

1992

Karen Springer v. Jerry Springer : Brief of Appellee

Utah Court of Appeals

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DOCKET NO. 920361

~~IN THE~~ UTAH COURT OF APPEALS

KAREN SPRINGER,

Plaintiff and Appellee,

vs.

JERRY SPRINGER,

Defendant and Appellant.

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Docket No. 920361-CA

Priority Classification 16

BRIEF OF APPELLEE KAREN SPRINGER

AN APPEAL FROM A DECREE OF DIVORCE IN
THE FOURTH JUDICIAL DISTRICT COURT OF
WASATCH COUNTY, STATE OF UTAH
THE HONORABLE GEORGE S. BALLIF, DISTRICT JUDGE.

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FILED
Utah Court of Appeals

MAR 8 1993

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Clerk of the Court

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IN THE UTAH COURT OF APPEALS

KAREN SPRINGER,)	
)	BRIEF OF APPELLEE KAREN
Plaintiff and Appellee,)	SPRINGER
)	
vs.)	
)	Docket No. 920361-CA
JERRY SPRINGER,)	
)	
Defendant and Appellant.)	

JURISDICTION

The Utah Court of Appeals has jurisdiction of this divorce appeal pursuant to Utah Code Ann., § 78-2a-3(2)(h) (1992).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. May Appellant Jerry Springer challenge the trial court's award of alimony and attorney fees when he fails to marshal all of the evidence at trial that supports the award?

Standard of Review: The appellate court will review the trial court's factual findings only when the Appellant has marshalled all of the evidence in support of those findings and demonstrated that, despite such evidence, the findings are against the clear weight of evidence and, therefore, an abuse of discretion. In the absence of that marshalling, the appellate court will not attempt to review the findings but will

assume their correctness. Crouse v. Crouse, 817 P.2d 836, 838 (Utah App. 1991); Fife v. Fife, 777 P.2d 512, 513 (Utah App. 1989).

2. Was the award of \$300.00 per month permanent alimony to Appellee Mrs. Springer an abuse of discretion after a 29-year marriage when there is substantial evidence of Mrs. Springer's financial circumstances and need, and of the Appellant's ability to pay alimony?

Standard of Review: The appellate court will not disturb the award of alimony when the trial court has exercised its discretion within the bounds and under the standards set by the appellate courts. Naranjo v. Naranjo, 751 P.2d 1144, 1147 (Utah App. 1988). The standard for alimony focuses upon the financial needs of the wife, her ability to provide income, and the husband's ability to provide support. Jones v. Jones, 700 P.2d 1072, 1075 (Utah 1985). This court will defer to the trial court's assessment of the credibility of the witnesses and the weight given the evidence. If the trial court considers the Jones factors, this court will not disturb the alimony award unless "a serious inequity" is shown, amounting to a "clear abuse of discretion." Osguthorpe v. Osguthorpe, 804 P.2d 530, 533-4 (Utah App. 1990) (on rehearing).

3. Did the trial court abuse its discretion in awarding Mrs. Springer a reasonable attorney fee of \$2,064.00. Also, should Mrs. Springer be awarded her attorney fees incurred on appeal?

Standard of Review: An award of attorney fees in divorce is within the sound discretion of the trial court when the court finds, based upon the evidence, the party's need for assistance, the Appellant's ability to assist, and the reasonableness of the fee. Crouse v. Crouse, 817 P.2d 836, 840 (Utah App. 1991); Bell v. Bell, 810 P.2d 489, 493 (Utah App. 1991).

STATUTORY PROVISIONS

There is no statutory authority in Utah which is determinative of the issues presented on appeal. However, the Utah Uniform Child Support statute on determining gross income, Utah Code Ann. § 78-45-7.5 (1992) is included herein as Addendum "I" for the court's convenience.

STATEMENT OF THE CASE

A. Nature of the Case

Appellant and defendant Jerry Springer appeals the decree of divorce entered May 21, 1992 and challenges the award to plaintiff Mrs. Springer of \$300.00 per month alimony and \$2,064.00 in attorney fees. A copy of the Decree of Divorce (R. 76) and the Findings of Fact and Conclusions of Law (R. 70) are Addenda "A" and "B", respectively.

B. Course of Proceedings and Disposition Below

Appellee Karen Springer filed her divorce complaint on April 5, 1991. Mrs. Springer sought custody of three teenage children, an equitable division of the assets and liabilities, child support, alimony, and attorney fees. (R. 1-4)

Appellant Jerry Springer filed his answer, admitting virtually all the allegations of the plaintiff's complaint, except the grounds for divorce. (R. 13, 12) Appellant specifically admitted that his income as a state employee was approximately \$3,000.00 per month and that Mrs. Springer's income as a school teacher was \$1,700.00 per month. (R. 12)

Prior to trial, the parties settled several issues, including placing the home for sale and dividing its proceeds equally, child custody, life and health insurance, and the division of personal property and retirement assets. (R. 24, 23; Tr. 4-8)

The only issues left for trial were the amounts of alimony, attorney fees, and child support to be awarded to Mrs. Springer. (Tr. 9) After a one-day trial on January 30, 1992, the trial judge issued his memorandum decision on March 16, 1992 (R. 54), attached as Addendum "C".

