

2003

# Walter John Horton v. Tamrika Khvtisiashvili : Brief of Appellee

Utah Court of Appeals

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Walter J. Horton; appellant pro se.

Suzanne Marelius; Littlefield & Peterson; Attorney for Appellee.

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**IN THE UTAH COURT OF APPEALS**

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**WALTER JOHN HORTON,**

Petitioner and Appellant,

-vs-

**TAMRIKA KHVTISIASHVILI,**

Respondent and Appellee.

**CASE NO. 20020275**

Priority No. 4

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**BRIEF OF APPELLEE**

---

Appeal from the Decree of Divorce of the  
Third Judicial District Court, Salt Lake County, State of Utah  
The Honorable Glenn K. Iwasaki, Third District Court Judge

---

Suzanne Marelius (#2081)  
Littlefield & Peterson  
426 South 500 East  
Salt Lake City, UT 84102  
(801) 531-0435  
Attorney for Respondent and Appellee

Walter J. Horton  
1068 3<sup>rd</sup> Avenue #2  
Salt Lake City, UT 84103  
(801) 558-1276  
Petitioner and Appellant, Pro-Se

**FILED**  
Utah Court of Appeals

**FEB 13 2003**

**Paulette Stagg**  
Clerk of the Court

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Suzanne Marelius (#2081)  
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426 South 500 East  
Salt Lake City, UT 84102  
(801) 531-0435  
Attorney for Respondent and Appellee

Walter J. Horton  
1068 3<sup>rd</sup> Avenue #2  
Salt Lake City, UT 84103  
(801) 558-1276  
Petitioner and Appellant, Pro-Se

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**IN THE UTAH COURT OF APPEALS**

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**WALTER JOHN HORTON,**

Petitioner and Appellant,

-vs-

**TAMRIKA KHVTISIASHVILI,**

Respondent and Appellee.

**BRIEF OF  
APPELLEE**

**CASE NO. 20020275**

Priority 4

---

Respondent/Appellee Tamrika Khvtisiashvili (hereinafter “Respondent”) submits the following as her response brief in this Appeal:

**STATEMENT OF JURISDICTION**

Jurisdiction to review the final judgment of the Third District Court, namely the Decree of Divorce entered December 19, 2000 and the Supplemental Decree of Divorce entered July 27, 2001, is vested in the Utah Court of Appeals pursuant to Rule 3 and 4 of the Utah Rules of Appellate Procedure and §78-2a-3(2)(h) UTAH CODE ANNOTATED (1998).

## **STATEMENT OF THE ISSUES**

Respondent does not dispute the Statement of Issues provided by Petitioner and will repeat them here for convenience as follows:

- I. Did Counsel for the Respondent Offer Derogatory and Untrue Statements to the Trial Court Resulting in Prejudice?
- II. Did the Trial Court Abuse its Discretion or Violate Due Process in Terminating the Joint Custody Status of the Parties?
- III. Did the Trial Court Abuse its Discretion or Violate Due Process in Bifurcating the Divorce?
- IV. Did Counsel for the Petitioner Walter Horton Err in His Representation of Petitioner's Case?
- V. Did the Trial Court Abuse its Discretion in Refusing to Annul the Marriage of the Parties?
- VI. Did Counsel for the Petitioner Walter Horton Misrepresent Petitioner in Failing to Timely Forward the Supplemental Decree of Divorce?
- VII. Did Counsel for Petitioner Walter Horton Impair Petitioner's Rights in Failing to Convince the Court to Set Aside the Judgment Against Petitioner?
- VIII. Did the Trial Court Abuse its Discretion in Not Granting Petitioner Attorneys Fees?

## **STATEMENT OF THE CASE**

The parties in this case were together for less than two years and had one child together, namely: Dagney Horton (DOB 01/08/95). Petitioner filed for a divorce and protective order proceeding in October 1996, at which time the minor child was less than



two years old. The parties were initially awarded joint custody of the child under a liberal schedule until it was evident that Respondent was functioning as the sole caretaker of the child and that Walter had no stable employment, no stable residence, would not visit the child for weeks at a time and was not an appropriate parent for joint custody. The Court entered an Order of sole custody for Respondent on November 22, 2000 and ordered Walter to pay child support of \$163 per month on her behalf. The divorce trial took place before Judge Glenn Iwasaki on June 29, 2001 at which time Petitioner was represented by Attorney Martin Tanner. The parties negotiated a complete settlement of all issues which was reported on the Court record and agreed to in open Court by both parties and counsel. After entry of the Supplemental Decree of Divorce, Petitioner filed an objection and requested to set aside the Supplemental Decree. His main objection was to the loss of joint legal custody status and that he could not automatically tend the child when a surrogate provider was needed. The Commissioner denied the Motion to Set Aside and upon review of the videotape of the stipulation, determined that there were some inaccuracies in the final pleadings which she viewed as clerical errors and ordered that an *Amended* Supplemental Decree of Divorce be prepared. That Order was entered February 28, 2002 and Petitioner's appeal followed.

The trial decisions being appealed are the Decree of Divorce entered in this case December 19, 2000 which granted a bifurcated divorce and reserved other issues for trial.

After trial, the Court entered a Supplemental Decree of Divorce and Findings of Fact and Conclusions of Law on July 27, 2001 resolving all remaining divorce issues. This was challenged by Petitioner in a Motion to Set Aside Decree and eventually the Court entered an *Amended* Supplemental Decree of Divorce on February 28, 2002. The relevant facts resulting in each of these Orders can be summarized as follows:

(a) Decree of Divorce entered December 19, 2000. The trial court granted Respondent's Motion to Bifurcate the Divorce based on the following facts: the parties were married June 9, 1994 and separated when Petitioner filed a Protective Order proceeding in October 1996. After being married 1½ years, the divorce case had taken four years up to the point of bifurcation. Both parties had made significant changes in their life and there was no hope of reconciliation. The case had been significantly delayed by Mr. Horton's repeated objections and appeals to the Court of every legal step taken. The Court deemed it appropriate to provide this level of closure to the parties. There was no objection to the Commissioner Recommendation that the divorce be bifurcated and that Decree was finalized on December 19, 2000.

