1984

Kathryn Myrna Newmeyer v. Jeddy Paul Newmeyer : Brief of Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

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KATHRYN MYRNA NEWMEYER,)

PLaintiff-Respondent,)

vs.) Case No. 19183

JEDDY PAUL NEWMEYER,)

Defendant-Appellant.)

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BRIEF OF APPELLANT

Appeal from the Judgment of the Third District Court
in and for Salt Lake County, State of Utah
Honorable Jay E. Banks

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IN THE SUPREME COURT OF THE STATE OF UTAH

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vs.	)	
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NATURE OF CASE

This domestic relations action is on appeal to this Court from the property distribution, alimony provisions, and attorney's fees awarded by a decree of divorce entered by the Court on the 25th day of March, 1983.

DISPOSITION IN LOWER COURT

The trial of this matter was held on the 28th day of February, 1983, in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Jay E. Banks, presiding. After trial a divorce was granted to the Plaintiff, the trial Court awarded Defendant his 1971 Maverick automobile; any rights that he would have to his pension plan at Utah Transit Authority, his motorcycle; an old piano; miscellaneous undescribed items and a lien against the parties home in Olympus Hills in the sum of Thirty-Two Thousand Six Hundred Six Dollars ($32,606.00) payable to him without interest at such time as the

Respondent remarries or cohabits with an adult male; or the youngest child reaches the age of 18 years or graduates from High School which ever occurs later or the home is sold or foreclosed; or the Plaintiff vacates the home for an unreasonable length of time or ceases to use it as her primary residence; The trial court also awarded Mrs. Newmeyer all of the balance of the equity in the home in Olympus Cove (said home was unencumbered by any mortgage, trust deed, or sales contract) a 1973 maverick automobile, a 1967 Ford truck; her savings at Cottonwood Thrift in excess of Ten Thousand Dollars ($10,000.00) and Lavoys Credit Union in excess of Four Thousand Dollars ($4,000.00) and Pioneer Thrift in the approximate sum of Three Thousand Dollars ($3,000.00); an interest in five (5) building lots held in joint tenancy with her brother as part of an inheritance from her fathers estate; the gasoline lawn mower; and the personal property in her possession (which included the household furniture exclusive of the old piano).

There were no debts of the parties.

The Court placed a value upon the home of the parties One Hundred Seventeen Thousand Dollars ($117,000.00) and made no other findings of values.

In addition the Plaintiff was awarded Two Hundred Dollars ($200.00) per month as child support for one minor child who was then age Twelve (12) and One Dollar ($1.00) per year alimony and Fourteen Hundred Twenty-Three Dollars ($1,423.00) as

attorney's fees.

No evidence was presented concerning the value of any pension plan of Defendant with Utah Transit Authority, no evidence was taken concerning attorney's fees, (except in Plaintiff answering her counsels question as to how much she had paid as attorney's fees, her answer was Fourteen Hundred Twenty-Two Dollars ($1,400,00)),(Tr. 47).

RELIEF SOUGHT ON APPEAL

Appellant, Jeddy Paul Newmeyer, respectfully requests this court to reverse the trial Court and revise the decree and award the Defendant an equitable division of the marital assets of the parties, and appropriately balance the equities, eliminate alimony and the award of attorney's fees, allow Appellant the tax deduction for the minor child for the taxable year, 1983 and each taxable year thereafter; require a recitation of the equitable lien of Appellant in any Quit Claim Deed required of him to be delivered to the Respondent.

STATEMENT OF FACTS

The parties were married on the 26th day of December, 1962, a little over Twenty (20) years prior to the date of trial to dissolve their marriage (R. at 91; Tr at 55). The parties had two (2) children, one who was an adult at the time of trial and was serving in the United States Air Force, the younger one is a female child approximately 12 years of age at the time of trial, the Respondent, Mrs. Newmeyer worked for approximately three (3)

months after the marriage and then did not work again outside the home for approximately thirteen (13) years (with exception of some minor babysitting jobs) and resumed work in 1975.

