

2002

## Melissa Shaw v. Scott Shaw : Reply Brief

Utah Court of Appeals

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James L. Watts; Attorney for Petitioner and Appellee.

Gayanne K. Schmid; Attorney for Respondent and Appellant.

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IN THE UTAH STATE COURT OF APPEALS

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MELISSA SHAW,	:	
	:	APPELLANT'S REPLY BRIEF
Petitioner and Appellee,	:	
	:	
vs.	:	No. 20020140-CA
	:	
SCOTT SHAW,	:	
	:	
Respondent and Appellant.	:	
	:	

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APPEAL FROM DECREE OF DIVORCE AND AMENDED DECREE OF DIVORCE  
GRANTED BY THE THIRD JUDICIAL DISTRICT COURT, THE  
HONORABLE STEPHEN L. HENRIOD PRESIDING

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Appellant

**FILED**  
Utah C. of Appeals  
JAN 24 2003  
Clerk of Court

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## II. ARGUMENT.

### A. THE TRIAL COURT ENTERED FINDINGS AGAINST THE CLEAR WEIGHT OF EVIDENCE.

A trial court's findings of fact will be overturned only if the trial evidence clearly preponderates against those findings. Elman v. Elman, 45 P.3d 176, 179 (Ut. Ct. App. 2002). But here, in at least the following respects, the evidence does not merely preponderate against the trial court's findings, there simply is no evidence to support them.

#### 1. The Diamond Ring.

The trial court found the purchase price of the diamond ring appellee (Mrs. Shaw) purchased during the marriage to be \$2400.00. Record on Appeal, pg. 198, ¶77. Mrs. Shaw admits there is nothing in the record which even suggests that to be the price she paid for the ring let alone a fair approximation of its current value. Appellee's Brief pg. 12. Mrs. Shaw did not offer any evidence of the price she paid for the ring. The only evidence Mrs. Shaw offered as to the ring's value was her sale of the ring to her mother for \$500.00, Record on Appeal, 318, pg. 77 lines 18-21, which the trial court found to be for less than the ring's actual value. Record on Appeal, pg. 198, ¶77.

Appellant (Mr. Shaw) offered the only evidence of its value. First, Mr. Shaw's evidence revealed the insurance appraisal value to be \$4500.00. Record on Appeal, 318, pg. 78, lines 5-9.

Second, Claudia Bennion testified that Mrs. Shaw told her she purchased the ring for \$5000.00. Record on Appeal, 318, pg. 108, lines 16-18. The trial court's finding the purchase price of the ring was \$2400.00 was not simply a matter of resolving conflicting evidence. It is one example of the trial court's having entered findings with no evidence in support and in the face of uncontradicted evidence to the contrary.

**2. Mr. Shaw's Tools as they Relate to the Diamond Ring.**

As Mrs. Shaw correctly argues, Mr. Shaw did not offer detailed evidence of the value of Mr. Shaw's pre-marital construction tools but testified briefly the tools were worth thousands of dollars. Record on Appeal 318, pg. 201, lines 9-14. Mrs. Shaw offered no evidence of the tools' value. There was no reason to value those tools for the sake of this record because as Mr. Shaw's pre-marital, separate property the tools were not within the trial court's jurisdiction to divide. Id. Neither party requested the trial court to find the tools' value.

Nonetheless, without any evidence in support, the trial court apparently accepted Mrs. Shaw's argument that the diamond ring was equal in value to the tools in Mr. Shaw's possession and offset one against the other. Record on Appeal, pg. 198, ¶79 & pg. 206, ¶5. There was insufficient evidence to make any finding regarding the tools' value. Out of thin air, the trial court

found the diamond ring's purchase price to be \$2400.00 but the trial court made no finding as to the ring's current value in spite of the insurance appraisal which valued the ring at \$4500.00. The trial court's finding offsetting the value of the tools in Mr. Shaw's possession against the value of the diamond ring in Mrs. Shaw's possession is unsupported by any evidence.

### **3. The Time Share Interests.**

The trial court established the value of each time share interest to be zero, awarded that zero dollar interest to Mr. Shaw and ordered him to serve the ongoing, monthly debt. But then the trial court found he should not be allowed to deduct from his income the \$400.00 per month expense of that debt service. Once again, that order is not merely against the weight of the evidence, it is without supporting evidence and in fact conflicts with the trial court's other findings.

