

1992

LaBadie v. LaBadie : Brief of Appellant

Utah Court of Appeals

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Frank T. Mohlman; Mohlman and Young.

Kellie F. Williams; Corporon & Williams.

Recommended Citation

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

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DAVID V. LaBADIE,	:	
Plaintiff/Appellant,	:	
vs.	:	
VERNA M. LaBADIE,	:	No. 920796-CA
Defendant/Appellee.	:	Category No. 15

---oo0oo---

BRIEF OF APPELLANT

APPEAL FROM AN ORDER MODIFYING DECREE OF DIVORCE, IN THE THIRD
JUDICIAL DISTRICT COURT IN AND FOR TOOELE, COUNTY, STATE OF UTAH,
THE HONORABLE DAVID S. YOUNG, JUDGE, PRESIDING.

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MOHLMAN AND YOUNG
250 South Main Street
Tocele, Utah 84074

FILED

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

---ooOoo---

DAVID V. LaBADIE,	:	
Plaintiff/Appellant,	:	
vs.	:	
VERNA M. LaBADIE,	:	No. 920796-CA
Defendant/Appellee.	:	Category No. 15

---ooOoo---

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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction to hear this case as provided in Title 78, Chapter 2a, Section 3, Utah Code Annotated, 1953, as amended 1992, "(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

"(i) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation adoption, and paternity."

STATEMENT OF THE ISSUES

1. Did the trial court abuse its discretion when it signed the proposed order over the objections of appellant's counsel without the opportunity of a hearing and without issuing findings stating the reasons for the approval of the order. The standard for review of this issue is for the Court to review the matter as if no findings had been made and accord no special deference to the conclusions of law on review. See Smith v. Smith, 793 P.2d 407 (Utah App. 1990).

2. Did the trial court abuse its discretion and the principles of res judicata when Appellee's counsel had previously approved the final Findings of Fact and Conclusions of Law and Decree of Divorce and there was no appropriate finding for the Court to change the prior order. The standard for review of this issue is for the Court to review the matter as if no findings had been made and accord no special deference to the conclusion of law on review. See Smith v. Smith, 793 P.2d 407 (Utah App. 1990).

3. Did the trial court abuse its discretion in modifying the original Decree of Divorce and requiring the Appellant to provide life insurance for his former spouse. The standard for review of this issue is for the Court to review the matter as if no findings had been made and accord no special deference to the conclusion of law on review. See Whitehead v. Whitehead, 836 P.2d 814 (Utah App. 1992).

DETERMINATIVE CONSTITUTIONAL PROVISIONS,
STATUTES, ORDINANCES AND RULES

1. Utah Code Annotated, §30-3-5(3),

"The court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance, health, and dental care, or the distribution of the property as it is reasonable and necessary."

2. Rule 4-501, Rules of Judicial Administration.
3. Rule 4-504(2), Rules of Judicial Administration.

IN THE UTAH COURT OF APPEALS

---ooOoo---

DAVID V. LaBADIE,	:	
Plaintiff/Appellant,	:	
vs.	:	
VERNA M. LaBADIE,	:	No. 920796-CA
Defendant/Appellee.	:	Category No. 15

---ooOoo---

BRIEF OF APPELLANT

STATEMENT OF THE CASE

The parties in this case had a divorce trial on November 13, 1991, before Judge Moffat in Tooele. Appellant's counsel prepared the final paperwork and sent it to Appellee's counsel for approval as to form. Appellee's counsel signed the documents and returned them to Appellant's counsel who then submitted them to the Court for signature. Judge Moffat signed the final documents on December 11, 1991, and they were entered by the clerk that same day.

About a month later, Appellee's counsel wrote to Appellant's counsel to indicate a belief that the final decree should have contained a statement saying that Appellant was

required to maintain the life insurance for the benefit of his former wife. Appellant's counsel disagreed with this belief because he recalled the Court saying that it would not order the Appellant to maintain his life insurance for the benefit of his former wife and the decree was not amended at that time.

Appellee subsequently filed a motion to amend the decree on August 4, 1992, under Rule 4-501 of the Rules of Judicial Administration, so that the Court would order Appellant to maintain his life insurance for the benefit of his former spouse. Appellant, through counsel, filed written objections to the motion. Appellee filed a partial transcript of the trial on November 13, 1991, and the trial court, with Judge David S. Young on the bench, granted the motion to amend. No hearing was held on the motion because neither party requested a hearing under Rule 4-501 of the Rules of Judicial Administration. The Court gave no findings as to its reasoning for the granting of the motion even though Appellant objected to the proposed motion because there were no findings of the Court.

SUMMARY OF THE ARGUMENT

The Plaintiff/Appellant, DAVID V. LaBADIE, first contends that the trial court erred by signing the proposed order without the opportunity of a hearing and without issuing findings stating the reasons for the approval of the order.

Mr. LaBadie next contends that the trial court erred when it approved the Amended Findings of Fact and Conclusions of Law and Decree of Divorce without stating the reasons for the amendment. By doing this, the Court violated the principles of res judicata.

Finally, Mr. LaBadie contends that the Court should not have required him to maintain life insurance on his life for the benefit of his former wife because his obligation to pay alimony ends at the time of his death.

ARGUMENT

POINT 1

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT SIGNED THE PROPOSED ORDER OVER THE OBJECTIONS OF APPELLANT'S COUNSEL WITHOUT THE OPPORTUNITY FOR A HEARING AND WITHOUT ISSUING FINDINGS STATING THE REASONS FOR THE APPROVAL OF THE ORDER.

This case points out the problems of the Rules of Judicial Administration, particularly with Rule 4-501 of that code. The Court ruled on the written motions and the objections without a hearing on the matter. Appellant's counsel filed a timely objection to the proposed order under the terms of Rule 4-504(2) and also requested a hearing for reconsideration following the Court's ruling. It would seem that when a timely objection is filed, that the trial court would then schedule a hearing on the

objection. The Rules of Judicial Administration provide no guidance to the trial court on the procedure to be followed.

