

2001

Linda K. Tripp v. Lowell B. Tripp : Brief of Appellant

Utah Court of Appeals

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

Linda K. Tripp,	:	APPELLANT BRIEF
Defendant / Appellant,	:	
	:	Appellate Case No. 20010990
VS	:	
	:	Civil No. 984908536
Lowell B. Tripp	:	Judge(s) Bruce C. Lubeck
Plaintiff / Appellee,	:	Ann S. Stirba

BRIEF OF THE DEFENDANT/APPELLANT

Appeal from a final judgement following a divorce trial before the Honorable Judge
Bruce C. Lubeck, presiding judge in the Third District Court, in and for Salt Lake
County, State of Utah.

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4122 South 1785 West, Suite 1 A
West Valley, Utah 84119-5532

Pro-se

Lowell B. Tripp
2172 West Silver Tree Circle
Riverton, Utah 84065

Pro-se

Additional Parties:

Trynt Robert Harris, minor child (age 16 at time of filing)	DOB: 01/27/83
Brandon Lon Harris, minor child (age 15 at time of filing)	DOB: 01/18/83
Amme Kaylien Tripp, minor child (age 4 at time of filing)	DOB: 03/01/94

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IN THE UTAH COURT OF APPEALS

Linda K. Tripp,	:	
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	:	Appellate Case No. 20010990
VS	:	
	:	Civil No. 984908536
Lowell B. Tripp	:	Judge(s) Bruce C. Lubeck
Plaintiff / Appellee,	:	Ann S. Stirba

BRIEF OF DEFENDANT

JURISDICTIONAL STATEMENT

The Utah Court of Appeals has jurisdiction in this matter pursuant to Utah Code 78-2a-3(2) (h) Ann. 1953, as amended.

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

STATEMENT OF ISSUE ONE

1. Was it error for the trial court to order the minor child have visitation with the Petitioner and to order an amount of child support inconsistent with the law when: 1) no consideration was given to Petitioner's threat on the minor child's life, 2) no evaluation was completed on either the Petitioner or minor child to determine safety risks for the child, 3) the Petitioner admitted during trial he has made no attempts to contact, recognize or properly provide for the needs of the child which was contrary to his testimony in previous hearings, 4) child support was based on Petitioner's previous years tax return and Defendants current monthly income, 5) the child support amount was determined without regard to interest and investment income as provided by law, 6) certain testimony was excluded in the courts decision.

STANDARD OF REVIEW AND SUPPORTING AUTHORITY

The relevant text of applicable statutes and case law provisions for a determination of this case are set forth verbatim and contained in the addendum. Acts and Omissions constituting contempt and legal conclusions are reviewed for correctness, with deference given to the trial court's ruling. Concerns the trial court's factual findings, and thus, is reviewed under a "clearly erroneous" standard regarding damages to parties aggrieved.

DETERMINATIVE STATUTES/CODES AND LAW

Relevant to this issue: Utah Code 30-3-3 (1); Utah Code 30-2-34 (1), (2); Utah Code 30-6-1; and Utah Code 78-45-7.5.

STATEMENT OF THE CASE

The minor child was appointed a Guardian Ad Litem only after two years of deliberation on this case, despite the several requests made by the Appellant to her Attorney's, Tesch, Thompson and Vance. Furthermore the court appointed a GAL from the third district court which was a conflict of interest in that the defendant works within the juvenile court system and has had business dealings with the guardian appointed, thus presenting a conflict of interest.

The court interviewed the minor child in chambers and disregarded her testimony in its final decision. The court concluded the defendant advised the court the child did not want to testify in court.

The court made a final order of child support based on the Appellee's previous years tax return and upon the Appellant's current pay stub. The court disregarded Appellee's interest of his investment funds in determining child support, as provided by

law. The court allowed the petitioner to not account for his investments funds.

RELEVANT FACTS

The minor child testified in chambers and it was reported she indicated a fear of the Petitioner due to his threat to kill her and her family members. A Child Protection Report was made and unsubstantiated only because the Division of Child and Family Services handled the case against policy and feared being sued by the Petitioner. The Petitioner, Mr. Tripp, testified in previous hearings he had been refused visitation and then at trial testified he had never attempted to make any contact to arrange for any visitation. The Defendant and her two 'previously' minor children testified the Petitioner had threatened to shoot and kill them if they did not leave their home.

Findings of Fact:

1) "The child met with the court on July 12, 2001, with the Guardian ad Litem present, at the request of the Respondent, who advised the Court that the child did not want to testify, but did want to meet with the Court. "

The child support amount was based upon Petitioner's previous years income while the Defendant's current income was used to base the support amount. The Petitioner was earning more at the time of trial than was reported in his previous years taxes, which would put his portion of child support at a higher amount.

Findings of Fact:

1) "Petitioner is employed full time and earns \$30,371.00 per year. Respondent is employed full time, 40 hours per week, and earns \$13.69 per hour."

SUMMARY OF THE ARGUMENT

The court committed error in disregarding the testimony of the minor child and failed to document in Findings of Fact, that the Petitioner had threatened to kill the minor child, her siblings and her mother in front of 4 year old Amme. The court failed to take into account the Child Protective Service records and the fact their policy was not followed appropriately. The court failed to recognize it was the request of the Guardian ad Litem who requested the child testify in chambers, not the Defendant and in fact the child did want to testify in trial but was refused such right by the choice of the Guardian ad Litem. As presented throughout this proceeding, the Petitioner's father killed his mother and shot his daughter, which gives reasonable fear he would do the same to the minor child, her siblings and her mother.

The court discounted the Petitioner's current income, which was higher than the prior year, by accepting his previous years tax return, thus allowing his portion of child support to be set at a lower rate. The court disregarded Appelle's interest income, as provided by law, in providing an appropriate amount of child support be set. Petitioner admitted in trial he had not appropriately accounted for his investment income and the court failed to have him appropriately account for those funds. As per Utah Code 78-45-7.5 (Addendum pg. ***) gross income includes interest income, etc.

The trial court erred in discounting the minor child's testimony when she expressed she was afraid of her father. It is important for the court to recognize Mr. Tripp had threatened to kill the minor child and other family members in front of the minor child when she was 4 years of age. He did so upon being informed by the defendant she refused to leave the marital home. Thus, he dangled the keys to the gun safe over her

head and made threat upon her life and the lives of her children. The court also erred in recognizing the defendant and her children have fear of petitioner's threat to kill them due to the petitioner's father killing the petitioner's mother and having shot petitioner's pregnant daughter in 1997, as well as recognizing petitioner's brother shot and killed himself in 1984. Thus, presenting a family history of "instability" and possible "mental illness". A safety risk assessment and psychological on the petitioner should have been in place prior to any decision made by the court regarding visitation with the minor child. The also court failed to take into account that previous testimony by the Petitioner, in previous hearings, was that he had been refused visitation which was contradictory to his testimony during trial, that he had never attempted to have visitation, thus presenting his blatant lies to the court. It is unsafe for the minor child to have any unsupervised contact with the minor child and possibly be the next statistic. It is important for the court to recognize this case has passed through three Judges and a Commissioner, not allowing for an ongoing assessment of the Petitioner's behaviors.

The court erred in being equitable when establishing child support. If the court so chooses to use the previous years income to establish support, it should be standard to use that same income of both petitioner and defendant. If they so choose to use current income, again it should be standard for both petitioner and defendant. Having used the previous years income for the petitioner and current income for the defendant put the petitioner at a great advantage when establishing his current child support amount and disallowed appropriate support for the minor child. Thus, the current support does not meet the standard allowance.

STATEMENT OF ISSUE 2

Was it error for the trial court to grant Petitioner credit for \$20,000 instead of

\$10,000, which Defendant forced upon her in communication with a threat on her and her children's lives and a demand she leave the marital home, when said funds were marital funds and should have been credited fifty/fifty and certain parts of testimony were excluded from the final decision and the amount was applied by the court to 1) deny an order for alimony and/or temporary support during the pendency of this action, 2) deny defendant sufficient funds, as provided by law, to defend herself in this action, 3) to deny the defendant and her children the right to live in the home, 4) count against Defendant's personal property left in the marital home for herself and each of her three Children, 5) were credited to past due Amounts of child support, child care and medical Expenses, 6) reimburse less than ½ of the marital tax return, 7) credit towards Defendant's equity in the marital home, 8) to cover a partial cost of attorney fees, all of which far exceed the amount under question

STANDARD OF REVIEW AND SUPPORTING AUTHORITY

The relevant text of applicable statutes and case law provisions for a determination of this case are set forth verbatim and contained in the addendum Acts and Omissions constituting contempt and legal conclusions are reviewed for correctness, with deference given to the trial court's ruling Concerns the trial court's factual findings, and thus, is reviewed under a "clearly erroneous" standard regarding damages to parties aggrieved

DETERMINATIVE STATUTES/CODES AND CASE LAW

Relevant to this issue: Utah Code 30-1-17.2, Utah Code 30-3-16 3, Utah Code 30-3-5; Utah Code 30-8-2 and Utah Code 30-6-1.