(b) Supplemental Decree of Divorce, Supplemental Findings of Fact and Conclusions of Law entered July 27, 2001. These pleadings were the result of a trial held June 29, 2001 before Judge Glenn Iwasaki. At this time Mr. Horton was represented by counsel Martin Tanner. The parties presented a complete stipulation of issues to the trial

court which was agreed to on the record by parties and counsel. No testimony was taken, rather, counsel simply reported the relevant terms of their stipulation. This trial resolved all pending issues including custody and visitation of the parties' one child, namely: Dagney A. Horton (DOB 01/08/95). The pleadings were then drafted by counsel for Respondent and sent to Attorney Martin Tanner on July 6, 2001 for review and approval as to form. They were not returned and after waiting the amount of time provided by Rule 4-504 Utah Code of Judicial Administration, the original documents were sent for entry by the Court and they were entered July 27, 2001.

(c) Amended Supplemental Decree of Divorce entered February 28, 2002.

Walter Horton filed a Motion to Set Aside the Supplemental Decree of Divorce which was heard by Commissioner Bradford on December 20, 2001. Mr. Horton was represented by counsel Steven Kuhnhausen. The Court entered an "Order on Motion to Set Aside Supplemental Decree of Divorce" on February 28, 2002, which *denied* the Motion of Mr. Horton to set aside the Supplemental Decree of Divorce which was determined to be a Motion under Rule 60(b) URCP. However, the Court, *sua sponte* found deficiencies in the Supplemental Decree as compared to the videotape of the Court Stipulation. To correct these deficiencies which appear to be clerical errors in the transcribing of the stipulation, the Court ordered that amended pleadings be prepared and filed. The Court directed three specific changes in these documents as follows:

- (i) that Respondent be awarded a judgment for support arrears of \$2,445 as Petitioner had never paid support pursuant to the temporary orders of the Court;
- (ii) that during the marriage, the parties incurred certain debts and obligations which had been fully paid by Respondent and that she was awarded judgment in the amount of \$2,000 payable by Petitioner; and
- (iii) that subparagraph 2a of the Supplemental Decree be eliminated and replaced with the language that the parties will abide by the Utah Advisory Guidelines. Paragraph 2a reads as follows:

“Childcare/Surrogate Care and Decision-Making Authority. At all times, the Petitioner is restrained from interfering with Respondent’s relationship and parenting of the minor child, including her school enrollment, health matters, childcare and other custodial issues. Respondent’s decision in these areas shall be final. The Petitioner has agreed to abide by the Utah Advisory Guidelines with the explicit understanding that Respondent will be in sole control of determining the childcare and surrogate needs and that this shall not be an automatic right of Petitioner to tend the child at any time he is free based on his history of casual employment which may be disruptive for the child. Respondent will consider Petitioner at any time she needs surrogate care along with her other options.

### **STATEMENT OF FACTS**

1. The parties were married June 9, 1994 in Salt Lake City, Utah.
2. The parties have one child together, namely: Dagney A. Horton, born January 8, 1995.

3. The parties separated on or about October 1996 when Petitioner obtained an *Ex-Parte* Protective Order against Respondent which was heard by the Court October 21, 1996. Respondent was unrepresented in that proceeding which resulted in an Order of Custody to Petitioner.

4. In December 1997, Respondent filed a Temporary Restraining Order and Affidavit concerning custody of the child. On January 12, 1998, Judge Iwasaki held an evidentiary hearing where both parties were present and represented by counsel. Mr. Horton was represented by counsel Robert Macri. The Court ordered joint legal custody and alternating 3 day/4 day timesharing and that this custody evaluation be performed by DCFS. This evaluation result sole custody for Respondent.

5. The joint custody arrangement ended in October 2000 when Commissioner Susan Bradford awarded Respondent sole physical and legal custody. For the first time, the Court entered an Order of child support that Petitioner pay \$163 a month.

6. The parties attended a Pretrial Settlement Conference before Commissioner Bradford on September 11, 2000. The parties attended a Pretrial Settlement Conference before Judge Glenn K. Iwasaki on February 22, 2001 and June 4, 2001 at which time Petitioner Walter Horton was represented by counsel Martin Tanner. At this time, the Judge ordered both parties to submit *proposed* Findings of Fact and Conclusions of Law and Decree of Divorce to one another and exchange those in advance of the trial. Counsel

for Respondent prepared these pleadings and sent them by fax to Attorney Martin Tanner on June 28, 2001 for review. Counsel for Petitioner did not prepare such proposed documents.

7. The Court convened the trial on June 29, 2001 before Judge Glenn K. Iwasaki at which time both parties were present in person and represented by counsel. Petitioner was represented by Attorney Martin Tanner. The parties presented a complete stipulation of issues which was read onto the record and agreed to by both parties and counsel. No testimony was taken. Counsel for Respondent drafted the Supplemental Decree of Divorce which was provided to opposing counsel Martin Tanner for review and approval as to form. The documents were not signed and returned and were ultimately presented to the Court for review and entry. No objection was received by counsel Tanner. The Court entered these pleadings on July 27, 2001.

### **SUMMARY OF ARGUMENTS**

I. Petitioner Cannot Argue Abuse of Discretion when the Result was Stipulated.

Since the parties presented a full and complete stipulation to the trial court, the issue of abuse of discretion is moot and irrelevant to these proceedings.

II. Petitioner Cannot Argue the New Issue of Attorney Competence for the First Time on Appeal.

Petitioner argues that his case was mishandled by his own attorneys, specifically, Robert Macri, Martin Tanner and Steven Kuhnhausen. These issues of lack of competence have never been raised before the trial court or in any other earlier proceeding. It is inappropriate to raise new issues at the level of appeal and as such, these arguments are moot and irrelevant.

III. Petitioner has Not Been Denied Due Process of Law.

Petitioner argues that he was denied due process of law in relation to the bifurcation of the divorce from other issues and in the termination of the joint custody status. Despite the fact that these issues were fully resolved by Stipulation at trial, it is clear on the earlier record that these matters were handled with appropriate process. At no time did Petitioner object to the rulings of the Court in a timely manner to preserve these claims. As such, these allegations of error are moot and irrelevant.

IV. Petitioner has Failed to Marshal the Evidence.

A basic requirement on appeal is the Appellant's duty to marshal all evidence in support of the trial court's ruling before setting forth the arguments for appeal. Petitioner has made no effort to marshal evidence in this case, which is fatal to the appeal.

