing or signing each of the remaining pages thereof and the Court finds in addition that her claim that such was done under duress is not supported by the evidence.

34. The Court finds the property distribution agreed to between the parties to be reasonable and appropriate.

Accordingly, the Court adopts the property distribution agreement of the parties, with respect to the property it covers, and further adopts those values placed upon the property by the parties as the most accurate values of such property to the extent that values were not placed upon certain of the property by the parties at the time such was divided and distributed, the Court finds that the values placed upon the remaining property, by Defendant, are fair and reasonable. The property valuation and distribution is attached hereto as Appendix A and by this reference incorporated herein and made a part hereof.

35. The remaining real and personal property acquired by the parties during the course of their marriage should be valued as set forth in Appendix B, which values the Court finds to be reasonable, and divided as follows:

TO THE PLAINTIFF MARY M. THRONSON:

(a) The residence at 2063 Hubbard Avenue, subject to the Plaintiff's payment of the unpaid mortgage and all costs and expenses associated with the residence;

(b) The parties' 1986 Mercedes Benz;

(c) All furniture, furnishing, fixtures and personal property contained in the residence at 2063 Hubbard Avenue at this time;

(d) A portion of the value of the Defendant's interest in the Retirement Plan at Parsons, Behle & Latimer in the present value amount of \$105,000.00, constituting

approximately one-half of Defendant's Retirement Plan interest minus Defendant's fifty percent share of the equity in the residence at 2063 Hubbard Avenue.

(e) One-half of the prorated annual contribution to be made to the Retirement Plan for the benefit of the Defendant to cover any period prior to May 1, 1989, whenever that contribution is made;

(f) The Plaintiff's IRA at Continental Bank;

(g) The parties' Western National annuity;

(h) The parties' Dual Asset Fund V;

(i) The two First Security Bank accounts presently utilized by the Plaintiff;

(j) One-half of the account held in trust for the parties' benefit at Sessions & Moore, which account represents certain salary and bonus amounts earned by Defendant and ordered temporarily escrowed by the Court;

(k) \$2,002.00 as a cash payment from the Defendant to compensate Plaintiff for the actual value represented in the Defendant's stock in the law firm of Parsons, Behle & Latimer;

(l) All other personal clothing, apparel, effects, objets d'art, and other personal property currently in the Plaintiff's possession and not otherwise dealt with herein.

TO THE DEFENDANT CHARLES H. THRONSON:

(a) The residence of the Defendant located at 1940 South 2500 East, which he purchased with separate inherited funds;

(b) The parties' 1986 Toyota Land Cruiser;

(c) The parties' 1983 Honda XR-500R;

(d) The parties' 1986 Honda XLV-750R;

(e) The parties' utility trailer;

(f) All furniture, furnishings, fixtures and appliances currently in possession of the Defendant;

(g) All office furniture located both at Defendant's residence and at the Parsons, Behle & Latimer office;

(h) All stock in the law firm of Parsons, Behle & Latimer;

(i) One-half of the account held in trust for the benefit of the parties' at Session & Moore, which account represents certain salary and bonus amounts earned by Defendant and ordered temporarily escrowed by the Court;

(j) The Valley Bank account presently utilized by the Defendant;

(k) The remainder of Defendant's interest in the Retirement Plan at Parsons, Behle & Latimer;

(l) The Defendant's IRA at Zions Bank;

(m) The parties' Aetna annuity;

(n) All personal effects, clothing, apparel, objets d'art, and other personal property currently in the possession of the Defendant.

36. The Court finds that Plaintiff should assume, pay, discharge and hold the Defendant harmless from the following debts and obligations incurred during the course of the marriage of the parties, and since their separation, in the approximate values set forth on Appendix B.

(a) The unpaid mortgage on the parties' residence at 2063 Hubbard Avenue, Salt Lake City, Utah;

(b) Nordstrom's accounts;

(c) ZCMI accounts;

(d) Bills due to Naomi Maddis for services rendered;

(e) Key Bank Visa card balance;

(f) First Security Bank Quickline balance;

(g) Zions First National Bank loan balance;

(h) First Security Bank Visa balance; and

(i) Any and all other liabilities incurred by the Plaintiff since separation not otherwise dealt with directly herein.

37. The Court finds that Defendant should assume, pay, discharge and hold the Plaintiff harmless from the following debts and obligations incurred during the course of the marriage

of the parties, and since their separation, in the approximate values set forth on Appendix B.

(a) The unpaid mortgage on his residence at 1940 South 2500 East;

(b) RC Willey account;

(c) MBNA Master Card account;

(d) First Security Bank account;

(e) Salt Lake Child and Family Therapy account;

(f) Valley Bank Visa card account;

(g) Any remaining balance due on the 1988 state and federal income taxes of the parties; and

(h) Any and all other obligations incurred by the Defendant since separation not otherwise dealt with.

38. The Court finds that the parties had each received separate inheritances, which they have each kept separate from, and not commingled with, the joint assets of the parties. The Court further finds that the parties have stipulated that their inheritances should remain their sole and separate property.

39. The Court finds that both of the parties have expended funds from their inheritances, and the Court finds specifically that the Plaintiff has expended a considerable portion of her separate inheritance funds to pay her expenses in lieu of seeking gainful full-time employment.

40. Under the circumstances, and in light of the distribution of property and other assets to Plaintiff herein,

the Court finds it inappropriate to require Defendant to reimburse Plaintiff her separate inheritance funds which Plaintiff voluntarily chose to expend on herself prior to the divorce of the parties.

41. The Court finds that the parties purchased furniture during the course of their marriage, and inherited other furniture primarily from Defendant's family. The Court further finds that most of the purchased furniture was distributed by the parties to the Plaintiff and most of the inherited furniture was distributed by the parties to the Defendant, in accordance with their mutual desires.

42. The Court finds that the Plaintiff has enjoyed the benefit and use of the inherited furniture during the course of the marriage of the parties, allowing the parties to expend their funds on goods and services other than furniture. The Court further finds that, because of this advantageous use, and because of the mutual agreement to value and distribute the furniture as between the parties, that Plaintiff's request that Defendant purchase additional furniture for Plaintiff should be denied.

43. The Court finds that, during the course of the marriage of the parties, Defendant was generally responsible for the handling of family finances and made various expenditures and investments on behalf of the family for the benefit of the family, including Plaintiff. The Court finds that there is no evidence that Defendant wasted, hid, misappropriated or

improperly expended any of the funds acquired by the parties during their marriage. The Court instead finds that, such expenditures and investments made by the Defendant on behalf of the family were legitimate and appropriate. Therefore, the Court finds that Plaintiff's request that she be paid one-half of certain of the funds expended by the Defendant for the benefit of the family during the course of the marriage should be denied.

