

1992

Kaylene S. Smith v. Odell M. Smith, Jr. : Brief of Appellant

Utah Court of Appeals

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BRIEF

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IN THE UTAH COURT OF APPEALS

FOR THE STATE OF UTAH

KAYLENE S. SMITH,)	BRIEF OF APPELLANT
)	
Plaintiff/Appellee,)	
)	APPELLATE CASE
)	NO: 920750-CA
vs.)	
)	DISTRICT COURT CASE
)	NO: 910000459
ODELL M. SMITH, JR.,)	
)	PRIORITY: 15
Defendant/Appellant.)	

An Appeal from the First
Judicial District Court of
Box Elder County, State of Utah
Honorable Clint S. Judkins, Presiding

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Utah Court of Appeals

1993

Harry T. Noonan
Clerk of the Court

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Attorney for
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LIST OF PARTIES

Kaylene S. Smith, Plaintiff and Appellee

Odell M. Smith, Jr., Defendant and Appellant.

TABLE OF CONTENTS

LIST OF PARTIES.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
STATEMENT OF JURISDICTION AND NATURE OF PROCEEDINGS.....	1
STATEMENT OF THE ISSUES ON APPEAL.....	1
STANDARD OF REVIEW ON APPEAL.....	2
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS.....	4
SUMMARY OF ARGUMENTS.....	5
ARGUMENTS.....	7
POINT I.	
THE COURT ABUSED ITS DISCRETION IN ITS AWARD OF ALIMONY.....	7
A. The Findings of Fact and Conclusions of Law are inadequate to support the award of alimony.	7
B. The Court erred in entering the Findings of Fact and Conclusions of Law when those Findings and Conclusions were disputed.....	11
C. The Court erred in failing to allow admission of certain evidence.	13
D. The Court erred in awarding alimony out of pre-marital assets.	17
POINT II.	
THE COURT ERRED IN ITS PROPERTY DISTRIBUTION.....	21
POINT III.	
THE TRIAL COURT ERRED IN ORDERING JAMES TO PAY VEE'S ATTORNEY FEES.....	22
CONCLUSION.....	24
CERTIFICATE OF MAILING.....	26

TABLE OF AUTHORITIES

CASE CITATIONS

<u>Acton v. Deliran</u> , 737 P.2d 996 (Utah 1987)	9
<u>Anderson v. Anderson</u> , 368 P.2d 264 (Utah 1962)	23
<u>Bell v. Bell</u> , 810 P.2d 489 (Utah App. 1991)	23
<u>Burke v. Burke</u> , 733 P.2d 133, 134 - 135 (Utah 1987)	17
<u>English v. English</u> , 576 P.2d 409 (Utah 1977)	2
<u>Jones v. Jones</u> , 700 P.2d 1072, 1075 (Utah 1985)	8
<u>Nobel v. Nobel</u> , 761 P.2d 1369, 1373 (Utah 1978)	17
<u>Rasband v. Rasband</u> , 752 P.2d 1331, 1337 (Utah Ct. App. 1991)	23
<u>Rucker v. Dalton</u> , 598 P.2d 1336, 1338 (Utah 1979)	9
<u>Stevens v. Stevens</u> , 754 P.2d 952 (Utah App. 1988)	9, 10
<u>Walters v. Walters</u> , 812 P.2d 64, 67 (Utah App. 1991)	17, 21, 22

STATUTES

Utah Code Annotated

§30-3-3 (1989)	22, 23
§30-3-5(1)	17
§78-2a-3(2) (i)	1

RULES

Utah Rules of Appellate Procedure Rule 3	1
Utah Rules of Appellate Procedure Rule 24	1
Utah Rules of Evidence 401	15
Utah Rules of Evidence 402	15
Utah Rules of Evidence 403	15
Utah Rules of Evidence 613(b)	16
Utah Rules of Judicial Administration Rule 4-504	12

CONSTITUTIONAL PROVISIONS

None

IN THE UTAH COURT OF APPEALS
FOR THE STATE OF UTAH

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STATEMENT OF JURISDICTION AND NATURE OF PROCEEDINGS

The Utah Court of Appeals has jurisdiction pursuant to Utah Code Annotated § 78-2a-3(2)(i), stating that the Court of Appeals has appellate jurisdiction over appeals from the District Court involving domestic relations cases, including but not limited to divorce and property division. Rule 3 of the Utah Rules of Appellate Procedure also indicates a procedure for taking appeals from judgments and orders of trial courts. This brief follows the structural requirements outlined in Rule 24 of the Utah Rules of Appellant Procedure. This is an appeal by Odell M. Smith, Jr., Defendant, from a judgment and Decree of Divorce.

STATEMENT OF THE ISSUES ON APPEAL

1. Whether the Trial Court abused its discretion in making the award of alimony that it did.
2. Whether the Findings of Fact and Conclusions of Law are insufficient to support the award of alimony.

3. Whether the Court properly entered its Findings of Fact and Conclusions of Law where Defendant's attorney objected to certain findings but withdrew as counsel.

4. Whether the Court erred in obligating Defendant to pay an income tax liability.

5. Whether the Findings of Fact and Conclusions of Law are insufficient to support the award of attorney's fees.

STANDARD OF REVIEW ON APPEAL

The Standard of Review on Appeal is that the Appellate Court must reverse if there is a misapplication or misunderstanding of the law, if the evidence clearly preponderates against the findings or conclusions or if there is a serious inequity that must be rectified as set forth in English v. English, 565 P.2d 409, 410 (Utah 1977).

STATEMENT OF THE CASE

This is an appeal from a Judgment and Decree of Divorce entered by the Honorable Clint S. Judkins sitting as a District Court Judge on or about October 14, 1992. ¹ R. 68-78 (Findings of Fact and Conclusions of Law).

At trial, Plaintiff (hereinafter referred to as "Kaylene") appeared and was represented by Attorney Jeff R. Thorne. Defendant (hereinafter referred to as "Odell"), appeared and was represented by Attorney Brent E. Johns. A trial was held on the matter in which the only witnesses were Kaylene, Odell and Kaylene's daughter. Judge Judkins entered his decision on the day of trial and Plaintiff's

attorney prepared a Findings of Fact and Conclusions of Law and Decree of Divorce. (T. 173-178).

Kaylene's attorney prepared a Findings of Fact and Conclusions of Law and Decree of Divorce and forwarded same to Odell's attorney on or about September 24, 1992. R. 66. (Letter to Brent Johns dated September 24, 1992.) Odell's attorney objected to paragraphs 10, 15, 16 and 17 of the Findings of Fact and Conclusions of Law and Decree of Divorce as set forth in his letter to Kaylene's attorney dated October 1, 1992. R. 67 (Letter to Jeff Thorne dated October 1, 1992.) Odell's attorney withdrew as counsel on October 14, 1992. R. 84 (Withdrawal of Counsel.) Kaylene's attorney forwarded, together with a letter to the Court the Decree of Divorce, Findings of Fact and Conclusions of Law as well as Brent Johns letter of October 1, 1992. R. 65 (Letter to Judge Judkins dated October 5, 1992.) Kaylene's attorney then submitted the Decree and Findings without making any of the changes suggested by Brent Johns, Odell's attorney. The Decree and Findings were submitted to Court together with a letter which indicated in part that it was being submitted for "either signing or modification as you see fit". R. 65 (Letter to Judge Judkins dated October 5, 1992.) Judge Judkins made one change at paragraph 16 of the Findings of Fact, signed the Decree of Divorce which was entered on October 14, 1992. R. 68 - 83 (Findings of Fact and Conclusions of Law, Decree of Divorce.)