**ARGUMENT**

I. DID COUNSEL FOR THE RESPONDENT OFFER DEROGATORY AND UNTRUE STATEMENTS TO THE TRIAL COURT RESULTING IN PREJUDICE?

Petitioner alleges that statements of counsel were false and resulted in prejudice to him. It is clear that Petitioner is confusing the role of counsel in presenting argument on behalf of a client with the role of a witness making sworn testimony. At no time was counsel a witness in this case. Rather, counsel for Respondent presented argument based on signed affidavits and pleadings under correct legal procedure. Petitioner was represented by counsel through the majority of the six year divorce and is clearly complaining about the outcome of the divorce, rather than any specific legal error. Moreover, there was no testimony at trial since the result was stipulated at the outset. Thus, the allegations made by Petitioner in this brief do not support any claim of trial court error or counsel error worthy of review.

II. DID THE TRIAL COURT ABUSE ITS DISCRETION OR VIOLATE DUE PROCESS IN TERMINATING THE JOINT CUSTODY STATUS OF THE PARTIES?

Petitioner complains about the Court hearing October 26, 2000 where he appeared pro-se and the Commissioner terminated the joint custody status of the parties and awarded to Respondent, sole custody of the minor child. A review of the record shows that there were appropriate pleadings, including an Order to Show Cause, Affidavit and Notice. The presence of Petitioner in Court showed he clearly received notice of the proceedings despite his protest to the contrary. Despite his argument in the Brief to the outcome of this hearing, Petitioner did *not* object to the recommendation of the



Commissioner under the appropriate procedural rule set forth in URCP 4-501. Accordingly, the Order was made final. The record reveals that the Commissioner had ample evidence to terminate the joint custody status including a custody evaluation recommending this result. Petitioner did not raise this issue at the time of trial before Judge Iwasaki, and as such, it is inappropriate to raise such an objection for the first time on appeal. *Coleman v. Stevens*, 2000 UT 98, 17 P.3d 1122.

III. DID THE TRIAL COURT ABUSE ITS DISCRETION OR VIOLATE DUE PROCESS IN BIFURCATING THE DIVORCE?

Petitioner objects to the lack of notice and outcome of the hearing held October 26, 2000 before the Commissioner which is referenced in the previous argument point. He was present that day representing himself pro-se and clearly had notice of the events given his personal appearance. The Court granted the Motion to Bifurcate the proceedings for good cause and again, Petitioner did not object in a timely or appropriate fashion. Because this raised for the first time on appeal, the matter is inappropriate for review. .

IV. DID COUNSEL FOR THE PETITIONER ERR IN HIS REPRESENTATION OF PETITIONER'S CASE?

Petitioner argues that his attorney, Mr. Tanner “beat down” the Petitioner into stipulating and then sets out certain factual findings that he expected. Despite these allegations, no issue is properly presented for review by this Court. It is uncontroverted

that the Supplemental Decree was entered based on the stipulation of counsel and approval of that stipulation in open Court by the parties. Whether Petitioner properly understood or misunderstood the process, it was conducted under all principles of due process and Utah procedural rules. He took the appropriate step of filing a Motion to Set Aside the Supplemental Decree based on his complaints of incompetent representation. These complaints were heard by Commissioner Bradford at a hearing post-divorce and she reviewed the videotape of the stipulation and ordered that an *Amended* Decree be issued. Given this result, Petitioner's complaints have been fully reviewed and handled and do not represent error by the trial court at any level. If Petitioner feels his counsel was inadequate, his remedy is a malpractice action, not to raise this issue on appeal.

V. DID THE TRIAL COURT ABUSE ITS DISCRETION IN REFUSING TO ANNUL THE MARRIAGE OF THE PARTIES?

Petitioner complains that his marriage ended in a divorce rather than an annulment, which was his preference. Petitioner raised this issue before the Commissioner and before Judge Iwasaki at trial. It is also undisputed that the divorce was completed by stipulation where both parties were represented by counsel and were present in person. It is clear at that time that a divorce was granted and not an annulment. It is inappropriate for Mr. Horton to now state that he wants to review the issue of an annulment based on his regrets. He complains that he was denied the right to provide evidence, which is certainly not the case when he stipulated to a result and waived his opportunity to testify at trial.

Given these facts, there was clearly no abuse of discretion by the trial court in awarding a divorce rather than an annulment.

VI. DID COUNSEL FOR PETITIONER MISREPRESENT PETITIONER IN FAILING TO TIMELY FORWARD THE SUPPLEMENTAL DECREE OF DIVORCE?

Petitioner complains that his counsel did not return phone calls and did not timely process materials. All of the factual support for this argument referenced in the brief are not contained in the official record. Rather, they are part of the personal correspondence between attorney and client. It is inappropriate for a reviewing Court to consider such materials. Again, Petitioner's complaints about the outcome have been raised by his Motion to Set Aside the Supplemental Decree and have been fully reviewed. Petitioner's remedy for errors of counsel is to file a malpractice action, not raise this issue on appeal.

VII. DID COUNSEL FOR PETITIONER IMPAIR PETITIONER'S RIGHTS IN FAILING TO CONVINCE THE COURT TO SET ASIDE THE JUDGMENT AGAINST PETITIONER?

Petitioner again alleges malpractice by his counsel. He again relies on telephone calls and correspondence outside of the record, which is inappropriate for consideration by a reviewing Court. The correct remedy is for Petitioner to file a malpractice action and he has failed to do so. As stated previously, the trial court

considered his objections to the Supplemental Decree and these were denied. This issue is not properly before the Court on appeal.

VIII. DID THE TRIAL COURT ABUSE ITS DISCRETION IN NOT GRANTING PETITIONER ATTORNEYS FEES?

The divorce was resolved by Stipulation presented on the record June 29, 2001. Part of that agreement was that neither party would be awarded fees and that each would bear their own costs and fees incurred in the divorce process. As this was part of a stipulated agreement, it is certainly not an abuse of trial court discretion to fail to award fees to either party.

Mr. Horton complains that he incurred fees for filing the Motion to Set Aside the Supplemental Decree, which the Court reviewed as a 60(b) Motion and resulted the December 20, 2001 hearing before Commissioner Bradford. A review of the Order on Motion to Set Aside Supplemental Decree of Divorce shows that the Motion to Set Aside the Decree was *denied*. Mr. Horton was thus not the prevailing party in this action. The Court also specifically addressed the issue of fees arising from that Motion and stated that both parties should bear their own costs and fees. One significant part to the reasoning in that regard is that Mr. Horton came before the Court with unclean hands, having paid \$0.00 in child support since the support obligation was imposed in October 2000. The ruling thus awarded to Respondent, a judgment for support arrears and for \$2,000 in unpaid debt, which Mr. Horton also failed and refused to pay. Given the equitable nature

of such proceedings, the Court's failure to award Mr. Horton fees at that time is supported by sufficient findings and legal conclusions.