It would seem as a minimum, however, that the trial court should be obligated to state findings as to why it ruled in a certain manner. The Court of Appeals has, time and time again, remanded cases back to the trial court where no findings or inadequate findings have been given for a ruling of the trial court. See Whitehouse v. Whitehouse, 790 P.2d 57 (Utah App. 1990). In this case, there has been no reason stated even though Appellant's counsel requested reasons from the Court at the outset. The only thing the Court provided was a Minute Entry dated October 28, 1992, which states "The Court hereby denies the Plaintiff's (Mr. LaBadie's) motion for hearing and finds the amendment to be consistent with the stipulation in court." We are left only to guess what stipulation the Court is talking about from this order.

POINT 2

THE TRIAL COURT ABUSED ITS DISCRETION AND THE PRINCIPLES OF RES JUDICATA WHEN APPELLEE'S COUNSEL HAD PREVIOUSLY APPROVED THE FINAL FINDINGS OF FACT AND CONCLUSIONS OF LAW AND DECREE OF DIVORCE AND THERE WAS NO APPROPRIATE REASON FOR THE COURT TO CHANGE THE PRIOR ORDER.

As pointed out in the summary of the case above, the trial on this matter was held on November 13, 1991. Appellant's

counsel prepared the final paperwork after the trial and sent it to Appellee's counsel for her signature. It should have been apparent to Appellee's counsel that her signature was an assurance that all of the conditions of the divorce had been included in the final documents. It is interesting to note that the Minute Entry of the clerk to the trial held on November 13, 1991 contains no reference to the matter of life insurance. A copy of this Minute Entry is included in the Addendum. If there is any stipulation that can be assumed by the Court it should be that the parties did not intend to have the Appellant provide life insurance because of the fact that it was not included in the original decree.

If the Court cares to review the entire transcript of the trial from November 13, 1991, it will discover that it was a complex trial dealing with many issues, most of them regarding money. The only references made in the entire transcript to the issue of life insurance occur on pages 19 and 89. On page 19, Mr. LaBadie is being questioned on cross examination as follows:

"Q. Do you have any objection to maintaining Mrs. LaBadie as the beneficiary of your life insurance?

A. I have to, yes.

Q. Pardon me?

A. Yes, I was ordered by the court to do that.

(Mr. LaBadie is speaking about a court order before the trial that he maintain the life

insurance during the pendency of the divorce action.)

Q. I'm talking about continuing that after the divorce. Do you have--?

A. Yes.

Q. Do you have any objection to continuing her?

A. No."

It is significant to note that immediately after this questioning, Mr. LaBadie was asked if he wanted to continue Mrs. LaBadie as a beneficiary on his retirement benefits and the following questioning took place:

"Q. How about as beneficiary on your retirement benefits?

A. I have no objection.

Q. Do you have any objection to her being awarded one-half of your retirement benefits?

A. Yes, I do. I don't see why she is entitled to it."

It should be clear to the Court that Mr. LaBadie was at best confused by the questioning and did not intend to be bound by the statements to continue his former wife as a life insurance beneficiary after the divorce.

The reference on page 89 of the transcript was during the arguments of counsel to the Court following the presentation of

evidence. The conversation was as follows:

"The Court: Well, I will grant joint divorces, one against the other. Did she file a counterclaim?

Ms. Williams: She did, your Honor, and she made a request the divorce be final in '92 and he has already agreed to maintain her on his survivor benefits and so the only other issue would be the attorneys fees issue.

Mr. Mohlman: You are talking about life insurance?

Ms. Williams: Yeah. He had said he was agreeable to maintain it.

Mr. Mohlman: Could I address that, on attorney fees?"

The judge never made any statements as to the award of life insurance. These references on pages 19 and 89 are the only two references to the matter. Appellant's counsel was left with the distinct impression (by what the Court indicated to both counsel after the proceedings were finished) that he was not going to order that Mr. LaBadie provide life insurance benefits on his life for the benefit of Mrs. LaBadie. Those indications were the reason that the matter of life insurance was not included in the Minute Entry nor in the final paperwork prepared by Appellant's counsel.

This case points out graphically one of the problems of legal practice in Tooele County. In most trial courts of this

State, the judge hearing the trial of a matter would be the one to make any rulings on subsequent matters regarding the case. In Tooele County, however, the judges are rotated on a six-month basis with no continuity on a matter. If this case had been heard in Salt Lake County, it would have been a relatively simple matter for both counsel to approach Judge Moffat, who had spent a great deal of time hearing this case, to ask him about the life insurance. As it turns out, Judge Moffat lost jurisdiction of the case simply because his six-month term in Tooele County had finished at the end of December, 1991.

POINT 3

THE TRIAL COURT ABUSED ITS DISCRETION IN MODIFYING THE ORIGINAL DECREE OF DIVORCE BY REQUIRING THE APPELLANT TO PROVIDE LIFE INSURANCE FOR HIS FORMER SPOUSE.

The major public policy issue regarding this case is whether the Court of Appeals wants to establish the precedent that would require a spouse to provide life insurance for a former spouse as a substitute for alimony. The general rule is, of course, that "on the death of either spouse after an award of alimony in connection with a decree of separation, the liability for alimony ceases." 24 Am Jur 2d, Divorce and Separation, §674. This rule allows for the obligor spouse to remarry and try to provide some degree of security for his new family. The Appellant

in this case has remarried and desires to provide some security to his new wife.

This general rule has lead the majority of courts to refuse to require a spouse to provide life insurance on his or her life for the benefit of a surviving former spouse. Inasmuch as the obligation for alimony ceases upon death, there is no valid reason for the deceased spouse to continue paying. As stated in 24 Am Jur 2d, Divorce and Separation, §634,

"Normally, since liability to pay alimony ceases when the obligor spouse dies, there is no authority for requiring the obligor spouse to maintain life insurance for a former spouse who will derive direct benefit only after death."