44. The Plaintiff has stipulated that she is not requesting any interest of Defendant in the law firm of Parsons, Behle & Latimer, or Defendant's employment therewith, except for an award of the value of one-half of the shares of stock which Defendant owns therein, which value is awarded to Plaintiff as hereinabove set forth above, and that no additional interest exists that should be awarded.

FINDINGS OF FACT REGARDING CUSTODY AND VISITATION

45. The Court finds that the independent custody evaluation and recommendation completed in this case represent a thorough, accurate and complete assessment of the custodial issues in this case, and that the same to the extent not inconsistent herewith are incorporated herein and made a part hereof. The independent custody evaluation report is attached hereto as Appendix C.

46. The Court finds each of the parties to be fit and proper persons to justify an award of custody of their minor

child, Patrick Thronson, to them, and that while there has previously existed some difficulty between the parties themselves, the Court finds that it is in the best interests of the parties' minor child, for the parties to be awarded joint legal custody.

47. The Court notes that pursuant to the provisions of Utah Code Ann. § 30-3-10.2(1) (1988) there is a rebuttable presumption that joint legal custody is in the best interests of a minor child, and the Court finds that, based upon the testimony and other evidence adduced herein, that presumption is operative and has not been rebutted.

48. The Court finds that Defendant has sought and agreed to an order of joint legal custody. To date, the Plaintiff has been resistant to an order of joint legal custody. However, it appears to the Court that Plaintiff's resistance is based upon both a lack of recognition of the importance of the relationship between Defendant and the minor child of the parties, and upon Plaintiff's own previously-expressed desire to leave the State of Utah with the minor child of the parties.

49. The Court finds that based upon the language and clear intent of said statute, upon the inherent power of this Court to act and to make orders in the best interests of the minor child of the parties, and under the circumstances presented herein, the Court finds that it is not required that the

Plaintiff agree to an order of joint legal custody before the Court can enter an order requiring the same.

50. The Court finds that both parents are capable of implementing joint legal custody, and that the parties have worked together and cooperated with respect to issues related to their minor child during the approximately 1 1/2-year elapse of time between the filing of the Complaint for Divorce by Plaintiff and the trial of the case.

51. This finding is also made and predicated upon the testimony of the counselor and therapist for Patrick, who also testified that the parties had worked together very well with respect to decisions related to the health, welfare and education of Patrick during this same period.

52. The Court further specifically finds that, while Plaintiff has claimed that she is not capable of implementing joint legal custody because of alleged past incidents of "physical" and "verbal" abuse, the Court finds those allegations to be unsupported by the weight of the credible testimony herein.

53. The Court specifically finds that joint legal custody is in the best interests of the minor child of the parties pursuant to Utah Code Ann. § 30-3-10.2(3). This finding is made and predicated upon the following specific findings of fact on this issue:

(a) The Court specifically finds that it is clear that the physical, psychological and emotional needs and

development of Patrick will benefit from joint legal custody. The Court further finds that the minor child of the parties has a close and nurturing relationship with both parents and that, based inter alia upon the independent custody evaluation and testimony, and the other testimony adduced herein, both parents have made substantial contributions throughout the life of the child to jointly support his needs and will continue to do so in the future.

(b) The Court specifically finds that both parents have demonstrated the ability, both during their marriage and after their separation, to give first priority to the welfare of their minor child, and both parties have demonstrated an ability to reach shared decisions in the child's best interests. The decisions include but are not limited to selection of and enrollment of their child in Rowland Hall St. Mark's School, selection and utilization of a counselor for him, coordinating work, vacation and holiday schedules, and the like.

(c) The Court specifically finds that both parents are capable of encouraging and accepting a positive relationship between their child and the other parent. The Court finds that while there is some question as to whether Plaintiff completely understands and acknowledges the close relationship between their child and Defendant, Plaintiff has the capability of encouraging and accepting that relationship.

(d) The Court specifically finds that both parents have jointly participated to a substantial degree in the intellectual and emotional development of Patrick, including his basic care requirements, education, nutrition, transportation, outside and recreational activities, spiritual development, friendships and the like. The Court further finds that both parents appear to recognize the child's needs and requirements, and both parents have worked to fulfill those needs and requirements.

(e) The Court specifically finds that the residence of the Plaintiff, at 2065 Hubbard Avenue in Salt Lake City is in close geographic proximity to the residence of Defendant, at 1940 South 2500 East in Salt Lake City. The Court further finds that this close geographical proximity has been an important factor in minimizing the effects upon their child of the separation and divorce of the parties.

(f) The Court also specifically finds the following as relevant factors supporting joint legal custody as being in the best interest of the parties minor child:

(i) the high intellectual and educational achievements of the parties, which the Court finds will likely be conducive to establishing a mature and amicable joint legal custody relationship;

(ii) both parties have continued to obtain counseling to understand and resolve within themselves the

problems in their relationship, which the Court finds will likely foster continued cooperation in working out custody arrangements;

(iii) both parties are very close to their child, and both parties place him in a priority position in their lives. The Court finds in addition that this attachment and concern will likely assist to reduce or minimize any negative feelings which the parties may have about certain aspects of their past relationship; and

(iv) Those other factors, not set forth above, favoring joint legal custody as articulated by the testimony and report of the independent custody evaluator.

54. The Court finds that its determination of the best interests of the child as set forth above is by a preponderance of the evidence, and is based upon the weight of the credible testimony and other evidence adduced herein, pursuant to Utah Code Ann. § 30-3-10.2(4) (1988).

55. The Court informs both parties, pursuant to Utah Code Ann. § 30-3-10.2(5) (1988) that an order for joint custody may preclude eligibility for public assistance in the form of aid to families with dependent children, and that if public assistance is required for the support of children of the parties at any time subsequent to an order of joint legal custody, the order may be terminated under Utah Code Ann. § 30-3-10.4 (1988).

56. The Court finds, recommends and will order that the parties attempt to settle future disputes by a dispute

resolution method, such as a jointly acceptable psychologist or social worker acting as an independent mediator, before seeking Judicial enforcement or modification of the terms and conditions of the Order of Joint Legal Custody, except in actual emergency situations, if any, requiring ex parte orders to protect the parties' minor child.