Case Law: Barber v. Barber 792 P2d 134 (Utah App. 1990), Bailey v. Bailey 745

P2d, 830, 833 (Utah App 1987); Burke v. Burke 733 P2d 133 (Utah 1987); Dunn v. Dunn 802 P2d 1314 (Utah App. 1990); Estate of Knickerbocker 912 P2d 969, (Utah 1996); Layton v. Layton 777 P2d 504, (Utah App. 1989); Newmeyer v. Newmeyer 745 P2d 1276, 1277 (Utah 1987).

STATEMENT OF THE CASE

The funds under question were not determined to be the separate property of either party. The courts denied alimony to the defendant based on the receipt of the \$20,000 she had taken upon leaving the marital home.

RELEVANT FACTS

The court failed to determine the sum of \$20,000 to be the separate property of either party but credited the same amount to the Petitioner as such. The court failed to recognize the funds were joint property of the parties. At the first temporary hearing the court determined no alimony would be awarded, based upon crediting the \$20,000 to be counted as such alimony. The court further credited, at that time, the funds were credited toward relocation.

Findings of Fact (#23) “Neither party should be awarded alimony. Petitioner paid the Respondent the sum of \$20,000, on October 23, 1998 for relocation and living expenses and assistance in putting Respondent back to the place she was prior to the marriage.”

The court further credited the petitioner for: equity in the marital home, attorney’s fees, the couples tax return funds, child support, child care, medical expenses, and personal property from the \$20,000, all of which far exceeds the amount in question.

SUMMARY OF THE ARGUMENT

The court erred in that they did not find the funds in question to be the separate property of either party. Petitioner and Defendant had jointly saved funds during a 1 ½ year period. The court committed error in that they gave no consideration to the needs of the Defendant having to use said funds to defend herself in this action. The court gave no award of alimony based on the defendant having the \$20,000 and thus said funds should not be counted as payment of multiple awards but should only count towards alimony. Furthermore, only \$10,000 should be credited for alimony and/or reestablishment funds as said funds were joint marital property. The court made no consideration to the Appellant's genuine need arising from a great economic change of circumstances due to the separation, nor did the court consider the needs of all the children involved which included the defendant's two other minor children. The court made no attempt to equalize the parties' respective standards of living. Further inequities of distribution regarding credit of the \$20,000 in question will be discussed in the argument regarding property.

ARGUMENT

The court made no finding of the \$20,000 to be the separate property of either party. The court also failed to recognize that in a previous hearing that Commissioner Evans had denied the defendant alimony because she had taken the \$20,000 when she was forced from the home. At that time, said funds were considered alimony and therefore should not have been credited toward any offset. The court again recognized no award of alimony at trial based upon the \$20,000. Furthermore the court awarded no support during the pendency of this case because said funds were counted as such. As these funds were also used as a threat on lives and a force to remove the defendant and her

children from the home, it should not be credited to the petitioner for any amount. The court failed to recognize it was due to the Petitioner's willful disregard of this court's orders the Defendant and her children were forced to replace several necessary items which would not have needed to be replaced if the Petitioner had followed this court's previous orders and restored their property to them within a timely manner. The court also failed to appropriately credit defendant for the expense of moving and restarting a new home due to the Petitioner's actions. The court made no consideration to the Appellant's genuine need arising from a great economic change of circumstances due to the separation, nor did the court consider the needs of all the children involved as not all were named on the original petition as provided for by law. The court only recognized the couple's minor child, when in fact the Defendant's two other minor children were greatly affected by this controversy. The court assumed the defendant had been placed in a position equal to her position prior to the marriage and failed to question her financial position prior to the relationship and/or marriage. The court did not take into account defendant was paying 3 times more than the petitioner for a home, was making a car payment and was responsible for three children while the petitioner had no car payments a small house payment and no other financial obligations.

The court failed to apply specific amounts to the use of relocation and living expenses and failed to question defendant as to her prior living conditions, but assumed this amount would place her back to the place she was prior to the marriage. The court failed to recognize the Defendant had to replace a home, vehicle, beds, clothing and other major and minor household items necessary for survival. All of which far exceed the \$20,000 in question. Said items may not have needed to be replaced if the Petitioner had

obeyed this courts orders and returned personal property to the Defendant and her children in a timely manner. The amount of \$20,000 did not place the defendant back into a position as well off as she was prior to the marriage and/or relationship In fact the defendant is still unable to replace what she had prior to combining households and has in fact gone into debt replacing only necessary items

STATEMENT OF ISSUE 3

Was it error for the trial court to overlook facts, evidence, previous contempt's and/or willful disregard of this courts orders by the petitioner as well as the petitioner's behaviors and self incriminating statements due to the this matter having been in the courts for three years and having passed through a Commissioner and three Judges, which has not provided for an ongoing review of the case, thus not giving opportunity for appropriate knowledge needed to make a well informed decision regarding the division of personal property and joint/marital property and was it also an oversight of the trial court do not apply all laws and case laws presented at trial as pertains to the matters in this case and to not order Petitioner's Attorney account for personal property funds of the minor child which were previously left in her trust and to allow the Petitioner credit for personal property claimed which was property belonging to the minor child, as well as to allow petitioner not to account for missing and/or hidden funds following an order to not sale, trade, transfer...any marital or joint property

STANDARD OF REVIEW AND SUPPORTING AUTHORITY

The relevant text of applicable statutes and case law provisions for a determination of this case are set forth verbatim and contained in the addendum. Acts and Omissions constituting contempt and legal conclusions are reviewed for correctness,

with deference given to the trial court's ruling Concerns the trial court's factual findings, and thus, is reviewed under a "clearly erroneous" standard regarding damages to parties aggrieved

DETERMINATIVE STATUTES/CODES AND CASE LAW

Relevant to this issue Utah Code 30-1-4 5 , Utah Code 30-1-17 2, Utah Code 30-2-1, Utah Code 30-2-3, Utah Code 30-2-4, Utah Code 30-2-10, Utah Code 30-3-16 3, Utah Code 30-3-5, and Utah Code 30-8-2

Case Law Barber v Barber 792 P2d 134 (Utah App 1990), Bailey v Bailey 745 P2d 830, 833 (Utah App 1987), Burke v Burke 733 P2d 144 (Utah 1987), Dunn v Dunn 802 P2d 1314 (Utah App 1990), Hall v Hall 858 P2d 1018 (Utah App 1993), Hogue v Hogue 831 P2d 120 (Utah App 1992), Estate of Knickerbocker 912 P2d 969 (Utah 1996), Layton v Layton 777 P2d 504 (Utah App 1989), Marvin v Marvin 557 P2d 106 (Cal 1976), Newmeyer v Newmeyer 745 P2d 1276, 1277 (Utah 1987), Rappleye v Rappleye 855 P2d 260 (Utah App 1993)

STATEMENT OF THE CASE

This case has carried on for a long period of time and has passed through a Commissioner and three Judges, thus disallowing an ongoing assessment of the facts and the ongoing behaviors of the petitioner, which are important in this case Respondent was pressured into appearing without counsel for trial in that her Attorney, Michael L. Adkins had recently passed away and the court would not allow her appropriate funds to further defend herself in this action, nor would they appoint her an attorney. All of the defendants finances were tied up in the marital home and property and she could not access them for hiring further counsel or providing a transcript to protect her property

rights.

The court determined no “common law marriage” based upon evidence and the fact the defendant had not filed a petition seeking to establish a common law marriage. The court failed to acknowledge the defendant’s health issues and her current age. The court failed to take into account what was given up for the marriage and/or relationship, as households were combined. The court failed to give value to work performed by the defendant which greatly enhanced the finances of the petitioner.

RELEVANT FACTS

This case has been passed through a Commissioner and three Judges which has failed to allow improper, ongoing assessment of the facts and behaviors of the petitioner. The court discounted the fact petitioner and defendant had been together for a 10 ½ year period because a petition for common law marriage was not filed. Defendant’s first attorneys’, Tesch, Thompson and Vance informed the defendant on more than one occasion she did not need to file a motion for common law marriage to be recognized due to the fact they had eventually become married.

The court failed to identify property as the separate property of either party. The court failed to account for property which was combined for the marriage. The court failed to make the petitioner account for hidden property and funds which he admitted he had done, at the trial. At temporary hearings the court had ordered personal property should be awarded to each of the parties. The court claimed there was not sufficient evidence of property ownership but failed to consider the circumstance in which the defendant was forced to leave the home and leave almost all of hers and her children’s property behind. Evidence of some property owned was presented in the form of photos

and receipts. The court previously ordered both parties not to sell, trade, transfer....property but allowed the petitioner the petitioner to disallow the courts orders and then failed to punished the petitioner for disregarding the courts orders. The petition admitted in trial and previous hearings he had closed out the safety deposit box and sold a vehicle among other things. Thus the aggrieved parties , defendant and her children, were forced to stand the expense of all the petitioner's actions.

SUMMARY OF THE ARGUMENT

The defendant felt pressured into proceeding into trial after a discussion with petitioner's attorney and speaking with the court. The court would not appoint the defendant an attorney so she could proceed through trial with counsel available. Furthermore, all of the defendants funds were tied up in the marital home and assets of which she had no access to so she could hire further counsel.