The general rule regarding insurance also agrees with this doctrine, as stated in 43 Am Jur 2d, Insurance, §978,

"As a general rule, after a divorce, the insurable interest of a wife in the life of her husband ceases."

The leading case in this matter appears to be from our neighboring State of Colorado. In Menor v. Menor, 391 P.2d 473 (Colo. 1964) at 477, the Supreme Court of Colorado stated:

"There is no authority in this jurisdiction under which a husband may be compelled to carry insurance on his own life to the end that a divorced wife may from that source continue to receive alimony after the death of the husband. When a divorce is granted, the wife may be entitled to a share in the property of the husband and she may be entitled to receive alimony in accordance with her need and the husband's ability to pay. This obligation to pay alimony ends with death and a court has no power through the device of an insurance policy to require payments which could only be upheld as alimony to continue after. This situation is

clearly distinguishable from those cases in which the parties to a divorce action have settled their property rights by contract, the terms of which are incorporated in the decree."

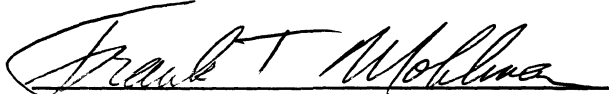
In the instant case, there was clearly no contract and the trial court clearly did not order that the husband was required to maintain his insurance. The subsequent ruling by the court to amend the decree did not follow the general rule and there is no reason in this case that the former husband should be required to maintain the insurance for benefit of his former wife. See also Clark v. Clark, 460 P.2d 936 (Okla. 1969), and Watson v. Watson, 485 P.2d 919 (Colo. App. 1971).

The Court should also note that the trial transcript is full of references to the fact that Appellant is in very poor health and as such would be very unlikely to obtain life insurance from any other source than through his employment.

CONCLUSION

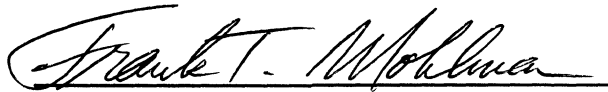
For the foregoing reasons, the Plaintiff/Appellant, DAVID V. LaBADIE, seeks a reversal of the Court's order dated October 28, 1992, which required the Appellant to maintain the life insurance policy available to him through his employment at Tooele Army Depot and naming the Appellee as the sole beneficiary thereof.

Respectfully submitted this 16TH day of March,
1993.


FRANK T. MOHLMAN
Attorney for Plaintiff/Appellant

CERTIFICATE OF MAILING

I, FRANK T. MOHLMAN, hereby certify that two copies of
the foregoing Appellant's Brief were mailed, First-Class Mail,
postage prepaid, to Kellie F. Williams, Corporon & Williams, 310
South Main Street - Suite 1400, Salt Lake City, Utah 84101, this
16TH day of March, 1993.


FRANK T. MOHLMAN
Attorney for Plaintiff/Appellant

ADDENDUM

	Addendum Page
Minute Entry, dated November 13, 1991	a
Motion to Amend Findings and Decree, dated August 4, 1992	b-f
Objection to Motion to Amend Findings and Decree, dated August 19, 1992	g-j
Motion for Reconsideration or in the Alternative a Motion for Stay Pending Appeal and Request for Hearing, dated October 27, 1992 . . . , . .	k-m
Objection to Proposed Order, dated October 27, 1992	n-o
Minute Entry, dated October 28, 1992	p
Order of Court, dated October 28, 1992	q-s
Utah Code Annotated, §30-3-5(3)	t
Rule 4-501, Rules of Judicial Administration . . .	u-w
Rule 4-504(2), Rules of Judicial Administration . .	x-y

3RD DISTRICT COURT-TOOELE

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IN THE THIRD DISTRICT COURT

TOOELE COUNTY, STATE OF UTAH

LABADIE, DAVID V	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 910300031 DA
	:	DATE 11/13/91
VS	:	HONORABLE RICHARD H. MOFFAT
	:	COURT REPORTER WORTHEN, NORA
LABADIE, VERNA M	:	COURT CLERK JPK
DEFENDANT	:	

TYPE OF HEARING:

PRESENT: PLAINTIFF DEFENDANT

P. ATTY. MOHLMAN, FRANK T

D. ATTY. WILLIAMS, KELLIE F

THIS MATTER COMES NOW BEFORE THE COURT FOR A HEARING ON DIVORCE. DAVID LABADIE AND VERNA LABADIE WERE SWORN AND EXAMINED. PLAINTIFF EXHIBITS 1,2,3 AND DEFENDANT EXHIBITS 4 THROUGH 9 WERE OFFERED AND RECEIVED. COURT HEARS CLOSING ARGUMENTS AND RULES AS FOLLOWS: PLAINTIFF'S RETIREMENT TO BE DIVIDED EQUALLY PURSUANT TO A QUALIFIED DOMESTIC RELATIONS ORDER TO BE OBTAINED AT THAT TIME. PLAINTIFF TO PAY FIRST AND SECOND MORTGAGE, CAR LOAN, AND PERSONAL SERVICE LOAN AND ALIMONY OF \$300 PER MONTH. PLAINTIFF TO BE AWARDED TRUCK AND CAMPER WITH ITEMS RESTORED TO CAMPER THAT HAVE BEEN REMOVED. PLAINTIFF AWARDED SNOWBLOWER. DEFENDANT AWARDED HOUSE AND CAR. EACH AWARDED PERSONAL PROPERTY AS ALREADY DIVIDED. PLAINTIFF TO PAY \$300 OF DEFENDANT'S ATTY FEES. DECREE OF DIVORCE WILL ISSUE PURSUANT TO COMPLAINT. EACH PARTY AWARDED DECREE FROM THE OTHER. DECREE FINAL UPON ENTRY.