57. The Court finds that at various times prior to and during the pendency of this action, Plaintiff has expressed a desire to permanently remove the minor child of the parties from the State of Utah. The Court specifically finds that it is clearly in the best interests of the parties' minor child that the child remain in the State of Utah in a proximity sufficiently close to each parent that the joint legal custody and close parental relationships may continue. In addition, the Court bases its finding, inter alia, upon the fact that the minor child of the parties was born and has lived his entire life in the State of Utah; that he currently is enrolled in Rowland Hall St. Mark's School, a private academic institution, where he has excelled and thrived; that he has developed friendships and participated in activities in the State of Utah which have contributed to his overall growth and development; that he has very strong and close relationships with both parents; and that he has essential psychological and emotional needs and requirements which can only be fulfilled by close physical proximity to and close contact with both parents.

58. The Court further specifically finds that it would be in the best interests of Patrick to remain in the State of Utah in close physical proximity to both parents, and that permanent removal of the child from the State of Utah by either party would cause very severe psychological, mental and emotional trauma, suffering and injury to the child. Accordingly, the Court finds it to be in the best interests of the child to restrict the parties from permanently removing him from the State of Utah, and the Court further specifically finds that it is in the best interests of the child that each of the parties reside in Salt Lake County in a proximity sufficiently close that the joint legal custody and close parental relationships with him may continue.

59. The Court finds that if either party determines to permanently remove the parties' minor child from the State of Utah, sole physical and legal custody should transfer to the remaining parent so that minimal disruption to the child would occur, and the Court further finds that such would be in the best interests of the minor child of the parties.

60. The Court finds that it is in the best interests of the minor child of the parties that the Court set forth the terms of its Order of Joint Legal Custody pursuant to Utah Code Ann. § 30-3-10.3 (1988). This Order of Joint Legal Custody is attached hereto and incorporated herein as Appendix D. The Court finds and instructs the parties that they are to utilize the

terms of this Order in their broadest and most inclusive sense, and to utilize the spirit of the terms of the Order in clarifying or resolving any disagreements or areas of reasonable uncertainty between them.

61. The Court finds that it is in the best interests of the parties and their minor child to attempt to arrange between themselves reasonable and liberal visitation consistent with their minor child's best interests. If the parties are unable to do so, the Court will set a specific schedule.

62. The Court finds that the income imputed to the Plaintiff is the sum of \$35,000.00 per year or \$2,917.00 per month, representing the mid-point of income from available employment opportunities on a full-time basis for the Plaintiff as a registered licensed Pharmacist.

63. The Court finds that the Defendant's income during the period 1981 through 1988, the time in which he has been a shareholder in the law firm at which he is employed, including annual gross salary and quarterly bonuses, is \$71,373.00, or \$5,948.00 per month.

64. The Court finds that, based upon the financial needs and requirements of the parties' minor child, the award of joint legal custody hereunder, and the income and expenses of the respective parties, that the level of total child support for the parties' minor child shall be set at \$900 per month.

65. The Court finds the Plaintiff's proportionate share of the parties' combined income to be 32.9% and the Defendant's proportionate share of the parties' combined income to be 67.1%. The Court further finds that under the joint legal custody award, and in light of an appropriate reasonable and liberal visitation schedule, it is reasonable that the parties' minor child will spend 57% of his time with Plaintiff, who has primary physical custody, and 43% of his time with the Defendant.

66. The Court finds that there are no extraordinary medical expenses relating to the parties' minor child and that the work-related child-care costs for said minor child will approximate \$108 per month.

67. The Court finds that the Defendant should be ordered to pay to the Plaintiff the sum of \$324.90 per month as and for child support during the period of time that the parties' minor child is in the physical custody of the Plaintiff, and \$108.90 per month when said minor child is in the physical custody of the Defendant pursuant to the computation schedule attached hereto as Appendix E and by this reference incorporated herein and made a part thereof. The Court finds in addition that all such child support payments shall continue until the parties' minor child reaches the age of majority or is earlier emancipated.

68. The Defendant has stipulated and the Court finds that the Defendant should be additionally responsible for tuition

costs and expenses for the attendance of the minor child of the parties at Rowland Hall St. Mark's School in Salt Lake City, Utah, a private educational institution, through the sixth grade, provided however that such may be re-evaluated upon the occurrence of either or both of the following:

(a) That tuition costs increase more than thirty percent (30%) over 1988-89 school year levels; or

(b) That Defendant's income decreases by more than thirty percent (30%) over his 1988 income level.

69. The Court finds that the Defendant shall maintain a life insurance policy currently available to him through his employment, in the face amount of \$200,000.00 in full force and effect for the benefit of the parties' minor child during the Defendant's obligation for the payment of support thereof, and further that such policy shall never be in an amount less than the present value of the unpaid child support obligations of the Defendant. The Court finds in addition that a corporate fiduciary shall be named as a trustee in an unfunded life insurance trust for the benefit of the parties' minor child, which corporate fiduciary shall be disinterested in the family of either party.

70. The Court finds with respect to the unfunded life insurance trust which Defendant is required to establish for the benefit of the parties' minor child, that the Defendant, along with the corporate fiduciary, are responsible for establishing

appropriate terms, conditions, and procedures with respect to funding and income distribution from said unfunded life insurance trust.

71. The Court finds that the Defendant should name, as an insured on his existing medical insurance policy, the parties' minor child during the Defendant's obligation of payment of child support therefore, and both parties should cooperate in all respects in the presentation and processing of all claims. The Court further finds that non-insured medical and dental expenses, including deductibles, should be borne equally by the parties. The Court further finds that if psychological counseling for the parties' minor child continues beyond the date of entry of the Decree of Divorce herein, each party shall bear one-half (1/2) of such counseling costs and expenses not otherwise covered by the insurance of either of the parties.

FINDINGS ON MISCELLANEOUS ISSUES

72. The Court finds that in accordance with the Plaintiff's request, the Plaintiff shall be restored to her maiden name of Mary Elizabeth Moriarty.

73. The Court finds that each party should be responsible for the payment of their own costs, attorneys' fees, and expert witness fees if any, incurred in connection with this matter, provided however, that the Defendant should pay toward the Plaintiff's attorneys' fees the sum of \$5,000.00.

74. The Court finds that each of the parties should be awarded their own personal effects, belongings, wearing apparel, jewelry and gifts from each other and such property as they received by way of gift or inheritance or as premarital property, as their sole and separate property without claim from the other.

75. The Court finds that the parties have acquired various tapes, pictures and video tapes, which the Plaintiff should provide to the Defendant as he designates for copying at his sole cost and expense.