The parties bought three (3) homes during their marriage, their first one shortly after the marriage in 1962 at 382 Vitas Avenue, for a purchase price of Ten Thousand Six Hundred Forty-Five Dollars ($10,645.00) with a down payment of approximately Seven Thousand Dollars ($7,000.00) (Tr. at 19). Respondent testified that she put down Fifty-Five Hundred Dollars ($5,500.00) and that Mr. Newmeyer put down Fifteen Hundred Dollars ($1,500.00) (Tr. at 20). Appellant, Mr. Newmeyer testified that he put down approximately Twenty-One Hundred Dollars ($2,100.00) and that Mrs. Newmeyer put down Twenty-Three to Twenty-Five Hundred Dollars ($2,300.00 to $2,500.00).(Tr. at 121). Appellant also paid as much as five (5) payments per month on the Vitas property (Tr. at 94 line 4 through 7). The parties lived in the Vitas home for approximately nine (9) years and then bought a home at 3924 South 10th East (Tr. at 21) trading their Vitas home for a value of Eleven Thousand Nine Hundred Fifty Dollars ($11,950.00), paying Three Thousand in addition received from the sale of ground, which had been given to the parties by Respondent's father and had been held in joint tenancy with her brother (Tr. at 22) and then an additional Fifty-Five Hundred Dollars ($5,500.00) from Respondent's mother's estate (Tr. at 22). Respondent's mother passed away in 1966, just four (4)

years after the parties marriage and seventeen years (17) prior to their divorce. The property on 10th East was purchased at a price of Twenty-One Thousand Five Hundred Dollars ($21,500.00) (Tr. at 21).

The parties lived on 10th East until 1979, when they purchased a home in Olympus Cove at 3242 Fortuna Drive. Said home was purchased at a price of One Hundred Eight Thousand Dollars ($108,000.00) (Tr. at 24). The parties were made aware of an appraisal on said property at the time of their purchase valuing said home at One Hundred Nineteen Thousand Dollars ($119,000.00) (Tr. at 134).

The parties received Fifty-Four Thousand Three Hundred Seventy-Two Dollars 18 cents ($54,372.18) net proceeds from the sale of their 10th East property and the Plaintiff put in approximately Forty-Six Thousand One Hundred Seventeen Dollars 98 cents ($46,117.98) from an inheritance from her father who passed away in June of 1978, One year prior to purchasing the Olympus Cove home (Tr. at 27) (see also Plaintiff's exhibit 13P). Mr. Newmeyer paid the One Thousand Dollars ($1,000.00) earnest money, Fifty-One Hundred Twenty-Nine Dollars 55 cents ($5,129.55) and then Fifty-Four Hundred Dollars ($5,400.00) which was part of the stated proceeds from the sale of the 10th East home (Tr. at 136) (Tr. at 138 and 139), (that is, the 10th East property purchase price was over stated by approximately Fifty-Four Hundred Dollars ($5,400.00) a method apparently devised by the purchasers and a

realtor (creative financing) to accomplish loan qualification with stated down payment), therefore, Mr. Newmeyer placed in the Olympus Cove home, Twelve Thousand One Hundred Twenty-Nine Dollars ($12,129.00) (Tr. at 127 at lines 8 through 11).

The Respondent retained approximately Twelve Thousand Dollars ($12,000.00) cash from her inheritance and kept it in one or more savings accounts and at the time of trial had approximately Seventeen Thousand Dollars ($17,000.00) in her accounts (Tr. at 37).

The Appellant was a good provider who was employed at the time of the marriage and had a two year old Ford automobile and some savings and was employed most of the time throughout the marriage experiencing approximately six (6) weeks of unemployment over the Twenty-One (21) year marriage (Tr. at 121,122,124). The parties never experienced much indebtedness throughout their marriage. Mr. Newmeyer was pretty frugal and was a hard worker, very careful with his money (Tr. at 81,82).

Each of the parties called an appraiser as a witness who gave a value on the home in Olympus Cove, Respondent's expert, Mr. Paul J. Lund gave a value of One Hundred Twelve Thousand Dollars ($112,000.00) stating his reason for the difference between his appraised value and that of Mr. Frank Blankenship, the expert for the Defendant, was due to a difference in his assigning a Six Hundred Dollar ($600.00) value to a two (2) vehicle garage in addition to their regular attached

two (2) vehicle garage. The detached garage is well over ten feet (10'), high built to house a boat or motorhome or other recreational vehicles. Mr. Lund's value, Six Hundred Dollars ($600.00), was on the basis that the recreational vehicle garage had an equal value to a concrete pad for the parking of a recreational vehicle, that is Six Hundred Dollars ($600.00) (Tr. at 8).