The only possible basis for the trial court's ruling is the parties' testimony the time share interests are a luxury item and Mrs. Shaw's testimony she could not sell the interests but may be able to find someone to take over the payments. Record on Appeal, 318, pg. 33, lines 21-25, pg. 34, lines 1-6, pg. 207 lines 11-25 and pg. 208, lines 1-5. First, whether or not the time share interests are a luxury does not change the fact Mr. Shaw still has to pay for them every month. Those \$400.00 a



month payments substantially impact Mr. Shaw's ability as the paying spouse to provide support. Second, there was no evidence Mr. Shaw could easily transfer the interests and be free of the debt. To the contrary, Mr. Shaw testified he would keep the interest for which the payment is \$150.00. Record on Appeal, pg. 207, lines 10-21. As to the other interest, there is no evidence a transfer of the interests was pending or even imminent. The monthly timeshare payments are a real and ongoing expense. The trial court abused its discretion in disallowing Mr. Shaw the \$400.00 a month expense of the timeshare payments.

These examples of the trial court's unsupported findings and all those discussed in Mr. Shaw's primary brief reveal the trial court abused its discretion in entering findings against the weight of the evidence or with simply no evidence in support. Mr. Shaw respectfully requests the Court to remand the matter to the trial court with instructions to enter findings consistent with and supported by the evidence.

#### **B. ALIMONY'S ESSENTIAL EQUITY.**

Mr. Shaw does not argue that payments on a debt which the trial court allocates to one party as it divides the marital property aren't properly included in that party's financial statement to determine that party's real financial ability.

Rather, Mr. Shaw argues the trial court can and should judge that financial ability in different ways as appropriate in different contexts. For example, in determining child support, the trial court will judge the parents' real ability to pay and real need to receive support based on all their real expenses. But in judging property division and alimony, the trial court in its discretion can and should consider not only the amount but also the nature of each parties' expenses.

Here, the trial court abused its discretion in first ordering Mrs. Shaw to be liable for her post-separation expenses but then making Mr. Shaw actually pay those expenses in the false name of alimony. Similarly, the trial court abused its discretion by making Mr. Shaw responsible to pay for Mrs. Shaw's seventeen year old son's new car and private school tuition by an award which in form is alimony but in substance is child support for the benefit of a seventeen year old, former step child. With all due respect, Mr. Shaw's argument on appeal is that the trial court did not consider or perhaps even appreciate that inherent conflict in its findings and resulting decree. At the very least, the trial court should acknowledge and explain its having entered those conflicting findings. Better yet, the trial court should enter findings free of those conflicts. That is, Mrs. Shaw's post-separation expenses and expenses related to her

seventeen year old son for whom she receives child support unrelated to this action should be excluded from the alimony analysis here.

**C. MS. UNDERHILL'S TESTIMONY WAS ADMITTED IMPROPERLY.**

As expert testimony in general and especially in rebuttal, the trial court's admission of Ms. Underhill's testimony is reversible error.

**1. Unqualified, Undisclosed Expert Testimony.**

Expert witness testimony is welcome and useful as carefully admitted. To rely on an expert's testimony, one must disclose early and in due course the expert's conclusions and the basis of those conclusions, usually in a written report for that purpose. See, e.g., Turner v. Nelson, 872 P.2d 1021 (Utah 1994). Here, there is no dispute Mrs. Shaw didn't complete or even attempt the process necessary to disclose and qualify Ms. Underhill as an expert witness. Rather, the dispute lies in whether Ms. Underhill's testimony was expert witness opinion or fact witness observation.

On appeal, Mrs. Shaw candidly admits she called Ms. Underhill to testify only for her expert opinions as to the following:

a. Mr. Shaw's allocation of income tax expenses and the deductibility of his certain claimed exemptions under IRS regulations;

b. Mr. Shaw's having caused the parties to be at increased risk of audit or other IRS action; and,

c. That the cure would be for one of the parties to amend his or her income tax return.

Appellee's Brief on Appeal, pg. 21. Ms. Underhill offered no testimony as to facts not already in evidence. The tax return already was in evidence and speaks for itself regarding its contents. Record on Appeal, 318, pg. 48, lines 9-14, pg. 226, lines 2-7. Ms. Underhill did not add nor subtract any fact. She did not prepare Mr. Shaw's return. She knew nothing of its foundation. The only fact testimony she offered was regarding Mrs. Shaw's return which as discussed below should have been raised as part of Mrs. Shaw's case in chief. Record on Appeal, 318, pg. 257, lines 3-7.