76. The Court finds that there is no harassment, annoyance or physically or verbally confrontative behavior presently occurring between the parties, nor is there any credible evidence that such behavior has occurred for a substantial period of time previously. Accordingly, the Court finds that there is no present necessity to enter a mutual restraining order against the parties to limit or otherwise restrict their contact. In the event that such conduct manifests itself, the Court may make such future orders as are necessary, if any.

77. The Court finds that the parties should file joint federal and state income tax returns for the tax year 1988, and that the parties should cooperate in all respects in the preparation and filing of such returns in such ways so as to minimize the overall joint taxes payable for the tax year 1988. If any such additional taxes are due and payable, the Defendant shall bear that expense. If either a state or federal tax refund is to

be received by the parties, it shall first be used to offset any state or federal tax liability for the tax year 1988, and then remaining amounts, if any, shall be jointly divided between the parties.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and the stipulations and Memorandum Decision heretofore made and entered, the Court now concludes as follows:

1. That the Court has jurisdiction over the subject matter hereof and the parties hereto.

2. That the parties are entitled to be awarded a Decree of Divorce each from the other on the grounds of irreconcilable differences and that such should become final upon its entry as provided by law.

3. That the Plaintiff should be awarded her maiden name of Mary Elizabeth Moriarty.

4. That the alimony, custody, child support and property distribution, and all other provisions of the Decree of Divorce should be entered pursuant to the Findings of Fact and Appendices entered herein, and pursuant to the Memorandum Decision which by this reference are incorporated herein and made a part hereof.

5. That each party should be required and ordered to properly execute and deliver such documents as may be necessary

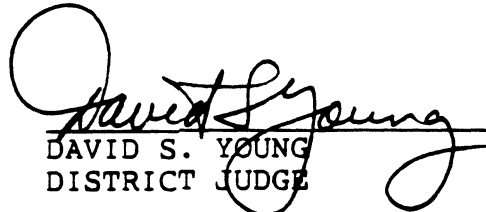
or appropriate to accomplish the transfer and disposition of the assets above awarded by the Court to the party entitled thereto, and to properly execute and deliver such documents to do such other things as may be necessary or appropriate to accomplish any of the other Findings and/or Conclusions by the Court herein.

6. That each of the parties should assume, pay and discharge his or her own costs and expenses, including attorneys' fees and expert witness fees incurred in connection herewith, provided, however, that the Defendant shall pay to Plaintiff's attorneys the sum of \$5,000 towards Plaintiff's attorneys fees.

7. That the Court shall make and enter its Decree of Divorce accordingly.

ENTERED this 22nd day of June, 1989.

BY THE COURT:




DAVID S. YOUNG
DISTRICT JUDGE

CERTIFICATE OF HAND DELIVERY

I hereby certify that I caused to be hand delivered, a true and correct copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW to the following on this 23rd day of May, 1989:

Paul H. Liapis
GUSTIN, ADAMS, STEGALL & LIAPIS
Attorneys for Plaintiff
Third Floor
New York Building
48 Post Office Place
Salt Lake City, Utah 84101



255:051589A

Tab A

APPENDIX "A"

EXHIBIT B

(FROM TRIAL EXHIBIT 30D)

MARITAL ESTATE DISTRIBUTION

Mary M. Thronson

<u>Property</u>	<u>Value</u>
All property brought into marriage (Desk, wardrobe, bed, chairs, chests, clothing, books, records, etc.)	
Sleeper Sofa	\$1,000.00*
Mahogany Chair	500.00
Oak Table	200.00
Brass Table Lamp	50.00
Large Cedar Chest	75.00
Brass Lamp & Shade	100.00
Brass Table Lamp	50.00
Book Cases	90.00
Two Mahogany Chairs	200.00
Two Mahogany Tables	400.00
All of Patrick's Furniture (Bed, Dresser, Bookshelves, Chair, Lamp, etc.)	600.00*
Air Conditioners (2)	800.00*
Wall Pictures	100.00*
Bedding & Linen	400.00*
Kitchen Table & Chairs	50.00
Lawn Furniture	300.00
Crystal	258.00
China	1,495.81
Silver	3,000.00*
Washer	524.95
Dryer	200.00
Dishwasher	200.00
Color Television	500.00*
Television Stand	150.00*
Video Cassette Recorder	700.00*
Snowblower	1,057.45
Lawnmower	275.00

Everyday Stainless Steel, Everyday	1,000.00
Dishes, Glassware, Appliances, etc.	150.00
Small Tent	600.00
Exercise Bike	50.00*
Wheelbarrow	75.00*
Grill	75.00*
Shop Vac	200.00
Camping Equipment	200.00
Compact Discs, Tapes & Records	200.00*
Compact Disc Player	400.00*
Pre-Amplifier	650.00*
Record Player	<u>200.00*</u>
Cabinet	
 TOTAL VALUE	 \$17,076.21

* Estimated value

EXHIBIT C

(FROM TRIAL EXHIBIT 30D)

MARITAL ESTATE DISTRIBUTION

Charles H. Thronson

<u>Property</u>	<u>Value</u>
All property brought into marriage (including 1973 Motorcycle, books, records, clothes, bed, etc.)	
Dining Room Table Pad	\$150.00
Bed Frame	260.00
Green Chair	110.00
Small Cedar Chest	50.00*
Brass Lamp	75.00*
Filing Cabinet	100.00*
Bookcases	90.00
Round Rug	150.00
Freezer	300.00*
Small Television	220.00
Watch	598.50
Ski Rack	100.00
Tools, cabinet & vise	500.00
Telephone answering machine	100.00
Large Tent	250.00*
Rowing Machine	689.00
Compact Discs, Records & Tapes	200.00*
Silverware (Inherited)	1,500.00*
Pictures	100.00
Camping Equipment	200.00
Bedding & Linen	400.00
Stainless Steel Utensils & Certain Household Items	150.00*
Motorcycle Stand	50.00
Creeper	25.00
Duck Boots	80.00
Air Mattress	100.00
Duck Chair	25.00

Gun	95.00
Tape Deck	800.00*
Tuner	500.00*
Amplifier	500.00*
Speakers & Wire	3,000.00*
Hedge Trimmer	30.00*
Miscellaneous Tools	<u>150.00*</u>
TOTAL VALUE	\$11,647.50

* Estimated value

Tab B

APPENDIX "B"