The defendant should not be punished or held responsible by the court for the actions of her previous attorney's, Tesch, Thompson and Vance when they informed her she did not have to file a motion for "common law marriage" due to the fact the petitioner and defendant had eventually become married. Said attorney's should have been aware of the law in this matter and should not have denied the defendant her rights. Thus all property division should be over turned based on the long term, trusting relationship established between the petitioner and defendant and not just on the eight months of "legal marriage". The court found the parties did not have a general reputation of husband and wife based on a bank account and separate residences. The petitioner and defendant had multiple residences and did so only to be in a position to build equity for the couple to be able to purchase a home big enough for the family. Furthermore, the

petitioner and defendant lived between each of their homes having clothing at both residence and keys to both residence. They also moved into the defendants apartment approximately six months prior to building their marital home. The defendant performed duties as a wife to the petitioner including planning of a family reunion in approximately 1991. The court erred in finding no common law marriage based on the fact no petition was filed for such (as described above) and the fact the petitioner and defendant had separate bank accounts. Utah Code 30-1-4.5 lists several factors which should be considered in this matter, most of which the court failed to review. The petitioner and defendant were capable of giving consent and eventually did, they were both capable of entering a solemnized marriage, they had cohabited, they had assumed marital rights, duties and obligations, and they had acquired a uniform and general reputation as husband and wife. Both petitioner and defendant continued to maintain separate bank accounts even after married. They only obtained a joint account to pay minimal household expenses. Other expenses were maintained separately even after married due to previous negative experiences of both parties. Couple often obtain more than one residence for multiple reasons. This couple had chosen to act in the manner they did to assure they could appropriately provide for the children while building an equity, with the least burden put upon the family. Furthermore, marital rights, duties and obligations were demonstrated during the 10 ½ year relationship. The couple did not file a joint tax return at any time, including while they were married, but the petitioner was allowed to claim the minor child on his taxes.

The court failed to properly review circumstances surrounding the Petitioner's refusal to turn over personal property to the defendant and her children. It was not until

1 ½ years after they had been forced to leave the marital home that they were able to access any personal property. Petitioner allow access then only by further order of the court to have both attorney's present. The court also failed to consider when the personal property was turned over to the defendant, much of it was missing or destroyed and failed to recognize the property had been pre-boxed and placed in that garage and was not sorted through while still at the marital home or while attorney's were present. The court failed to acknowledge evidence and testimony presented showing much of the "claimed property returned" to the defendant and her children, included trash such as moldy oranges, empty milk jugs, pops cans, etc.. They also failed to recognize how much property was destroyed by the petitioner, prior to returning it to the defendant and her children. Due to the petitioner's behaviors, the defendant was left to replace property belonging to herself and her children which included: beds, clothing, chronic medications, school books, work equipment. Etc..

The court failed to recognize and account for the fact not all children under the age of 17 years of age, whose welfare was affected, were included in the original divorce petition, thus not recognizing their rights to personal property. The court did not give consideration of what they were forced to leave behind due to Petitioner's threat on their lives. Furthermore, the court failed to recognize the two oldest minor children of the defendant were receiving child support of \$563 per month and were not at all supported by the petitioner.

The court stated in the memorandum they felt the property claimed to be the minor child's was set at a value too high for her age...but failed to question the values presented, any further. Nor did the petitioner question the value of the property as he had

knowledge many of the items were previously owned by the defendant as part of her business in providing child care and were thus passed on to the minor child. Educational toys are expensive and the amounts presented to the court were reasonable replacement amounts. Furthermore, said property should be replaced to allow the defendant the means to provide a second income without having to leave the minor child for an extended amount of time or having to pay additional child care expenses, which the petitioner does not support. The court also claimed the defendants two sons did not specifically identify collectors cards. It is unreasonable for any card collector to be able to identify each and every card in their collection of such a large quantity. Furthermore, multiple cards were identified in the exhibit presented as personal property and due to the exhibit the defendant had not reason to believe there was a need for further explanation. Nor did the petitioner question the evidence presented as he had knowledge of the large number of cards which the children possessed. Both children were working and had applied much their earnings to their collections. Furthermore, as provided by Utah Code 30-3-3, the court may include equitable orders relating to the children and their property , which was not appropriately acknowledged. Property belonging to the children should be separated and awarded to them as they had bought and personally paid for much of their own items and they were receiving child support in the amount of \$563.00 per month. The petitioner was providing no support for the two oldest minor children and in fact refused to provide for them, except to allow them to live in the marital home, if they paid for finishing their own rooms, in which they did.

The court made no attempt to equalize the parties' respective standards of living. Neither petitioner or defendant had means greater than the other prior to their 'marriage'

and/ or relationship Furthermore, the two oldest children of the defendant received ongoing child support and were not supported at all by the petitioner The court made no attempt to establish what either party owned prior to their 'marriage' nor did they identify what either party had given up when they combined their households As the petitioner had inherited several newer and better household furnishings from his parents, the defendant had given up almost all of her household items to accept those from the estate, leaving her with out necessary furnishings to provide for herself and the children Thus the petitioner was left in the marital home with all combined furnishings and the defendant had to replace all household items at her own expense Furthermore, the court did not identify or consider the extensive household furnishings of the petitioner's parents estate which the defendant laid no claim to and were left with the petitioner, which put him at a great advantage of furnishing his household The court also failed to consider the threats made by the petitioner which placed the defendant in fear of her life if she had taken any furnishing from the home that the petitioner had not stated she could have The court also failed to acknowledge that the petitioner had committed adultery and return to his ex-wife.

Though the court made a finding the defendant went back to the home on several occasions to obtain personal property, they failed to acknowledge the petitioner would not allow the defendant into the home to claim property as the court had previously ordered. The petitioner would not turn over said property until such time attorney's were present, which was approximately 1 ½ years latter. They also did not recognize that what little clothing was returned and belonging to the three minor children, no longer fit them after this period of time and therefore was of no value to the parties. Also, what few

household items were returned had already had to be replaced by the defendant because of the petitioner's disregard for this court's orders.

The court stated the defendant has "demonstrated commendable enthusiasm in providing an Exhibit broken down into discrete categories of items alleged to be missing or damaged". It is unreasonable to assume one would put so much effort and time into such an Exhibit to make a 'pointless' effort. Said efforts were applied at the advice of the defendant's attorney Michael L. Adkins, to present precise identifiable records to the court to eliminate extensive questioning of each and every item and provide information for the court without taking up unnecessary time from the court. Furthermore, the court failed to acknowledge some pictures of items owned were also presented in the exhibit, with the defendant and/or her children holding them, which demonstrated previous ownership of said items. If the defendant had been allowed to access her personal property a large amount of photos and receipts could have been presented to the court for further proof of what was previously owned by her and her children. Again the defendant was withheld from obtaining her personal property which would have provided the court with additional evidence. Furthermore, the court failed to find and appropriately recognize the numerous broken salt and pepper shakers presented to the court as Exhibit and missing collectible's and sentimental items of great value.

The court accepted the petitioner's claim of missing items belonging to him and his deceased parents which he claimed to be missing, without question. They failed to recognize such claims were made long after the couple's separation and no evidence was presented by the petitioner regarding any of those items.

The court found "neither party set forth an explanation as to how so many

items...could possibly disappear without either party knowing the whereabouts. The court again failed to recognize the defendant and her children were forced to leave the marital home due to a threat, by the petitioner, to kill them. Thus, they had little opportunity to remove any items from the home and when they tried to remove necessary furnishings the petitioner again threatened them. The court also failed to recognize testimony that the defendant was instructed by the Sheriff's, who were called to the home, to leave her home for her and her children's safety. Though the Sheriff's were able to get the petitioner to leave the home for a short period of time he returned immediately after the Sheriff's left the residence and began to threaten the defendant again and unpack items from the boxes the defendant attempted to take with her. At that time the defendant quickly left the home in fear for their lives, with a feeling of the lack of support by proper authorities. It is unreasonable for the court to assume a balance of the claimed missing items when the defendant and her children have multiple missing items and the petitioner had a relatively small amount of items he claimed to be missing. Thus presenting a great difference between the two. The court found values put forth by defendant were "substantially overstated" but failed to appropriately recognize the research and comparable market values which were the amounts the defendant based her values on. The petitioner and his counsel had a copy of the Evidence and did not question any ownership of the items, nor did they question the values. If there had been any question to the items owned the issues should have been raised at trial by the petitioner and/or his attorney. As the petitioner had knowledge that the claims were reasonable and he knew the items had previously been owned by the defendant and her children he did not question the claims.

The court awarded only \$4,000 to the defendant for personal property of her and her three children. This allowed only \$1,000 for each party which does not even replace beds, clothing, employer owned equipment, school books and chronic medications that had to be replaced, as well as other necessary items for their survival. Again, the court did not appropriately account for the needs of the three children involved in this matter. Noting that the two oldest minor children were not included on the original petition and were not supported by the petitioner. Furthermore, the court continues to disregard the fact the Petitioner's family history of his father killing his mother, caused great fear for the defendant and her children and placed them in a position in which they could not gain access to their personal property.

The defendant admitted in a temporary hearing and again in trial he had closed out the safety deposit box, against the courts orders. The court failed to find which properties in the safety deposit box belonged to the petitioner and which to the defendant and her children. The court failed to hold the petitioner responsible for his actions and did not order the property belonging to the defendant or her children be returned to them. Nor did the court order the petitioner to replace any of the items following his disregard for this courts orders. Thus, again leaving the defendant to stand the expense of the petitioner's actions.