The obvious purpose for Ms. Underhill's testimony was to record her opinion. Her testimony was of expert opinion and not of objective fact. Mrs. Shaw's plain failure to qualify her as an expert disqualifies her testimony for any purpose.

## **2. Plain Rebuttal.**

Ignoring for the moment the expert quality of Ms. Underhill's testimony, it fails even as plain rebuttal. Mrs. Shaw claims Mr. Shaw opened the door to her expert witness's testimony regarding the full scope of his tax filing by a one sentence answer to her one sentence question on cross-examination. Record on Appeal, 318, pg. 226, lines 8-10. The entire exchange on which Mrs. Shaw relies was her asking Mr. Shaw if he participated in the preparation of his tax return and his simple answer yes. Id. Mrs. Shaw's timing of that single question and her elaborate rebuttal to it reveal that Mrs. Shaw planned from the start to introduce Ms. Underhill's expert testimony on rebuttal so Mr. Shaw could not respond to it.

Rebuttal testimony need not be a direct response to direct testimony but may be used to explain or refute even the reasonable inferences the fact finder may derive from an opponent's testimony. Astill v. Clark, 956 P.2d 1081, 1085 (Ut. Ct. App. 1998). But here, Mr. Shaw offered no direct testimony, reasonable inference, or even the slightest hint of the point Mrs. Shaw raised for the first time in rebuttal through Ms. Underhill. It was not part of Mr. Shaw's case. It was not part of Mr. Shaw's defense. Nor was it the kind of rebuttal testimony intended to refute Mr. Shaw's credibility. Ms. Underhill did not

testify that Mr. Shaw had been untruthful in his testimony regarding his return, nor could she. She knew no more facts about his return than would anyone else with a copy of it.

"When the offering party contends that the undisclosed witness is necessary to rebut the adverse party's evidence, the issue hinges on whether the evidence 'sought to be rebutted could reasonably have been anticipated prior to trial.' 75 Am. Jur. 2d Trial § 371, at 570 (1991)." Turner, 872 P.2d at 1024. On appeal, Mrs. Shaw claims she called Ms. Underhill to respond to issues which she only knew of after Mr. Shaw testified. But Mrs. Shaw disclosed Ms. Underhill as a witness the afternoon before trial. Mrs. Shaw knew of the issue regarding the parties' mortgage interest deduction before trial but withheld it for rebuttal, hoping Mr. Shaw would not object.

The subject of Ms. Underhill's testimony was a part of Mrs. Shaw's case in chief, which she chose as a matter of strategy to raise in rebuttal. She did so risking that it might be excluded as beyond the scope if Mr. Shaw objected. The trial court failed to exclude the testimony on that objection so it falls to this Court to exclude it now.

### **3. Expert Rebuttal.**

Expert rebuttal is allowable in a narrow context wholly inapplicable here. Ironically, the very case on which Mrs. Shaw

relies is the best support for reversal. See, Astill, 956 P.2d at 1085 *distinguishing* Turner v. Nelson, 872 P.2d 1021 (Utah 1994). First, in Astill, there was no issue of surprise because the experts proposed on rebuttal had been disclosed and designated properly. Id. Astill recognized if that were not the case, the rebutting testimony should have been excluded. Id. at 1085-86 *citing* Zanoletti v. Norle Properties Corp., 688 So. 2d 952, 954 (Fla. Dist. Ct. App. 1997). Second, in Astill and in every other case of its kind, the opponent first offered expert testimony in its defense in chief. Id. Because neither condition occurred here, Mrs. Shaw's expert rebuttal testimony should have been excluded.

First, Mrs. Shaw disclosed Ms. Underhill as a witness just the day before trial. Exhibit A. Even then she did not disclose the most basic essence of her testimony, leaving Mr. Shaw to guess whom she was and what she might say. She never disclosed that Ms. Underhill was an expert and gave no prior notice of her opinions and their foundation.