Addendum "a"

3RD DISTRICT COURT-TOOELE

92 AUG 12 PM 12:42

FILED BY

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Salt Lake City, Utah 84101
(801) 328-1162

IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR TOOELE COUNTY, STATE OF UTAH.

DAVID V. LaBADIE,
Plaintiff,

MOTION TO AMEND FINDINGS AND
DECREE

-vs-

VERNA M. LaBADIE,
Defendant.

Civil No. 910300031

COMES NOW THE DEFENDANT, by and through counsel, Kellie F. Williams, and pursuant to Rule 4-501 of the Code of Judicial Administration and moves the above entitled court to amend the Decree of Divorce and Findings of Fact previously entered in the above captioned matter, so that said documents include a provision requiring the plaintiff to maintain the life insurance policy available to him through his employment naming the defendant as the sole beneficiary thereof.

SAID MOTION is based upon the fact that the above captioned matter came on for trial on November 13, 1991, before the Honorable Richard H. Moffat, at which time the defendant testified as to a desire that she be named as beneficiary under

the plaintiff's life insurance policy available through his employment at Tooele Army Depot. During testimony, the plaintiff agreed that he had no objection to maintaining his current life insurance and naming the defendant as the sole beneficiary thereof.

At the time the court rendered its decision, the court said that the plaintiff was ordered to maintain his life insurance policy through his employment naming the defendant as the beneficiary thereof.

Plaintiff's counsel prepared the decree and findings and submitted them to plaintiff's counsel for her review and approval, which documents were reviewed and approved and after which approval defendant's counsel discovered that the life insurance provision had been omitted. That error was pointed out to opposing counsel by way of a letter of January 7, 1992, a copy of which is attached hereto and designated as Exhibit A and incorporated herein by reference. Defendant's counsel requested that plaintiff prepare the amended decree and findings containing the necessary insurance provisions. Since that time, plaintiff's counsel has not prepared those documents, and in order to protect the rights of defendant and enforce the order of the court, it is reasonable that this court permit the amendment of the findings and decree to the court with the court's order. The omission was due to a clerical error as set forth in Rule 60 of the Utah Rules of Civil Procedure and the defendant respectfully requests that that error be corrected and that amended documents issue.

DATED THIS 4th day of August, 1992.

CORPORON & WILLIAMS

A handwritten signature in dark ink, appearing to read 'Kellie F. Williams', is written over a horizontal line.

KELLIE F. WILLIAMS
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am employed in the offices of
Corporon & Williams, attorneys for the defendant herein, and
that I mailed a true and correct copy of the Motion for Amended
Findings and Degree to in an envelope addressed to:

FRANK T. MOHLMAN
Attorney for Plaintiff
250 South Main Street
Tooele, Utah 84074

dated this 24 of August, 1992.


Secretary

Corporon & Williams

A Professional Corporation
Attorneys at Law
310 South Main Street
Suite 1400
Salt Lake City, Utah 84101

Kellie F. Williams
Mary C. Corporon
Jennifer Gandolfo

Telephone (801) 328-1100
Facsimile (801) 363-8240

January 7, 1992

FRANK T. MOHLMAN
Attorney at Law
250 South Main Street
Tooele, Utah 84074

Re: LaBadie v. LaBadie

Dear Frank:


Being directed to you is a Domestic Relations Allocation Order which I have prepared for your approval. I would appreciate your review of this document and return to my office for submission to the Office of Personnel Management.

I sent you a Quit-Claim Deed a month ago and have not received the signed deed back from you.

In addition, I have noted an error in the Findings and Decree that I did not note earlier. You did not set forth in the Findings and the corresponding Decree of Divorce a provision that Mr. LaBadie maintain Ms. LaBadie as the beneficiary on his life insurance policy. My notes of the Judge's decision indicate that is the order of the Court. It was also Mr. LaBadie's offer during cross-examination. I would appreciate your drafting an Amended Findings and Decree to comport with the Judge's decision so that they can be submitted to the Court.

Your immediate attention to these three issues is greatly appreciated.

Sincerely,


KELLIE F. WILLIAMS
Attorney at Law

KFW:sm

Enclosure: Domestic Relations Allocation Order (+ Orig.)
cc: Verna LaBadie

3RD DISTRICT COURT-TOOELE

92 AUG 19 PM 4:00

FILED BY R

FRANK T. MOHLMAN - #2289
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Attorneys for Plaintiff
250 South Main Street
Tooele, Utah 84074
Telephone: 882-1618

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

---ooOoo---

DAVID V. LaBADIE,	:	OBJECTION TO MOTION
Plaintiff,	:	TO AMEND FINDINGS
vs.	:	AND DECREE
VERNA M. LaBADIE,	:	Civil No. 910300031
Defendant.	:	

---ooOoo---

DAVID V. LaBADIE, by and through her attorney, FRANK T. MOHLMAN, hereby objects to defendant's Motion to Amend Findings and Decree dated August 4, 1992. In support thereof, plaintiff alleges the following:

1. Neither plaintiff nor his counsel have any recollection of an Order by the Court requiring the plaintiff to maintain the life insurance policy available to him through his employment at Tooele Army Depot naming the defendant as the sole beneficiary thereof, but, rather,

MOHLMAN & YOUNG
ATTORNEYS AT LAW
250 SOUTH MAIN
TOOELE, UTAH 84074

recall that when defendant made such a request for continuance of the insurance, the Court informally stated that if plaintiff desired to provide said insurance, the Court had no objection to him doing so, but that the Court would not order him to maintain that insurance.

2. A review of the Court's minute entry of the hearing, while being rather explicit about the Court's orders in this matter, makes no reference whatsoever to plaintiff's responsibility to maintain a life insurance policy for the benefit of defendant. A copy of said minute entry is attached hereto and incorporated herein by reference.