STATEMENT OF FACTS

Kaylene and Odell met in the summer of 1980 when Kaylene gained employment as a secretary at Odell's Grain Elevator operation. Both parties were married to other people at the time. (T. 11 and 12) Some time later, the relationship developed into a romantic relationship. (T. 12) Kaylene obtained a divorce from her husband in 1983. The relationship continued on an irregular basis until Odell was divorced. Odell obtained a divorce from his wife in 1986. (T. 13 and 69) At that time, Odell assisted Kaylene in moving to Brigham City, Utah in January of 1986. (T. 70) Odell also moved into a separate residence in Brigham City, Utah in June of 1986. (T. 70 and 71) The parties maintained separate residences but continued their relationship until they were married on August 14, 1989. (T. 17 and 73 - 74) The parties did not live together under one roof or hold themselves out to be married until the time they were married in 1989. (T. p. 175)

Pursuant to his divorce from his former wife, Odell received a settlement to compensate him for his interest in the family farm operation which settlement, actually received by Odell, was \$249,000.00. It is disputed as to both the amount of settlement and as to how the amounts were arrived at. Odell did not work during the time of the marriage, as a result of a head injury. (T. p. 116) Kaylene worked for Brigham Realty, Richard's Manufacturing Jewelers and Weinstocks while the parties resided in Brigham City. (T. p. 51 - 53).

Kaylene filed a Verified Complaint, Order to Show Cause and Temporary Restraining Order on September 13, 1991 (R. 1 - 11). A trial was held on August 28, 1992, and the divorce entered October 14, 1992. T. 68 - 78 (Findings of Fact and Conclusions of Law) Odell filed a timely appeal from this decision on November 12, 1992. R. 85 and 86. (Notice of Appeal)

SUMMARY OF ARGUMENT

Odell's Appeal is primarily centered around three (3) issues, those being alimony, division of an income tax liability and attorney fees. The Court abused its discretion in these areas or entered Findings of Fact and Conclusions of Law which were not adequately supported by the evidence or which were insufficient altogether.

It is also an issue as to whether the Findings of Fact and Conclusions of Law were appropriately entered, given the Withdrawal of Odell's attorney simultaneous to entry of those Findings and Conclusions.

With regard to alimony, the Court erred in at least three (3) aspects. First, the findings are inadequate and are not based upon the evidence at trial. The Findings specifically note that the parties did not, prior to marriage, represent themselves to be husband and wife. In fact, this finding was a specific ruling wherein the Court held that even though there was a long term relationship there was no marriage relationship that existed prior to the formal marriage of the parties. T. 175. Notwithstanding

this fact, the findings contained certain items which were contested at trial and objected to by Odell's attorney. Those being the statement that it was commonly recognized by Plaintiff's family that they were "living together" the majority of the time for 1986 to the time they were married and certain implications with regard to Kaylene's employment being terminated based upon the wishes of Odell. R. 68, 69, 73, 77. The findings and conclusions entered by the Court simply are not supported by the evidence at trial and should not have been entered based upon the objections by Odell's attorney.

Second, the findings do not specifically note Odell's ability to earn income or his expenses. The findings do note what Kaylene's current income is but do not set forth what her ability to earn income is.

Finally, the Court further erred in its award of alimony based upon an error which the Court made at trial in failing to allow Odell to introduce certain documents which had great bearing on the terms of the parties pre-marital relationship and upon Kaylene's veracity. These documents, Odell's exhibit 4 and 5.

Odell will further show, on appeal, that the Court erred in requiring him to pay the income tax liability incurred as a result of Kaylene taking an income tax refund and cashing the check when that refund should have been returned to the State Tax Commission as a result of the parties filing an amended and joint income tax return.

The final issue on appeal is attorney fees which were inappropriately awarded on the basis that there was no showing of need by Kaylene, for that award. The Court in this case entered findings which preponderate against the actual evidence taken at trial and which resulted in a serious inequity between the parties. As such, the case should be reversed and remanded.

ARGUMENT

POINT I.

THE COURT ABUSED ITS DISCRETION IN ITS AWARD OF ALIMONY.

The Court should remand this case for further findings with regard to alimony or should reverse the alimony award altogether on the basis that the Findings and Conclusions entered below are not sufficient to support the alimony award. In the alternative, the Court should reverse with regard to alimony on the basis that the evidence at trial preponderates against the finding of alimony entered by the Court.

A. The Findings of Fact and Conclusions of Law are inadequate to support the award of alimony.

The factors that a Court must consider in making an award of alimony are well established in recent case law. These factors are 1, the financial conditions and needs of the wife; 2, the ability of the wife to produce an income for herself; and 3, the ability of the husband to provide

support. See Jones v. Jones, 700 P.2d 1072, 1075 (Utah 1985). In viewing the Findings of Fact and Conclusions of Law then, this Court must consider whether the Findings address each of those factors.

The first factor is the financial conditions and needs of the wife. This factor is probably the most clearly addressed in the findings of fact which are as follows:

1. Prior to the parties marriage the Plaintiff was working and earning net income of approximately \$1,000.00 per month. Plaintiff also was earning \$1,000.00 during this marriage. The Plaintiff terminated her employment and Plaintiff is now only making approximately \$400.00 income per month. R. 73 (Findings of Fact and Conclusions of Law)

2. That the Plaintiff needs income on an average monthly basis of \$1,162.00 to enable her to live similar to how she lived during the marriage and to meet her current living expenses and obligations. R. 73 (Findings of Fact and Conclusions of Law)

3. The Plaintiff has suffered an economic disadvantage as a result of the marriage in that she does not have as good employment as she had before the marriage and during the marriage before she quit her employment at the urging of the Defendant... . R. 77 (Findings of Fact and Conclusions of Law)

With regard to the second factor, that being the

ability of the wife to produce an income for herself, there is no specific finding except as otherwise listed above.

There is also no specific finding as to Odell's ability to provide support. The only thing mentioned with regard to Odell's financial situation was the amounts of money that he received prior to this marriage as a settlement from a divorce from his former wife. This settlement was specifically to compensate Odell for his share of marital assets in the first marriage. R. 70 (Findings of Fact and Conclusions of Law). The only other finding or conclusion of law with regard to Odell's earning potential was that there was some interest earned on bank accounts at First Security Bank in Idaho. However, the Court specifically found that that income was dissipated in living expenses during the time the parties were married. R. 77 (Findings of Fact and Conclusions of Law)

The Utah Supreme Court has clearly held that the trial court must make findings on all material issues. Acton v. Deliran, 737 P.2nd 996 (Utah 1987). These findings should be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on which factual issue was reached. Stevens v. Stevens, 754 P.2nd 952, 958 (Utah 1988). Quoting Rucker v. Dalton, 598 P.2nd 1336, 1338 (Utah 1979).

In the case at bar, the only specific finding as to the financial condition and the need of Kaylene was that she had

a need of living expenses in the amount of \$1,162.00 per month. There is no finding as to her ability to produce income simply that she was, at the time of trial, earning \$400.00 per month as opposed to the \$1,000.00 per month which she had earned prior to and during the marriage. The Court completely failed to enter adequate findings as to the ability of Odell to provide support. All the Court finds in this regard is that he has assets which he acquired to marriage. The Supreme Court has clearly held that Findings of Fact made by the trial court which fail to specifically set forth the paying spouse's financial condition, income and ability to pay are insufficient. Stevens, at 958. There is no specific finding as to how much Odell makes on a monthly basis or what his ability to pay is relative to his own living expenses.