IX. THE PETITIONER FAILED TO MARSHAL THE EVIDENCE WHICH IS FATAL TO THE APPEAL AND RESPONDENT SHOULD BE AWARDED HER FEES ON APPEAL.

This Court has stated on many occasions that a critical requirement of appellate advocacy is the duty of the Appellant to marshal the evidence when challenging the trial court's findings of fact. Petitioner herein made no effort to marshal the evidence in this case. Based on Petitioner's complete failure to marshal any evidence, Respondent should be awarded his fees on appeal.

The marshaling requirement has been defined and explained in numerous domestic cases. In the recent case of *Moon v. Moon*, 1999 UT App 973 P.2d 431, the Court found on appeal that Mr. Moon had simply reargued his own evidence and because he failed to marshal the evidence supporting the trial court's findings, the Appellate Court had to assume that the record supported the findings of the trial court. This Court has also held that when a party challenges findings on appeal and fails to marshal the supporting evidence, that the trial court's findings will not be disturbed on appeal. *Rudman v. Rudman*, 1991 UT App 812 P.2d 73, 79. See also *Breinholt v. Breinholt*, 1995 UT App 905 P.2d 877, 882. The marshaling rule was adopted to insure that the Appellate Court would not be put in the position of retrying the case without seeing or hearing the

witnesses. *Nilson v. Nilson*, 1982 UT 652 P.2d 1323, 1324. Given the failure of Petitioner to marshal any evidence whatsoever, it is inconceivable that she should succeed on appeal. On this basis, Respondent respectfully moves this Court for an award of attorneys fees and costs incurred in the appeal, either under Rule 33(a) of the Utah Rules of Appellate Procedure or as to the party prevailing on the appeal pursuant to *Bolliger v. Bolliger*, 2000 UT App 47.

### **CONCLUSION**

The Appeal of Walter Horton should be denied in its entirety. The action is frivolous and not supported in any way by Utah law. There was no basis for the arguments presented and the evidence and law was mischaracterized and misstated. *Eames v. Eames*, 735 P.2d 395 (Utah Ct. App. 1987). Petitioner has entirely failed to marshal the evidence. Petitioner complains about his counsel and raises issues of malpractice for the first time on appeal. His remedy is not to appeal these complaints, rather, he should file a separate malpractice action. He states that he was instructed to do this by the Commissioner, yet he has failed to do so. Those issues are entirely irrelevant to this appeal. Petitioner complains about abuse of discretion by the trial court and Judge Glenn Iwasaki in the areas of not granting an annulment and in terminating joint custody. However, Petitioner waived his right to testify at trial and stipulated to divorce terms. Given this circumstance, he cannot now change his mind and argue that the Court abused discretion when the Court

was not even asked to provide a ruling. Lastly, Petitioner has objected to the Supplemental Decree which was the result of his own stipulation. That objection was heard by Commissioner Bradford who treated it as a Rule 60(b) Motion. Most of these complaints have been fully reviewed in that context and the Motion was denied. Petitioner has thus had a complete opportunity for review at many stages of the process. He has been represented by competent counsel and has refused to take their advice. Petitioner has provided no viable basis for appeal on the record of this case. It is appropriate that the Appeal be denied in all respects. Respondent requests that she be awarded her costs and attorneys fees incurred before the Court of appeals based on the unnecessary, repetitive filings in this matter.

RESPECTFULLY SUBMITTED this 13 day of February 2003.

**LITTLEFIELD & PETERSON**



---


SUZANNE MARELIUS

Attorney for Respondent/Appellee

## CERTIFICATE OF SERVICE

I hereby certify that I caused to be sent by U.S. Mail, first class, postage prepaid, two true and correct copies of the foregoing *Brief of Appellee* on this 13 day of February 2003, to:

Walter J. Horton  
1068 3<sup>rd</sup> Avenue, #2  
Salt Lake City, UT 84103



---



## **ADDENDUM**

Supplemental Decree of Divorce	
Entered July 1, 2001 by the Third District Court . . . . .	1
<i>Amended</i> Supplemental Decree of Divorce	
Entered February 8, 2002 by the Third District Court . . . . .	2
Order on Motion to Set Aside Supplemental Decree of Divorce	
Entered February 28, 2002 by the Third District Court . . . . .	3

# **Addendum 1**

SUZANNE MARELIUS - 2081  
Attorney for Petitioner  
**LITTLEFIELD & PETERSON**  
426 South 500 East  
Salt Lake City, Utah 84102  
Telephone: (801) 531-0435  
Facsimile: (801) 575-7834

IMAGED

**FILED DISTRICT COURT**  
Third Judicial District

JUL 27 2001

SALT LAKE COUNTY  
By [Signature]  
Deputy Clerk

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

**WALTER JOHN HORTON,**

Petitioner,

-VS-

**TAMRIKA KHVTISIASHVILI,**

Respondent

**SUPPLEMENTAL DECREE  
OF DIVORCE**

Case No. 964904582 DA  
Judge Glenn Iwasaki  
Commissioner Susan Bradford

The above-entitled matter came before the Court for trial on June 29, 2001 before the Honorable Glenn Iwasaki presiding. Respondent was present in person and represented by counsel Suzanne Marelius. Petitioner was present in person and represented by counsel Martin Tanner. The parties were previously divorced by Decree entered in the above case December 19, 2000 with all other issues reserved for trial. The parties presented a complete stipulation of issues which was agreed to on the record by parties and counsel. Based on the Stipulation herein, the Respondent agrees that her answer may be withdrawn and a divorce may be entered on the grounds of irreconcilable differences. Based on the stipulation stated on the record, a review of the Court file

Supplemental Decree of Divorce @J



herein, the Court having entered its Findings of Facts and Conclusions of Law, now makes and enters the following Decree:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. Decree of Divorce. The Petitioner is awarded a Decree of Divorce from Respondent on the grounds of irreconcilable differences, such Decree to become final upon entry, and the marriage of the parties is hereby dissolved.

2. Custody and Visitation. Respondent Tamrika Khvtisiashvili is awarded the sole legal, physical care and control of the minor child Dagney A. Horton, born January 8, 1995, subject to Petitioner's rights of visitation. The parties shall abide by the Utah Advisory Guidelines and incorporate those terms specifically into this Decree as set forth below. The Petitioner shall have reasonable and liberal rights of visitation consisting of a schedule that the parties agree in advance and in the event of any dispute, he shall receive at least the statewide standard schedule set forth at UCA §30-3-35 and as summarized below.