A decree and formal findings were prepared by Appellant's counsel. The court entered those findings and final decree on May 21, 1992. Generally, the court ordered, *inter alia*, that:

1. Mrs. Springer was awarded custody of the three teenage children and monthly child support of \$657.00, based upon the uniform child support guidelines; (R. 75, 72 - Add. A)

2. The real and personal property were equally divided by agreement; (R. 73 - Add. A)

3. Retirement accounts were equally divided; (R. 73 - Add. A)

4. Based upon Appellant's regular income of \$36,240.00 and Mrs. Springer's regular income of \$21,335.00, and their respective expenses, as adjusted, Mrs. Springer was awarded \$300.00 monthly alimony; (R. 62, 63, 64 - Add. B)

5. Based upon a finding of reasonableness, Mrs. Springer's need, and Appellant's ability to assist her need, Mrs. Springer was awarded \$2,064.00, representing one-half (1/2) of her attorney fees. (R. 72 - Add. A)

Mr. Springer's notice of appeal was filed June 4, 1992. (R. 82) He also gave notice that a trial transcript had been prepared. (R. 86) A transcript has never been filed of record and does not appear on the clerk's index filed in this court.

Notwithstanding, because Appellant refers to the transcript in his brief, Appellee will cite herein to the evidence and testimony in the transcript as though it was part of the record on appeal.

During this appeal, Mrs. Springer garnished Appellant's bank account to obtain payment of the attorney fee judgment. (R. 93, 95) The garnishee Zions First

National Bank paid the garnishment without any objection from Appellant. (R. 95) A satisfaction of judgment for \$2,064.00 attorney fee award only was filed on September 9, 1992. (R. 97)

STATEMENT OF FACTS

Appellee Karen Springer objects to Appellant's fleeting "Statement of Facts" because said statement is incomplete and Appellant fails to marshal the facts that support the alimony and attorney fee awards. Although Appellant purports to marshal the facts in his argument, he inserts unsupported conclusions and relies only upon evidence to support those conclusions. Appellant omits evidence supporting the Decree in an attempt to reargue his version of the facts. Because Appellant fails to state all the relevant evidence in the light most favorable to the Decree, Appellee provides the following Statement of Facts:

Appellee Karen Springer and Appellant Jerry Springer were married almost 30 years ago in March, 1963. (Tr. 12) Mrs. Springer is 49 years old; Appellant is 55 years old. (Tr. 10, 61) At the time of the divorce, the parties resided at their home in Midway, Wasatch County, Utah. (Tr. 10)

Mrs. Springer obtained her Bachelor of Science degree in 1964-5 with a teaching certificate. (Tr. 48) However, for a majority of the marriage, she raised the parties' six children. (Tr. 145) At trial, three of the six children were still in their teenage years, 12 through 16. (Tr. 12-3)

Appellant is employed as a vocational rehabilitation counselor with the State Office of Education in Provo. Appellant holds a Master's degree in sociology and was "very close" to his doctorate, requiring only his dissertation. (Tr. 61-4)

As a rehabilitation counselor for over twenty years, Appellant earns a gross monthly income of \$3,020.00 (\$36,240.00 a year), with a \$2,016 monthly take home, after insurance and taxes. (Tr. 61; Exh. 5) Supplementing this income, he also lectures for Brigham Young University, receiving \$25.00 per hour plus expenses, and for the National Park Service. (Tr. 63-4, 151-4) In 1991, he received an additional \$400.00 for his lectures, as well as "paid vacations" at the national parks. (Tr. 64-5, 154-5)

Prior to the trial, Appellant also taught night classes at Wasatch High School. He claimed he was only paid \$1,349.00 for this teaching, even though he reported income of \$2,600.00 on his 1990 tax return and \$2,490.00 in 1989. (Tr. 68; Exhs. 19, 20) At trial, he asserted that he had stopped teaching there because the district declined to rehire him for the 1991-92 school year. (Tr. 62)

After 1987, Mrs. Springer returned to teaching and now teaches sixth grade at the Wasatch Middle School in Heber City. (Tr. 10, 13, 46) As a "step 5" teacher with a B.S. degree and 30 extra hours, Mrs. Springer is paid \$21,335.00 per year, or \$1,778.00 per month gross income. (Tr. 14; Exh. 13)

Mrs. Springer also described to the trial court all of the other sources of payments to her, however uncertain, in her teaching position. (Exh. 13; Tr. 14-7, 34-7, 45-7, 49) In addition to her base salary, Mrs. Springer is also eligible for and receives a "career ladder" incentive (\$825.00 in 1991-92, paid to her at \$69.00 per

month). (Exh. 13; Tr. 30-4) Including this "career ladder" money, if she participates in that program, she "nets" a monthly take-home pay of \$1,351.00 (Tr. 15-6; Exh. 13)

If Mrs. Springer successfully completes all additional career ladder requirements for a school year, she is then eligible to receive an additional one-time career ladder "bonus" in May. (Tr. 15, 9) In May 1991, she qualified for a lump sum "bonus" of \$772.00 which was less than her 1990 "bonus". (Tr. 46; Exh. 13, 9)

While Mrs. Springer assumed that an additional \$700.00 to \$1,100.00 might be possible in May 1992, the district superintendent cautioned that the Wasatch School District had reduced its performance bonus money that year. Whatever "bonus" money was available would depend upon the number of candidates who completed the necessary program requirements. (Exh. 9; Tr. 17) Mrs. Springer was told that career ladder money was "down" and could even be as little as one-half ($\frac{1}{2}$) of prior years. (Tr. 47) The superintendent's letter explaining the career ladder funding is Exhibits 9 and 23 and is attached as Addendum "H".