The Court further erred in entering a finding and conclusion which, by its own terms is contradictory. Judge Judkins, scratched out a portion of paragraph 16 of the Findings of Fact and eliminated language which says that Plaintiff terminated her employment because of the wishes and desires of the Defendant. Notwithstanding this fact, the Court allowed as a conclusion of law that Plaintiff had suffered an economic disadvantage as a result of the marriage and that she does not have as good as employment as she had before the marriage and during the marriage before she quit her employment at the urging of the Defendant. R.

77 (Findings of Fact and Conclusions of Law). These two statements contradict themselves. Even were these statements excluded, the findings are not support by evidence at trial.

The evidence showed that the parties had a marriage which lasted from August 14, 1989 to approximately August of 1991 when the parties were separated and a verified complaint was filed. Further, Odell testified that, at least a portion of that two (2) year marriage Kaylene did not live with him on a steady basis. T. 103 - 110. The Court abused its discretion in ordering Odell to pay alimony of almost \$29,000.00 on a two (2) year marriage, where he has no independent source of income other than pre-marital assets or social security and where that marriage was centered around a relationship which can best be described as sporadic.

B. The Court erred in entering the Findings of Fact and Conclusions of Law when those Findings and Conclusions were disputed.

Kaylene's attorney prepared the Findings of Fact and Conclusions of Law and forwarded those to Odell's attorney on September 24, 1992. R. 66. Odell's attorney replied by a letter dated October 1, 1992, indicating that he disagreed with the Findings at paragraph 10, 15, 16 and 17 and paragraph 14 of the Decree of Divorce on the basis that they appeared more as arguments at Court rather than specific

Findings. R. 67. (Letter to Jeff Thorne dated October 1, 1992). Rather than revise the Findings, Kaylene's attorney submitted them to the Court with a letter to Judge Judkins dated October 5, 1992 with a notation that "it appears that we are not able to agree as to what should be placed in the Findings and Conclusions; therefore, I am submitting them to you for either signing or modification as you see fit". The Court made one change to paragraph 16 of the Findings of Fact and made no changes to the Decree of Divorce. R. 73 - 83 (Findings of Fact, Conclusions of Law and Decree of Divorce). Without other dealings or input as to the content of the Findings of Fact and Conclusions of Law, Odell's attorney withdrew as counsel on October 14, 1992.

Two (2) errors were committed throughout this course of events. First, Odell's attorney should have objected under Rule 4-504 of the Utah Rules of Judicial Administration, to the proposed Findings, Judgments and Decree. Second, the Court should not have modified the Findings of Fact and Conclusions of Law without a hearing on the matter. As set forth above, certain of the Findings especially with regard to alimony took the form of arguments at trial rather than actual findings of the Court. Notwithstanding this fact, they were entered as the court's findings without hearing or other input by Odell's attorney. As such, the Findings are against the weight of the evidence and are improperly entered under Rule 4-504 of the Utah Rules of Judicial Administration.

C. The Court erred in failing to allow admission of certain evidence.

Kaylene testified at trial the parties entered into a relationship in 1980 which became intimate in approximately January of 1981. From that point forward that the relationship "continued on a regular basis" during the entire time that Kaylene worked for Odell. T. 12. Kaylene further testified that marriage was "talked about all the time", T. 13, and that when Odell moved to Brigham that he was living with Kaylene until he bought a separate residence and that they had a regular relationship going on "month after month after month". T. 15, 16. Kaylene later admitted on cross-examine that they did see other people for a period of time in 1988, that they were not living as husband and wife from the period of 1986 to 1988 and that she "saw one other man and was with him maybe two (2) times". T. 41 - 44. Kaylene further testified that Odell never spent time staying with his parents during the time that the parties lived in Brigham. T. 42. Most of these statements were contradicted by Odell.

Odell testified on direct examination that the relationship was "explosive and unpredictable and very uncertain". T. 77. Odell further testified that he moved directly into the Condominium in Brigham and, impliedly, did not live with Kaylene for a period of two (2) months. T. 73. Odell testified that he spent a great deal of time at his

parents home and spent the night there at least twice a week. T. 81 - 85. Odell further testified, in contradiction to Kaylene's testimony that he did not want her to quit her job at Brigham Realty and did not want her to quit her job at Richard's Manufacturing Jewelers. T. 99 and 100.

Odell's attorney attempted to admit into evidence, a letter marked Defendant's exhibit #4, which was a letter to Kaylene's girlfriend in Idaho and dated January 7, 1990. Odell testified that he found the letter in the garbage where it was torn up and that he pieced it together. The first page of exhibit #4 was read into evidence. Odell's attorney also attempted to admit exhibit #5, another letter from Kaylene to her parents and dated January 5, 1990 into evidence. This letter was also found in the trash where it had been torn up and was also pieced back together by Odell. At trial, the following exchange took place:

MR. THORNE: Well, again, your honor, I guess I am having some problem. If I understand both of these, these were written and may have expressed her thought process, but she tears them up and doesn't send them and communicated them.

THE COURT: How is it material what she threw in the garbage? If they had received the letters, maybe, but she throws them in the garbage.

MR. JOHNS: It is material in that it shows her thought processes. It shows her commitment to the marriage, in the case of this first one. This one will show her relationship with Odell regarding the job. This one will go on an entirely different track, your honor, because this one is going to show, and what we are offering this for, is to show the quitting of the job at Nordstrom and at Richards Manufacturing Jewelers was at her desire and her interest, counter to her previous testimony on the stand. Now that's what this particular letter is going to go for.

MR. THORNE: Well --

MR. JOHNS: And their statements to that fact.

THE COURT: I am going to sustain the objection. If the letter had been delivered then it would be a different situation, but where she wrote a letter and threw it away, obviously torn up, I don't see that that's material. I am going to sustain the objection, unless you can show anything else. T. 96 - 97.

Neither exhibit 4 or exhibit 5 was admitted into evidence. Brent Johns, Odell's attorney specifically pointed out that the letters go to Kaylene's veracity and contradicts her previous testimony. T. 94.

The Court apparently declined to admit these letters into evidence on the basis that they were thrown away rather than delivered.

It is not certain as to what rule of evidence the Court relied on in declining to allow these letters into evidence. Since the Court made inquiry as to the letters relevance it is assumed that the letters were not admitted into evidence on the basis of relevance. However, relevant evidence under Rule 401 of the Utah Rules of Evidence "means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence". Utah Rules of Evidence Rule 402. If the evidence is relevant then all relevant evidence is admissible unless its probative value is substantially outweighed by the danger of unfair prejudice. See, Utah Rules of Evidence Rules 402 & 403. In the case at bar there is no evidence as to whether the probative value of these letters

were substantially out weighed by the danger of unfair prejudice. It is not certain whether the Court declined to admit them into evidence on the basis of relevancy.

The second option as to the Court's failure to admit these letters is under some notion that they do not go to the credibility of the witness or the witnesses veracity as submitted by Odell's attorney. The letters were to be admitted to show differences in what Kaylene had written in the letters regarding seeing other men and her statements regarding Odell urging her to quit her jobs. Rule 613 of the Rules of Civil Procedure governs prior statements of witnesses. 613 (b) provides as follows:

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require.

In the case at bar, the letters should have been admitted into evidence on cross examination of Odell. Kaylene would have then had the opportunity to explain or deny the letters on redirect examination and Odell given the opportunity to interrogate her on recross examination. Odell's attorney chose to introduce the letters on a direct examination assumedly so that a foundation could be laid as to how the letters were obtained. This would still, however, give Kaylene the opportunity to explain or deny the content of the letters.