3. Plaintiff's counsel prepared the Findings and Decree based on the orders of the Court and they were approved as to form by defendant's counsel.

Dated this 19TH day of August, 1992.



FRANK T. MOHLMAN
Attorney for Plaintiff

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing to Kellie F. Williams, Attorney for Defendant,

Corporon & Williams, 310 South Main Street - Suite 1400, Salt
Lake City, Utah 84101, this 19th day of August,
1992.

Frederic O. Smith

91 NOV 13 PM 12:01

FILED BY _____ g

IN THE THIRD DISTRICT COURT

TOOELE COUNTY, STATE OF UTAH

LABADIE, DAVID V	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 910300031 DA
	:	DATE 11/13/91
VS	:	HONORABLE RICHARD H. MOFFAT
	:	COURT REPORTER WORTHEN, NORA
LABADIE, VERNA M	:	COURT CLERK JPK
DEFENDANT	:	

TYPE OF HEARING:
PRESENT: PLAINTIFF DEFENDANT

P. ATTY. MOHLMAN, FRANK T
D. ATTY. WILLIAMS, KELLIE F

THIS MATTER COMES NOW BEFORE THE COURT FOR A HEARING ON DIVORCE. DAVID LABADIE AND VERNA LABADIE WERE SWORN AND EXAMINED. PLAINTIFF EXHIBITS 1,2,3 AND DEFENDANT EXHIBITS 4 THROUGH 9 WERE OFFERED AND RECEIVED. COURT HEARS CLOSING ARGUMENTS AND RULES AS FOLLOWS: PLAINTIFF'S RETIREMENT TO BE DIVIDED EQUALLY PURSUANT TO A QUALIFIED DOMESTIC RELATIONS ORDER TO BE OBTAINED AT THAT TIME. PLAINTIFF TO PAY FIRST AND SECOND MORTGAGE, CAR LOAN, AND PERSONAL SERVICE LOAN AND ALIMONY OF \$300 PER MONTH. PLAINTIFF TO BE AWARDED TRUCK AND CAMPER WITH ITEMS RESTORED TO CAMPER THAT HAVE BEEN REMOVED. PLAINTIFF AWARDED SNOWBLOWER. DEFENDANT AWARDED HOUSE AND CAR. EACH AWARDED PERSONAL PROPERTY AS ALREADY DIVIDED. PLAINTIFF TO PAY \$300 OF DEFENDANT'S ATTY FEES. DECREE OF DIVORCE WILL ISSUE PURSUANT TO COMPLAINT. EACH PARTY AWARDED DECREE FROM THE OTHER. DECREE FINAL UPON ENTRY.

3RD DISTRICT COURT-TOOELE

92 OCT 27 PM 12:01

FILED BY

R

FRANK T. MOHLMAN - #2289
MOHLMAN AND YOUNG
Attorneys for Plaintiff
250 South Main Street
Tooele, Utah 84074
Telephone: 882-1618

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

---ooOoo---

DAVID V. LaBADIE,	:	MOTION FOR RECONSIDERATION
Plaintiff,	:	OR IN THE ALTERNATIVE A
vs.	:	MOTION FOR STAY PENDING
VERNA M. LaBADIE,	:	APPEAL AND REQUEST FOR
Defendant.	:	HEARING
	:	Civil No. 910300031

---ooOoo---

COMES NOW the plaintiff, by and through his attorney, FRANK T. MOHLMAN, and moves the Court to reconsider its ruling approving the defendant's request that plaintiff name defendant the beneficiary of his life insurance policy. The Court has not explained its reasoning for its ruling and there is no basis in fact or law which should allow the defendant the remedy requested in her motion. As a general rule, the obligation to pay alimony terminates on the obligor's death (See 24 Am Jur 2d, Divorce and

OHLMAN & YOUNG
ATTORNEYS AT LAW
250 SOUTH MAIN
TOOELE, UTAH 84074

Separation, \$611), and so there is no need to have a life insurance policy to guarantee the alimony payments. Furthermore, the only thing in the record that counsel has submitted is a statement of defendant's counsel that the insurance issue had been resolved. There is not in the record presented to the Court an affirmative decision by the Court as to the issue of the life insurance. Plaintiff's counsel has requested from the court reporter a full transcript of the trial so that the Court's decision may be fully explained.

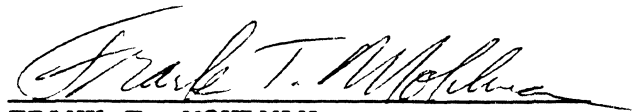
In addition to the above factors, the plaintiff has remarried and it is important that he provide insurance coverage for his present wife in the event of his death. Because of plaintiff's health problems, the only life insurance policy he has is that which is offered through his employment.

Plaintiff moves, in the alternative, for a stay pending appeal of the execution of the Court's order in the event that the Court denies this Motion for Reconsideration. As indicated above, the plaintiff has remarried and his new spouse is in need of the insurance protection in the event of plaintiff's death. Furthermore, defendant has not paid the obligations on the debts ordered by the Court and it is likely that plaintiff's estate would be sued for those debts in the event of his death.

WHEREFORE, plaintiff prays that the Court reconsider its ruling approving the defendant's request that the plaintiff name

the defendant as the beneficiary of his life insurance policy; or, in the alternative, if the Court denies said motion, that the Court enter a stay pending appeal of the execution of the Court's Order; and that this matter be set for a hearing with the Court.

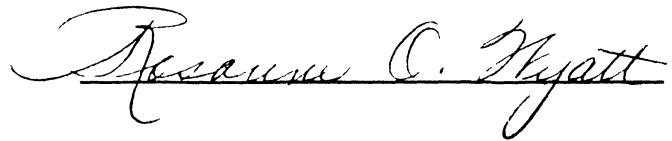
Dated this 27TH day of October, 1992.