The availability of "career-ladder money" varies from year to year. (Tr. 15, 46-7) Mrs. Springer explained that an amount of career ladder "bonus" cannot be known in advance because it is dependent upon a complicated mathematical formula with numerous variables. First, the career ladder income is dependent upon legislative funding, which is allocated between the various school districts. Wasatch School

District's allocation is based upon the number of applicants and those who ultimately qualify at various levels. Each applicant, such as Mrs. Springer, must meet individual, personal criteria during the year. Then, upon qualification at the end of the year, the amount of individual "bonus" received depends upon the number of qualifying participants, statewide and within the district. Less experienced teachers, such as Mrs. Springer, receive less. (Tr. 45-7; Exh. 9, Add. H)

The trial court specifically found that, for child support and alimony purposes, Mrs. Springer's career ladder funds should not be included in her income because the career ladder program could lead to "higher salary" for Mrs. Springer in the future, potentially reducing future alimony. (Memo. Dec. R. 53, 52) Furthermore, dependence upon speculative career ladder income would bring Mrs. Springer uncertainty on a year-to-year basis and penalize her for seeking extra compensation while pursuing career advancement. (Memo. Dec., R. 53; Findings, R. 65)

As a recreation-type "hobby", and in support of her 16-year-old daughter's activities, Mrs. Springer also attends tumbling competitions. Occasionally, she has judged at these competitions. (Tr. 49-51) Although she was paid \$405.00 for her judging in 1991, her expenses for uniforms and travel to and from the competitions exceeded \$500.00. (Tr. 50-1; Exh. 22, Sched. C) The trial court excluded Mrs. Springer's "tumbling" money, as well as Appellant's lecturing income, in calculating child support and alimony.

In fixing child support under the statutory guideline, the court applied Appellant's income of \$3,020.00 and Mrs. Springer's base salary of \$1,778.00 to calculate a child support payment of \$218.00 per teenager. (Child Support Worksheet, R. 56 - attached as Addendum "D").

The trial court also pared down each party's allowed reasonable living expenses. Mrs. Springer itemized the monthly living expenses for herself and her three daughters, totaling \$2,579.89. (Exh. 17, attached as Addendum "F") Her listed expenses are based upon the monthly average of her actual expenses over the eight to nine months prior to the trial. (Tr. 27, 52-5) During the divorce proceedings, her expenses exceeded her income (including temporary support). She had to exhaust her savings and borrow from her parents. (Tr. 42)

She also testified that the agreed sale of the family home meant that she and her daughters would live somewhere else "not as nice" and would reduce her house payment. (Tr. 29) The court reduced her "necessary" house payment \$241.00. (Memo. Dec., R. 51; Exh. 17) The court declined to allow her tithing contributions of \$230.00 and \$150.00 to replace her 1988 sedan; reduced the monthly food expense by \$75.00; and reduced her expenses for her daughters' school activities, school lunches, entertainment and clothing by \$124.00. (Tr. 51-5; R. 51) The trial court allowed her \$1,800.00 as reasonable expenses — a reduction of \$780.00.

In addition to these regular monthly expenses, Mrs. Springer also itemized other marital debts that she owed, (Exh. 16 attached as Addendum "G"), including an R.C. Willey bill for Christmas (\$395.00), the loan on her automobile (\$1,912.00 repaid at \$150.00 per month), family dental bills (\$715.00), her bank overdraft (\$225.00), her then billed attorney fees (\$3,555.00), and her loan from her parents (\$500.00). (Tr. 21-4; Exh. 16, Add. G) The court found that even with economies and reductions in some areas, Mrs. Springer still had need for assistance in meeting her monthly expenses. (Add. C, R. 51)

Appellant Mr. Springer claimed monthly expenses for himself alone of \$2,312.00. (Exh. 5 p. 4; R. 50) Living in his mother's home in Pleasant Grove, Appellant claimed that he was paying \$552.00 a month in rent, utilities, maintenance, and insurance. (Tr. 79, 109; Exh. 5, p. 4) He estimated \$98.00 a month of entertainment expenses, compared to \$75.00 a month expended by Mrs. Springer and three teenagers. (Exh. 5, p. 5; Exh 13) His church tithing contributions were grouped with his "incidentals" of \$150.00 a month. (Tr. 111) Appellant also claimed a \$240.00 monthly payments for two vehicles (Tr. 115, Exh. 5, p. 5).

The trial court found that Appellant's expense items were overstated, giving some specific examples. After eliminating Appellant's tithing contributions and incidentals of \$150.00, the trial court found that Appellant's expenses "such as entertainment, incidentals and auto payments, which both parties have, . . [were]

high" and should be reduced to meet reasonable needs. (Memo. Dec., R. 50-1) The court did not, however, state what it considered to be a reasonable total for all of Appellant's monthly expenses. (R. 50)

In order to equalize Mrs. Springer's burden to maintain a home for herself and the three teenagers and a lifestyle "somewhere near" that of the marriage, with both parties' incomes and expenses, the court awarded Mrs. Springer \$300.00 monthly alimony. (R. 50)

SUMMARY OF ARGUMENT

Appellant Mr. Springer has not marshalled the evidence that supports the alimony and attorney fee awards. Substantial evidence in the record shows Mrs. Springer's financial need; the extent that she, herself, contributed to meet that need; and Appellant's ability to pay alimony. The evidence supports the trial court's findings on each of these Jones factors.

Although Appellant may argue his own interpretation of the evidence or opinion as to what he thinks fair, the responsibility to determine the equities lies with the trial court — not with Appellant. Because the Jones factors were properly considered and findings were made on each, the alimony award is not seriously inequitable.