Additionally, the parties will abide by the following parenting terms:

- a. Childcare/Surrogate Care and Decision Making Authority. At all times, the Petitioner is restrained from interfering with Respondent's relationship and parenting of the minor child, including her school enrollment, health matters, childcare and other custodial issues. Respondent's decision in these areas shall be final. The Petitioner has agreed to abide by the Utah Advisory Guidelines with the explicit understanding that Respondent will be in sole control of determining the childcare and surrogate needs and that this shall not be an automatic right of Petitioner to tend the child at any time he is free based on his history of casual employment may be disruptive for

the child. Respondent will consider Petitioner at any time she needs surrogate care along with her other options.

- b. Current Address Telephone. At all times, the parties will each keep the other informed of current residence and work address and telephone numbers. For the record, Petitioner stated his current address and telephone number as: 1055 East 2<sup>nd</sup> Avenue, #4, Salt Lake City, UT 84102, (801) 558-1276 and he will inform Respondent immediately upon any change.
- c. Mutual Restraint. Both parties shall be restrained from making any derogatory, demeaning or negative comments about the other parent in the presence of the child. Both parents will be supportive of the relationship of the child with the other parent at all times. At all times, the parties will be restrained from discussing the divorce case/future litigation or changes in household custody arrangements with the child at any time.
- d. Curbside Exchange. The parties will exchange the minor child for visitation at curbside with Petitioner driving to Respondent's home staying in his vehicle, honking his horn to indicate his presence. The child will be sent out of the home promptly and there will be no contact or verbal exchange between the parties at this time. At the end of visitation, Petitioner will return to Respondent's home with the child, honk his horn to indicate his presence and the child will be sent out of the vehicle alone and into the home. These exchanges should be efficient and brief, with neither party engaging in any prolonged greetings or goodbyes with the child.

3. Utah Advisory Guidelines. The parties will abide by the Utah Advisory Guidelines contained at UCA §30-3-33 except as specifically modified above, and such guidelines are summarized as follows:

- a. visitation schedules mutually agreed upon by both parents are preferable to a court-imposed solution;
- b. the visitation scheduled shall be utilized to maximize the continuity and stability of the child's life;

- c. special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the visitation schedule;
- d. each parent shall pick up the child at the time specified and return the child at the times specified, and the child's regular school hours shall not be interrupted;
- e. the delivering parent shall have the child ready for visitation at the time he is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time he is returned;
- f. the court may make alterations in the visitation schedule to reasonably accommodate the work schedule of both parents and may increase the visitation allowed to the other parent but shall not diminish the standardized visitation provided in §30-3-35 and §30-3-35.5;
- g. the court may make alterations in the visitation schedule to reasonably accommodate the distance between the parties and the expense of exercising visitation;
- h. neither visitation nor child support is to be withheld due to either parent's failure to comply with court-ordered visitation schedule;
- i, each parent shall notify the other parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the child is participating or being honored, and the other parent shall be entitled to attend and participate fully;
- j. both parents shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency;
- k. each parent shall provide the other with his or her current address and telephone number within 24 hours of any change;

- l. each parent shall permit and encourage liberal telephone contact during reasonable hours and uncensored mail privileges with the child;
- m. parental care shall be presumed to be better care for the child than surrogate care and the court shall encourage the parties to cooperate in allowing the other parent, if willing and able, to provide child care;
- n. each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the other parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise; and
- o. each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

5. Visitation. The parties have defined Petitioner Walter Horton's visitation as consisting of the statewide standard schedule of visitation contained at UCA §30-3-35 as summarized below:

**U.C.A. §30-3-35 MINIMUM SCHEDULE FOR VISITATION**

(Summarized)

**Reasonable Visitation** should be defined as the parents may agree. If they are not able to agree, the definition for school-aged children (beginning kindergarten) will be as follows:

**Midweek:** One weekday evening specified from 5:30-8:30 p.m.

**Alternate Weekends:** Friday 6:00 p.m. to Sunday 7:00 p.m.

***Holidays take precedence over the weekend visitation and weekend schedule doesn't change.***

**Holiday Visitation:** (6:00 p.m. day before holiday to 7:00 p.m. day of unless specified otherwise)

### Odd Numbered Years

Human Rights Day  
Easter, Friday 6:00 p.m. to Sunday, 7:00 p.m.  
Memorial Day, Friday 6:00 p.m. to  
Monday 7:00 p.m.  
July 24<sup>th</sup> - 6:00 p.m. day before to 11:00 p.m.  
day of holiday  
Veteran's Day  
Day before or after child's birthday  
3:00 p.m. to 9:00 p.m.  
First half Christmas vacation, including  
Christmas Eve and Christmas Day to  
1:00 p.m. (So long as the entire holiday is  
divided equally)

### Even Numbered Years

President's Day  
July 4<sup>th</sup>, 6:00 p.m. day before to 11:00 p.m.  
day of holiday  
Labor Day, Friday 6:00 p.m. to Monday,  
7:00 p.m.  
Columbus Day  
UEA weekend Wednesday 6:00 p.m. to  
Sunday 7:00 p.m.  
Child's actual birthday, 3:00 p.m. to 9:00 p.m.  
Thanksgiving, Wednesday 7:00 p.m. to  
Sunday 7:00 p.m.  
Second half Christmas vacation, including  
Christmas Day 1:00 p.m. to 9:00 p.m. (So long  
as the entire holiday is divided equally)

**Father's Day:** With Father 9:00 a.m. to 7:00 p.m.

**Mother's Day:** With Mother 9:00 a.m. to 7:00 p.m.

**Summer:** 4 weeks during summer or, if year round, ½ school breaks, custodial parent allowed two week uninterrupted. Notification of summer visitation or vacation weeks with children should be provided in writing to the other parent at least 30 days in advance.

**Telephone:** Contact at reasonable hours.

4. **Child Support.** Petitioner is ordered to pay child support to Respondent in the amount of \$163 per month commencing July 5, 2001. Support shall be paid one-half by the 5<sup>th</sup> and one-half by the 20<sup>th</sup> of each month and shall be collected by the Office of Recovery Services pursuant to an Order of Income Withholding with any cost for that process to be paid by Petitioner. Child Support shall continue until the minor child has reached the age of 18 or graduated from high school in the due course of attendance, whichever is later.