The court awarded the defendant only \$1,000 of the couples 1998 tax return and failed to equalize the distribution of said funds. Furthermore, the court did not acknowledge the defendant was 'ordered' to file a separate return against her will and thus it disallowed her to claim interest she had paid that would have been allowed as a tax deduction were the couple not filing separate returns. Again, the defendant's attorney's,

Tesch, Thompson and Vance, wrote in the order that the defendant was ordered to file a separate return when the court in fact had only recommended such. Again, the defendant should not be held responsible for her attorney's mistakes. Thus, It is clear that $\frac{1}{2}$ of the tax return would have been \$1,092 and it was not divided equally. Furthermore the return should have been distributed appropriately by the accounting for the minor children being supported which would make the division a 4 to 1 split, thus allowing the amount of \$1,242 to be awarded to the defendant and her children.

The court failed to recognize the defendant had given up her vehicle when the couple had combined their assets, at which time she began maintaining and paying for the Buick in question. Furthermore, the court failed to acknowledge in it's findings the petitioner failed to follow previous court orders and would not turn over the payment book or sign a release to allow the defendant to make payments on said vehicle. The court also failed to hold petitioner accountable for his actions in that he sold the vehicle against this courts orders. In fact the vehicle was sold and at a minimum the court should award the defendant a portion of the selling price for her payments and investment in the vehicle. The petitioner also owned two other vehicles at the time, neither of which he had to make any payments on, therefore, he could have easily afforded to maintain said vehicle until this matter was appropriately settled. The courts allowance of petitioner's disregard for previous court orders placed the defendant in a position in which she had no access to use of any vehicle the couple had and was therefore forced to purchase another vehicle to maintain her job . The petitioner failed to follow this courts previous order not to sale any property and he was definitely in a financial position he could have maintained said vehicle until this matter was resolved. Furthermore, the court should have awarded

defendant's son should amount for his services on the vehicle as if any other party providing such service would have been awarded. At a minimum the court should have allowed an equitable amount to the defendant to replace the vehicle she had given up to combine the couples assets. Again the court failed to recognize property owned prior to this couples relationship and/or marriage. The defendant owned a vehicle going into the relationship and should have been provided a vehicle upon ending of the relationship.

As per Utah Code 30-2-10, the defendant and her children were forced to leave their home without a suitable condition for the life of the family. Such circumstance should be used in determining an appropriate division of property. As per Utah Code 30-1-17.2, the court should make orders regarding the support and maintenance of the parties and children as may be equitable. The court has not appropriately made orders regarding the defendant and her children as the decisions made have left the defendant replacing many items and losing many others, thus causing her a great amount of debt.

STATEMENT OF ISSUE FOUR

Was it error for the trial court to award the Plaintiff the marital home and a large portion of the equity and leave the Defendant with no means to obtain appropriate housing for herself and the minor child(ren) based upon facts that: 1) give Defendant no value for work provided, towards equity in the marital home, by the Defendant and her children, 2) rescind the title of the home which states it was purchased by two single individuals as "joint tenants", which was the final document of two verbal contracts made between the Plaintiff and Defendant during their long term relationship, 3) the Defendant gave up a housing equity of over \$27,000 to join in the purchase of the home with the Plaintiff 4) the Plaintiff provided necessary services to settle the Defendant's

parents estate 5) it was determined without recognizing a “common law marriage” because Defendant’s previous attorney’s denied her request to file a petition for such since the couple had eventually become married and she was told it was unnecessary, 6) the court failed to recognize fault of the divorce as adultery by the Plaintiff, 7) allow only a small lien on the home for the Defendant and does not order the Plaintiff to refinance the loan on the home or pay her portion of the equity, which denies the Defendant appropriate means to provide a home for her and the minor child and which has left the Plaintiff paying a house payment of \$375.00 per month and the Defendant paying a house payment of \$897.00, 8) left the Defendant in a position worse off than she was previous to the marriage and/or relationship, 9) allowed Petitioner improper equity credit for a previously owned home, 10) the Judge noted in his memorandum the Defendant and the minor child had a greater need for the home 11) the Defendant and her three minor children were forced from the home against their will.

STANDARD OF REVIEW AND SUPPORTING AUTHORITY

The relevant text of applicable statutes and case law provisions for a determination of this case are set forth verbatim and contained in the addendum. Acts and Omissions constituting contempt and legal conclusions are reviewed for correctness, with deference given to the trial court’s ruling. Concerns the trial court’s factual findings, and thus, is reviewed under a “clearly erroneous” standard regarding damages to parties aggrieved.

DETERMINATIVE STATUTES/CODES AND LAW

Utah Code 30-3-16.3, Utah Code 30-6-1, Utah Code 30-1-4.5, Utah Code 30-3-1, Utah Code 30-1-17.2, Utah Code 30-2-10, Utah Code 30-8-2, Utah Code 30-3-5, Utah

Code 30-2-4, Utah Code 30-2-3

Case Laws Barber v Barber 792 P2d 134 (Utah App 1990), Bailey v Bailey 745 P2d, 830, 833 (Utah App 1987), Burke v Burke 733 P2d 133 (Utah 1987), Dunn v Dunn 802 P2d 1314 (Utah App 1990), Hall v Hall 858 1018 (Utah App 1993), Hogue v Hogue 831 P2d 120 (Utah App 1992), Estate of Knickerbocker 912 P2d 969, (Utah 1996), Layton v Layton 777 P2d 504 (Utah App 1989), Marvin v Marvin 557 P2d 106, (Cal 1976), Newmeyer v Newmeyer 745 P2d 1276, 1277 (Utah 1987)

STATEMENT OF THE CASE

The court ordered petitioner could remain in the marital home throughout these proceedings and gave no consideration to the living conditions the defendant and her children were forced to endure. The court gave the defendant only a small portion of her equity in the home as a lien on the property and credited the petitioner for \$20,000 which was not found to be his separate property. The court failed to assure the defendant and her children were provided an appropriate place to live after being forced from their home.

RELEVANT FACTS

The court erred in acknowledging the defendant and her children had been forced from their home and they were not provided another home as appropriated by law. The court erred allowing the defendant access to her share of funds to appropriately provide a home for herself and her children and to defend her rights in the matter. The court erred in not finding the defendant and her children had reasonable fear of the petitioner's threat to kill them in that there is a family history of threats that have been carried out by his immediate family members. The court has failed to protect the victims in this case and

view the factors of domestic violence related to this case.

SUMMARY OF THE ARGUMENT

The court failed to provide temporary orders regarding the welfare of the defendant and her children, to assure they had an appropriate place to live after being forced from their home by a threat made by the petitioner to kill them. The court erred in establishing a reasonable fear of the petitioner, by the defendant and her children, in that the petitioner's immediately family has carried out threats of killing one another, but in fact has ignored those issues throughout this case. Therefore the court did not acknowledge the defendant and her children had been forced from the marital home and were left without a homestead which would meet the needs of the family. The court erred in making an appropriate division of equity in the marital home and failed to credit the defendant and her children appropriately for their work and long term 'relationship' with the petitioner. The court erred in recognizing the facts surrounding the separation which were due to the petitioner having an affair with his ex-wife and his decision to return to her and dissolve his current marriage.

ARGUMENT.

The court erred in giving petitioner exclusive use and possession of the marital home and leaving the defendant only with a lien against the home. The defendant was left with full responsibility for supporting the three minor children without adequate living. Furthermore, the court failed to credit the defendant properly for the large enhancement of what she and her children contributed to the building and financing of the marital home. The court found the petitioner put \$51,500 of his separate funds as a down payment on the building lot for the home and failed to acknowledge those funds came

from the sale of his previous home which both parties remodeled to gain the equity for the down payment on the marital home. The defendant and her sons spent countless hours remodeling the petitioner's previous home with the agreement the equity built up would go towards a new home for the couple. The defendant would NOT have "donated" the amount of time and/or money without promise of partial equity and without believing said home was partially hers. Furthermore, the defendant provided full accounting services in settling the petitioner's parents estate as she felt a responsibility to do so because they were "husband and wife" in their relationship. The petitioner would have had at least \$30,000 less of the estate money if it were not for the contribution made by the defendant to enhance the couples financial state. The petitioner again only performed the duties out of responsibility and commitment to the petitioner as his wife and based on a promise made by the petitioner to apply the \$30,000 to the marital home as her portion of their down payment. The defendant would NOT have performed such multiple and intense duties for anyone free of charge and thus should be compensated for her work as agreed by the petitioner and defendant in that the verbal contracts were based upon a long term trusting relationship between the couple. It was also agreed at trial, through the petitioner's testimony, the petitioner's estate of his parents was greatly enhanced by the defendant providing services that would otherwise have cost the couple over \$30,000. Furthermore, the court failed to consider the circumstance of abuse of the defendant and her minor children by the petitioner, as the factor to force her to take the \$20,000 under distress and out of fear for the lives of her and her children and leave the marital home to save their lives. It was clearly not a choice for the defendant to give up 10 years of hard work towards a home and then be left with nothing to provide for her children.