Event if the trial court confused the various sources of Mrs. Springer's income in its Memorandum Decision, the evidence is clear and unrefuted that the amount of career ladder money is uncertain from year-to-year and was properly excluded from alimony calculations. And, the evidence supports a finding of her need and his ability to pay, even if the higher income levels are assessed to her as Appellant argues.

Finally, Appellant admits that the child support award is proper. That award is based upon the same gross income of both parties which the trial court used to determine alimony. If Mrs. Springer's income was proper to calculate child support, it was also proper to determine alimony.

As to the attorney fee award, the court received and considered, without any objection, evidence of Mrs. Springer's need and the reasonableness of her attorney's fee. After considering this evidence and the evidence of both parties' financial circumstance the trial court made adequate findings on her need, his ability to assist with her need, and the reasonableness of the fee. There is no basis to disturb the award to Mrs. Springer of one-half of her attorney fees at trial. She should also be awarded her attorney fees incurred on appeal.

ARGUMENT

POINT I

THE TRIAL COURT PROPERLY AWARDED PERMANENT ALIMONY OF \$300.00 PER MONTH TO MRS. SPRINGER.

The trial court's award of \$300.00 a month in alimony is warranted by the substantial evidence at trial of Mrs. Springer's need, her inability to meet that need as a sixth grade teacher, and Appellant's ability to assist in meeting the need. Alimony's primary function is to enable Mrs. Springer to maintain, as nearly as possible, the "standard of living enjoyed during the marriage." Rudman v. Rudman, 812 P.2d 73, 76 (Utah App. 1991). The well-established standard for determining alimony in Utah considers:

1. The financial conditions and needs of the wife, and
2. The ability of the wife to produce a sufficient income for herself, and
3. The ability of the husband to provide support.

Jones v. Jones, 700 P.2d 1072, 1075 (Utah 1985).

When these factors have been considered, this court will not disturb the trial court's considerable discretion unless Appellant shows that such a serious inequity has resulted as to manifest a clear abuse of discretion. Rudman, 812 P.2d at 76. In this case, Appellant fails to show such a "serious inequity" or abuse, and the record does not reasonably support any such contention.

Appellant must marshal all the evidence supporting the alimony award to show that the award was inequitable. Viewed with the decree as a whole, Appellant's burden is not met when his facts and argument are incomplete and inaccurate. Neither this court nor Appellee should undertake to complete Appellant's duty for him. Without an accurate and adequate marshaling, this court should refuse to even consider the substance of Appellant's dispute of the trial court's findings. Potter v. Potter, 204 Utah Adv. Rep. 37, 38, n. 1 (Ct. App. 1992); Allred v. Allred, 835 P.2d 974, 979 (Utah 1992); Accord Koulis v. Standard Oil Co. of Calif., 746 P.2d 1182, 1184 (Utah App. 1987) (In the absence of a concise, accurate statement of the facts, marshaling the evidence, this court assumes the correctness of the findings and judgment.)

Appellant argues that the trial court erred when it excluded Mrs. Springer's career ladder income from alimony calculations. The determination of Mrs. Springer's income to assess alimony under Jones is not clearly erroneous. Nor is the alimony awarded clearly erroneous when considering the entire record. Even assuming that Mrs. Springer's dependable income was as much as Appellant claims, the alimony award is still not an abuse of discretion or inequitable.

A. The exclusion of Mrs. Springer's speculative career ladder income to determine spousal support is not clearly erroneous.

Appellant's brief correctly identifies the four sources of income to Mrs.

Springer at the time of trial:

1. Her base salary - \$21,335 in 1991 as a teacher step 5, paid monthly.
2. A career ladder incentive - \$825 per year in 1991, paid monthly. Career ladder income changes from year to year depending on appropriated funds and the district career ladder plan. (Exh. 9, Add. H)
3. A career ladder bonus - paid in May 1992. In addition to funding, the amount of this bonus will depend upon the level of participation, completion of program requirements, and number of participants statewide and in the district. Mrs. Springer received \$772.00 in 1991. However, the bonus paid has been less in the three years she has participated in the program and was predicted to be less again in 1992. (Tr. 46-7)

The trial court found that inclusion of income from the career ladder program for support purposes "would bring uncertainty on a year-to-year basis, as well as penalize her for seeking extra compensation while pursuing career advancement." The Career Ladder Program could lead to a higher salary and, thereby, to less alimony in the future. (Memo. Dec., R. 53, 52; Findings, 65, 64)

4. Tumbling judge - at daughter's tumbling meets where her expenses to support her daughter in this activity exceed the total earned.

However, beyond properly identifying these sources, Appellant's brief then hops around the several variations of monthly, yearly income evidence and expenses, picking and choosing different figures depending on which suits his position. What is his position? It is that after a 28-year marriage, during which his 50-year-old partner worked in the home, and now with an income 30 percent higher than all of her income, Appellant does not have to pay any alimony. (Tr. 160) Appellant has to compare apples to oranges to support that position.

Appellant's narrow point of view in this case is very much like the husband in Carter v. Carter, 584 P.2d 904, 905 (Utah 1978). In Carter, the parties divorced after a 31-year marriage, owning modest assets. The wife was unemployed during the marriage, but, upon divorce, secured a teaching position. The husband complained when the trial court refused to terminate her \$350.00 per month alimony, arguing that her teaching income was sufficient for her support. The Utah Supreme Court, sensitive to the trial court's duty, opined that it is "necessary and proper for the court to consider not only his point of view, but all of the factors bearing on the total problem." Id. One such factor is to encourage the wife to seek enhanced employment, which is not served by cutting off alimony entirely just because she takes the initiative and industry to get a job. Id.