Because the Court declined to admit the letters into

evidence, Kaylene's veracity was not necessarily called into question and important contradictions in her testimony were not allowed into evidence.

D. The Court erred in awarding alimony out of pre-marital assets.

As indicated above the Court made no finding as to Odell's source of income. It is therefore reasonable to assume that alimony is paid out of assets which Odell received as a settlement from his prior marriage. There is no dispute that all of the assets received by Odell arose from the relationship with his previous wife, the sale of the farm or the purchasing of Odell's interest in that farm. There is, likewise, no issue that the assets were not co-mingled.

When a Decree of Divorce is entered, the Court may include in it "equitable orders relating to the children, property and parties ... ". U.C.A. 30-3-5(1) (1989). The purpose of property division is to allocate property in the manner which best serves the needs of the parties and best permits them to pursue their separate lives. Nobel v. Novel, 761 P.2d 1369, 1373 (Utah 1988) Quoting Burke v. Burke, 733 P.2d 133, 135 (Utah 1987). The Utah Court of Appeals set out a standard and list of factors generally considered in fashioning a property division where part or all of the property is pre-marital property. Walters v. Walters, 812 P.2d 64, 67 (Utah App. 1991). In the Walters

case, the Court set forth approximately twelve (12) factors which should be considered in making a distribution of property. These factors, and their relevance to the case at bar are set forth below:

1. The amount and kind of property to be divided: The only property at issue herein was the payments received by Odell which constituted either earnings off the farm property which he held in common with his ex-wife, or principal or interest from the sale of that property. Part of the property also includes five (5) certificates of deposit with First Security Bank in Idaho held jointly with Odell and his children. Each account having an initial deposit of \$36,000.00.

2. Whether the property was acquired before or during the marriage: Odell received a portion of this settlement prior to marriage in the form of a \$30,000.00 lump sum payment in April of 1986 and thereafter 3 or 4 payments of \$25,000.00 each. The remainder of the proceeds from his prior divorce settlement was not actually received until March of 1991.

3. The source of the property: There is no dispute that the source of the property was from a settlement on Odell's previous divorce. It is uncertain as to whether the money constituted earnings off the farm property or principal and interest from the sale of that property.

4. The health of the parties: The only testimony in

this regard was that Kaylene would be required to undergo a hysterectomy or a D&C and that Odell had been hit in the head approximately three (3) years prior to trial which has caused him to be unable to work.

5. The parties standard of living, respective financial conditions, needs and earning capacity: As set forth above, there was no specific finding as to either parties earning capacity except that Kaylene had earned both before and during the marriage at least \$1,000.00 per month. Odell had no income, per se, except for social security. Odell remained in the marital home but it is uncertain as to each of the parties standard of living.

6. The duration of the marriage: The marriage lasted approximately two (2) years until Kaylene filed for a divorce.

7. The children of the marriage: There were no children of the marriage.

8. The parties ages at the time of the marriage and of divorce: It is not certain as to the parties ages it is only certain that Odell is 15 years older than Kaylene. T. 116.

9. What the parties gave up by the marriage: It is uncertain what the parties gave up by the marriage. Both parties moved from their homes in Idaho to obtain homes in Brigham City. Odell had purchased a condominium in Brigham City which he had to sell at a loss. T. 76. Odell did not

work during the course of the marriage, Kaylene worked full time during the marriage, quit that job and was working part time at trial.

10. Necessary relationship the property division has with the amount of alimony and child support to be awarded: There is no child support so that is not an issue. There is a direct relationship between the property division and the amount of alimony because alimony could not be paid from any other source. Odell had no source of income other than a small amount of social security which he was receiving or was about to receive. The only way that alimony could be paid would be out of the property division.

11. Whether one spouse has made any contribution towards the growth of the separate assets of the other spouse: Odell testified that Kaylene made no financial contribution to the marriage and that any money earned by her was kept by her with the exception of paying a phone bill. T. 105, 106. There is no dispute that Kaylene did not make any contribution toward the settlement money as received from Odell's prior divorce.

12. Whether the assets were accumulated or enhanced by the joint efforts of the parties: It is undisputed that the only asset accumulated by the parties was the home. No other assets were accumulated or enhanced by joint effort of the parties. Specifically, the settlement monies received by Odell were received, maintained, and used entirely

separate from Kaylene.

The Court of Appeals in the Walters case noted that the last two (2) factors were of particular concern. Further that the trial court can reallocate pre-marital property as part of a property division where "unique circumstances exist". Walters at 67.

In the case at bar, Kaylene made no contribution toward growth of separate assets, made no effort to accumulate the assets or to enhance its value. This situation is not so "unique" as to justify the award of alimony from pre-marital assets. The court should not have awarded Kaylene alimony which, of necessity, had to have been paid out of the separate assets. This has effectively awarded Kaylene a portion of the pre-marital property which she could not have gotten as property. It would have been inappropriate to award Kaylene a portion of those assets as personal property and it is likewise inappropriate to award Kaylene those assets even though that award takes the form of alimony.

POINT II.

THE TRIAL COURT ERRED IN ORDERING ODELL TO INCUR
THE INCOME TAX LIABILITY.

The Court, without explanation required Odell to pay the income tax liability to the State of Utah or the IRS for all years during the marriage. This Court's specific language with regard to the income tax liability in its

entirety is "the Defendant shall pay the income tax, liability whatever it was, that \$227.00". There is no finding as to why Odell was required to pay that income tax liability and no comment made on the testimony regarding that income tax liability.

Testimony at trial indicated that the income tax liability resulted because Kaylene filed a separate income tax return and received a tax refund. Odell persuaded Kaylene to file a joint income tax return by means of filing an amended return. Kaylene cashed the income tax refund against the wishes of Odell, and did not refund that amount to the State of Utah. T. 108 - 109 and 62 - 64. Odell submits that the trial court erred in ordering him to incur that income tax liability when the liability arose solely because Kaylene inappropriately kept an income tax refund and cashed it. Had she not taken this action, there would have been no other liability in dispute.

POINT III.

THE TRIAL COURT ERRED IN ORDERING ODELL TO PAY ATTORNEY FEES.

Under Utah Code Annotated §30-3-3 (1989) a court may award attorney fees in a divorce proceeding. "In order to award attorney fees, the trial court must find the requesting party is in need of financial assistance and that the fees requested are reasonable." Walters v. Walters, 812 P.2d 64, 68 (Utah 1991).

The Court, in the findings of fact and conclusions of law with regard to attorney fees simply provided that Plaintiff is awarded \$2,000.00 attorney fees and judgment shall enter against the Defendant in favor of the Plaintiff in said amount. R. 76 (Findings of Fact and Conclusions of Law) In its actual ruling, the Court simply stated that "the Court is going to award \$2,000.00 attorney's fees in behalf of the Plaintiff". T. 174. There is no finding as to Kaylene's financial need or as to the reasonableness of the request. The award of attorney's fees is inadequately supported. See, Anderson v. Anderson, 368 P.2d 264 (Utah 1962). In addition no finding was entered with regard to the ability of Odell to pay attorney's fees as also required by §30-3-3 of the Utah Code and under case law. See Rasband v. Rasband, 752 P.2d 1331, 1337 (Utah Ct. App. 1988). In the case of Bell v. Bell, 810 P.2d 489, 494 (Utah Ct. App. 1991), the Utah Court of Appeals discussed an award of attorney fees. "The Court made no findings on wife's need for the payment of her fees, husband's ability to pay the fees, or the reasonableness of the attorney fees." Bell at p.494.