Mr. Blankenship put a value on the recreational vehicle garage of Four Thousand Dollars ($4,000.00) (Tr. at 49). Mr. Blankenship gave an appraised value of One Hundred Twenty-Two Thousand Dollars ($122,000.00) (Tr. at 50). Mr. Blankenship testified that the extra garage made the house and property more desireable and it was his opinion that a purchaser would be willing to pay the additional value that he had placed upon it, because of that garage (Tr. at 54).

Both parties were in good health at the time of trial and had been, both are employed, Respondent has a diploma from the LDS Business College (Tr. 55, 57).

The parties filed a joint income tax return for the taxable year 1981 and had an additional tax burden beyond the withholding from their checks, Seventeen Hundred Forty-One Dollars ($1,741.00) for the Federal return Five Hundred Fifty-Four Dollars ($554.00) to Utah State Tax Commission for the state return and at a cost of Twenty-Eight Dollars ($28.00) for

tax preparation. The entire burden of Twenty-Three Hundred Twenty-Three Dollars ($2,323.00) was born by the Appellant (Defendants Exhibit 7D, Tr. at 133).

From 1975 through 1980 the Respondent worked at a cleaners making Three Dollars Fifty cents ($3.50) per hour one day per week (Tr. at 74). At the time of trial Respondent was employed at Sorensen Research, grossing Eight Hundred Sixty-Two Dollars Seventy cents ($862.70) per month (Defendant's Exhibit 20D). At the time of trial the Appellant was working at Utah Transit Authority as a mechanic earning Thirteen Hundred Ten Dollars Sixty cents ($1,310.60) per month (R. at 67).

In addition to the Respondents income from working she received approximately One Hundred Dollars ($100.00) per month from a savings certificate (Tr. at 78) or One Hundred Twenty-Five Dollars ($125.00) per month (Defendant's Exhibit 20-D).

ARGUMENT

POINT 1. THE COURTS DELAY IN RULING RESULTED IN A SERIOUS PREJUDICE TO THE APPELLANT.

The Court took the critical issues under advisement, that is the value of the home in Olympus Cove, the contributions of the parties toward said home and a division of the equity therein.

The Court then made its final ruling more than three (3) weeks after trial from the Courts notes rather than the evidence. That is the evidence showed that the house appraisal

at the time of purchase was One Hundred Nineteen Thousand ($119,000.00) in August of 1979; that the Respondent herself valued the home at the time of filing her Complaint in 1982 at One Hundred Twenty Thousand Dollars ($120,000.00); that the Respondent's expert witness valued the home at One Hundred Twelve Thousand Dollars ($112,000.00) but gave the extra garage a value of Six Hundred Dollars ($600.00) only; that the Appellants expert witness valued the home at One Hundred Twenty-Two Thousand Dollars ($122,000.00). The Court ended up with a valuation of One Hundred Seventeen Thousand Dollars ($117,000.00) which is obviously the mid point between the two expert witnesses.

The Court's determination of a value which does not relate to any of the evidence but is a mere compromise, does not represent an exercise of discretion but is an arbitrary and capricious act of the trial Court.

The Respondent, testified consistent with the documentary facts which show approximately Forty-Six to Forty Seven Thousand Dollars ($46,000.00 to $47,000.00) from her inheritance from her father's estate went into the house in Olympus Cove (Tr. at 29 line 18). Exhibit 13P shows a check to Associated Title Company in the sum of Eighteen Thousand Eight Hundred Seventy Dollars Seventy-Six cents ($18,870.76) and Exhibit 11P shows a withdrawal from her savings at Valley Bank in the sum of Twenty-Seven Thousand Two Hundred Forty-Seven Dollars Ninety-Eight cents ($27,247.98) for a total of Forty-Six Thousand

One Hundred Eighteen Dollars Seventy-four cents ($46,118.74). The Court however, makes its ruling concerning the division of the equity of the house based upon the entire inheritance of Respondent being paid toward the Olympus Cove house. It appears the Court deducted the Sixty Thousand One Hundred Eighteen Dollars ($60,118.00) from its arbitrary value of One Hundred Seventeen Thousand ($117,000.00) placed on the house resulting in a subtotal of Fifty-Six Thousand Eight Hundred Eight-Two Dollars ($56,882.00) then deducted Five Thousand One Hundred Twenty-Seven Dollars ($5,127.00), therefrom, resulting in a subtotal of Fifty-One Thousand Seven Hundred Fifty-Five Dollars ($51,755.00) divided that subtotal by two (2) resulting in a sum of Twenty-Five Thousand Eight Hundred Seventy-Seven Dollars Fifty cents ($25,877.50) added back to that figure Five Thousand One Twenty-Seven Dollars ($5,127.00), which the Court assumed was the contribution of the Appellant to the Olympus Cove house, resulting in the sum of Thirty-One Thousand Four Dollars Fifty cents ($31,004.50), and then added the original Fifteen Hundred Dollars ($1,500.00) which Appellant contributed to the parties first house resulting in Thirty-Two Thousand Five Hundred Four Dollars Fifty cents ($32,504.50), which is nearly the amount awarded by the Court as an equitable lien in favor of Appellant. If the court did not go through computations similar to those above in arriving at an award to Appellant it is most difficult to assume any rationale for the sum of the lien.