Thronson v. Thronson

Property Description	Fair Market Value	Debt	Net Value	Husband	Wife	Source or Comment
CASH						
First Security-Wife	66.35		66.35		66.35	Exhibit 5P
First Security-Wife	43.00		43.00		43.00	Exhibit 5P
Valley Bank-Husband	1366.84		1366.84	1366.84		Exhibit 400
Sessions & Moore Trust	12281.34		12281.34	12281.34		Exhibit 430
SECURITIES						
Stock PBL	4004.00		4004.00	4004.00		Stipulation
Dual Asset Fund V	11300.00		11300.00		11300.00	Exhibit 400
VEHICLES						
1986 Mercedes	25972.56		25972.56		25972.56	Exhibit 300
1986 Toyota Land Cruise	18368.80		18368.80	18368.80		Exhibit 300
1973 Yamaha 360 MX			.00			Prenuptial Asset (CHT)
1983 XR500R Honda	2004.50		2004.50	2004.50		Exhibit 300
1986 XLV750R Honda	5699.70		5699.70	5699.70		Exhibit 300
1986 XR600R Honda			.00			Note 1
Three bike trailer	910.00		910.00	910.00		Exhibit 300
1980 Blazer Sale Contract			.00			Note 2
FURNITURE & FIXTURES						
Furniture, Appliances	28723.71		28723.71	11647.50	17076.21	Note 3
Office Furniture	2500.00		2500.00	2500.00		Exhibit 300
RETIREMENT ACCOUNTS						
Retirement Plan at PBL	269382.21		269382.21	161929.80	107452.41	Note 4
IRA Zion's-Husband	9095.45		9095.45	9095.45		Exhibit 5P
IRA Continental-Wife	7500.60		7500.60		7500.60	Exhibit 5P
OTHER						
Annuity Western Mutual	28582.36		28582.36		28582.36	Exhibit 380
Annuity Aetna	21438.70		21438.70	21438.70		Exhibit 380
REAL PROPERTY						
2063 Hubbard Avenue	182500.00	128022.62	54477.38		54477.38	Stipulation
1940 South 2500 East			.00			Note 1
LIABILITIES						
R.C. Willey		3115.99	-3115.99	-3115.99		Exhibit 400
MBMA		5000.00	-5000.00	-5000.00		Exhibit 400
First Security Bank		1727.38	-1727.38	-1727.38		Exhibit 400
SL Family Therapy		800.00	-800.00	-800.00		Exhibit 400
Valley Bank VISA		2055.17	-2055.17	-2055.17		Exhibit 400
Wordestrom's		1053.56	-1053.56		-1053.56	Exhibit 18P
ZCMI		887.67	-887.67		-887.67	Exhibit 18P
Noami Mattis		630.00	-630.00		-630.00	Exhibit 18P
Key Bank VISA		352.01	-352.01		-352.01	Exhibit 18P
First Security Quickline		3624.00	-3624.00		-3624.00	Exhibit 18P
Zion's First National		2043.44	-2043.44		-2043.44	Exhibit 18P
First Security VISA		220.00	-220.00		-220.00	Exhibit 18P
1988 Taxes		3500.00	-3500.00	-3500.00		Note 5

GENERAL NOTES

- A. Plaintiff should not receive reimbursement of \$17,818 for use of inherited funds during divorce proceeding.
- B. All proceeds from the sale of the following securities were used to pay taxes:
 - Fidelity Magellan Fund
 - Fidelity Short Term
 - Mutual Shares Corp.
 - 20th Century Select
 - Vanguard Fund
- C. 1987 State Tax Refund was divided between Plaintiff and Defendant.
- D. Monies from the following accounts were used to pay joint debts and obligations of the parties:
 - First Security
 - American Savings
 - Merrill Lynch Joint Account
- E. Attorneys' fees and costs are not listed for either party. Each party will pay their own

SPECIFIC NOTES

- 1. Acquired by Defendant with inherited funds.
- 2. All proceeds from the sale of 1980 Blazer were used for joint obligations.
- 3. Valued and distributed pursuant to Exhibit 30D. Those items that were not specifically valued on Exhibit 30D are marked with an asterisk on Exhibits B and C, attached hereto and originally attached to Exhibit 41D.
- 4. Pension Plan Value (\$269,382.21) as per Larry Worrell - 2 = \$134,691.10 for each party. Pursuant to Plaintiff's request at the Pretrial, the Plaintiff would receive all of the equity in the home at 2063 Hubbard Avenue (\$54,477.38) and Plaintiff would reduce her claim to her share of the pension plan by \$27,238.69.
- 5. A \$3,500.00 payment was made to the IRS by Defendant for estimated 1988 taxes at the time Plaintiff and Defendant filed for an extension.

Tab 5

JUN 23 1989

By CP

CLARK W. SESSIONS (2914)
DEAN C. ANDREASEN (3981)
SESSIONS & MOORE
Attorneys for Defendant
400 First Federal Plaza
505 East 200 South
Salt Lake City, Utah 84102
Telephone: (801) 359-4100

2148998
6-26-89-8:12am

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

MARY M. THRONSON,	:	
	:	DECREE OF DIVORCE
Plaintiff,	:	
	:	
vs.	:	
	:	Civil No. D-87-4318
CHARLES H. THRONSON,	:	
	:	Judge David S. Young
Defendant.	:	

The above-entitled matter came on regularly for trial on the 25th day of April, 1989, and continued thereafter for three days before the Honorable David S. Young, one of the Judges of the above-entitled Court. The Plaintiff was present in person and represented by Paul H. Liapis and Helen Christian of Gustin, Green, Stegall & Liapis, her attorneys. The Defendant was present in person and represented by his attorney, Clark W. Sessions of Sessions & Moore. The Court heard the evidence adduced, reviewed and considered the issues and stipulations presented and, after taking the matter under advisement, rendered its Memorandum

Decision on the 9th day of May, 1989, and having made and entered its Findings of Fact and Conclusions of Law and being fully advised in the premises, hereby ORDERS, ADJUDGES AND DECREES as follows:

1. That the parties be and they are hereby awarded a Decree of Divorce each from the other on the grounds of irreconcilable differences and that such Decree of Divorce shall become final upon its entry as provided by law.

2. That the Plaintiff is awarded alimony in the sum of \$800.00 per month for a period of one (1) year commencing in June, 1989 and concluding in May, 1990, following which alimony shall cease and terminate.

3. That the Plaintiff be and she is hereby awarded her maiden name of Mary Elizabeth Moriarty.

4. That the parties be and they are hereby awarded joint legal custody of the parties' minor child Patrick Thronson, provided however, that if either party determines to leave the State of Utah, custody of said child should transfer to the party remaining in the State of Utah.