The requirement to disclose an expert and the expert's potential testimony may lie in a trial court order or in the parties' duty to supplement discovery. See, e.g., Turner, 872 P.2d at 1024; Christenson v. Jewkes, 761 P.2d 1375, 1377 (Utah

1988). Here, in Interrogatory No. 15 served by mail on February 8, 2001, Mr. Shaw requested Mrs. Shaw to:

List the name(s), address(es) and telephone number(s) of all persons who may have information regarding this action or whom you may call to testify at the trial of this matter. Include a statement of the substance of each person's knowledge and/or anticipated testimony.

Exhibit B. Mrs. Shaw never responded to those interrogatories. In each of the reported cases, what saved the trial court from reversal in allowing the surprise witness's testimony was that the opposing party first had an opportunity to discover and prepare for the witness's testimony before trial. See, e.g., Christenson v. Jewkes, 761 P.2d 1375, 1377-78 (Utah 1988); Onyeabor v. Pro Roofing, Inc., 787 P.2d 525, 528 (Ut. Ct. App. 1990); Erickson v. Wasatch Manor, Inc., 802 P.2d 1323, 1326-27 (Ut. Ct. App. 1990). Here, Mrs. Shaw's failure to respond and disclose Ms. Underhill's testimony should have barred her testimony.

Second, Mr. Shaw did not propose any expert testimony regarding his tax returns which would have required Mrs. Shaw to propose her own expert to preserve fairness. Mrs. Shaw raised the issue of the parties' mortgage interest deduction for the first time through Ms. Underhill.



#### **4. Harmless Error.**

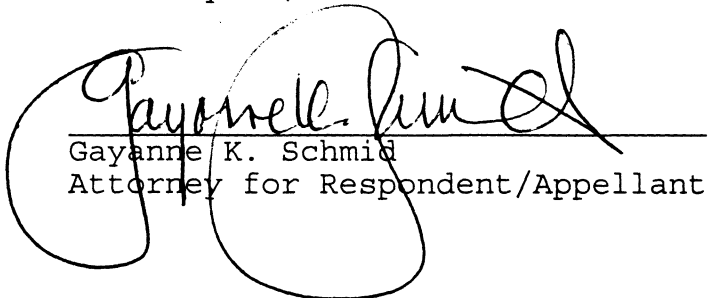
There is no question the trial court's order for Mr. Shaw to amend his return to take just one-half of the mortgage interest deduction was in direct response to Ms. Underhill's unchallenged expert testimony; that is the only time the issue was raised. There is no question Mrs. Shaw's unchallenged expert testimony on rebuttal persuaded the trial court to take Mrs. Shaw's position on the issue. Mr. Shaw should have had early notice of that expert testimony, the right to have another expert study the opponent's expert's conclusions and the right to have his own expert testify in rebuttal. If that expert testimony had been presented properly and subjected to challenge as the adversary process demands, it is equally likely the trial court would have ordered Mrs. Shaw to amend her return to take none of the interest deduction. The trial court's allowing that surprise, unchallenged expert testimony was error, which cost Mr. Shaw the unnecessary expense of amending his return and to forfeit half of the mortgage interest deduction although the entire deduction is rightfully his. That error was by no means harmless.

#### **VII. CONCLUSION.**

The trial court abused its discretion in entering findings against the weight of the evidence or with simply no evidence in

support. The trial court also abused its discretion in awarding alimony beyond Mrs. Shaw's legitimate need and well beyond Mr. Shaw's ability to pay. Finally, the trial court erred in allowing Mrs. Shaw's surprise expert to testify on rebuttal. Mr. Shaw respectfully requests the Court to remand the matter to the trial court with instructions to enter findings consistent with and supported by the evidence, to strike the alimony award and to strike Ms. Underhill's testimony or to allow Mr. Shaw to challenge her testimony as the rules allow.

Respectfully submitted on January 17, 2003.