The Court should have valued the house at One Hundred Twenty-Two Thousand Dollars ($122,000.00) (Mr. Blankenships value should have been accepted because it placed a realistic value upon the two (2) vehicle brick garage which is high enough to park recreational vehicles including motorhomes). Respondent's own value at the time of filing was One Hundred Twenty Thousand Dollars ($120,000.00) the appraised value four (4) years prior to the divorce trial, at the time of purchase, was One Hundred Nineteen Thousand Dollars ($119,000.00). Therefore the Court should have deducted Respondents contribution from her father's estate, which was inherited shortly before the purchase, Forty-Six Thousand One Hundred Eighteen Dollars ($46,118.00) from One Hundred Twenty-Two Thousand Dollars ($122,000.00) getting a subtotal of Seventy-Five Thousand Eight Hundred Eighty-Two Dollars ($75,882.00) he should then have deducted the Twelve Thousand Dollars ($12,000.00) contributed by the Appellant, leaving a subtotal of Sixty-Three Thousand Eight Hundred Eighty-Two Dollars ($63,882.00) should then have divided that sum by two (2) getting a total of Thirty-One Thousand Nine Hundred Forty-One Dollars ($31,941.00) and should then have added the Twelve Thousand Dollars ($12,000.00) contributed by the Appellant to that sum giving Appellant the sum of Forty-Three Thousand Nine Hundred Forty-One Dollars ($43,941.00) as an equitable lien on said property. Appellants contribution of Twelve Thousand Dollars ($12,000.00) came by the One Thousand Dollars ($1,000.00)

earnest money, Five Thousand One Hundred Twenty-Nine Dollars ($5,129.00) from his savings and Six Thousand Dollars ($6,000.00) from savings (Tr. at 127).

A. Standard of Review. Divorce is an equitable proceeding in which this Court may review questions of fact as well as questions of law. Hansen vs. Hansen, 537 P.2d 491 (Utah 1975) although a trial court's findings, judgments and decision are given favor they are subject to review and the exercise of discretion it is not without limitation. DeRose vs. DeRose, 19 Utah 2d 77, 426 P.2d 221 (1967), when the trial court fails to apply correctly the principals of law and equity wherein a case where the evidence clearly preponderates against the findings or there is a clear abuse of discretion and especially where the court obviously acts in an arbitrary and capricious manner, this court will revise or remand as necessary. Watson vs. Watson, 561 P.2d 1072 (Utah 1977). On appeal. this court may review a case, weigh the evidence, and substitute its own judgment for that of the trial court where necessary. Graziano vs. Graziano, 7 Utah 2d 187,321 P.2d 931 (1958). When the decree works an injustice and is contrary to equity and good conscience this court must revise that decree. Christensen vs. Christensen, 21 Utah 2d 261, 444 P.2d 511 (1968).

B. The Trial Court Erred in Assigning an Arbitrary Value to the House and in Failing to Assign Values to Other Properties.

In the instant case, the court as noted above, placed an arbitrary value upon the Olympus Cove property of the parties then made errors in it's calculations in it's distribution to the parties and contrary to the mandate of Rule 52(a) of the Utah Rules of Civil Procedure failed to determine the value of any of the other assets distributed to the parties making it difficult if not impossible for this court to make a proper determination as to whether or not the property distribution made by the trial court was equitable and just. Formal findings of fact are absolutely necessary in a divorce action where property is distributed, Read vs. Read, 594 P.2d 871 (1979), Chandler vs. West, 610 P.2d 1299 (Utah 1980); Martin vs. Martin, 22 Wash. App.295, 588 P.2d 1235 (1979).