5. That the parties shall arrange between themselves reasonable and liberal visitation by the parties of Patrick Thronson consistent with the best interests of said child.

6. That the total child support payable for the support and maintenance of the parties' minor child Patrick Thronson shall be

\$900.00 per month. The Defendant be and he is hereby ordered to pay for the support and maintenance of said minor child the sum of \$324.90 per month when the Plaintiff has physical custody of said minor child and the sum of \$108.90 per month when the Defendant has physical custody of said minor child.

7. That the Defendant shall maintain in full force and effect, at his cost and expense, life insurance on his life for the benefit of the parties' minor child, Patrick Thronson, in the face amount of \$200,000.00, which policy shall not be less than the present value of the unpaid child support obligation of the Defendant during the period of the minority of said minor child. The Defendant be and he is hereby ordered to designate and name a corporate fiduciary in an unfunded life insurance trust to implement the life insurance provisions hereof which corporate trustee shall be disinterested in the family of either of the parties hereto.

8. That the Defendant be and he is hereby ordered to maintain in full force and effect and at his cost and expense, existing health insurance coverage naming the parties' minor child, Patrick Thronson as an insured thereunder during the period of time the Defendant is under an obligation for the payment of child support. The parties are hereby ordered to assume, pay and discharge, on an equal basis, all medical and dental costs and

expenses for the care and treatment of the parties' minor child Patrick Thronson not covered by such insurance and the Defendant is further ordered to cooperate in all respects in the presentation and processing of all claims for benefits under such health insurance plan.

9. That the Defendant be and he is hereby ordered to assume and pay tuition costs and expenses for the attendance of the parties' minor child Patrick Thronson at Rowland Hall through the sixth grade; provided however, such responsibility may be re-evaluated upon the occurrence of either or both of the following:

a. That the tuition costs increase more than thirty percent (30%) over present levels; or,

b. That the Defendant's income decreases by more than thirty percent (30%) over present levels.

10. That the Plaintiff be and she is hereby awarded the following property and property interests, subject to any indebtedness thereon, as her sole and separate property, without claim from the Defendant:

a. The residence at 2063 Hubbard Avenue, subject to the Plaintiff's payment of the unpaid mortgage;

b. The parties' 1986 Mercedes;

c. All furniture, furnishings, fixtures, and other personal property contained in the home at this time;

d. A portion of value of the Defendant's interest in the retirement plan of Parsons, Behle & Latimer in the present value amount of \$105,000.00 which interest and additional contribution as hereinafter set forth, shall be the subject of a Qualified Domestic Relations Order as defined in the Retirement Equity Act of 1984 P.L. 98-397;

e. The Plaintiff is further entitled to one-half of the pro rated annual contribution to be made to the Parsons, Behle & Latimer retirement plan on behalf of the Defendant to cover any period prior to May 1, 1989 whenever that contribution is made;

f. The Plaintiff's IRA at Continental Bank;

g. The parties' Western Mutual annuity;

h. The parties' Dual Asset Fund #V;

i. The two First Security accounts presently utilized by the Plaintiff;

j. One-half of the account held in trust at Sessions & Moore for the benefit of the parties;

k. \$2,002.00 as a cash payment from the Defendant to compensate Plaintiff for the Defendant's value represented in the Parsons, Behle & Latimer stock;

1. All other personal clothing, apparel, effects, objets d'art, and other personal property currently in the Plaintiff's possession and not otherwise dealt with herein.

11. That the Defendant be and he is hereby awarded the following property and property interests, subject to any indebtedness thereon, as his sole and separate property, without claim from the Plaintiff:

a. The Defendant's residence at 1940 South 2500 East, purchased with separate inherited funds;

b. The parties' 1986 Toyota Landcruiser;

c. The parties' 1983 Honda XR500R; the parties' 1986 Honda XLV750R and the parties' three bike trailer;

d. All furniture, furnishings, fixtures and appliances currently in the possession of the Defendant;

e. All office furniture located both at the Defendant's residence and at Parsons, Behle & Latimer office;

f. All Parsons, Behle & Latimer stock;

g. One-half of the account held in trust at Sessions & Moore for the benefit of the parties;

h. The Valley Bank account utilized by the Defendant;

i. The remainder of the Defendant's interest in his retirement plan at Parsons, Behle & Latimer;

j. The Defendant's IRA at Zions Bank;

k. The Aetna annuity;

l. All personal effects, clothing, apparel, objets d'art, etc. currently in the possession of the Defendant.

12. That the Plaintiff be and she is hereby ordered to assume, pay, discharge and hold the Defendant harmless from the following debts and obligations:

a. The unpaid mortgage on the parties' residence at 2063 Hubbard Avenue, Salt Lake City, Utah;

b. Nordstrom's account;

c. ZCMI account;

d. Bill due to Dr. Naomi Maddis for services rendered;

e. Key Bank Visa Card balance;

f. First Security Bank Quickline balance;

g. Zions First National Bank loan balance;

h. First Security Bank Visa balance;

i. Any and all other liabilities incurred by the Plaintiff since separation not otherwise dealt with directly herein.

13. That the Defendant be and he is hereby ordered to assume, pay, discharge and hold the Plaintiff harmless from the following debts and obligations:

a. The unpaid mortgage on his residence at 1940 South 2500 East;

- b. R. C. Willey account
- c. MBNA Mastercard account;
- d. First Security Bank account;
- e. SL Family Therapy account;
- f. Valley Bank Visa Card account;
- g. The balance due on the 1988 taxes;
- h. Any and all other obligations incurred by the Defendant since separation not otherwise dealt with.

14. That the Plaintiff be and she is hereby ordered to provide such of the parties' pictures, tapes and recordings to the Defendant as he shall designate for duplication at his sole cost and expense.

15. That each of the parties shall assume and pay one-half (1/2) of non-insured counseling costs and expenses for the parties' minor child Patrick Thronson if such is continued beyond the date of entry hereof.

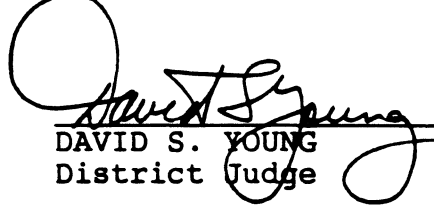
16. That each of the parties shall assume and pay their own costs and attorneys fees incurred in connection herewith, provided however, the Defendant be and he is hereby ordered to pay toward the Plaintiff's attorneys fees the sum of \$5,000.00.