In the immediate case, there is no finding as to Kaylene's need for the payment of her fees, Odell's ability to pay the fees or the reasonableness of the attorney's fees. In fact, reasonableness of the attorney's fees was disputed by counsel in closing argument. T. 169, 169. As a

result, the Court should reverse the trial court's decision with regard to attorney fees.

CONCLUSION

The trial Court has abused its discretion and, as a result, a serious inequity has occurred in this case. The initial order which proved to be inequitable was that of alimony. The Court awarded Kaylene alimony in spite of the fact that the marriage only lasted for approximately two (2) years and without finding as to Kaylene's ability to support herself. Any alimony paid would, of necessity, come out of Odell's property which he received as settlement from a prior marriage and which was specifically found not to be a marital asset. There was no order entered with regard to Odell's ability to pay alimony. The Findings of Fact, which were disputed, are inadequate to support the Court's award. As a result, the Court abused its discretion with regard to alimony.

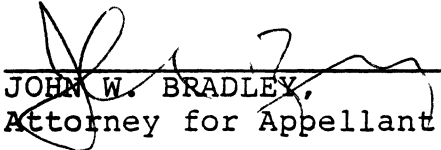
The second inequity from the Court's ruling is with regard to the income tax liability. That tax liability was incurred as a result of bad faith on the part of Kaylene and for no other reason. Odell should not be obligated to pay for her mistakes.

Finally, the Court erred in awarding Kaylene her attorney's fees. No facts were entered with regard to Kaylene's need, Odell's ability to pay or as to

reasonableness of the fee. Based upon these reasons the case should be reversed and remanded on each of these issues.

RESPECTFULLY SUBMITTED this 21 day of June, 1993.

VLAHOS, SHARP, WIGHT & BRADLEY

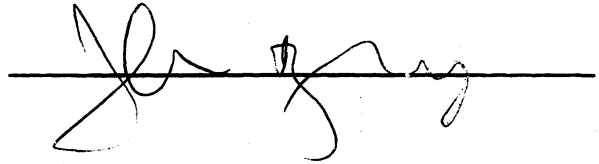


JOHN W. BRADLEY,
Attorney for Appellant

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on this 27 day of June, 1993,
I delivered four (4) true and correct copies of the above
and foregoing APPELLANT'S BRIEF by hand delivering same to
the following:

JEFF R. THORNE
Attorney for Plaintiff/Respondent
Zions Bank Building, 98 North Main
P.O. Box 876
Brigham City, Utah 84302



FOOTNOTES

1. All references are to the pages of the original record as paginated by the Clerk of the District Court, pursuant to Utah Rules of Appellate Procedure, Rule 25(e). All documents in the record referred to will be found in the Appendix in the order referred to in the Brief. For purpose of clarity, the following abbreviations shall be adopted by Appellant:

"R." refers to the record with its page number and title of the document in parenthesis.

"T." refers to the transcript.

APPENDIX A

Jeff R. Thorne of Mann, Hadfield & Thorne #3250
 Attorney for Plaintiff
 Zions Bank Building - 98 North Main
 P. O. Box 876
 Brigham City, Utah 84302-0876
 Telephone: 723-3404

IN THE FIRST DISTRICT COURT, BOX ELDER COUNTY, STATE OF UTAH

KAYLENE S. SMITH,)	
Plaintiff,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
vs.)	
ODELL M. SMITH, JR.,)	Civil No. 910000459DA
Defendant.)	Judge Clint S. Judkins

The above-entitled matter came on for hearing on the 28th day of August, 1992 at the hour of 10:00 o'clock a.m. The plaintiff was personally present and was represented by her counsel of record, Jeff R. Thorne of the firm of Mann, Hadfield and Thorne. The defendant was present and was represented by his counsel, Brent E. Johns. The plaintiff introduced her evidence and testified in said matter; and the defendant introduced his evidence and testified in said matter. The court being fully familiar in the premises issues the following Findings of Fact.

FINDINGS OF FACT:

1. RELATIONSHIP PRIOR TO MARRIAGE

The parties have had a romantic relationship beginning in 1980. From 1986 and continuing up to the date the parties were married

on August 14, 1989 at Challis, Idaho the parties spent the majority of each week living together. Even though the parties had an intimate relationship, the parties did not represent themselves to be husband and wife to their friends or to their family. It was commonly recognized by plaintiff's family that they were "living together" the majority of time from 1986 to the time they were married. The parties relationship contributed to each party's divorce from their prior spouses.

DATE OF MARRIAGE

2. The plaintiff and defendant were married on August 14, 1989 at Challis, Idaho.

NO CHILDREN

3. No children have been born as issue of said marriage and none are expected.

RESIDENCE OF PARTIES

4. The plaintiff and the defendant are residents of Box Elder County, State of Utah, and have been for more than three months immediately prior to the commencement of this action.

GROUND FOR DIVORCE

5. During the course of the marriage and the months preceding the filing of the action, irreconcilable differences developed such that the very purposes of the marriage were destroyed.

DEFENDANT'S PROPERTY FROM PRIOR MARRIAGE

6. Odell Smith was divorced from his former wife, Renae Smith in March, 1986 in the State of Idaho. As part of his written settlement agreement with his first wife, Odell Smith was entitled to cash payments of \$210,000.00 and \$150,000.00. The prior divorce decree provided that the \$210,000.00 was to be paid \$30,000.00 on or before April 20, 1986, \$30,000.00 upon the closing of a loan (the terms of the loan were mentioned in the decree), \$150,000.000 payable in annual payments of \$25,000.00 per year including interest at the rate of eight percent annum from the date of March 27, 1986. Additionally, Mr. Smith was to be paid by his former wife an additional \$150,000.00 within five years from the date of the divorce. The payments were to compensate Mr. Smith for his share of the marital assets in his first marriage. Mr. Smith, also, received other assets under his prior divorce.

ASSETS IN BANKS AT TIME OF THE DIVORCE

7. At the time the divorce action was filed, there was in an account in the name of Odell M. Smith with American First Credit Union a balance of \$41,275.00 as of September 14, 1991, together with a share savings account in the amount of \$9,532.16. Mr. Smith testified at one time Kaylene's name was on his checking account, but he removed it because "she spent too much."

Odell Smith also had five different certificates of deposit with First Security Bank in Challis, Idaho. The money was deposited on March 27, 1991, each account had initial deposit of \$36,000.00 and which accrued interest at the rate of 6.83% per annum. These accounts totalled \$180,000.00 on March 17, 1992. Mr. Smith testified the money for these accounts came from payments from his first wife.

CHALLIS PROPERTY

8. Odell Smith also received a cabin and real property in Challis, Idaho, which came from his divorce settlement with his first wife.

\$249,120.93 PAYMENT RECEIVED DURING THIS MARRIAGE

9. Odell Smith received the sum of \$249,120.93 on or about March 27, 1991 from his former wife and/or son for his share of any interest in the farm properties he was awarded under his prior divorce decree. Mr. Smith was unable to articulate how the amount of money was computed. He was unable to state whether the money constituted earnings off the farm property which he held in common with his ex-wife or whether it was all principal or interest from the sale of the property.

HOME PURCHASED IMMEDIATELY PRIOR TO MARRIAGE

10. A home was purchased at 70 North 200 East, Brigham City, Utah on June 27, 1989, approximately six weeks prior to the time the parties were married. Title to the home was only in Mr.

Smith's name. The home was purchased with Mrs. Smith's consent and knowledge and was the marital home of the parties. The parties stipulated that the home had a market value of \$63,000.00, and there exists a lien against the home in the approximate amount of \$29,000.00. A \$25,000.00 down payment was made by the defendant out of his separate funds. The court determines that there is a \$9,000.00 equity in the family home.