5. Childcare Expenses. The parties shall share equally in any work, career, and education related childcare expenses for the benefit of the minor child as required by UCA §78-46-7.16. The party incurring the expense shall provide verification of the cost to the other parent and will be reimbursed one-half thereafter and no later than 30 days of receipt of such verification. If childcare is a regular monthly cost, the Petitioner's portion shall be paid along with child support and collected by ORS.

6. Health/ Dental Insurance and Expenses. The Respondent presently has the child on her policy of health insurance. She shall verify the premium cost for Petitioner and one-half that cost will be added to child support and paid at that same time. In the future if Petitioner has health insurance available at a reasonable cost, the parties should compare policies and determine which best meets the needs of the child and select the most cost effective, complete coverage available.

At all times, the parties shall share equally in the premium cost for the child's portion of health insurance. At all times, the parties will share equally in all reasonable and necessary uninsured medical or dental expenses incurred for the child's healthcare, which expenses include, but are not limited to the following: co-payments, deductibles, medical, hospitalization, orthodontic, optical and therapeutic expenses. Any party incurring a health or dental expense for the children should provide verification of the cost and amount to the other party and be reimbursed with one-half that amount promptly and no later than within thirty (30) days thereafter.

7. Marital Debts. During the marriage the parties incurred debts and obligations which have been fully paid by Respondent. These expenses include medical costs from the birth of the

child, credit card and bank debt of at least \$4,000. All these expenses have been paid by Respondent and there will be no contribution expected by Petitioner.

8. Personal Property. Each party is hereby awarded their own premarital and separate property and that portion of joint property presently in their possession. The Respondent shall be specifically restored to her all property belonging to her prior to the marriage including her journals, books, clothing and personal effects. Respondent shall be awarded all property, furnishings and clothing of the minor child for her benefit.

9. Restraining Order. The Petitioner shall be restrained from coming anywhere on or about the place where Respondent may be including her work and home residence. Petitioner is restrained from any harassing, threatening, annoying or harmful conduct or communication towards Respondent of any nature whatsoever. The parties shall exchange the minor child for visitation at curbside when Petitioner picks up and returns the child for visits he should remain in the vehicle, honk the horn to indicate his presence and send the child out of the vehicle. There shall be no interaction between the parties during such exchanges.

10. Alimony. Neither party shall be awarded alimony from the other.

11. Attorneys Fees and Costs. Each party shall assume and pay their own attorneys fees and costs incurred in this matter.

12. Maiden Name. Respondent shall be restored to her maiden name of Khvtisiashvili at her option.

13. Documents and Mutual Cooperation. Each party shall execute and deliver to the other all instruments and documents of ownership required to perform the obligations of the parties under the Court orders. The parties shall cooperate reasonably with one another, in person or

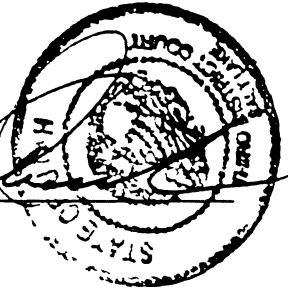
through counsel to carry out all provisions of the Court orders All provisions herein shall by and benefit the respective heirs and assignees of the parties to the extent if any that such provisions are assignable.

Dated this 27 day of July, 2001.

BY THE COURT:



JUDGE GLENN IWASAKI



**Approval as to Form:**

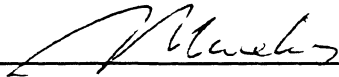
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Martin S. Tanner  
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I caused to be sent by U.S. Mail, first class, postage prepaid, a true and correct copy of the foregoing *Decree of Divorce* on this 6 day of July, 2001,  
to:

Martin S. Tanner  
340 Broadway Centre  
111 East Broadway  
Salt Lake City, UT 84111-5250

  
\_\_\_\_\_

# **Addendum 2**

SUZANNE MARELIUS - 2081  
Attorney for Petitioner  
**LITTLEFIELD & PETERSON**  
426 South 500 East  
Salt Lake City, Utah 84102  
Telephone: (801) 531-0435  
Facsimile: (801) 575-7834

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

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**WALTER JOHN HORTON,**

Petitioner,

-vs-

**TAMRIKA KHVTISIASHVILI,**

Respondent

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***AMENDED* SUPPLEMENTAL  
DECREE OF DIVORCE**

Case No. 964904582 DA  
Judge Glenn Iwasaki  
Commissioner Susan Bradford

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The Motion of Petitioner Walter Horton to set aside the Supplemental Decree of Divorce entered in the above-matter came before the Court for hearing December 20, 2001 before Commissioner Susan Bradford presiding. Petitioner was present in person and represented by counsel Steven Kuhnhausen. Respondent was present in person and represented by counsel Suzanne Marelius. At that time, the Court ordered that an *Amended* Supplemental Decree of Divorce should issue reflecting certain corrections determined by the Court. The parties were previously divorced by Decree entered December 19, 2000 and at the time of trial, June 29, 2001, presented a complete Stipulation of issues which were agreed to on the record by parties and counsel. Based on the foregoing and a review of the Court file and record herein, the Court having

entered it's Findings of Fact and Conclusions of Law, now makes and enters the following  
*Amended Supplemental Decree of Divorce:*

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. Custody. Respondent Tamrika Khvtisiashvili is awarded the sole legal, physical care and control of the minor child Dagny A. Horton, born January 8, 1995, subject to Petitioner's rights of visitation. The parties shall abide by the Utah Advisory Guidelines and incorporate those terms specifically into this Decree as set forth below. The Petitioner shall have reasonable and liberal rights of visitation consisting of a schedule that the parties agree in advance and in the event of any dispute, he shall receive at least the statewide standard schedule set forth at UCA §30-3-35 and as summarized below.

Additionally, the parties will abide by the following parenting terms:

- a. Current Address/Telephone. At all times, the parties will each keep the other informed of current residence and work address and telephone numbers. For the record, Petitioner stated his current address and telephone number as: 1055 East 2<sup>nd</sup> Avenue, #4, Salt Lake City, UT 84102, (801) 558-1276 and he will inform Respondent immediately upon any change.
- b. Mutual Restraint. Both parties shall be restrained from making any derogatory, demeaning or negative comments about the other parent in the presence of the child. Both parents will be supportive of the relationship of the child with the other parent at all times. At all times, the parties will be restrained from discussing the divorce case/future litigation or changes in household custody arrangements with the child at any time.
- c. Curbside Exchange. The parties will exchange the minor child for visitation at curbside with Petitioner driving to Respondent's home staying in his vehicle, honking his horn to indicate his presence. The child will be sent out of the home promptly and there will be no contact or verbal

exchange between the parties at this time. At the end of visitation, Petitioner will return to Respondent's home with the child, honk his horn to indicate his presence and the child will be sent out of the vehicle alone and into the home. These exchanges should be efficient and brief, with neither party engaging in any prolonged greetings or goodbyes with the child.