FRANK T. MOHLMAN
Attorney for Plaintiff

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing to KELLIE F. WILLIAMS, Attorney for Defendant, Corporon & Williams, 310 South Main Street - Suite 1400, Salt Lake City, Utah 84101, this 27th day of October, 1992.



92 OCT 27 PM 12:00

FILED BY R

FRANK T. MOHLMAN - #2289
MOHLMAN AND YOUNG
Attorneys for Plaintiff
250 South Main Street
Tooele, Utah 84074
Telephone: 882-1618

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

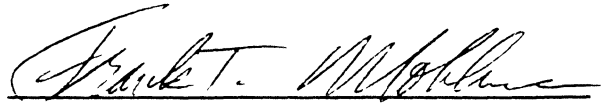
---ooOoo---

DAVID V. LaBADIE,	:	
Plaintiff,	:	OBJECTION TO PROPOSED
vs.	:	ORDER
VERNA M. LaBADIE,	:	
Defendant.	:	Civil No. 910300031

---ooOoo---

COMES NOW the plaintiff, by and through his attorney, FRANK T. MOHLMAN, and objects to the form of the proposed order submitted to the Court and mailed to counsel on October 21, 1992. There are no findings of fact associated with the order to indicate the reasoning behind the Court's ruling in this matter. The findings added to the original findings of fact do not explain the facts the Court used to arrive at its ruling on defendant's Motion to Amend Findings and Decree dated August 4, 1992.

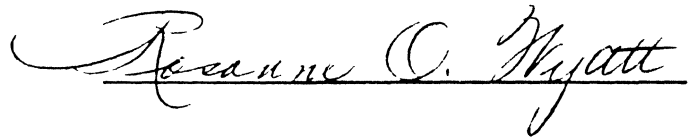
Dated this 27th day of October, 1992.



FRANK T. MOHLMAN
Attorney for Plaintiff

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing to KELLIE F. WILLIAMS, Attorney for Defendant, Corporon & Williams, 310 South Main Street - Suite 1400, Salt Lake City, Utah 84101, this 27th day of October, 1992.



3RD DISTRICT COURT-TOOELE
92 OCT 28 PM 3:04
FILED BY R

IN THE THIRD DISTRICT COURT
TOOELE COUNTY, STATE OF UTAH

LABADIE, DAVID V	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 910300031 DA
	:	DATE 10/28/92
VS	:	HONORABLE YOUNG, DAVID S.
	:	COURT REPORTER AMBROSE, EILEEN
LABADIE, VERNA M	:	COURT CLERK RGB
DEFENDANT	:	

TYPE OF HEARING:
PRESENT:

P. ATTY. MOHLMAN, FRANK T
D. ATTY. WILLIAMS, KELLIE F

THE COURT HEREBY DENIES THE PLAINTIFF'S MOTION FOR HEARING AND
FINDS THE AMENDMENT TO BE CONSISTENT WITH THE STIPULATION
IN COURT.

C/C COUNSEL

Addendum "p"

000100

3RD DISTRICT COURT-TOOELE

92 OCT 28 PM 3:03

FILED BY R

KELLIE F. WILLIAMS #3493
Attorney for Defendant
CORPORON & WILLIAMS, P.C.
310 South Main Street
Suite 1400
Salt Lake City, Utah 84101
(801) 328-1162

IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR TOOELE COUNTY, STATE OF UTAH.

DAVID V. LaBADIE,

Plaintiff,

O R D E R

-VS-

VERNA M. LaBADIE,

Defendant.

Civil No. 910300031DA
Judge David S. Young

THE ABOVE-CAPTIONED MATTER having come on before the above-entitled court pursuant to Rule 40-501, Code of Judicial Administration, on the defendant's Motion to Amend Findings and Decree, dated August 4, 1992, and the plaintiff having filed an objection to Motion to Amend and defendant having filed a response and a supplemental response, and the court having reviewed the motion and file and the transcript of hearing before Judge Moffat, based thereon and for good cause appearing therefor;

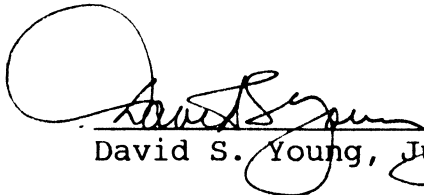
IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the Decree of Divorce and Findings of Fact previously entered in the above-captioned matter shall be amended to include a provision ordering the plaintiff to maintain the life insurance policy available to him through his employment at Tooele Army Depot and naming the defendant as the sole beneficiary thereof.

2. The Decree and Findings of Fact are ordered to be amended to reflect the foregoing.

DATED this 28th day of October 1992.

BY THIS COURT:

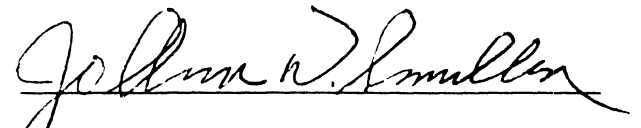

David S. Young, Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am employed in the offices of Corporon & Williams, P.C., attorneys for the defendant herein, and that I caused the foregoing ORDER to be served upon plaintiff by placing a true and correct copy of the same in an envelope addressed to:

Frank T. Mohlman, Esq.
250 South Main Street
Tooele, Utah 84074

and depositing the same, sealed, with first-class postage prepaid thereon, in the United States mail at Salt Lake City, Utah on the 21ST day of October 1992.


Secretary

30-3-4.1 to 30-3-4.4. Repealed.

Repeals. — Laws 1990, ch. 230, § 4 repeals these sections, as last amended by L. 1989, ch. 104, §§ 2 to 5, providing for the appointment, authority, duties, and jurisdiction of court commissioners, effective April 23, 1990.

30-3-5. Disposition of property — Maintenance and health care of parties and children — Division of debts — Court to have continuing jurisdiction — Custody and visitation — Termination of alimony — Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children; and

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide the day care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance, health, and dental care, or the distribution of the property and obligations for debts as is reasonable and necessary.