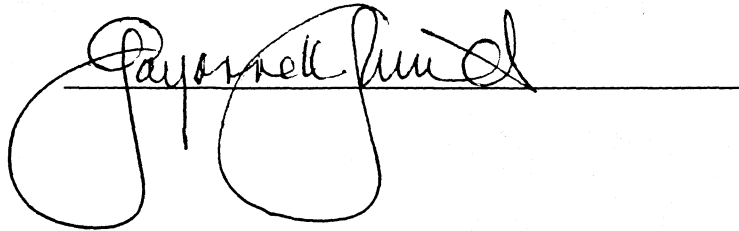
Gayanne K. Schmid  
Attorney for Respondent/Appellant

SERVICE CERTIFICATE

I certify that on January 21, 2003, two correct copies of the appellant's reply brief were served by mail to the following:

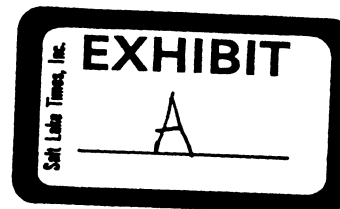
JAMES L. WATTS  
39 Exchange Place, Ste. 100  
Salt Lake City, UT 84111  
Telephone (801) 994-0838  
Attorney for Petitioner and Appellee

Dated January 21, 2003.

A handwritten signature in black ink, appearing to read "James L. Watts", is written over a horizontal line. The signature is stylized with large loops and a cursive script.

## Exhibit A

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Attorney for Petitioner

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

MELISSA J. SHAW, Petitioner,  vs. SCOTT A. SHAW, Respondent.	PETITIONER'S WITNESS AND EXHIBIT LIST  Case No. 004907136 DA  Judge Stephen L. Henroid
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COMES NOW the Petitioner, Melissa Shaw, by and through her attorney of record, and does hereby give notification of Petitioner's Witness and Exhibit List. The Petitioner intends to call as witnesses the following individuals: Melissa Shaw, Petitioner; Barbara Underhill, C.P.A.; Cindy Smith, Owner/Partner Redrock Brewing Company; Philip Trickey, Mover; Eric Barger, Mover; Jason Frank, Petitioner's Son; together with rebuttal witnesses presently unknown.

Documents and Exhibits to be introduced: Backyard photo "before"; backyard photo "after"; photo of garage; photo of backyard "hot-tub"; Appraisal Report; Home Equity Loan Summary; 2000 Harley NADA Report; 2000 Tax Returns – Melissa Shaw;

1999 Tax Returns – Joint; 1998 Tax Returns – Joint; 2000 W-2's – Both Parties; 1999 W-2's – Both Parties; 1998 W-2's – Both Parties; 2000 Retirement Statement – Scott Shaw; Correspondence dated May 14, 2001 from Gayanne Schmid; Correspondence dated April 24, 2001 from James I. Watts; Payroll Pay-stub including YTD income – Melissa Shaw; Payroll Pay-stub including YTD income – Scott Shaw; 2000 Harley Sale Agreement; Hyundai Sale Agreement; Trendwest Payment Agreement; WorldMark The Club Credit Terms/Agreement; 2000 Redrock Brewing Company 401k Statement – Scott Shaw; Mountain America Home Equity Loan .

DATED this 26 day of October 2001.

  
James I. Watts

**CERTIFICATE OF MAILING**

I **HEREBY** certify that on the \_\_\_\_ day of October 2001, that I ~~mailed via United~~ *Hand delivered*

~~States mail, postage prepaid~~, a true and correct copy of the foregoing Petitioner's

WITNESS AND EXHIBIT LIST to the following:

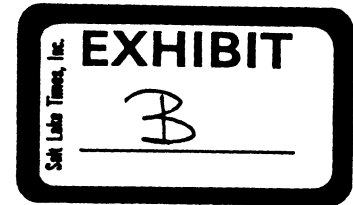
Gayanne Schmid  
68 S. Main Street, Suite 800  
SLC, Utah 84101

  
Linnette Hansen

## Exhibit B

ORIGINAL

Gayanne K. Schmid (State Bar No. A6793)  
68 S. Main Street, Suite 800  
Salt Lake City, UT 84101  
Telephone: (801) 531-8300



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

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MELISSA SHAW  Petitioner,  v.  SCOTT SHAW,  Respondent.	RESPONDENT'S FIRST SET OF INTERROGATORIES TO PETITIONER  Case No. 004907136  Judge Henroid Commissioner Bradford

Respondent Scott Shaw hereby requests Petitioner Melissa Shaw, pursuant to Rules 26 and 33 of the Utah Rules of Civil Procedure, to answer the following interrogatories in writing, under oath, within thirty (30) days after service.