The court also included in the findings of fact that petitioner had contributed \$127,000 of his separate, inherited funds but failed to recognize he would have had \$30,000 less of the inherited funds if the defendant had not provided accounting services to settle said estate. The court also failed to recognize of the \$127,000, approximately \$80,000 of the funds were from the sale of the ‘couples’ previous home, which they remodeled. The defendant made a great contribution toward the growth of the assets and based upon their oral contracts, the petitioner jointly agreed upon the conveyance of the home. Furthermore, the court made award based on the original purchase price of the home and failed to account for all additions made on the home by the parties, including: finishing two bedrooms, partly finishing the large family (great) room, putting in the lawn and cement trim throughout the yard, the soft water system, and other small improvements. Only a small portion of these additions were viewed and the value of the home had increased greatly about the amount of \$239,000. The court erred in not requiring a current appraisal on the home to allow a fair and equitable division. In “Bailey v. Bailey” the court noted “even if the property is found to be separate property, it is still subject to equitable division” as well as noted in further case law. The defendant failed to show the court how improvements and additions on the home became his separate property. Furthermore in Utah Code 30-2-3 “A conveyance, transfer or lien executed by either husband or wife to or in favor of the other shall be valid to the same extent as between other persons”. The petitioner did acknowledge his intention to convey the property to the defendant based upon he contribution and verbal contracts made between them. Thus the court should recognize the title on the home was the final contract representing two verbal contracts made between the petitioner and defendant and

should be acknowledged to the same extent as between other persons.

The court also indicated in findings “not all of respondent’s work is to be credited...” which brings to question why the petitioner’s work is fully credited and only a portion of the respondent’s and her children’s work is credited of any value. Therefore, the court has stated the respondent’s work is less valued without reason. Such an analysis gives short shrift to the defendant who contributed homemaking skills and child care. It is only fair and equitable that the work of all parties be credited equally as a woman should be paid for her skills provided. Because the defendant’s sons were also involved in the work of the home it is reasonable to believe the defendant and her sons should be credited for the work provided. Defendant’s sons were in their teenage years during much of the construction and provided labor as would any other man, therefore they should be credited for such.

The court included in findings the petitioner had owned the Roberta street home since the mid 1980’s. (Findings of Fact #41) The court erred in this finding as the petitioner did not purchase the home until the 1990’s which was after the parties began their relationship. Thus the court credited the petitioner for ten years ownership in a home which was not the case. Again the court fails to credit the respondent her share of the equity and assumed she performed the work to enhance the relationship. Thus, it is brought to question what the petitioner did to enhance the relationship without compensation of financial means. The court has failed to acknowledge any contribution to the relationship, by the petitioner. It should not be assumed that one parties contribution is less valuable than that of the other party. The court provides no explanation to why the increase in value of the home was so great and attributes no credit

to the improvements made on the home and performed by both parties. The court does find it was a contribution by defendant but again gives no value to her work. The defendant would NOT have made such great contribution to remodeling and caring for the home for anyone without an agreement for payment or gain for her work performed. The verbal contract between the parties was finalized upon signing the deed for the marital home. It is a great oversight for the court to assume no value for the defendant's work performed and assume she did the work to enhance the relationship and to give credit to the petitioner for his work performed. Furthermore the court should not void a contract made between two parties which was finalized and agreed upon at the closure of the two verbal agreements.

The court found the defendant gave up a housing escrow which was valued over \$27,000. Said escrow would have provided a down payment on a home for defendant and her children had she and the petitioner not been married and obtained a home together. The agreement between the petitioner and defendant was that because she would give up such a great amount and in addition because she settled petitioner's parents estate, a credit of \$30,000 would be a portion of her down payment on the marital home. The court has given improper consideration to both of these issues leaving the defendant without a down payment for a home and without equity for her work performed. At no time would the defendant have forfeited her escrow account to spend less than a years time in the marital and then be left without means for a home of her own. Due to courts decision the petitioner was left with a house payment of only \$375 monthly while the defendant is left with a house payment of \$900 monthly. Furthermore, the defendant has to pay a high interest on a second mortgage because she was left

without proper means for providing a home and this was the only way for her to obtain appropriate means for herself and her children. It is clear there is not a fair and equitable division of property in this matter and there was no attempt to equalize the standards of living of the two parties as the law provides.

The court failed to consider all the facts surrounding the building of the marital home as well. The defendant spent countless hours meeting with contractors to assure the home was properly built and met the needs of the family. Several hours were put in by the defendant which were above and beyond what the petitioner had put in. Such commitment caused the defendant to rearrange her work hours, as provided in testimony, and therefore she had more responsibility for the building of the home. The court also failed to recognize the petitioner was working out of town during much of the time the home was being built.

The court failed to take into account the health of the defendant. The defendant suffers from fibromyalgia, chronic fatigue and allergies. The marital home was built to assist the defendant with her health issues. A jet tub was installed to provide defendant with a source of massage which is the best source of treating the fibromyalgia and fatigue while a special air filter system was installed to assist in treatment of allergies for the defendant and the minor child. Furthermore, a rambler home was built to provide for living space in which the defendant did not have to climb stairs all the time due to the fact her health issues often prohibit her from doing so. Since the defendant was forced from the home her health has greatly declined and with her financial state she has been unable to provide for her health needs.

The marital home was built as a joint effort between the petitioner and defendant

and such should be recognized the same as if it were between two separate individuals, under contract. The trial court was further informed the petitioner had cohabited with his ex-wife prior to the separation of the petitioner and defendant and thus the court should have provided for immediate payment of the defendants share of equity. The court also found that the petitioner had ordered a change on the locks of the marital home prior to her being forced from the home. Which clearly shows his intent to force her and the children from the home prior to the night it happened. "It is clear an equitable division of property accumulated by 'unmarried' cohabitants has been sustained upon finding a partnership, contract for services, and/or a trust." (Layton v Layton) Such a contract should be unenforceable only to the extent it rests on immoral and illicit consideration of meretricious sexual services. "Adults who voluntarily live together and engage in sexual relations are nonetheless as competent as any other person to contract respecting their earnings and property rights." (Marvin v Marvin) Therefore, the court should reconsider its division of property in the matter.

STATEMENT OF ISSUE FIVE

Was it error for the trial court to not uphold previous orders of the court and pose no sanctions upon the Plaintiff for contempt and/or willful disregard of this court's orders which left the Defendant with additional debt an emotional distress, and to disallow the Defendant due process by allowing the Plaintiff to call witness(s) without proper and prior legal notice to all parties involved and denying the Defendant the right to invoke the exclusionary rule.

STANDARD OF REVIEW AND SUPPORTING AUTHORITY

The relevant text of applicable statutes and case law provisions for a

determination of this case are set forth verbatim and contained in the addendum. Acts and Omissions constituting contempt and legal conclusions are reviewed for correctness, with deference given to the trial court's ruling. Concerns the trial court's factual findings, and thus, is reviewed under a "clearly erroneous" standard regarding damages to parties aggrieved.

DETERMINATIVE STATUTES AND RULES

Utah Code 7803201; Utah Code 78-32-10; Utah Code 78-31-11 U. S. Constitution, Evidence Rules – exclusionary rule.

STATEMENT OF THE CASE

The court made specific temporary orders to the petitioner, which he willfully knowingly and intentionally disregarded and the court failed to find the petitioner in contempt of such orders.

The court allowed witness, Thelma Tripp, to testify following the defendants objection to the testimony based upon the fact the petitioner's attorney had not informed the defendant she was a possible witness and the court had allowed Thelma Tripp to sit in the court room and hear other testimony in the case. The defendant's witnesses were not allow in the court room during other testimony.

RELEVANT FACTS

The court made multiple orders for the petitioner to follow and then allowed him to disregard such orders. The court imposed no sanctions upon the petitioner for intentional disregard of the court orders and failed to provide damages to the aggrieved parties.

Previous temporary orders had been made by the court as follows:

January 28th 1999

1. Both parties restrained from disposing of assets.
2. Respondent awarded temp. possession of the 1995 Regal.
3. Return of Christmas presents will be as counsel stated on record.
4. Personal property will be exchanged

May 18, 1999

1. With regard to the safety deposit box: Issue of contempt certified and reserved as trial issue.
2. ...Mr. Tripp to make sure the property is available.

August 02, 1999

1. With regard to the motion to compel: Motion is granted and Mr. Tripp provide responses to the outstanding discovery...
2. Issue of contempt...his refusal to allow Mrs. Tripp to enter the home and a finding of contempt regarding destroying property all be certified for further hearing.

August 30, 1999

1. Judgement was entered in favor of defendant for the sum of \$390 attorney's fees.

November 18, 1999

1. With regard to the buick...issue is certified and heard at the same time the contempt hearing is held.
2. Request for temp. fees is reserved
3. Court makes no recommendation regarding the possession of the home.
4. The insurance check in Ms. Tripp's possession be provided to Ms. Cave and Mr. Tripp endorse it and these funds applied to the costs of mediation which the court

recommends the parties attend.

January 20, 2000

1. The court granted the objection as to the life insurance.
2. The issue of the Buick will be considered at further hearing.

March 31, 2000

1. Court does not find contempt regarding the Buick.
2. Regarding the personal property, the Court orders Mr. Tripp permit Mrs. Tripp access to home...
3. The court finds contempt regarding child care.