Appellant also has a greater income potential because of his training, experience and seniority acquired over the past 20 years, while Mrs. Springer has been occupied mainly in caring for of the home and family. Id. at 905-6. (Tr. 131-2) Moreover, Mrs. Springer's needs should be assessed in light of the standard of living enjoyed by her and her children during the marriage.

The trial court heard all of the evidence regarding the means and sources of Mrs. Springer's support. He considered the numerous variables in calculating career ladder incentives and was advised that the amount of those incentives had been less each year than the year before. The court acted well within its discretion in determining that her career ladder income was too speculative and unreliable to give certainty on a year-to-year basis. (R. 53, 52; 65, 64) Excluding guesstimates of future income amounts was a proper exercise of his discretion. See Rudman, 812 P.2d at 76-7 (A future social security income was too speculative without a specific finding as to the amount and date); Rasband v. Rasband, 752 P.2d 1331 (Utah App. 1988) (Decreasing wife's alimony based upon speculation as to her future earning ability is inappropriate, considering the court's continuing jurisdiction); McCulloch v. McCulloch, 435 N.W.2d 564, 567 (Minn. App. 1989) (Future bonus income was too speculative and not a dependable source of income.)

Appellant himself apparently recognized the speculative nature of Mrs. Springer's supplemental income when he affirmative alleged and admitted in his

Answer that Mrs. Springer's income as a school teacher was \$1,700.00 per month. (Answer, R. 12) Including the potential of future career ladder bonus would be as reasonable as adding to Mr. Springer's income a 3.5% salary step increase for state employees anticipated for July 1994, or the state employee raise authorized by the 1993 legislature.

And, even more telling, nowhere does Appellant's brief challenge the trial court's award of child support or the factual basis for that award. The court considered the purposes and function of Utah Code Ann. § 78-45-7.5 (1992) useful to determine income for alimony purposes, as well as for child support purposes. In ordering child support at \$218.00 per child, the trial judge used the same income and expense figures that he used to fix the \$300.00 per month alimony. (Add. D, R. 56) Appellant has not appealed from that exercise of discretion and concedes that Mrs. Springer's income was properly evaluated for support purposes.

If the trial court's determination of income for child support was not clearly erroneous, then that same determination for spousal support is also not clearly erroneous.

B. Appellant fails to show that the award to Mrs. Springer of \$300.00 per month alimony is inequitable and an abuse of discretion.

Arguing that the alimony award is unfair to him, Appellant picks and chooses among the income and expense figures before the trial court, ignoring more direct

comparisons that support the award. He contends that the court should have included in Mrs. Springer's income her monthly career ladder incentive and that the omission of \$68.75 a month requires reversal of the entire \$300.00 award - *ipso facto*.

(Appellant's Brief at 10) As demonstrated, the court's findings are not clearly erroneous when considering the ultimate award and the uncertain speculative nature of career ladder. However, whether or not Mrs. Springer's monthly career ladder money is considered for support purposes, the \$300.00 alimony award is still equitable and fair in light of all the factors bearing on the total problem.

Even assuming Mrs. Springer's gross teacher salary of \$1,778.00 was augmented to include her monthly career ladder incentive (\$68.75), her average monthly gross would only be \$1,847.00 — almost \$1,200.00 less than Appellant's monthly gross of \$3,045.00. (See, Exh. 5, p. 2) Her monthly income is still only 60% of his income. Had she been teaching for 20 years she might now have seniority and a greater income potential — but she does not and he does.

Comparing the parties' net monthly take-home income, his "usable" income is \$2,016.00 after taxes and insurance (for which he also gets \$32.00 credit on child support). Mrs. Springer's augmented net monthly take home would be \$1,351 — still two-thirds that of Appellant's and a difference of \$665.00.

On virtually all other issues agreed to by the parties, their assets and liabilities were divided equally — 50-50. The home equity was divided equally, yielding an estimated \$35,000.00 each when sold. (Tr. 4, 81)¹ Retirement benefits were divided equally. (Tr. 5-9) Dental/medical expenses were split equally. (Tr 4). Bank overdrafts were roughly equivalent. Each party assumed an automobile payment. (Exh. 16; Tr. 16) The trial court properly awarded alimony that would "tend to equalize the burden" on Mrs. Springer to maintain a home and a lifestyle "somewhere near" that of the marriage. (Findings, R. 62) Appropriately, any necessary decrease in that lifestyle should be experienced by both parties. In view of this equal and equitable division of assets, the alimony award likewise is not inequitable. Had the trial court completely equalized the income and removed Mrs. Springer's disparity, an alimony award greater than \$300.00 would still have been equitable.

In Appellant's comparison of the parties' income and expenses, he either follows or ignores the trial court's determinations thereof, depending on which figure is to his advantage. For example, he chooses the court's lower figure of Mrs. Springer's reasonable expenses of \$1,800.00 but compares that to the higher income figure, including career ladder, which the court rejected. (See Exhs. 17 and 13)

¹Although each would receive over \$35,000.00 after the Decree, Mrs. Springer would have to arrange for a less expensive residence for herself and the children. (Tr. 51) Appellant had no need to acquire new accommodations, although he testified that he intended to so at an increased expense of \$800.00 a month. (Tr. 109; Exh. 5)

Exhibit 13 (Add. E) is Mrs. Springer's itemization of income, advising the trial court of all the various sources of her "income". Mrs. Springer explained each element of that "income" in her testimony, describe its dependability and variation. (Tr. 45-7) The trial court was not bound by Exhibit 13 and the listed income sources any more than it was bound by Mrs. Springer's itemized expenses in Exhibit 17. Rather, her explanations of income and expenses were factors to consider along with Appellant's evidence of his income and expenses in balancing the equitable, reasonable needs and abilities of each party.