AUTOMOBILE PURCHASED DURING MARRIAGE

11. In July, 1991 a 1991 Dodge Shadow automobile was purchased, which has a fair market value of \$7,000.00. The automobile was purchased with funds from the checking account with America First Credit Union account.

LOT AND STORAGE PURCHASED IN 1986

12. The defendant purchased a lot and storage building in 1986 in Brigham City, Utah. The lot and building has a fair market value of \$18,500.00. This real estate was titled in Mr. Smith's name.

PERSONAL PROPERTY BEFORE MARRIAGE

13. The plaintiff had a table and four chairs, a roll-top desk, a couch, a green rocker, a square end table, a bathroom bench, and a green hanging lamp, which was her property before the marriage which was taken to the cabin in Challis, Idaho after the parties were married.

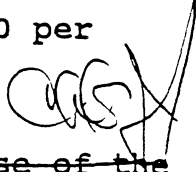
PROPERTY ACQUIRED DURING MARRIAGE

14. During the marriage, the parties purchased a three-piece white leather furniture set, two area rugs, a grandfather clock, a toaster, various wall hangings, a silk flower arrangement, and vacuum.

MEDICAL NEEDS OF PLAINTIFF

15. The plaintiff is in need of surgery pursuant to a letter of Dr. C. M. Dibble, M.D. which was admitted into evidence. Plaintiff's medical condition requiring surgery arose during this marriage.

EMPLOYMENT OF PLAINTIFF

16. Prior to the parties' marriage, the plaintiff was working and earning net income of approximately \$1,000.00 per month. Plaintiff also was earning \$1,000.00 during this marriage. The plaintiff terminated her employment ~~because of the wishes and desires of the defendant~~ and plaintiff is now only making approximately \$400.00 income per month. 

LIVING EXPENSES OF PLAINTIFF

17. The plaintiff needs income on an average monthly basis of \$1,162.00 to enable her to live similar to how she lived during the marriage and to meet her current living expenses and obligations.

SOCIAL SECURITY AVAILABILITY TO DEFENDANT

18. The defendant is eligible for social security, but has not applied for social security at the present time. The defendant states that he would be entitled to social security of approximately \$350.00 per month. The defendant has not been employed during the time the parties have been married.

DEBTS

19. The only debts are the debt existing against the home in Brigham City, Utah.

AS CONCLUSIONS OF LAW FROM THE FOREGOING FINDINGS OF FACT
THE COURT CONCLUDES:

MARRIAGE PROPERTY

1. The only joint property the parties have acquired during the time of the marriage is the equity in the home which was purchased. The court sets the equity at \$9,000.00. The defendant shall pay to the plaintiff \$4,500.00 within 60 days as and for her share of the equity.

AUTOMOBILE

2. The 1991 Dodge automobile was purchased with the defendant's separate funds. The automobile will be awarded to the defendant.

PERSONAL PROPERTY

3. The plaintiff shall be awarded the loveseat, chair and vacuum. The defendant shall receive the remainder of the items acquired during the marriage.

PERSONAL PROPERTY ACQUIRED PRIOR TO MARRIAGE

4. The plaintiff shall be entitled to the items of property which were taken to the cabin in Challis, Idaho which were hers prior to the time the parties married. Those items of property are the table and four chairs, roll-top desk, couch, green rocker, square end table, bathroom bench, and green hanging lamp. The defendant shall return those items to plaintiff within 10 days.

MISCELLANEOUS ITEMS

5. The defendant shall be awarded the Bible, the carved Bible stand, the Revere Ware, the five quart pan with lilac handles, the pressure cooker, the knife block and paring knives, as well as any of his cassette tapes which may be in plaintiff's possession. All other items of personal property which plaintiff has in her possession shall remain hers and shall be her sole and separate property.

PLAINTIFF'S UNINSURED MEDICAL EXPENSES

6. The defendant shall pay any medical expenses related to plaintiff's surgery not covered by insurance, if those expenses are incurred within the next six (6) months.

LOT AND STORAGE SHED

7. The court finds that the lot and storage shed were purchased by separate funds by the defendant and are awarded to him.

HOME

8. The home of the parties is awarded to the defendant subject to a lien in the amount of \$4,500.00 to be paid by the defendant to the plaintiff within 60 days from the date of this hearing.

INCOME TAX LIABILITY

9. The defendant shall pay the income tax liability to the State of Utah or IRS for all years during the marriage.

PLAINTIFF RESTORED TO FORMER NAME

10. The plaintiff has requested that she be restored to her former name of Koyle and the plaintiff's name shall henceforth be and she shall be known as Kathleen S. Koyle.

ATTORNEY FEES

11. The plaintiff is awarded \$2,000.00 attorney's fees and judgment shall enter against the defendant in favor of the plaintiff in said amount.

INTEREST ON SAVINGS ACCOUNT

12. The court finds that any interest earned on the \$180,000.00 at First Security Bank in Idaho was marital property, but that income was dissipated in living expenses during the time the parties were married.

EXTRA MARITAL AFFAIR

13. Even though the parties had a long-term relationship, the majority of that time was spent as an extra marital rather than a marriage relationship.

ALIMONY

14. The plaintiff has suffered an economic disadvantage as a result of the marriage in that she does not have as good as employment as she had before the marriage and during the marriage before she quit her employment at the urging of the defendant. The plaintiff is entitled to alimony for four years. Alimony is twice as long as the length of the marriage. The court will, however, give the defendant credit for one year of alimony inasmuch as they have been separated and the defendant has been paying temporary alimony since September, 1991. The defendant shall pay alimony to the plaintiff in the amount of \$643.00 beginning with the month of September, 1992 for a period of one

Smith vs Smith, #910000459
Findings & Conclusions

year, or until August of 1993. Thereafter, he shall pay alimony in the amount of \$600.00 per month for the next two years or up until August of 1995.

DATED this 14 day of October, 1992.



CLINT S. JUDKINS
DISTRICT JUDGE PRO TEM

APPROVED AS TO FORM:

Brent E. Johns
Attorney for Defendant

pj/3:smith-k.fnd

APPENDIX B

LAW OFFICES
MANN, HADFIELD AND THORNE

A PROFESSIONAL CORPORATION

ZIONS BANK BUILDING

98 NORTH MAIN

P. O. BOX 876

BRIGHAM CITY, UTAH 84302-0876

TELEPHONE (801) 723-3404

FAX (801) 723-8807

WALTER G. MANN, RETIRED

REED W. HADFIELD

JEFF R. THORNE

BEN H. HADFIELD

September 24, 1992

Brent E. Johns
2411 Kiesel Avenue, Suite 101
OGDEN UT 84401

Re: Smith vs Smith

Dear Brent:

Enclosed you will find the following documents:

1. The original and one copy of the Findings of Fact and Conclusions of Law.
2. The original and one copy of the Decree of Divorce.

Would you please approve the documents as to form and return them to me as soon as possible and I will have them filed with the court.

If you have any changes which you think should be made, please contact me as soon as possible and we will try to get the changes made that we can agree to.

Very truly yours,

MANN, HADFIELD & THORNE

By _____

JRT/pj
Enclosures
pj/1:johns-b.ks

APPENDIX C

ATTORNEY AT LAW
2411 Kiesel Ave.
Suite 101
Ogden, Utah 84401-2391

(801) 394-5581
FAX (801) 394-5583

October 1, 1992

Jeff R. Thorne
Attorney at Law
Zions Bank Building
P.O. Box 876
Brigham City, Utah 84302

RE: Smith vs. Smith

Dear Jeff:

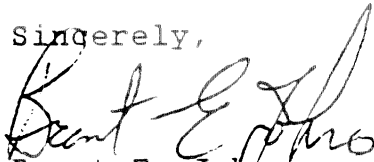
In response to the Findings and Decree you prepared for the above referenced divorce, I have some concerns.