17. That the parties be and they are hereby ordered to execute such deeds, conveyances, bills of sale and other documents

as may be necessary or appropriate to transfer the property as
awarded by the Court to the party entitled thereto.

DATED this 22nd day of June, 1989.

BY THE COURT:

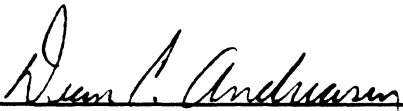


DAVID S. YOUNG
District Judge

CERTIFICATE OF HAND DELIVERY

I hereby certify that I caused to be hand delivered, a true and correct copy of the foregoing DECREE OF DIVORCE to the following on this 23rd day of May, 1989:

Paul H. Liapis
GUSTIN, ADAMS, STEGELL & LIAPIS
Attorneys for Plaintiff
Third Floor
New York Building
48 Post Office Place
Salt Lake City, Utah 84101



Tab 6

subject to reasonable rights of visitation to include every other weekend from Friday at 6:00 p.m. to Sunday at 6:00 p.m., alternating red letter calendar holidays, two weeks in the summer, Christmas morning from 1:00 p.m. to the following morning at 9:00 a.m., one-half of the Christmas vacation time, Father's Day for Defendant and Mother's Day for Plaintiff.

3. Plaintiff's inheritance should be restored to her prior to the division of the assets.

④. Plaintiff should be awarded alimony in the sum of \$2,500.00 per month for a period of 5 years and thereafter \$1.00 per year until she remarries, dies or cohabits.

5. Defendant should pay to Plaintiff child support in the sum of \$1,276.04 per month until the child attains the age of 18 years and graduates from high school.

6. Defendant should advance to the Plaintiff the sum of \$31,000.00 for the purchase of furniture and \$5,900.00 to reimburse Plaintiff for her purchase of blinds and a piano.

7. Defendant should maintain health, accident, hospitalization, and dental insurance for the minor child until he attains the age of 21 years.

8. Defendant should maintain a minimum of \$200,000.00 of life insurance on his life with the child named as his sole beneficiary thereon.