Also, in criticizing Mrs. Springer's financial needs, Appellant completely neglects to consider the marital liabilities which she must pay in addition to her list of monthly expenses (Exh. 16; Tr. 21) — including a \$150.00 car payment; R.C. Willey bill; \$2,000.00 attorney fees; dental bills and a \$225.00 bank overdraft.

Appellant argues that Mrs. Springer's take home is understated because, at trial, she took no withholding deductions for her daughters. Appellant claims that Mrs. Springer's net income will increase by another \$117.00 a month when her withholding deductions are increased. (Appellant's brief at 15-6). This argument fails for two reasons. Assuming Mrs. Springer's income is augmented by her career ladder incentive as Appellant argues, her monthly take home is \$1,407.00. Then, if she also included three exemptions for withholding purposes, the increase in monthly net is only \$57.00 — not the \$117.00 Appellant claims (compare Add. E and Exh. 29).

Secondly, Appellant ignores the fact that Mrs. Springer's alimony income is taxable to her. The tax on \$300.0 a month alimony decreases the net amount of monthly support available to her. And, the tax deduction for alimony that he pays, increases Appellant's net income. Her decreased net support and increased tax liability will more than offset any benefit gained by increasing her withholding for two dependents.

Appellant attempts to minimize his own income and expenses, cloaking himself in an attitude of benevolent generosity. Appellant claims the trial court erred by refusing to accept, whole hog, his estimated future expenses of \$2,551.00.

(Appellant's Brief at 13) Even his present expenses at the time of trial were considered by the court to be "overstated". (Finding 24, R. 63) While the court did not discuss each and every item, it did discuss some examples. (R. 63) The court was entitled to consider the reasonableness of Appellant's claim of \$545.00 in rent, maintenance and utilities for his mother's home (Tr. 79-81, 157); \$98.00 monthly entertainment (Tr. 113); operating two automobiles (Tr. 75, 114-5); and, tithing (Tr. 111). After hearing Mrs. Springer explain her marriage debts (Exh. 16) and borrowing \$500.00 from her parents, Appellant decided to tell us about the "\$500.00" that he had "borrowed" from his mother. He was "embarrassed" that he had never previously disclosed that "loan" prior to his trial testimony. (Tr. 75) Above and beyond Appellant's PEHP benefits as a state employee, he also claimed \$57.00 a month for his medical and dental bills. (Exh. 5, p. 4)

Proper exercise of the court's discretion includes a critical review of all of a party's expenses. The issue is not whether Appellant incurred the expenses, but whether they are reasonable in light of the whole circumstances, including the needs of each party. For example, the purchase of a new home for Appellant alone, at an expense of almost \$800.00 per month is not reasonable in this case and was further indication to the trial court of Appellant's unreasonable, inflated expense. Although the trial court did not place a firm total on Appellant's reasonable expenses, if the same 30 percent reduction is made to his claimed expenses of \$2,312.00 as was made to Mrs. Springer's, Appellant's reasonable expenses would only be \$1,600.00, leaving over \$400.00 a month after child support.

Also, relevant to the court's consideration was the award to Appellant of real property near Mountain Spa which Appellant received by inheritance during the marriage. As inherited property, the lots were properly awarded to him but the trial court could reasonably take that into account when evaluating the entire circumstances for purposes of spousal and family support.

All-in-all, Appellee submits that Appellant's brief is nothing more than an attempt to **reargue** what he believes fair — from his perspective. Appellant ignores the perspectives of Mrs. Springer and of the trial court. Whether or not the trial court may have confused his explanation of the sources of Mrs. Springer's income, the ultimate, resulting award is not seriously inequitable, flawed or unfair. The evidence

and record as a whole support the permanent alimony award. Thronson v. Thronson, 810 P.2d 428, 435 (Utah App. 1991); Naranjo v. Naranjo, 751 P.2d 1144, 1147 (Utah App. 1988).

There is no abuse of discretion in the \$300.00 a month alimony award and the award should be affirmed.

POINT II

THE AWARD TO MRS. SPRINGER OF ONE-HALF OF HER ATTORNEY FEES IS SUPPORTED BY THE FINDINGS AND EVIDENCE, AND SHE SHOULD BE AWARDED HER FEES ON APPEAL.

Appellant complains that the award to Mrs. Springer of one-half of her attorney fees below is not supported by adequate findings.

At trial, Mrs. Springer's attorney introduced, without objection, his affidavit (Exh. 31) that detailed his legal services on her behalf up to the day before trial. Exhibit 31 avers that a reasonable fee for his 34.4 hours of service is \$4,128.00, based upon an average rate of \$120.00 per hour. (Exh. 31; Tr. 170-1) All of the attorney's work was required in the divorce and the fee was reasonable in light of the normal charges for similar services. (Exh. 31)

The trial court specifically found that (1) "plaintiff has need for such assistance," and (2) "defendant has the ability to provide assistance in the payment of attorney's fees and costs charged to her by her counsel." The court then ordered that "defendant pay one-half of the charges shown on plaintiff's exhibit 31 which the Court finds to be reasonable for the services he has performed in this matter." (Memo. Dec. R. 50; also, Findings, R. 62) The court then ordered Appellant to pay one-half of the \$4,128.00 fee. (Decree, R. 72)

Mrs. Springer's need for assistance to pay her fees is supported by her monthly expenses of \$2,580.00 and her marital obligations compared to her monthly take-home income. (Exhs. 13, 16, 17; Tr. 26-7, 42) Moreover, her total monthly expenses had not significantly reduced since her separation from Appellant, even though Mrs. Springer has cut back her expenditures, borrowed from her parents, and relied upon her limited savings to make ends meet. As of trial, her expenses without paying her accrued attorney fees, still exceeded her income, including the temporary support. (Tr. 42) She also described additional, unscheduled maintenance problems in the home which would require additional financial resources prior to its sale — a broken dishwasher and disposal, painting, a "questionable" roof and \$500.00 to repair the furnace. (Tr. 43, 60) Her need for assistance is evident.