Particularly, the wording of paragraphs 10, 15, 16 and 17 of the Conclusions and paragraph 14 of the Decree. These paragraphs appear to be more the arguments presented in Court rather than the Court's findings.

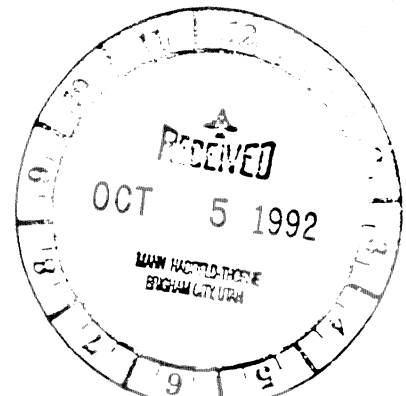
I understand that you picked up a copy of the Court's transcript of the hearing. Would you please either review it again and incorporate more precisely what the Judge said rather than the arguments, or send a copy of it on to me so that I may review it.

Thank you for your consideration.

Sincerely,


Brent E. Johns
Attorney at Law

ekv



ATTORNEY AT LAW
2411 Kiesel Ave.
Suite 101
Ogden, Utah 84401-2391

(801) 394-5581
FAX (801) 394-5583

October 9, 1992

Jeff R. Thorne
Attorney at Law
P.O. Box 876
Brigham City, Utah 84302-0876

RE: Smith vs. Smith

Dear Jeff:

Thank you for sending the copy of the Court transcript. After reviewing it, I believe the changes I have requested are in line. I have made the changes on the original Findings and Decree and am returning them to you.

Findings of Fact Paragraph 10: There was no indication or evidence that the home was purchased with Mrs. Smith's consent and knowledge.

Findings of Fact Paragraph 15: There is no proof that the Plaintiff's medical condition arose during the marriage. This is unsubstantiated.

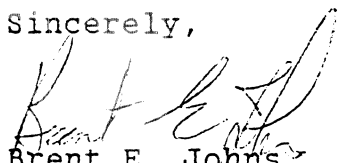
Findings of Fact Paragraph 16: The Court did not find that the Plaintiff terminated her employment because of the wishes and desires of the Defendant.

Findings of Fact Paragraph 17: The Court determined that Plaintiff was entitled to alimony. The remainder of paragraph 17 was not part of the Court's findings.

Decree of Divorce Paragraph 14: My only problem with Paragraph 14 of the Decree is that I don't believe it is necessary.

If those modifications were made to the Findings and Decree I would not have a problem with them.

Sincerely,



Brent E. Johns
Attorney at Law

cc: Odell Smith

APPENDIX D

Brent E. Johns, Bar No. 1705
Attorney for Plaintiff
2411 Kiesel Avenue, Suite 101
Ogden, Utah 84401-2391
Telephone: (801) 394-5581

IN THE FIRST JUDICIAL DISTRICT COURT OF BOX ELDER COUNTY

STATE OF UTAH

KAYLENE S. SMITH,

Plaintiff

vs.

ODELL M. SMITH, JR.,

Defendant

)

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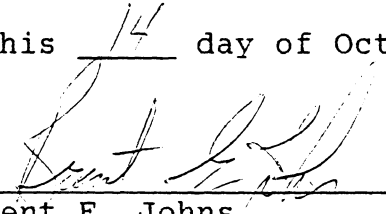
WITHDRAWAL OF COUNSEL

CIVIL NO. 910000459DA

Judge: Clint S. Judkins

COMES NOW attorney Brent E. Johns, and hereby withdraws as
counsel for the Defendant herein to become effective immediately.

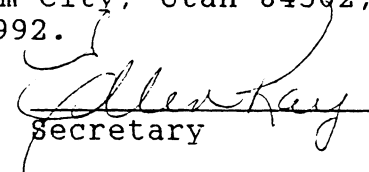
DATED this 14 day of October, 1992.



Brent E. Johns
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing
Withdrawal to Jeff R. Thorne, Attorney for Plaintiff, at P.O. Box
876, Brigham City, Utah 84302-0876, and to Odell Smith, Defendant,
at 70 North 200 East, Brigham City, Utah 84302, postage pre-paid
this 14th day of October, 1992.



Secretary

APPENDIX E

LAW OFFICES
MANN, HADFIELD AND THORNE

A PROFESSIONAL CORPORATION

ZIONS BANK BUILDING

98 NORTH MAIN

P. O. BOX 876

BRIGHAM CITY, UTAH 84302-0876

TELEPHONE (801) 723-3404

FAX (801) 723-8807

WALTER G. MANN, RETIRED

REED W. HADFIELD
JEFF R. THORNE
BEN H. HADFIELD

October 5, 1992

Judge Clint S. Judkins
First District Court
Box Elder County Courthouse
BRIGHAM CITY UT 84302

Re: Smith vs Smith, #910000459

Dear Judge Judkins:

Enclosed is a letter I sent to Brent Johns on September 24, 1992, together with a letter he sent to me dated October 1, 1992.

I have also enclosed a copy of the original Findings of Fact and Conclusions of Law and Decree of Divorce.

It appears that we are not able to agree as to what should be placed in the Findings and Conclusions; therefore, I am submitting them to you for either signing or modification as you see fit.

Very truly yours,

MANN, HADFIELD & THORNE

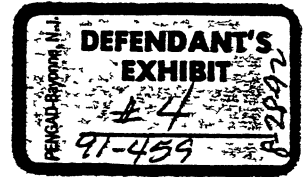
By



JRT/pj
Enclosures
pj/1:jjudkins.ks

cc: Brent E. Johns

APPENDIX F



1-7-90

Dear Jan,

Just a quick note!
Mama told me you called
and she thought you were
going to call me back. I
was there until 2:30 but
didn't hear from you.

I don't know what ~~you~~
have heard but if its
that ~~JK~~ and I are calling
it quits you may have been
right, but I would appreciate
it if you would not spread
that around that you heard
it from me. The joke is
always on us and for
some reason this love to talk
about us and we don't really
want them to have to talk
about anything. I don't know

into spread the rumor.
We have not been getting
along very well - to the
point he left Christmas
day and went to Idaho
and stayed 2 days. He
said he didn't say anything
to anyone but I don't
believe it otherwise how
did the whole damn
north side find out.
No one else knew. We
had a disagreement and
the next day he went to
the lawyer, drew up
papers and told me 4 days
later I haven't signed
anything yet and don't
plan on it until Jim's
good and ready. I really
thought that things would
turn out better than they

have it's been hard living
in his house because
he doesn't want to move
over and let me in. He
accuses me of moving
him out, some of my
furniture is in the
house as you know - but
I don't hang anything
or change things around.
Clean out and rearrange
anything, he doesn't like me
to cook, do dishes, bake -
nothing. All I do is sit
around like a queen bee
and I don't like it. I want
to be part of everything
and he doesn't want me
to. He thinks he's being
considerate to me well in
away it's fine but not
all the time. This will

never be my house. It will
always be his. He won't
drive nails in the wall
so I can't hang my nice
things and he can't
understand why I get so
bent out of shape. He
can be so good but he
can be a pain in the
ass too. I could tell you
several things but I don't
want you ~~to~~ to think of
ruining his power. I was
so happy at first - I really
thought it would be wonderful
the second time around
but don't kid yourself. The
grass is never greener on
the other side. For some
reason I'm not happy and
I'm not sure why. We are
supposed to go to a marriage