2. Utah Advisory Guidelines. The parties will abide by the Utah Advisory Guidelines contained at UCA §30-3-33 except as specifically modified above, and such guidelines are summarized as follows:

- a. visitation schedules mutually agreed upon by both parents are preferable to a court-imposed solution;
- b. the visitation scheduled shall be utilized to maximize the continuity and stability of the child's life;
- c. special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the visitation schedule;
- d. each parent shall pick up the child at the time specified and return the child at the times specified, and the child's regular school hours shall not be interrupted;
- e. the delivering parent shall have the child ready for visitation at the time he is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time he is returned;
- f. the court may make alterations in the visitation schedule to reasonably accommodate the work schedule of both parents and may increase the visitation allowed to the other parent but shall not diminish the standardized visitation provided in §30-3-35 and §30-3-35.5;



- g.** the court may make alterations in the visitation schedule to reasonably accommodate the distance between the parties and the expense of exercising visitation;
- h.** neither visitation nor child support is to be withheld due to either parent's failure to comply with court-ordered visitation schedule;
- i.** each parent shall notify the other parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the child is participating or being honored, and the other parent shall be entitled to attend and participate fully;
- j.** both parents shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency;
- k.** each parent shall provide the other with his or her current address and telephone number within 24 hours of any change;
- l.** each parent shall permit and encourage liberal telephone contact during reasonable hours and uncensored mail privileges with the child;
- m.** parental care shall be presumed to be better care for the child than surrogate care and the court shall encourage the parties to cooperate in allowing the other parent, if willing and able, to provide child care;
- n.** each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the other parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise; and
- o.** each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

3. Visitation Schedule. The parties have defined Petitioner Walter Horton's visitation as consisting of the statewide standard schedule of visitation contained at UCA §30-3-35 as summarized below:

**U.C.A. §30-3-35 MINIMUM SCHEDULE FOR VISITATION**

(Summarized)

Reasonable Visitation should be defined as the parents may agree. If they are not able to agree, the definition for school-aged children (beginning kindergarten) will be as follows:

**Midweek:** One weekday evening specified from 5:30-8:30 p.m.

**Alternate Weekends:** Friday 6:00 p.m. to Sunday 7:00 p.m.

*Holidays take precedence over the weekend visitation and weekend schedule doesn't change.*

**Holiday Visitation:** (6:00 p.m. day before holiday to 7:00 p.m. day of unless specified otherwise)

**Odd Numbered Years**

Human Rights Day  
Easter, Friday 6:00 p.m. to Sunday, 7:00 p.m.  
Memorial Day, Friday 6:00 p.m. to  
Monday 7:00 p.m.  
July 24<sup>th</sup> - 6:00 p.m. day before to 11:00 p.m.  
day of holiday  
Veteran's Day  
Day before or after child's birthday  
3:00 p.m to 9:00 p.m.  
First half Christmas vacation, including  
Christmas Eve and Christmas Day to  
1:00 p.m. (So long as the entire holiday is  
divided equally)

**Even Numbered Years**

President's Day  
July 4<sup>th</sup>, 6:00 p.m. day before to 11:00 p.m.  
day of holiday  
Labor Day, Friday 6:00 p.m. to Monday,  
7:00 p.m.  
Columbus Day  
UEA weekend Wednesday 6:00 p.m to  
Sunday 7:00 p.m.  
Child's actual birthday, 3:00 p.m. to 9:00 p.m.  
Thanksgiving, Wednesday 7:00 p.m. to  
Sunday 7:00 p.m.  
Second half Christmas vacation, including  
Christmas Day 1:00 p.m. to 9:00 p.m. (So long  
as the entire holiday is divided equally)

**Father's Day:** With Father 9:00 a.m. to 7:00 p.m.

**Mother's Day:** With Mother 9:00 a.m. to 7:00 p.m.

**Summer:** 4 weeks during summer or, if year round, ½ school breaks, custodial parent allowed two week uninterrupted. Notification of summer visitation or vacation weeks with children should be provided in writing to the other parent at least 30 days in advance.

**Telephone:** Contact at reasonable hours.

4. **Child Support.** Petitioner is ordered to pay child support to Respondent in the amount of \$163 per month commencing July 5, 2001. Support shall be paid one-half by the 5<sup>th</sup> and one-half by the 20<sup>th</sup> of each month and shall be collected by the Office of Recovery Services pursuant to an Order of Income Withholding with any cost for that process to be paid by Petitioner. Child Support shall continue until the minor child has reached the age of 18 or graduated from high school in the due course of attendance, whichever is later.

5. **Childcare Expenses.** The parties shall share equally in any work, career, and education related childcare expenses for the benefit of the minor child as required by UCA §78-46-7.16. The party incurring the expense shall provide verification of the cost to the other parent and will be reimbursed one-half thereafter and no later than 30 days of receipt of such verification. If childcare is a regular monthly cost, the Petitioner's portion shall be paid along with child support and collected by ORS.

6. **Health/ Dental Insurance and Expenses.** The Respondent presently has the child on her policy of health insurance. She shall verify the premium cost for Petitioner and one-half that cost will be added to child support and paid at that same time. In the future if Petitioner has health insurance available at a reasonable cost, the parties should compare policies and determine

which best meets the needs of the child and select the most cost effective, complete coverage available.

At all times, the parties shall share equally in the premium cost for the child's portion of health insurance. At all times, the parties will share equally in all reasonable and necessary uninsured medical or dental expenses incurred for the child's healthcare, which expenses include, but are not limited to the following: co-payments, deductibles, medical, hospitalization, orthodontic, optical and therapeutic expenses. Any party incurring a health or dental expense for the children should provide verification of the cost and amount to the other party and be reimbursed with one-half that amount promptly and no later than within thirty (30) days thereafter.