INSTRUCTIONS

1. These interrogatories shall be deemed to be continuing interrogatories so as to require proper supplemental answers if further information is obtained or developed by you, your counsel, or your agents after the time that you respond to these interrogatories.
2. If, after exercising due diligence to secure the information, you are unable to answer fully any of these interrogatories, you must answer to the fullest extent possible, specifying the



reason(s) for your inability to answer the remainder and providing whatever information, or knowledge or belief you may have concerning the unanswered portion.

3. Where the answer to any interrogatory may be derived or ascertained from a document, you may respond by providing a copy of the document as part of your answer to the interrogatory.

4. If you object to an interrogatory or a subpart thereof, you must, nevertheless, answer the interrogatory or subpart to the extent that you deem it is not objectionable.

### **DEFINITIONS**

1. The word "DOCUMENTS" is used herein in its customary broad sense, and refers to any kind of printed, typewritten, handwritten or otherwise recorded matter, of whatever character, of any kind or description, whether sent or received or neither, including originals, duplicates, reproductions, facsimiles or drafts.

2. The terms "YOU" and "YOUR" refers to Petitioner Melissa Shaw, her attorneys, agents, and all persons acting or purporting to act on her behalf.

3. The terms "RELATE" or "RELATING TO" include referring to, alluding to, responding to, concerning, connected with, commenting on, regarding, discussing, showing, describing, reflecting, analyzing, constituting, including, mentioning, in respect of, or about.

4. The term "IDENTIFY" means as follows:

(a) With regard to a person: state the full name, place of employment, the last known business or home addresses and telephone numbers.

(b) With regard to documents: state the author(s), addressee(s), title, date, brief summary of the contents, and any other information which would describe the document with sufficient specificity that it may be made the subject of a request for production of documents. In lieu of this requirement, you may either (1) state that the document has already been provided, with sufficient information so as to permit the identification of the precise document so referenced, or (2) provide the document in response to the concurrent Request for Production of Documents, which is being served on you at this same date, so long as the identity of the referenced document can be determined.

### **INTERROGATORIES**

Interrogatory No. 1: Please state the highest educational level you attained (e.g., grade 12 of high school or junior year of college).

Interrogatory No. 2: Identify any degrees, certificates or formal training you may have received from any educational or technical institution?

Interrogatory No. 3: Identify all places where you have been employed or engaged in business during the last three years, stating separately as to each employment or business:

(a). The name, address and telephone number of the place where employed or where you engaged in business;

(b). The inclusive period of time (from date to date) when you were self-employed or engaged in business, and the reason for termination of that employment or business, if you are not longer so employed or engaged in business;

- (c). Your job classification, title or position;
- (d). A brief description of your duties and responsibilities;
- (e). The nature of the employment or business (whether continuous or seasonal; full-time or part-time) and the number of hours worked per week;
- (f). The name of your immediate supervisor, boss or foreman;
- (g). the amount of wage, salary, or other remuneration, received and the manner in which you were paid (e.g., hourly, weekly, monthly, or annually, or on a piece work, incentive, or commission basis);
- (h). All involuntary pay deductions (e.g., taxes, FICA, etc.);
- (i). All voluntary pay deductions (e.g., stock purchase plans, payment of loans, etc.);

Interrogatory No. 4: If you are not currently employed through your present employer(s) for forty hours each week, please state:

- (a) The reason(s) why you do not work a forty hour week;
- (b) Whether or not your employer(s) limits your work to less than forty hours per week;
- (c) The names of other potential employers and the type of work that you have made application for in the past twelve (12) months.

Interrogatory No. 5: Please list the amount of all monthly income that you actually receive or that you receive any direct/indirect benefit from, other than income from your

employment or self-employment. The sources of income applicable to this interrogatory include, but are not limited to the following:

- commissions and bonuses;
- interest income;
- stock dividend income;
- royalty income;
- inheritance income;
- trust income;
- gift income;
- social security income;
- retirement/pension income;
- stipends;
- governmental/private grants;
- income from the sale/lease of real or personal property;
- income from any person with whom you share living accommodations;
- educational grants, stipends or scholarships.
- governmental assistance including, but not limited to, welfare, food stamps
- child support
- tips, etc.

With respect to this interrogatory, please indicate the following:

- (a) The name and address of each source of income/benefit;
- (b) The reason that you receive the income/benefit;
- (c) The dates during each year when such income/benefit is received by you.