(4) In determining visitation rights of parents, grandparents, and other relatives, the court shall consider the welfare of the child.

(5) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

Subdivisions (5) through (7) as Subdivisions (5)(C) and (D) and (6), substituted "circuit" for "court" in Subdivision (5)(C), substituted "presiding judge" for "court" in two places in Subdivision (5)(D), substituted March 1st for February 28th in Subdivision (6), added Subdivision (7), and made stylistic changes throughout

The 1990 amendment in Subdivision (1) added "or if the statement is made on behalf of a business or corporation a statement that the business or corporation" to the introductory language of paragraph (C) and made stylistic changes, rewrote Subdivision (2) to delete language relating to appraisals and inserted "prepared by a certified public accountant", redesignated former Subdivision (2)(C) as present Subdivision (3), added present Subdivision (4),

and renumbered the remaining subdivisions accordingly, making appropriate reference changes throughout, in present Subdivision (3), deleted "audited" before "financial statement" and substituted "surety" for "company" in the first sentence and substituted "the value" for "a ratio of bond dollars to letter of credit dollars" in the second sentence, in present Subdivision (5), substituted "current assets" for "real assets" in two places, and rewrote present Subdivision (6) to delete a table setting out the ratio of bond dollars outstanding to net worth value

The 1992 amendment substituted "Commercial" for "qualifications of" in the rule heading, inserted "re-qualification and disqualification" and "commercial" in the Intent section, and substantially rewrote the rule

Rule 4-408. Locations of trial courts of record.

Intent:

To designate locations of trial courts of record.

Applicability:

This rule shall apply to all trial courts of record.

Statement of the Rule:

(1) Each county seat and the following municipalities are hereby designated as locations of trial courts of record: American Fork; Bountiful; Cedar City; Clearfield; Kaysville; Layton; Murray; Orem; Park City; Roosevelt; Roy; Salem; Sandy; Spanish Fork; West Valley City

(2) Subject to limitations imposed by law, a trial court of record of any subject matter jurisdiction may hold court in any location designated by this rule.

(Added effective January 1, 1992)

ARTICLE 5. CIVIL PRACTICE.

Rule 4-501. Motions.

Intent:

To establish a uniform procedure for filing motions, supporting memoranda and documents with the court

To establish a uniform procedure for requesting and scheduling hearings on dispositive motions

To establish a procedure for expedited dispositions.

Applicability:

This rule shall apply to motion practice in all district and circuit courts except proceedings before the court commissioners and the small claims de-

partment of the circuit court. This rule does not apply to petitions for habeas corpus or other forms of extraordinary relief.

Statement of the Rule:

(1) Filing and service of motions and memoranda.

(a) **Motion and supporting memoranda.** All motions, except uncontested or ex-parte matters, shall be accompanied by a memorandum of points and authorities appropriate affidavits, and copies of or citations by page number to relevant portions of depositions, exhibits or other documents relied upon in support of the motion. Memoranda supporting or opposing a motion shall not exceed ten pages in length exclusive of the "statement of material facts" as provided in paragraph (2), except as waived by order of the court on ex-parte application. If an ex-parte application is made to file an over-length memorandum, the application shall state the length of the principal memorandum, and if the memorandum is in excess of ten pages, the application shall include a summary of the memorandum, not to exceed five pages.

(b) **Memorandum in opposition to motion.** The responding party shall file and serve upon all parties within ten days after service of a motion, a memorandum in opposition to the motion, and all supporting documentation. If the responding party fails to file a memorandum in opposition to the motion within ten days after service of the motion, the moving party may notify the clerk to submit the matter to the court for decision as provided in paragraph (1)(d) of this rule.

(c) **Reply memorandum.** The moving party may serve and file a reply memorandum within five days after service of the responding party's memorandum.

(d) **Notice to submit for decision.** Upon the expiration of the five-day period to file a reply memorandum, either party may notify the Clerk to submit the matter to the court for decision. The notification shall be in the form of a separate written pleading and captioned "Notice to Submit for Decision." The notification shall contain a certificate of mailing to all parties. If neither party files a notice, the motion will not be submitted for decision.

(2) Motions for summary judgment.

(a) **Memorandum in support of a motion.** The points and authorities in support of a motion for summary judgment shall begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts shall be stated in separate numbered sentences and shall specifically refer to those portions of the record upon which the movant relies.

(b) **Memorandum in opposition to a motion.** The points and authorities in opposition to a motion for summary judgment shall begin with a section that contains a concise statement of material facts as to which the party contends a genuine issue exists. Each disputed fact shall be stated in separate numbered sentences and shall specifically refer to those portions of the record upon which the opposing party relies, and, if applicable, shall state the numbered sentence or sentences of the movant's facts that are disputed. All material facts set forth in the movant's statement and properly supported by an accurate reference to the record shall be

deemed admitted for the purpose of summary judgment unless specifically controverted by the opposing party's statement.

(3) Hearings.

(a) A decision on a motion shall be rendered without a hearing unless ordered by the Court, or requested by the parties as provided in paragraphs (3)(b) or (4) below.

(b) In cases where the granting of a motion would dispose of the action or any issues in the action on the merits with prejudice, either party at the time of filing the principal memorandum in support of or in opposition to a motion may file a written request for a hearing.

(c) Such request shall be granted unless the court finds that (a) the motion or opposition to the motion is frivolous or (b) that the dispositive issue or set of issues governing the granting or denial of the motion has been authoritatively decided.

(d) When a request for hearing is denied, the court shall notify the requesting party. When a request for hearing is granted, the court shall set the matter for hearing or notify the requesting party that the matter shall be heard and the requesting party shall schedule the matter for hearing and notify all parties of the date and time.