Appellant's ability to assist in the payment of Mrs. Springer's fees is evidenced by over \$36,240.00 in yearly income, at least 30 percent higher than Mrs. Springer's. His take-home pay exceeds her highest monthly take-home by over \$600.00. In addition to his income and divided retirement plan, he was awarded inherited real property near the Mountain Spa. (Tr. 4)

Even assuming that the written findings of the court, prepared by Appellant's counsel, are somehow lacking, the award is based upon "evidence of financial need . . . , the ability of the other spouse to pay, and the reasonableness of the requested fees". Bell v. Bell, 810 P.2d 489, 493 (Utah App. 1991). Viewed in the light most

favorable to the finding that Mrs. Springer has need and that Mr. Springer has the ability to provide assistance with her attorney fees, the evidence substantially supports those findings.

Not only does the evidence support the award but Appellant failed to object to the award of any attorney fees at trial. Nowhere in the transcript does Appellant argue or claim that Mrs. Springer was not in need of assistance with her fees, that he could not pay, or that the fee requested was not reasonable. (Tr. 170) In fact, at the conclusion of the trial, Appellant's attorney agreed that Mrs. Springer's attorney could submit his affidavit of attorney fees — received as Exhibit 31. Nothing in that affidavit was challenged or refuted.

While plaintiff's attorney fees was an issue initially left by the parties for trial (Tr. 9), there is no objection on the record to Mrs. Springer's evidence of her need or Appellant's ability to pay. Any oblique concern implied as to the reasonableness of the fee arises only from the written statement of Appellant's attorney fees of \$3,618.00 (not including trial time), which Appellant submitted only because he thought the court "should be aware" of Appellant's fees. (Tr. 170; Exh. 36)

The evidence before the court, including the unrefuted affidavit, sufficiently establishes each element of the attorney fee claim. Sorenson v. Sorenson, 839 P.2d 774 (Utah 1992) When Appellant neither objects to the reasonableness of the amount

nor refutes evidence at trial of his ability to pay, any failure to enter detailed factual findings is, at worst, harmless. Potter v. Potter, 204 Utah Adv. Rep. at 39.

In addition to the failure to object at trial, Appellant admits in his brief that Mrs. Springer is in need of assistance and that Appellant can pay, and has paid, the \$2,064.00 attorney fee award. However, in arguing that he should not assist in paying Mrs. Springer's fees, Appellant refers to selected facts and contentions outside the record. (Appellant's Brief at 20) The specific evidence in the record that supports the findings of her need and his ability to pay is ignored in Appellant's brief.

Appellant's argument here is distinctly different from his cited authority Chambers v. Chambers, wherein both parties challenged the trial court's fee award. This court remanded Chambers because the trial court failed to "address the reasonableness of the fees. . . ." Chambers v. Chambers, 198 Utah Adv. Rep. 49, 50 (Ct. App. 1992). The circumstances here are not "similar" to that case, because here the evidence of fees and reasonableness is uncontested. Judge Ballif's findings specifically address the reasonableness of Appellee's fees and find them to be reasonable. (R. 62, Finding 26)

Substantial evidence in this case supports the findings that "plaintiff has need for such assistance [in paying attorney's fees], and that defendant has the ability to provide assistance in the payment of attorney's fees and costs charged to her by her

counsel . . . shown on plaintiff's Exhibit No. 31 which the Court finds to be reasonable for the services he performed." (Finding 26, R. 62; Memo. Dec., R. 50)

In addition to her attorney fees at trial, Mrs. Springer should also be awarded her full attorney fees incurred on appeal. Generally, when a party in a divorce action is awarded fees by the trial court, fees will also be awarded to that party on appeal. Potter v. Potter, 204 Utah Adv. Rep. at 39; Lyngle v. Lyngle, 831 P.2d 1027, 1031 (Utah App. 1992).

The award of attorney fees should be affirmed and Mrs. Springer should be awarded her attorney fees incurred on appeal.

CONCLUSION

The decree should be affirmed. The award to Mrs. Springer of \$300.00 a month alimony and \$2,064.00 attorney fees is adequately supported by the evidence and well within the court's discretion.

The court's determinations regarding the parties' respective incomes and reasonable expenses is not clearly erroneous. The attorney fee award is based upon sufficient factual findings and unrefuted evidence.

Appellee Mrs. Springer should also be awarded her attorney fees incurred in this appeal and the case should be remanded for determination of the amount.

Respectfully submitted this 8th day of March, 1993.

A handwritten signature in black ink, appearing to read "Clark R. Nielsen", is positioned above a horizontal line.

Clark R. Nielsen

Joseph L. Henriod

HENRIOD, HENRIOD & NIELSEN

Attorneys for Appellee Karen Springer

ADDENDA

- A Decree of Divorce
- B Findings of Fact and Conclusions of Law
- C Memorandum Decision
- D Child Support Obligation Worksheet
- E Exhibit 13 - Income of Plaintiff
- F Exhibit 17 - Monthly Expenses for Plaintiff and Three Minor Children
- G Exhibit 16 - Liabilities Incurred During the Marriage
- H Letter from Superintendent Jolley dated January 29, 1992
- I Utah Code Ann. § 78-45-7.5. Determination of gross income — Imputed income.