7. Child Support Arrears. During the pendency of the matter, the Petitioner was ordered to pay child support to Respondent of \$163 per month effective October 1, 2000. No support amounts have been paid. Respondent is awarded a judgment for child support arrears in the amount of \$2,445 through December 31, 2001, due and payable by Petitioner, Walter Horton and this judgment shall bear interest at the legal rate of 7.34% per annum until paid.

8. Marital Debts. During the marriage the parties incurred debts and obligations which have been fully paid by Respondent. These expenses include medical costs from the birth of the child, credit card and bank debt of at least \$4,000. The Respondent paid the entirety of these costs and she is awarded a judgment due and payable by Petitioner Walter Horton in the amount of \$2,000 to bear interest at the legal rate of 7.34% per annum until paid. Petitioner is ordered to pay a minimum of \$50 per month on this obligation until it is paid in full.

9. Personal Property. Each party is hereby awarded their own premarital and separate property and that portion of joint property presently in their possession. The Respondent shall be specifically restored to her all property belonging to her prior to the marriage including her journals, books, clothing and personal effects. Respondent shall be awarded all property, furnishings and clothing of the minor child for her benefit.

10. Restraining Order. The Petitioner shall be restrained from coming anywhere on or about the place where Respondent may be including her work and home residence. Petitioner is restrained from any harassing, threatening, annoying or harmful conduct or communication towards Respondent of any nature whatsoever. The parties shall exchange the minor child for visitation at curbside when Petitioner picks up and returns the child for visits he should remain in the vehicle, honk the horn to indicate his presence and send the child out of the vehicle. There shall be no interaction between the parties during such exchanges.

11. Alimony. Neither party shall be awarded alimony from the other.

12. Attorneys Fees and Costs. Each party shall assume and pay their own attorneys fees and costs incurred in this matter.

13. Maiden Name. Respondent shall be restored to her maiden name of Khvtisiashvili at her option.

14. Documents and Mutual Cooperation. Each party shall execute and deliver to the other all instruments and documents of ownership required to perform the obligations of the parties under the Court orders. The parties shall cooperate reasonably with one another, in person or

through counsel to carry out all provisions of the Court orders. All provisions herein shall by and benefit the respective heirs and assignees of the parties to the extent if any that such provisions are assignable.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2002.

**BY THE COURT:**

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JUDGE GLENN IWASAKI

**Approval as to Form:**


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Steven Kuhnhausen  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be sent by U.S. Mail, first class, postage prepaid, a true and correct copy of the foregoing *Amended Supplemental Decree of Divorce* on this 15<sup>th</sup> day of Feb 2002, to:

Steven Kuhnhausen  
10 West Broadway, Suite 603  
Salt Lake City, UT 84101

  
\_\_\_\_\_

# **Addendum 3**



SUZANNE MARELIUS - 2081  
Attorney for Petitioner  
**LITTLEFIELD & PETERSON**  
426 South 500 East  
Salt Lake City, Utah 84102  
Telephone: (801) 531-0435  
Facsimile: (801) 575-7834

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

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**WALTER JOHN HORTON,**

Petitioner,

-vs-

**TAMRIKA KHVTSIASHVILI,**

Respondent

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**ORDER ON MOTION TO SET  
ASIDE SUPPLEMENTAL  
DECREE OF DIVORCE**

Case No. 964904582 DA  
Judge Glenn Iwasaki  
Commissioner Susan Bradford

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The Motion of Petitioner Walter Horton to set aside the Supplemental Decree of Divorce entered in the above-matter came before the Court for hearing December 20, 2001 before Commissioner Susan Bradford presiding. Petitioner was present in person and represented by counsel Steven Kuhnhausen. Respondent was present in person and represented by counsel Suzanne Marelius. The Court considered the record, argument and good cause appearing and recommends the following as a Court Order herein:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The parties above-named were divorced by Decree of Divorce entered December 19, 2000 and a Supplemental Decree of Divorce entered July 27, 2001. The Petitioner

filed a timely motion to set aside the Supplemental Decree of Divorce alleging errors and omissions in the drafting of the Supplemental Decree.

2. The counsel for Respondent drafted the Supplemental Decree based on a Stipulation presented at the time of final trial. The Court has reviewed the videotape of the Stipulation and discussed the issue with counsel.

3. The Motion to Set Aside the Supplemental Decree of Divorce under Rule 60(b) URCP is denied.

4. The Court however does find deficiencies in the Supplemental Decree as compared to the videotape of the Stipulation and *Sua sponte*, under Rule 60(a) URCP will correct what appear to be clerical errors in the transcribing of the Stipulation which by its terms, also references the temporary Order issued in this case which is the "Order on Motion for Temporary Orders" entered November 22, 2000. The Court has also considered the *proposed* Findings of Fact, Conclusions of Law and Decree of Divorce prepared by Respondent which were referenced at the time the Stipulation was stated on the record. The parties are directed to file an *Amended* Supplemental Decree of Divorce with the following additions and corrections:

- a. Include a provision that the Petitioner had a temporary child support obligation to Respondent of \$163 per month, effective October 1, 2000 and that no child support has ever been paid. Respondent is awarded a judgment for these arrears in the amount of \$2,445, representing support arrears through December 2001, to bear interest at the legal rate of 7.34% per annum until paid, plus costs of collection.
- b. Include a provision that during the marriage, the parties incurred debts and obligations which have been fully paid by Respondent, these expenses include medical costs for the birth of the child, credit card and bank debt of

at least \$4,000. The Respondent is awarded a judgment against Petitioner for one-half these debts in the amount of \$2,000. This judgment is to bear interest at the legal rate of 7.34% per annum until paid. Petitioner should pay a minimum of \$50 per month to Respondent on this obligation until it is paid in full.

- c. Subparagraph 2(a) in the Supplemental Decree of Divorce shall be eliminated and the parties will abide by the Utah Advisory Guidelines.

5. Each party will bear their own costs and attorneys fees incurred in this matter.

Dated this 28 day of Feb, 2002.

**BY THE COURT:**



\_\_\_\_\_  
JUDGE GLENN IWASAKI

**Recommendation of:**



\_\_\_\_\_  
Commissioner Susan Bradford

**Approval as to Form:**

\_\_\_\_\_  
Steven Kuhnhausen  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be sent by U.S. Mail, first class, postage prepaid, a true and correct copy of the foregoing *Order on Motion to Set Aside Supplemental Decree of Divorce* on this 15<sup>th</sup> day of Feb., 2002, to:

Steven Kuhnhausen  
10 West Broadway, Suite 603  
Salt Lake City, UT 84101

  
\_\_\_\_\_