Interrogatory No. 6: Do you receive an expense account or allowance for car, gas, food, cellular phone, per diem or anything else from your employer? If so, give the average amount during the discovery period, on a monthly basis, per type of expense.

Interrogatory No. 7: State each and every debt which is owed to you, including child support, by any person, firm, corporation or other entity, and in connection with this

answer for each such debt, state:

- (a) The name and address of the person or entity owing such debt to you;
- (b) The amount due and owing you for each such debt;
- (c) The rate of interest being charged by you on any such debt and the maturity

date of each such debt;

(d) A description of the collateral or security, if any, which you have taken in connection with each such debt.

(e) What efforts you are making, if any, to collect the debt(s).

(f) What amount(s), if any, you have received in payment toward the debt(s).

Interrogatory No. 8: With respect to your Financial Declaration recently filed with the Court, in support of the Motion for Temporary Support, please describe in detail your basis for each of the itemized monthly expenses.

Interrogatory No. 9: Please state whether you own or have owned any interest in real property, including timeshares and for each piece of real property indicate:

- (a). The location the real estate in which you have an interest.
- (b). The nature of the interest which you claim in the real estate.
- (c). The name(s) of all persons or entities which hold legal title to the real estate.
- (d). At the date of acquisition of the property, the fair market value or purchase price of the real estate.

(e). If the property purchase was financed, the amount of the indebtedness at the time of purchase.

(f). The amount of the downpayment on the property and the source of the downpayment.

(g). Whether or not you claim to have contributed, directly or indirectly, any money or labor to the acquisition and/or improvement of said property and, if so, please specify the following:

- (1) The date of each and every contribution;
- (2) The amount of money or labor contributed;
- (3) The consideration for each and every contribution; and
- (4) All documents, records, or witnesses which will substantiate and prove your contribution.

Interrogatory No. 10: Please identify (a) all motor vehicles currently owned or leased by you or Respondent ; (b) the purchase price and/or downpayment; (c) date of purchase; (d) current indebtedness thereon; (e) the reasonable market value thereof; and (f) the title owner of each vehicle.

Interrogatory No. 11: In connection with any pension, profit sharing, retirement, or stock purchase plan or any other similar plan provided to you by your employer or yourself, please state the following:

- (a) The cash value of each such plan as of the date on which these

Interrogatories are answered;

- (b) The cash value of each such plan as of the date of this marriage or the date on which such plan was entered into, whichever is later;
- (c) A detailed description of the assets which comprise each such plan;
- (d) Any and all withdrawals made by you from each such plan from the date of the marriage until the present.

Interrogatory No. 12: List all of the banks or financial institutions in which you and/or the other party in this case have had any money or other property deposited or being held during the discovery period. This interrogatory pertains to both joint and individual accounts.

Please list:

- (a) The name and address of each said bank or institution;
- (b) The account number of each account;
- (c) The name in which the account is/was held; and
- (d) If the account is currently open, the current account balance or, if the account is not currently open, the account balance at the time the account was closed.
- (e) Whether any account was ever funded, in whole or in part, with funds obtained by either party from his/her individual sources (pre-marital income, inheritance, etc.);

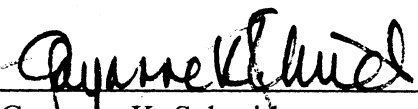
Interrogatory No. 13: Describe all bank or any other institution accounts in which your name does not appear, but in which you deposited money within the discovery period, and please state with respect to each such account:

- (a) in whose name the account appeared;
- (b) the name and address of the bank or other institution;
- (c) the account number;
- (d) the approximate date and amount of each deposit made by you; and
- (e) whether the account is still open and, if so, the present balance.

Interrogatory No. 14: Please furnish a detailed inventory of all personal property , including furnishings, fixtures and appliances , acquired by the parties during the marriage. Please specify which items you believe should be awarded to you and which items should be awarded to Respondent and briefly state your reason for the division, if any. If your proposed division is based on the relative values of the property, please list the estimated value of each item.

Interrogatory No. 15: List the name(s), address(es) and telephone number(s) of all person(s) who may have information regarding this action or whom you may call to testify at the trial of this matter. Include a statement of the substance of each person's knowledge and/or anticipated testimony.

DATED: January 30, 2001

  
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Gayanne K. Schmid  
Attorney for Respondent