9. Plaintiff and Defendant should share proportionately all the

APPENDIX A

Tab 7

Item No. 159

EXPECTATION OF LIFE AND MORTALITY RATES, BY RACE, AGE, AND SEX

AGE IN 1988 (years)	EXPECTATION OF LIFE IN YEARS					EXPECTED DEATHS PER 1,000 ALIVE AT SPECIFIED AGE				
	Total	White		Black		Total	White		Black	
		Male	Female	Male	Female		Male	Female	Male	Female
At birth	74.8	72.0	76.8	65.2	73.5	10.38	10.02	7.80	20.04	16.08
1	74.6	71.7	76.4	65.5	73.7	72	76	57	11.16	9.8
2	73.6	70.8	77.5	64.6	72.8	55	55	44	84	79
3	72.7	69.8	76.5	63.6	71.9	43	42	34	76	64
4	71.7	68.9	75.5	62.7	70.9	36	34	27	62	52
5	70.7	67.8	74.6	61.7	69.8	29	30	22	51	43
6	69.8	66.9	73.6	60.7	68.9	26	26	19	43	36
7	68.8	65.9	72.6	59.8	68.0	23	23	17	37	29
8	67.8	64.9	71.6	58.8	67.0	21	23	15	33	25
9	66.8	63.9	70.6	57.8	66.0	19	20	14	30	22
10	65.8	62.9	69.6	56.8	65.0	17	18	13	30	20
11	64.8	61.9	68.6	55.8	64.1	16	19	14	32	20
12	63.8	61.0	67.7	54.9	63.1	23	27	17	40	22
13	62.8	60.0	66.7	53.9	62.1	34	43	23	52	26
14	61.8	59.0	65.7	52.9	61.1	47	64	30	69	30
15	60.8	58.0	64.7	52.0	60.1	63	86	39	88	36
16	59.8	57.1	63.7	51.0	59.1	78	110	46	108	43
17	59.0	56.1	62.8	50.1	58.2	90	129	52	130	46
18	58.0	55.2	61.8	49.1	57.2	99	142	54	154	55
19	57.1	54.3	60.8	48.2	56.2	104	150	53	180	60
20	56.2	53.4	59.9	47.3	55.3	108	156	52	207	66
21	55.2	52.5	58.9	46.4	54.3	115	166	52	235	73
22	54.3	51.5	57.9	45.5	53.3	118	170	51	258	79
23	53.3	50.6	56.9	44.6	52.4	120	169	51	274	86
24	52.4	49.7	56.0	43.7	51.4	119	166	52	287	93
25	51.5	48.8	55.0	42.8	50.5	118	160	52	298	100
26	50.5	47.9	54.0	42.0	49.5	117	156	53	312	107
27	49.6	47.0	53.1	41.1	48.6	118	153	54	328	117
28	48.7	46.0	52.1	40.2	47.6	121	156	56	346	128
29	47.7	45.1	51.1	39.4	46.7	127	162	57	372	140
30	46.8	44.2	50.1	38.5	45.7	133	169	60	398	155
31	45.8	43.2	49.2	37.7	44.8	139	176	63	423	169
32	44.9	42.3	48.2	36.8	43.9	146	182	67	449	182
33	44.0	41.4	47.2	36.0	43.0	151	187	71	475	191
34	43.0	40.5	46.2	35.2	42.1	156	190	75	500	199
35	42.1	39.5	45.3	34.3	41.1	161	195	79	527	207
36	41.2	38.6	44.3	33.5	40.2	169	202	86	556	217
37	40.2	37.7	43.4	32.7	39.3	178	211	89	586	232
38	39.3	36.8	42.4	31.9	38.4	189	222	103	625	253
39	38.4	35.9	41.5	31.1	37.5	204	237	114	686	279
40	37.4	34.9	40.5	30.3	36.6	220	254	127	741	309
41	36.5	34.0	39.6	29.5	35.7	238	273	142	798	340
42	35.6	33.1	38.6	28.7	34.8	257	295	157	862	369
43	34.7	32.2	37.7	28.0	34.0	277	318	171	940	394
44	33.8	31.3	36.7	27.2	33.1	298	343	186	1035	418
45	32.9	30.4	35.8	26.4	32.2	322	372	203	1140	442
46	32.0	29.5	34.9	25.7	31.4	350	405	222	1262	471
47	31.1	28.7	33.9	24.9	30.5	382	444	245	1401	508
48	30.2	27.8	33.0	24.1	29.7	421	490	272	1562	556
49	29.4	26.9	32.1	23.4	28.8	467	542	304	1741	614
50	28.5	26.1	31.2	22.7	28.0	517	600	339	1940	678
51	27.6	25.2	30.3	22.0	27.2	570	664	377	2167	745
52	26.8	24.4	29.4	21.3	26.4	627	735	415	2425	808
53	26.0	23.6	28.6	20.6	25.6	686	814	453	2711	866
54	25.1	22.7	27.7	19.9	24.8	748	901	493	3029	919
55	24.3	21.9	26.8	19.3	24.0	810	994	535	3380	970
56	23.5	21.2	26.0	18.6	23.3	882	1094	583	3866	1031
57	22.7	20.4	25.1	18.0	22.5	964	1206	636	4394	1117
58	21.9	19.6	24.3	17.3	21.8	1060	1330	707	5064	1235
59	21.2	18.8	23.4	16.7	21.0	1168	1466	786	5887	1378
60	20.4	18.2	22.6	16.1	20.3	1287	1614	870	6864	1539
61	19.7	17.5	21.8	15.5	19.6	1411	1770	961	7994	1689
62	18.9	16.8	21.0	15.0	19.0	1538	1931	1053	9286	1840
63	18.2	16.1	20.2	14.4	18.3	1658	2092	1146	10742	1998
64	17.5	15.4	19.5	13.9	17.7	1782	2257	1240	12363	2135
65	16.8	14.8	18.7	13.4	17.0	1910	2428	1341	14149	2285
66	16.1	14.1	18.0	12.9	16.3	2041	2604	1441	16099	2447
67	15.4	13.4	17.3	12.4	15.6	2186	2784	1541	18224	2621
68	14.7	12.7	16.6	11.9	14.9	2336	2968	1641	20534	2807
69	14.0	12.0	15.9	11.4	14.2	2491	3156	1741	23039	2995
70	13.3	11.3	15.2	10.9	13.5	2651	3348	1841	25749	3185
71	12.6	10.6	14.5	10.4	12.8	2816	3544	1941	28664	3377
72	11.9	9.9	13.8	9.9	12.1	2986	3744	2041	31794	3571
73	11.2	9.2	13.1	9.4	11.4	3161	3948	2141	35139	3767
74	10.5	8.5	12.4	8.9	10.7	3341	4156	2241	38699	3965
75	9.8	7.8	11.7	8.4	10.0	3526	4368	2341	42474	4165
76	9.1	7.1	11.0	7.9	9.3	3716	4584	2441	46464	4367
77	8.4	6.4	10.3	7.4	8.6	3911	4804	2541	50679	4571
78	7.7	5.7	9.6	6.9	7.9	4111	5028	2641	55119	4777
79	7.0	5.0	8.9	6.4	7.2	4316	5256	2741	59794	4985
80	6.3	4.3	8.2	5.9	6.5	4526	5488	2841	64694	5195
81	5.6	3.6	7.5	5.4	5.8	4741	5724	2941	69894	5407
82	4.9	2.9	6.8	4.9	5.1	4961	5964	3041	75394	5621
83	4.2	2.2	6.1	4.4	4.4	5186	6208	3141	81194	5837
84	3.5	1.5	5.4	3.9	3.7	5416	6456	3241	87294	6055
85	2.8	0.8	4.7	3.4	3.0	5651	6708	3341	93694	6275
86	2.1	0.1	4.0	2.9	2.3	5891	6964	3441	100394	6497
87	1.4	0.4	3.3	2.4	1.6	6136	7224	3541	107394	6721
88	0.7	0.7	2.6	1.9	0.9	6386	7488	3641	114694	6947
89	0.0	0.0	1.9	1.4	0.2	6641	7756	3741	122294	7175
90	0.0	0.0	1.2	0.9	0.5	6901	8028	3841	130194	7405
91	0.0	0.0	0.5	0.4	0.8	7166	8304	3941	138394	7637
92	0.0	0.0	0.0	0.0	0.0	7436	8584	4041	146794	7871
93	0.0	0.0	0.0	0.0	0.0	7711	8868	4141	155394	8107
94	0.0	0.0	0.0	0.0	0.0	7991	9156	4241	164194	8345
95	0.0	0.0	0.0	0.0	0.0	8276	9448	4341	173194	8585
96	0.0	0.0	0.0	0.0	0.0	8566	9744	4441	182394	8827
97	0.0	0.0	0.0	0.0	0.0	8861	10044	4541	191794	9071
98	0.0	0.0	0.0	0.0	0.0	9161	10348	4641	201394	9317
99	0.0	0.0	0.0	0.0	0.0	9466	10656	4741	211194	9565
100	0.0	0.0	0.0	0.0	0.0	9776	10968	4841	221194	9815
101	0.0	0.0	0.0	0.0	0.0	10091	11284	4941	231394	10067
102	0.0	0.0	0.0	0.0	0.0	10411	11604	5041	241794	10321
103	0.0	0.0	0.0	0.0	0.0	10736	11928	5141	252394	10577
104	0.0	0.0	0.0	0.0	0.0	11066	12256	5241	263194	10835
105	0.0	0.0	0.0	0.0	0.0	11401	12588	5341	274194	11095
106	0.0	0.0	0.0	0.0	0.0	11741	12924	5441	285394	11357
107	0.0	0.0	0.0	0.0	0.0	12086	13264	5541	296794	11621
108	0.0	0.0	0.0	0.0	0.0	12436	13608	5641	308394	11887
109	0.0	0.0	0.0	0.0	0.0	12791	13956	5741	320194	12155
110	0.0	0.0	0.0	0.0	0.0	13151	14308	5841	332194	12425
111	0.0	0.0	0.0	0.0	0.0	13516	14664	5941	344394	12697
112	0.0	0.0	0.0	0.0	0.0	13886	15024	6041	356794	12971
113	0.0	0.0	0.0	0.0	0.0	14261	15388	6141	369394	13247
114	0.0	0.0	0.0	0.0	0.0	14641	15756	6241	382194	13525
115	0.0	0.0	0.0	0.0	0.0	15026	16128	6341	395194	13805
116	0.0	0.0	0.0	0.0	0.0	15416	16504	6441	408394	14087
117	0.0	0.0	0.0	0.0	0.0	15811	16884	6541	421794	14371
118	0.0	0.0	0.0	0.0	0.0	16211	17268	6641	435394	14657
119	0.0	0.0	0.0	0.0	0.0	16616	17656	6741	449194	14945