As will be seen subsequently the court gave the Respondent, the entire value of what it determined was her inheritance through the marriage despite the fact that some of the inheritance was received within four (4) years from the date of marriage, that is some seventeen (17) years prior to the divorce and ascribed that value to her in the Olympus Cove house, then also gave her, her savings which represented some of the same inheritance resulting in a duplication of no less than Fourteen Thousand Dollars ($14,000.00). Had the court made exact findings these glaring errors would have become apparent prior to the entry of the decree.

Had the court ruled within a reasonable time from the trial and from the evidence including the Exhibits, those errors could have been avoided and an equitable result achieved.

POINT II. RESPONDENT RECEIVED CREDIT IN TWO (2) PLACES FOR A PORTION OF THE INHERITANCE RECEIVED FROM HER FATHER IN 1979.

The Respondent received an inheritance from her father in August of 1979, her father having passed away in June of 1978 (Tr. at 58). The parties purchased the Olympus Cove house in August of 1979, the court awarded to the Respondent her savings which amounted to over Seventeen Thousand Dollars ($17,000.00) according to her testimony, at the time of trial (Tr. at 75). The court then also gave the Respondent all of the equity in the house subject to an equitable lien in favor of the Appellant, which gave the Respondent credit for what the court considered her entire inheritance through the marriage, that is approximately Sixty Thousand Dollars ($60,000.00). At least a large portion, probably no less than Fourteen Thousand Dollars ($14,000.00) of the savings account was part of the inheritance from the Respondent's father estate.

By her own testimony and by the Exhibits, it appears that Respondent used no more than Forty-Six Thousand One Hundred Eighteen Dollars Seventy-four cents ($46,118.74) of the inheritance from her father toward the purchase of the Olympus property.

For the court to make such a division giving the Respondent, duplicate credit is an arbitrary act of the trial court which should be reversed.

POINT III. THE TRIAL COURT FAILED TO TAKE INTO CONSIDERATION THE ADDITIONAL TAXES PAID BY THE APPELLANT OVER AND ABOVE WITHHOLDING OF THE PARTIES FOR THE TAXABLE YEAR OF 1981.

The court made no finding whatsoever concerning any consideration or lack thereof, of the taxes paid in addition to withholding by the Appellant for the taxable year 1981 under a joint tax return, said sum equals Twenty-Three Hundred Twenty-Three Dollars ($2,323.00) including the costs of preparation of tax returns (Defendants Exhibit 7D)

Such a failure to make a finding or to take into consideration the matter of payment of additional taxes makes the outcome arbitrary and capricious.

POINT IV. RESPONDENT'S COMPLAINT REQUESTS THAT APPELLANT BE ALLOWED TO CLAIM THE MINOR CHILD AS A DEPENDENT FOR INCOME TAX PURPOSES (R4).

Respondent's complaint prays that Appellant be allowed to claim the minor child as a dependent for income tax purposes both state and federal providing he was current at the end of each calendar year.

Respondent made no motion to amend her pleading concerning the matter of tax dependents, the court made no motion concerning said matter and made no finding that Appellant was

delinquent at the end of the calendar year of 1982 on the orders of the court. In fact the testimony showed that the Appellant was current on his child support obligation at the time of trial (Tr. at 130).

POINT V. THE COURT FAILED TO TAKE INTO CONSIDERATION ANY APPRECIATED VALUES IN THE PARTIES HOMES DURING THE MARRIAGE AND ASSIGN EACH A PORTION.

The court failed to take into consideration that the Appellant was employed during the twenty-one (21) year period of marriage all except approximately six (6) weeks and that he was frugal and careful with money and that through wise purchases and sales of real estate and with the assistance of the Plaintiff's inheritance built up a marital estate unencumbered.

The court made no finding and it cannot be assumed that the Respondent by herself with a period of no employment for thirteen (13) years during the marriage and rather minor earnings for the most part during her employment could save substantial sums in addition to those inherited without the assistance of the Appellant.

Further the court made no finding, but it is obvious that each of the houses appreciated during the time the parties were married and lived in said houses, that is the first house on Vitas appreciated approximately Fifteen Hundred Dollars ($1,500.00), the second house had an appreciated value of approximately Thirty-Two Thousand Five Hundred Dollars

($32,500.00) and the Olympus home appreciated any where from Four Thousand to Fourteen Thousand Dollars ($4,000.00 to $14,000.00) for a total appreciated value during the marriage of the parties of Forty-Eight Thousand Dollars ($48,000.00), which should have been equitably divided between the parties to avoid an arbitrary and capricious outcome in the property distribution, Read vs. Read. 594 P.2d 871 (1979).