Judgments were entered against petitioner and in favor of the defendant for child care, child support and medical on multiple occasions.

The court allowed Thelma Tripp to testify in trial following an objection made by the defendant. The defendant's objection was based upon two facts: 1) Thelma was not listed as a witness in this case and the defendant had not been given prior notice of having her as a potential witness, 2) the defendant was not given her right to evoke the exclusionary rule, to have Thelma Tripp removed from the court room, prior to hearing the testimony of other witnesses.

SUMMARY OF FACTS

The testimony of Thelma Tripp should be disallowed as the defendant was not provided any prior notice she could be a possible witness and she was allowed to remain in the court trial to hear the testimony of other witnesses prior to giving her testimony. The defendant was not permitted due process in being allowed to exercise her rights to invoke the exclusionary rule with this witness when she was not allowed to have her

witnesses present during the entire trial due to being informed by the petitioner's attorney she could not have them present during testimony. The defendant was also not allowed proper notice of the possible witness and was therefore not allowed time to prepare questions for said witness.

Due to multiple legal partner's involved in this lengthy process, the petitioner was allowed to conduct himself in a manner in which he willfully, knowingly and intentionally disregarded this court's order with an intent to further harm the defendant and her children. The petitioner was not appropriately found in contempt on all issues and was therefore not held responsible for his actions, thus leaving the defendant and her children to endure the emotional and financial burdens caused by the petitioner's actions. The petitioner conducted himself in a manner which proved to the court he had lied and withheld information from the court and the defendant which would have allowed the court to make an informed decision concerning property division. Such behaviors should be taken into account when making a decision concerning a fair and equitable decision. Wherefore, the petitioner's testimony should be carefully considered when reviewing the multiple untrue facts he presented to the court, as was proven in trial.

ARGUMENT

The defendant provided all information, prior to the trial, to the plaintiff regarding witness names and what they would testify to. The plaintiff however, failed to provide prior notice to the defendant of any possible witnesses and in fact indicated to her the only witness that would be called would be the defendant. Furthermore, Thelma Tripp, who testified at the trial, was not present as a witness nor was she available when the trial began. The court also allowed Thelma to sit in on other testimony presented at

trial and therefore denied the defendant the right to invoke the exclusionary rule, which she would have done. The defendant was not allowed due legal process in this court because she was not given the opportunity to have Thelma Tripp removed from the court prior to hearing other testimony. She was also denied due legal process in that she was not provided information or time to prepare questioning for this witness, which caused undue emotional stress to the defendant. The court made findings of fact based on Thelma's testimony and gave a high creditability to her testimony after allowing her to hear other testimony, prior to hers. Therefore the testimony of Thelma Tripp should be stricken from the record and not considered in any decision the court made.

The petitioner willfully, knowingly and intentionally disregarded this courts orders on multiple occasions. The defendant and her children were denied their personal property, a place to live, a vehicle and several other rights due to the petitioner's disregard for such orders. The court continued to allow the petitioner to disregard orders without punishment throughout the 2 ½ year period of this proceeding. While the defendant recognizes this case passed through a Commissioner and three Judges and the court did not exercise a continued and well informed decision in their assessment of the petitioner's behaviors and lack of following the courts orders, the defendant should not have to incur the financial and emotional burdens of the petitioner's continued disregard of this courts orders. The defendant prevailed on multiple orders to show cause, against the petitioner but the court failed to provide damages to her for trying to get petitioner to obey various court orders. Such expenses incurred by the petitioner, for attorney's fees, to have the petitioner obey the courts orders totaled \$_____ which should be awarded to the defendant as provided by law. The court did not consider the ability of the

parties to pay attorney's fees and failed to recognize the fault of the parties, for the separation, to be that the petitioner had returned to and was having an affair with his ex-wife and thus threatened the lives of the defendant and her children to force them to leave the home

On January 28, 1999 the defendant was awarded possession of the 1995 Buick Regal. The petitioner failed to fully provide the Buick for the defendant as provided by the court in that he would not give her a release to make payments on the vehicle and obtain a records of said payments. On November 18, 1999 the court certified the issues regarding the buick. On January 20, 2000 the court again reserved the issues regarding the Buick. On March 31, 2000 the court erred in finding there was no contempt regarding the buick in that the petitioner had failed to turn over to the defendant the payment book and or any other documents she needed to continue making payments and accessing needed services for said vehicle. Thus, causing the vehicle to be removed from her possession and forcing her to stand the expense of obtaining further transportation. The court erred in finding the petitioner was not in contempt in regard to the vehicle and should reconsider such contempt in that the petitioner forced repossession of the vehicle from the defendants possession and then immediately regained possession himself and sold the vehicle. Though the defendant had put multiple funds into said vehicle she received nothing from the sale and was left without transportation.

The defendant was granted an objection to the Commissioner's recommendation, regarding the life insurance, on January 20, 2000. The court allowed petitioner's attorney to hold the funds obtained by petitioner when closing out the insurance. Said funds were to be used to pay for mediation. Due to the defendant's financial condition she was not

charged any fees. The court allowed petitioner's attorney to keep the fees and not turn over any amount to the defendant and did not hold her or the petitioner in contempt for doing so. Such fees were not to be used for paying the petitioner's attorney and should have immediately been turned over to the defendant upon finding she had no fee for the mediation. The court should reconsider contempt charges on both the petitioner and his attorney for willfully, intentionally and knowingly withholding fees from the defendant.

On January 28, 1999 both parties were restrained from disposing of assets and were ordered to exchange personal property. On May 18, 1999 the court reserved contempt of closing the safety deposit box for trial. The trial court found the petitioner in contempt of closing the safety deposit box but imposed no sanctions upon the petitioner which again left the defendant with the emotional and financial burden of losing the items that were in the box. The trial court further assumed the petitioners disobedience of court orders was documented and went to pay fees and other matters associated with this litigation. The court erred in providing evidence to the defendant regarding the petitioner's claims. There is no evidence presented to the court or to the defendant that the petitioner had reason or that he even did use any fees for matters associated with this matter. Even if he had, the court did NOT allow any funds to the defendant to provide for her defense in this matter but as documented, they are allowing the petitioner great latitude in his claims without proper documentation. The court erred in not imposing sanctions on the petitioner to either return said items or provide a financial compensation to the defendant and the minor child. The court has further erred in assuming claims made by the petitioner and had disallowed any claims made by the defendant.

On January 28, 1999 both parties were restrained from disposing of assets and the

petitioner was ordered to return Christmas presents and to exchange personal property. On May 18, 1999, the petitioner was ordered to make sure personal property is available to the defendant. On August 02, 1999, the issue of contempt for petitioner to not allow defendant to enter the home and destroying property were certified for further hearing. On March 31, 2000, the petitioner was ordered to allow defendant to access the home to claim personal property. The court then finds, at trial, no contempt against the petitioner for disallowing the respondent and her children to obtain their personal property. The court also found no contempt of the petitioner not returning the Christmas gifts. As it is well documented, the petitioner willfully disobeyed this court's order and there have been no sanctions imposed upon him for his behaviors. Such continued actions of the petitioner and continued errors of the court have allowed the petitioner to financially gain from his actions and have caused the defendant and her children to incur a great amount of financial and emotional burdens. The court should find the petitioner in contempt on all of these actions and should impose at a minimum, financial damages incurred by the defendant, due to his actions. The court also erred in not finding the petitioner in contempt of turning over personal property in that he destroyed much of the property, as provided by exhibit, and that much of the property was missing.

The court found the petitioner did not accurately file financial declarations consistent with facts. Again, the court posed no sanctions upon the petitioner. As the petitioner admitted in trial he had hidden assets, in it unknown both to the court and to the defendant where there were more hidden funds and assets. Therefore, the courts are unable to make a fair and equitable distribution of any property in the matter. As such, contempt issues were found by the court to be "willful or merely negligent" the petitioner

should have sanctions imposed upon him as his actions has caused great emotional and financial burden upon the defendant and her children

It is clear that with these findings the petitioner cannot and should not be trusted in any matter regarding the facts of the case. He has proven to lie on the stand, in multiple hearings, regarding multiple matters and withhold information from the court and from the defendant. Therefore, the petitioner should be held in contempt for such behaviors and have sanctions imposed upon him. At a minimum sanctions should be related to the damages to the aggrieved parties for such loss. Such sanctions should include a sum of money sufficient to indemnify the defendant and to satisfy her costs and expenses related to the petitioner's actions.

CONCLUSION

The defendant comes before this court and respectfully requests the following relief:

That if the appeals court cannot make an informed decision from the information provided, they refer the matter again to the trial court, based upon the defendants Impecuosity, for an order to allow the defendant to gain access to her funds, which have been withheld from her, to pay for a transcript to be produced.

That if the court can proceed without a transcript, they provide the following relief:

- 1) The order for visitation be supervised visits only, for the safety and protection of the minor child.
- 2) The child support established be changed to include interest income, as provided by law.
- 3) The court disallow the petitioner credit for any of the \$20,000 as is was to cover alimony and moving expenses and was used in conjunction with a threat upon the lives of the defendant and her three minor children.
- 4) The court find a "common law marriage" between the petitioner and defendant and make such other division of property based on that marriage and long term trusting relationship.
- 5) The court order petitioner to account for all hidden assets and divide such assets between the parties equitably.
- 6) The court find there was reasonable fear of the defendant and her children that forced them to leave the marital home due to the petitioner's family history of prior homicide's and injury by a fire arm.