Counselor Tuesday but I'm
not sure he'll keep it. Don
to the point I don't see
any more. My attitude
sucked I'm sure but he
is so hard to talk to
and it's always my fault.
I get tired of taking the
blame all the time. It's
ok what he says but I
better not do it. The more
we at first I married
him for his money. Well
I want you to know that
he has never given me a cent!
His money ~~his~~ his money.
I even have to pay for my
phone each month. I quit
my job because I was going
to move to Salt Lake.
Then I come back to get
some clothes and he wanted

me to stay and work this
out but I really have
my doubts it will work
If I had the money I
could move and settle
some where else. I could stay
with Paula except I did
for 3 days. In at a first
now I really don't know
what to do. He resents me
quitting my job - what the
hell, why can't he support
me. I thought that's what
husbands were for. Guess
I had that one wrong!!
He pitched because I
was gone all the time
but he never suggested I
quit my job. Oh he did
once and then he said
well if you quit we won't
eat. HA HA HA!

because all he has is
rabbit ears and only gets
2 or 3 stations. You just
will not believe what I
have gone through its so damn
stupid - all of it! He's always
telling me how poor he is
Can you believe that one!
He even called my parents
so she called me and
asked me over the coast
and I really came unglued.
I've never talked to my
mother before like I talked
to her this day. I really
push her the right way.
She's tried to run my
life all my life and
I told her she would not
run this one

I have no remorse
quitting my job. I'll

Just find something else.
I wear so tired of working
for Rich any way. I just
feel so burnt out. I
certainly didn't get any
sympathy from him. He said
we all have to work
and I said to him - well
why don't you then? He
stays home all the time,
does what he wants if he
wants, when he wants - I work
all day and go home at
nite - sit & watch T.V. He
resented me when going
shopping with a girl friend
one day - One day since I've
been married to him I left
him home!! I don't feel
comfortable doing what I enjoy
doing around him. But he
can do anything he wants!

I want then to really want
to go but I guess I don't
care if it doesn't. It's
just tough to have to start
all over again. I wish I
would have kept my house
and everything in it. I
don't have my way at all
in this house. I guess it
sounds like I'm ungrateful,
he tells me I am and
don't seem to sound that
way, all I want is to be
part of things and I'm not.
When he had picnic paper
drawn up he looked at me
and said "Merry Christmas
and that's all I got for
Christmas. He did not buy
me one thing except a
\$500⁰⁰ lawyer fee. Can
you believe that - well

its true every word I'm
telling you. Now what he
has said up there I
don't know and could
care less. He's lied to me
more than once. So what
ever you have heard is
probably a lie.

You can write to me
at 70 N 200 E. He still fits
but sure how long but
until I get good and ready
to move out. He even took
me off his checking acct.
He didn't tell me I found
out myself. He told me I
wasn't acting like a wife
so he took me off. He even
had cable shut off and
so if I want to watch TV
I have to watch his Black
& white and its Jersey

Life is a ~~bitch~~ - right -
why can't we ever be
happy! I wish I would have
stayed single. You better off.
Then you don't have to
answer to anyone

Everything I've told you
I assume you will keep
to yourself. If people ask
you if ~~you~~ ^{are} ~~split~~ ^{split}
just tell them no! It's
none of their damn business
anyway as much as they
would like it to be. In
telling you because you
still are my best friend
and I still love you deep
I wish we could see each
other more than we do.

I wish you would write
since its cheaper for
both of us. If you are

ever in the area. Let me
we'll meet somewhere.

I hope this long
depressing letter finds
you well and happy.
How's Jodi doing? I hope
things are going well for
them.

Did you go to Harrell
& Cheryl's reception? How
it was? Wasn't her dress
out of this world? She
looked so pretty. She's a
dell. I just love her! I
hope it will work out
great for them. They both
deserve some happiness.
Cheryl is so good to him
and she thinks he's the
greatest and of course he
thinks the same.

Well, I guess I'd best get

This letter off the ground.
It will probably cost me
50¢ to mail it. HA

Please write and don't
be too concerned. It's tough!!
I ~~app~~ appreciate your concern.
Go and wish you were
here to talk to. But I'll
either make it or get the
hell out of it and the later
might be the best. But
time will tell.

I'll wait to hear from
you soon I hope -

Love ya Lots -

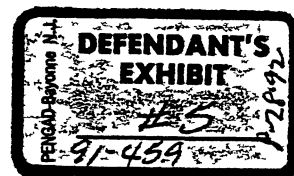
Haylene

70 W 200E

Brigham City, UT
84302

Jean Joseph
P.O. Box 330
Rupert, Id 83350

APPENDIX G



1-5-90

Dear Mom & Dad,

Just a quick note. I've been inventorying at the Opden store at nights - tonight will be the 3rd night we work from 8pm until 6:00 AM. Makes it along night - then try to sleep in the day time in a job. I never could sleep during the day. So I've been so tired and haven't taken the time to write. I'm glad you moved and like your new place. Sounds really nice.

I came home from work Tuesday to get some more clothes and Dad was so glad to see me. I guess he didn't know where I was for sure - he heard me tell you that I was going

to Hart's but still not too
sure he knew where. We talked
half the night and all the
next day trying to see if we
can't resolve our differences.
90% of me wants to stay and
make it work but 10% doesn't
know for sure. Maybe I've been
on my own for so long that
I feel closed in and can't let my
self. I am so tired of working
and I told him that. He didn't
appreciate it when I told him
I had quit Richards but I
don't care. I was tired of that
place no benefits except
a little insurance and sick
leave - no retirement and
haven't had a raise since
I've been there so why
should I work my butt off
for nothing? And I worked

We are going to a marriage
Counselor Tuesday - we talked
about this before but I
felt like it was just suppose
to be for my benefit and was
his to end. I told him it
would be for both of us
or I wouldn't go. I think most
men are afraid to admit
that they aren't all perfect.
I realize that we have alot
to overcome and I guess
Jim was the most patient
person in the world and
I do have alot of faults
but I don't need anyone
telling me that. I don't need
to be preached to taken aside
& treated like a 2yr old.
I've tried hard to overcome
alot of hard feelings I have
but it hasn't come over

worked hard in that store
to make it what it is today
and I doubt it will stay
open to long. They are
trying to find a new
manager however and I
don't think they have come
up with one yet. I have
~~no personal~~ ~~what~~ so ever
leaving. I will find
something else and maybe
I could work part time.
He complains about being
alone all the time but
he doesn't suggest that I
quit work. But I figure he
can just support me for
 awhile. I do want to work
again but not full time
unless its one hell of a
good job with benefits. I've
tried of working for nothing.

Write. There has tried hard
to but if we want this
to work we will have to
concentrate on each other
and nothing else will
have to matter. It hasn't
been easy to just come
home from work and
sit to a prepare meal -
then go in and watch TV
or whatever and not be able
to do dishes or etc. I've
never had that treatment
before - I have always
done it myself - forever -
I guess you shouldn't bit
the hand that feeds you
so this is another
Chapter to come back. Love
open if you may! So
you two hang tough
and we will hang tough

all the kids are fine.
Brittney sure grinning and
what a little doll. Does
nothing but smile. She
so good - Course so was
her mother at that age.
Well, have to get ready
for work again. Hope tonight
is the best time. They

by one travel time.
I wanted last night when
I came home but here at
6:20 AM. At least there
is little traffic!

Write when you can -
we will come up when
we can. Right now the
weather is lousy!

Love ya Lots
Ray &
Orel

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