The decree should require that a Quit Claim Deed from the Appellant to Respondent recite Appellants equitable lien.

Unless a Quit Claim Deed from Appellant to Respondent recites Appellants equitable lien, Appellant will not be adequately protected from purchasers or lenders who may encumber the Olympus property.

POINT VI. THE PARTIES CONSIDERED THE INHERITANCE RECEIVED FROM RESPONDENT'S MOTHER AS MERGED INTO THE MARITAL ESTATE.

The parties by their acts and conduct through the years of their marriage considered the inheritance and gifts from Respondent's father and or through Respondent's mothers estate (Respondent's mother died four (4) years after the marriage) as merged in their marital estate as evidenced by them taking title to their homes in joint tenancy; and although maintaining separate accounts for their individual earnings the parties each contributed to the marital abode. Thus the court should not have considered as an inheritance sacred from distribution the gifts

and inheritance from Plaintiff s father during his life time or from Plaintiff's mothers estate which occurred seventeen (17) years prior to the dissolution of the marriage 30-3-5 Utah Code Annotated (1953 as amended); Englert vs. Englert 576 P.2d 1274.

POINT VII. THERE WAS NO EVIDENCED TO ESTABLISHE REASONABLENESS OF ANY AWARD OF ATTORNEY'S FEES.

There is no evidence concerning the necessity of or the total time necessary for legal services or the hourly rate charged or the reasonableness thereof for an award of attorney's fees to Respondent, thus no attorney's fees should have been awarded.

The only mention of attorney's fees during the entire time of the trial was that Plaintiff had paid the sum of Fourteen Hundred Twenty-Two Dollars ($1,422.00) (Tr. at 47 lines 11 through 13). See Delatore vs. Delatore green sheets decided by the Utah Supreme Court 21st day of February, 1984, case no. 18625.

POINT VIII. NO ALIMONY SHOULD HAVE BEEN AWARDED UNDER THE CIRCUMSTANCES.

Both parties are healthy, able bodied and employed, there is very little disparity in income, there are no encumberances on properties, no indebtedness, the Plaintiff has additional income from investments and additional property through inheritance (no less than five (5) building lots in New Mexico). Alimony should be based primarily upon needs, Carter

vs. Carter,563 P.2d 177; MacDonald vs. MacDonald,236 P.2d 1066, 120 Utah 573; the Respondent is the one who desires to terminate the marriage, the Respondent can provide adequately for herself and presumably the child support is set at a reasonable figure for the support of the minor child, thus no alimony should be awarded.

CONCLUSION

The trial court acted in an arbitrary and capricious manner in establishing the value of the Olympus Cove home contrary to any of the evidence, such act was not an act of discretion but became arbitrary and unrelated to the evidence.

The trial court ignored the evidence probably as a result of the long delay in ruling on matters under advisement and in referring to notes only, resulting in a serious prejudice in the award concerning Appellant.

The trail court erred in giving the Respondent duplicate credit in her savings and in the house on Olympus Cove of at least a duplication of Fourteen Thousand Dollars ($14,000.00) from her father's estate.

The trial court erred in allowing Plaintiff to recover the total amount she received from her parents estates despite the fact that her mother passed away seventeen (17) years prior to the divorce and despite the fact that part of the gift

from her father was during his lifetime early in the marriage and the parties had considered those matters merged into their marital estate.

The trail court erred in not giving the Appellant credit for the appreciation of the assets of the parties acquired during their marriage primarily through his industry and employment and assistance through her parents.

The trial court erred in awarding alimony under all the circumstances of the parties.

The trial court errored in awarding attorney's fees where there is no evidence to support such an award or to determine the reasonableness thereof, or the necessity therefore.

The trial court erred further in failing to consider or make any finding concerning the additional tax which was paid by Appellant for the parties failure to withhold sufficient sums for the taxable year 1981.

This court should review and weigh the evidence and make corrections, revisions or reversal as are necessary in accordance with the requested relief in Appellant's brief.

RESPECTFULLY SUBMITTED this 4th day of March, 1984.

GLEN M. RICHMAN
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of March, 1984, I placed two (2) copies of the foregoing brief of Appellant with a Delivery Service to be delivered to David A. McPhie, attorney for Respondent at 8 East Broadway, Suite 201, Salt Lake City, Utah 84101.