- 7) The court find the petitioner's "Petition for Divorce" to be incomplete in that it did not include all children under the age of 17, whose welfare would be affected, as provided by law, to insure all children's need were met
- 8) The court consider the petitioner's health issues in determining a fair and equitable division of property and attempt to equalize the parties standards of living
- 9) The court provide relief to the defendant, and order the petitioner to pay for property which is missing and/or destroyed, in the amount of \$ 12,915.
- 10) The court provide relief to the defendant's son, Trynt R. Harris, and order the petitioner to pay for property which is missing and/or destroyed, in the amount of \$ 6,367.
- 11) The court provide relief to the defendant's son, Brandon L. Harris, and order the petitioner to pay for property which is missing and/or destroyed, in the amount of \$ 5,315.
- 12) The court provide relief to the minor child, Amme Kaylien Tripp, and order the petitioner to pay for property which is missing and/or destroyed, in the amount of \$ 1,330.
- 13) The court find the verbal contracts between the petitioner and the defendant were finalized upon signing the deed of the marital home which was obtained "as joint tenants" and thus should be held as the final contract between the parties as would be upheld between any two parties.
- 14) The court find the defendant is entitled to payment for her work done to enhance the property of the petitioner and for her homemaking and child care services, as provided by law.

15) The court find the testimony of Thelma Tripp should be stricken from the records due to not allowing the defendant due process by allowing her to evoke the exclusionary rule or to be informed of witnesses prior to the trial.

16) The court provide immediate relief to the defendant for her share of equity in the marital home in the amount of \$ 85,000 and that the petitioner be ordered to refinance and/or sale the home to make the defendant's fund available with 60 days of the order.

17) The court review petitioner's contempt of court issues and provide such relief to the defendant and her children, for the petitioner's willful and intentional disregard of this courts previous orders, as provided by law.

18) The court provide the defendant relief for being forced to purchase a vehicle in one of the following ways.

a) The petitioner be ordered to pay the defendant an amount of \$9,000 for the replacement of the buick, or

b) The defendant be ordered to turn over a vehicle of equal value that is currently in his possession.

19) The court order the petitioner to pay to the defendant and the minor child an amount of \$10,000 for items that were in the safety deposit box when he closed or transferred the contents against this courts orders.

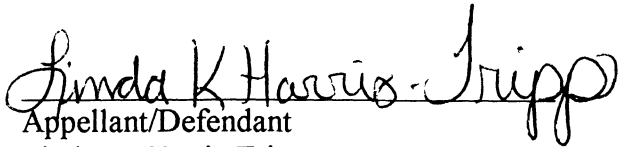
20) The court order the petitioner and his prior attorney to immediately release the insurance funds that were held by Attorney Lori Cave, to the minor child.

21) The court order the petitioner to pay the defendant her share of the 1998 tax return

in the amount of \$1,242.

22) The court provide the defendant relief for attorney's fees in the amount of \$ _____ due to the petitioner's willful and intentional disregard of this courts orders and the defendant having to incur the expense to enforce such orders.

Respectfully Submitted:

A handwritten signature in cursive script that reads "Linda K. Harris-Tripp". The signature is written in black ink and is positioned above the printed name and address.

Appellant/Defendant

Linda K. Harris-Tripp

4122 South 1785 West, Suite 1A

West Valley City, Utah 84119-5532

APPENDIX ONE

APPENDIX ONE

UTAH CODE 30-3-3

- (1) In any action filed under Title 30, Chapter 3, 4, or 6, and in any action to establish an order of custody, visitation, child support, alimony or division of property in a domestic case, the court may order a party to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action. The order may include provision for costs of the action.
- (2) In any action to enforce an order of custody, visitation, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense. The court, in its discretion, may award no fees or limited fees against a party if the court finds the party is impecunious or enters in the records the reason for not awarding fees.
- (3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in the custody of the other party.

UTAH CODE 30-1-4.5

- (1) A marriage which is not solemnized according to the chapter shall be legal and valid if a court of administrative order establishes that it arise out of a contract between two consenting parties who:
 - (a) are capable of giving consent;
 - (b) are legally capable of entering a solemnized marriage under the provisions of this chapter;
 - (c) have cohabited;
 - (d) mutually assume marital rights, duties and obligations; and
 - (e) who hold themselves out as and have acquired a uniform and general reputation as husband and wife.
- (2) The determination or establishment of a marriage under this section must occur during the relationship described of that relationship.

Evidence of a marriage recognizable under this section may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

UTAH CODE 30-6-1

- (1) “Abuse” means attempting to cause, or intentionally or knowingly causing to an adult or minor physical harm or intentionally placing another in fear of imminent physical harm.

UTAH CODE 30-3-34

- (1) If the parties are unable to agree on a visitation schedule, the court may establish a visitation schedule consistent with the best interests of the child.
- (2) The advisory guidelines.... The presumption may be rebutted based upon a finding of the court including any of the following criteria:
 - (a) visitation would endanger the child's physical health;
 - (b) visitation would significantly impair the child's emotional
 - (c) development;
 - (d) the lack of demonstrated parenting skills;
 - (h) any other criteria the court determines relevant to the best interests of the child.

UTAH CODE 30-3-16.3

The petition for conciliation shall state:

(2) The name and age of each child under the age of 17 years whose welfare may be affected by the controversy.

UTAH CODE 30-1-17.2

(1) If the parties have accumulated any property or acquired any obligations subsequent to the marriage, if there is a genuine need arising from an economic change of circumstances due to the marriage, or if there are children born or expected, the court may make temporary and final orders, and subsequently modify the orders, relating to the parties, their property and obligations, the children and their custody and visitation, and the support and maintenance of the parties and children, as may be equitable.

UTAH CODE 30-2-3

A conveyance, transfer or lien executed by either husband or wife to or in favor of the other shall be valid to the same extent as between other persons.

UTAH CODE 30-2-4

A wife may receive the wages for her personal labor, maintain an action therefor in her own name and hold the same in her own right, and may prosecute and defend all actions for the preservation and protection of her rights and property as if unmarried. There shall be no right of recovery by the husband on account of personal injury or wrong to his wife, or for expenses connected therewith, but the wife may recover against a third person for such injury or wrong as if unmarried, and such recovery shall include expenses of medical treatment and other expenses paid or assumed by the husband.

UTAH CODE 30-2-10

Neither the husband nor wife can remove the other or their children from the homestead without the consent of the other, unless the owner of the property shall in good faith provide another homestead suitable to the condition in life of the family; and if a husband or wife abandons his or her spouse, that spouse is entitled to the custody of the minor children unless a court of competent jurisdiction shall otherwise direct.

UTAH CODE 30-3-1

(3) Grounds for divorce:

(b) adultery committed by the defendant subsequent to marriage;

(g) cruel treatment of the plaintiff by the defendant to the extent of causing
bodily injury or great mental distress to the plaintiff;

(4) A decree of divorce granted under Subsection (3) (j) does not affect the
liability of either party under any provision for separate maintenance previously
granted.

UTAH CODE 30-3-5

- (1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:
 - (d) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.
 - (e) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

UTAH CODE 30-8-2

(2) “Property” means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

UTAH CODE 78-31-11

Damages to party aggrieved. If an actual loss or injury to a party I
In an action or special proceeding, prejudicial to his rights therein, is
Caused by the contempt, the court, in addition to the fine or imprisonment
Imposed for the contempt or in place thereof, may order the person
proceeded against to pay the party aggrieved a sum of money sufficient to
indemnify him and to satisfy his costs and expenses; which order and the
acceptance of money under it is a bar to an action be the aggrieved party
for such loss and injury.

UTAH CODE 78-32-1

Acts and omissions constituting contempt. The following acts of omissions in respect to a court or proceedings therein are contempt's of the authority of the court:

- (5) Disobedience of any lawful judgement, order or process of the court.
- (10) Disobedience of a subpoena duly served, or refusing to be sworn or to answer as a witness.

Utah Code 78-32-10

Contempt – Action by court. Upon the answer and evidence taken, the court shall determine whether the person proceeded against is guilty of the contempt charged. If the court finds the person is guilty of the contempt, the court may impose a fine not exceeding \$1,000, order the person incarcerated in the county jail not exceeding 30 days, or both. However, a justice court judge or court commissioner may punish for contempt by a fine not to exceed \$500 or by incarceration for five days of both.

UTAH CODE 78-45-7.5

- (1) As used in the guidelines, “gross income” includes:
 - (a) prospective income from any source, including nonearned sources, except under Subsection (3);
 - (b) income from salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains social security benefits, workers’ compensation benefits, unemployment compensation, income replacement disability insurance benefits, and payments from “nonmeans-tested” government programs.

APPENDIX TWO

APPENDIX TWO

BAILEY V. BAILEY

745 P2d, 830, 833 (Utah App 1987)

“The trial court did not find the underlying land to be Mr. Bailey’s separate property, although it did acknowledge Rachel’s intention that the conveyance be considered an advance on Mr. Bailey’s inheritance. It is to be noted that even if the property is found to be Mr. Bailey’s separate property, it is still subject to equitable division.