(e) In those cases where a hearing is granted, a courtesy copy of the motion, memorandum of points and authorities and all documents supporting or opposing the motion shall be delivered to the judge hearing the matter at least two working days before the date set for hearing. Copies shall be clearly marked as courtesy copies and indicate the date and time of the hearing. Courtesy copies shall not be filed with the clerk of the court.

(f) If no written request for a hearing is made at the time the parties file their principal memoranda, a hearing on the motion shall be deemed waived.

(g) All dispositive motions shall be heard at least thirty (30) days before the scheduled trial date. No dispositive motions shall be heard after that date without leave of the Court.

(4) Expedited dispositions. Upon motion and notice and for good cause shown, the court may grant a request for an expedited disposition in any case where time is of the essence and compliance with the provisions of this rule would be impracticable or where the motion does not raise significant legal issues and could be resolved summarily.

(5) Telephone conference. The court on its own motion or at a party's request may direct arguments of any motion by telephone conference without court appearance. A verbatim record shall be made of all telephone arguments and the rulings thereon if requested by counsel.

(Amended effective January 15, 1990; April 15, 1991.)

Amendment Notes. — The 1990 amendment rewrote this rule to such an extent that a detailed description is impracticable.

The 1991 amendment deleted "and a copy of

the proposed order" following "supporting documentation" in Subdivision (1)(b) and made related stylistic changes and inserted "principal" in Subdivision (3)(b).

Rule 4-504. Written orders, judgments and decrees.**Intent:**

To establish a uniform procedure for submitting written orders, judgments, and decrees to the court. This rule is not intended to change existing law with respect to the enforceability of unwritten agreements.

Applicability:

This rule shall apply to all civil proceedings in courts of record except small claims.

Statement of the Rule:

(1) In all rulings by a court, counsel for the party or parties obtaining the ruling shall within fifteen days, or within a shorter time as the court may direct, file with the court a proposed order, judgment, or decree in conformity with the ruling.

(2) Copies of the proposed findings, judgments, and orders shall be served upon opposing counsel before being presented to the court for signature unless the court otherwise orders. Notice of objections shall be submitted to the court and counsel within five days after service.

(3) Stipulated settlements and dismissals shall also be reduced to writing and presented to the court for signature within fifteen days of the settlement and dismissal.

(4) Upon entry of judgment, notice of such judgment shall be served upon the opposing party and proof of such service shall be filed with the court. All judgments, orders, and decrees, or copies thereof, which are to be transmitted after signature by the judge, including other correspondence requiring a reply, must be accompanied by pre-addressed envelopes and pre-paid postage.

(5) All orders, judgments, and decrees shall be prepared in such a manner as to show whether they are entered upon the stipulation of counsel, the motion of counsel or upon the court's own initiative and shall identify the attorneys of record in the cause or proceeding in which the judgment, order or decree is made.

(6) Except where otherwise ordered, all judgments and decrees shall contain the address or the last known address of the judgment debtor and the social security number of the judgment debtor if known.

(7) All judgments and decrees shall be prepared as separate documents and shall not include any matters by reference unless otherwise directed by the court. Orders not constituting judgments or decrees may be made a part of the documents containing the stipulation or motion upon which the order is based.

(8) No orders, judgments, or decrees based upon stipulation shall be signed or entered unless the stipulation is in writing, signed by the attorneys of record for the respective parties and filed with the clerk or the stipulation was made on the record.

(9) In all cases where judgment is rendered upon a written obligation to pay money and a judgment has previously been rendered upon the same written obligation, the plaintiff or plaintiff's counsel shall attach to the new complaint a copy of all previous judgments based upon the same written obligation.

(10) Nothing in this rule shall be construed to limit the power of any court, upon a proper showing, to enforce a settlement agreement or any other agreement which has not been reduced to writing.
(Amended effective January 15, 1990; April 15, 1991.)

Amendment Notes. — The 1990 amendment inserted "civil proceedings in" and "except small claims" under "Applicability" and made minor stylistic changes in the Statement of the Rule

The 1991 amendment added the final sentence to the Intent paragraph, deleted "and not of record" following "courts of record" in the Applicability paragraph, and added Subdivision (10)

Rule 4-505. Attorneys' fees affidavits.

Intent:

To establish uniform criteria and a uniform format for affidavits in support of attorneys' fees.

Applicability:

This rule shall govern the award of attorneys' fees in the trial courts.

Statement of the Rule:

(1) Affidavits in support of an award of attorneys' fees must be filed with the court and set forth specifically the legal basis for the award, the nature of the work performed by the attorney, the number of hours spent to prosecute the claim to judgment, or the time spent in pursuing the matter to the stage for which attorneys' fees are claimed, and affirm the reasonableness of the fees for comparable legal services.

(2) The affidavit must also separately state hours by persons other than attorneys, for time spent, work completed and hourly rate billed.

(3) If judgment is being taken by default for a principal sum which it is expected will require considerable additional work to collect, the following phrase may be included in the judgment after an award consistent with the time spent to the point of default judgment, to cover additional fees incurred in pursuit of collection.

"AND IT IS FURTHER ORDERED THAT THIS JUDGMENT SHALL BE AUGMENTED IN THE AMOUNT OF REASONABLE COSTS AND ATTORNEY'S FEES EXPENDED IN COLLECTING SAID JUDGMENT BY EXECUTION OR OTHERWISE AS SHALL BE ESTABLISHED BY AFFIDAVIT."

(4) Judgments for attorney's fees should not be awarded except as they conform to the provisions of this rule and to state statute and case law.
(Amended effective January 15, 1990.)

Amendment Notes. The 1990 amendment inserted "be filed with the court and" in Subdivision (1), deleted the former Subdivision (2), requiring descriptions of fee arrangements other than hourly rates, added the designation

(2) to the former last sentence of Subdivision (1), and in Subdivision (4) inserted the subdivision designation and the phrase beginning "and" at the end