Premarital property, gifts and inheritances may be viewed as separate property, And in appropriate circumstances, equity will require that each party retain the Separate property brought to the marriage. However, the rule is not invariable. In Fashioning an equitable property division, trial courts needs consider all of the pertinent circumstances.”

BARBER V. BARBER

792 P2d 134 (Utah App. 1990)

“However, Anita’s argument completely ignores the fact that these parties were eventually married, and it is well’ settled that premarital or separate property may, under proper circumstances, be subject to equitable division upon divorce. Anita also fails to show how the improvements that ...made to the house became her separate property.

BURKE V. BURKE

733 P.2d 133 (Utah 1987)

“The factors generally to be considered are the amount and kind of property to be divided; whether the property was acquired before or during the marriage; the source of the property; the health of the parties; the parties’ standard of living, respective financial conditions, needs and earning capacity; the duration of the marriage; the children of the marriage; the parties’ ages at time of marriage and of divorce; what the parties gave up by the marriage; and the necessary relationship the property division has with the amount of alimony and child support to be awarded. (FN7) Of particular concern in a case such as this is whether one spouse has made any contribution toward the growth of the separate assets of the other spouse (FN8) and whether the assets were accumulated or enhanced by the joint efforts of the parties. (FN9)”

DUNN V. DUNN

802 P2d 1314 (Utah App. 1990)

“The Utah Supreme Court has defined the factors for the trial court to consider in fashioning an equitable property division:

the amount and kind of property to be divided; whether the property was acquired before or during the marriage; the source of the property; the health of the parties; the parties’ standard of living, respective financial conditions, needs and earning capacity; the duration of the marriage; the children of the marriage; the parties’ ages at time of marriage and of divorce; what the parties gave up by the marriage; and the necessary relationship the property division has with the amount of alimony and child support to be awarded.

...We note that these factors do not include a consideration of which partner was the more economically productive during the marriage...The lower court’s approach to marital property distribution is troublesome as it suggests a weighing only of each partner’s financial contribution to the marriage. Such an analysis ignores contributions of love, encouragement, and companionship, which elude monetary valuation. Such an analysis also gives short shrift to spouse who contribute homemaking skills and child care.

We find the trial court abused its discretion ... We remand for the court to make adequate findings of the value of the separate and marital portions of these accounts...

ESTATE OF KNICKERBOCKER

912 P2d 969, (Utah 1996)

Husband was entitled to damages for conversion of household furnishings...for loss of use of items which husband owned solely and loss of one-half interest in property which spouses owned as tenants in common...

In sum, we hold that the marital home of Mr. and Mrs. Knickerbocker was held In tenancy in common...because she severed the joint tenancy by executing and recording a quitclaim deed of her interest from herself as a joint tenant to herself as a tenant in common.

FINLAYSON V. FINLAYSON

874 P2d 843, 850 (Utah App 1994)

“ Since there was no agreement between the parties on attorney fees, the trial court could only award attorney fees pursuant to statute. While the trial court cites several reasons for awarding attorney fees, it did not specify the legal basis for its award. (FN2) I would therefore vacate the award of attorney fees and remand the issue to the trial court for findings as to the legal basis for its award. Only if fees are justified under a statute, do the reasons for the reduction in the fees requested become an issue.”

HALL V. HALL

858 P2d 1018 (Utah App. 1993)

In allocating equity in the parties' home, the trial court failed to make adequate findings to justify its departure from the presumptive rule of equal distribution of property

HOGUE V. HOGUE

831 P2D 120 (Utah App. 1992)

...Of particular concern in a case such as this is whether one spouse has made any contribution toward the growth of separate assets of the other spouse and whether the assets were accumulated or enhanced by the joint efforts of the parties...applying the law to the facts of this case, we determine that the trial court did not abuse its discretion in awarding Mr. Hogue an undivided one-half interest in Mrs. Hogue's premarital property...(2) Mr. And Mrs. Hogue jointly agreed upon the conveyance of the ranch to Mrs. Hogue...(3) Mr. And Mrs. Hogue cohabited together at the ranch for several months prior to the conveyance...(5) Mr. And Mrs. Hogue resided at a jointly maintained the ranch...The above findings clearly support the trial court's determination that the division of the ranch was reasonable and fair under the circumstances.

LAYTON V. LAYTON

777 P2d 504, (Utah App. 1989)

Although they were never legally married...four children were born to “the Laytons”...

Title to most of their relatively extensive property holdings is in contenance; (FN)

however, title to some parcels is in Donald's name alone, and one parcel acquired in part

with joint funds appears to be in Helen's name alone....The district court concluded that

the parties' relationship was a marriage as defined in Utah Code Ann 30-1-4.5 (1989)

and that their assets could therefore “be divided according to the equitable principles

governing divorce actions ”

An equitable division of property accumulated by unmarried cohabitants has been sustained upon finding a partnership, contract for services, and/or a trust.

MARVIN V. MARVIN

557 P2d 106, (Cal. 1976)

Contract between non-marital partners is unenforceable only to the extent that it explicitly rests on the immoral and illicit consideration of meretricious sexual services, despite contention that enforcement of such a contract would violate public policy, and enforceability of such a contract is not precluded when one partner contributes only homemaking services... A promise to perform homemaking services is a lawful and adequate consideration for contract.

The fact that a man and woman live together without marriage and engage in a sexual relationship does not in itself invalidate agreements between them relating to their earnings, property or expenses, nor is such an agreement invalid merely because the parties may have contemplated the creation or continuation of a non-marital relationship when they entered into it; such agreements fail only to the extent that they rest on a consideration of meretricious sexual services, and not on the ground that the agreement is “involved in” or made “in contemplation of” a non-marital relationship; ...

The Supreme Court... held that provisions of the Family Law Act do not govern the distribution of property acquired during a non-marital relationship that court should enforce express contracts between non-marital partners except to the extent the contract is explicitly founded on the consideration of meretricious sexual services... that in the absence of express contract, the court should inquire into the conduct of the parties to determine whether that conduct demonstrates implied contract, agreement of partnership or joint venture, or some other tacit understanding between the parties, and may also employ the doctrine of quantum merit or equitable remedies such as constructive or

resulting trust, when warranted by the facts of the case; that in the instant case plaintiff's complaint stated a cause of action for breach of an express contract and furnished suitable basis on which trial court could render declaratory relief, and that the complaint also could be amended to state a cause of action founded on theory of implied contract, or equitable relief.

Where trial court rendered judgement for defendant on the pleadings, Supreme Court had to accept the allegations of the complaint as true, determining whether such allegations stated or could be amended to state a cause of action.

Adults who voluntarily live together and engage in sexual relations are nonetheless as competent as any other persons to contract respecting their earnings and property rights, except that they cannot lawfully contract to pay for the performance of sexual services; such parties may order their economic affairs as they choose, and no policy precludes the courts from enforcing such agreements. ...in accord with the law governing community property... may form a partnership or joint venture, hold property acquired as joint tenants or tenants in common, or agree to any other such arrangement

There is no more reason to presume that services rendered between non-marital partners are contributed as a gift than to presume that funds are contributed as a gift; rather it should be presumed that the parties intended to deal fairly with each other.

We conclude... The courts should enforce express contracts between non-marital partners... In the absence of an express contract, the courts should inquire into the conduct of the parties to determine whether that conduct demonstrates an implied contract, agreement of partnership or joint venture, or some other tacit understanding between the parties. The courts may also employ the doctrine of quantum merit, or

equitable remedies such as constructive or resulting trusts, when warranted by the facts of the case.

Finally, a non-marital partner may recover in quantum meruit for the reasonable value...of household services rendered less the reasonable value of support received if he can show that he rendered services with the expectation of monetary reward.

NEWMAYER V. NEWMAYER

745 p.2D 1276, 1277 (Utah 1987)

“In dividing the marital estate, the trial court may make such orders concerning property distribution and alimony as are equitable. Utah Code Ann. 30-3-5 (1)...In making such orders, the trial court is permitted broad latitude, and its judgement is not to be lightly disturbed, so long as it exercises its discretion in accordance with the standards set by this Court.”

RAPPLEYE V. RAPPLEYE

855 P.2d 260 (Utah App. 1993)

“Reasonable attorney fees are not measured by what an attorney actually bills, nor is the number of hours spent on the case determinative in computing fees. In determining the reasonableness of attorney fees,...[a] court may consider among other factors, the difficulty of the litigation, the efficiency of the attorneys in presenting the case, the reasonableness of the number of hours spent on the case, the fee customarily charged in the locality for similar services, the amount involved in the case and the result attained, and the expertise and experience of the attorneys involved. “

CERTIFICATE OF SERVICE

I, Linda K. Tripp and Caron Chavez, certify that

on this 24th day of June, 2002, I personally cause to be served upon

Lowell Bryce Tripp, petitioner/appellee, a copy of the Appellant Brief, and the notice for defendant's change of address, by mailing a copy to him at the following address:

Lowell Bryce Tripp
2172 West Silver Tree Circle
Riverton, Utah 84605

By: Caron Chavez
Signature

By: Linda K. Tripp
Signature