ADDENDUM "A"

FILED
IN THE DISTRICT COURT
WASATCH COUNTY, UTAH
9-21-92 Date
Clerk
Deputy

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L:springer.dod
Our File No. 20,669

Attorneys for Defendant

IN THE FOURTH JUDICIAL DISTRICT COURT OF WASATCH COUNTY
STATE OF UTAH

KAREN SPRINGER,	:	
	:	DECREE OF DIVORCE
Plaintiff,	:	
	:	
vs.	:	
	:	
JERRY SPRINGER,	:	
	:	Case No. 6913
Defendant.	:	Hon. George E. Ballif

The above-entitled matter came on regularly for hearing on January 30, 1992. The plaintiff appeared in person and was represented by her attorney, Joseph L. Henriod. The defendant appeared in person and was represented by his attorney, Don R. Petersen. The parties having stipulated as to certain issues; reserving the issues of what, if any, alimony and/or attorney's fees should be paid to the plaintiff, and if the Court should consider, in calculating plaintiff's income, the money she receives from the school district in a Career Ladder Program, and the court having taken certain issues under advisement; having issued its

Addendum A

Memorandum Decision on March 12, 1992, having heretofore entered its Findings of Fact and Conclusions of Law, now makes and enters the following:

DECREE OF DIVORCE

1. The plaintiff is granted a Decree of Divorce divorcing her from the defendant, said Decree to become absolute and final upon signing and entry of the same in the office of the clerk of the court.

2. There have been six children born as issue of this marriage, three of whom are minors, to-wit: Sarah Marie Springer, born June 26, 1975; Hazel Springer, born May 18, 1978; and Robyn Springer, born January 4, 1980. That the plaintiff and defendant are hereby awarded joint custody of the minor children, with the plaintiff being awarded physical residential custody and the defendant being awarded reasonable rights of visitation. The Court further orders that the parties are to abide by the Stipulation dated July 30, 1991, and the Court's Order dated August 26, 1991, with the following exceptions:

a. The defendant hereby waives any right, title or interest he has in any off-sets in the home received by way of inheritance and/or gifts contributed to or aided in construction of the family home and the purchase of the property upon which it is located. The parties are ordered to sell the home through Davis Brothers ERA Real Estate Company. The plaintiff and defendant have the right in said listing to purchase the home. The home will be listed for sale at \$140,000.00 or more. The sale price may be reduced by mutual agreement of the parties, in the event the home does not sell.

b. The Safire wood burning stove shall be left in the premises and made part of the sale to any prospective buyers.

c. In addition to the family home and the property upon which it is located in Midway, Utah, there is an additional parcel of real property in Midway, Utah, held in the names of the parties. It is hereby ordered that the defendant is awarded all right, title and interest in and to said property, and it has been stipulated to that the defendant received the same by way of inheritance. The plaintiff is ordered to execute a quit claim conveying all right, title and interest she has in and to said property to the defendant. Said property is more particularly described as follows:

Beginning at a point 273.42 feet North of the Southeast corner of the Southwest quarter of Section 26, Township 3 South, Range 4 East, of the Salt Lake Meridian; and running thence North 398 feet; thence West 152 feet; thence South 398 feet; thence East 152 feet to the point of beginning.

3. Each party is hereby ordered to provide health and accident insurance for the use and benefit of the minor children, if available through their employment at a reasonable cost. Any expenses not paid for by health insurance which are non-routine health care expenses, shall be paid for one-half by the plaintiff and one-half by the defendant.

4. Each party is ordered to cooperate with the other in implementing the terms of the Decree of Divorce entered by the court.

5. The plaintiff is ordered to maintain a life insurance policy on her life in the amount of \$15,000.00 designating the minor children as beneficiaries thereof.

6. The defendant is ordered to maintain a life insurance policy on his life in the amount of \$50,000.00 designating the minor children as beneficiaries thereof.

7. It is ordered that the parties divide equally all retirement accounts which they have acquired, and that a Qualified Domestic Relations Order be entered with respect to said retirement accounts, it being understood that the plaintiff has a retirement account and a 401K account through the State of Utah, and that likewise, the defendant has a retirement account and a 401K account through the State of Utah. Counsel for the plaintiff is ordered to prepare the necessary QDRO's to divide said accounts equally between the plaintiff and defendant, and said division shall be effective as of January 30, 1992.

8. Each party is awarded the personal property as set forth on Exhibit 15 attached hereto, which exhibit sets forth property awarded to the plaintiff and the defendant with the following exceptions: the Safire wood burning stove set forth on the exhibit to be awarded to the defendant shall be left in the family home and made part of the sale price of the home. As to the property in dispute, the plaintiff is awarded the oak/maple hutch which matches the kitchen set and the wagon axle. The defendant is awarded the Japanese Geisha doll, large Navajo rug, pool table (slate bed), and cemetery lots. In order to equalize the division of the personal property, the defendant is ordered to pay to the plaintiff the sum of \$700.00, which sum shall be paid to the plaintiff when the family home is sold.

9. It is hereby ordered that the parties file a joint tax return for the year 1991, and divide any refunds received therefrom equally. The defendant is ordered to pay for the

cost of preparing the tax returns, and said tax returns shall be prepared by K. Alan Zabel who has prepared tax returns for the parties in previous years.

10. It is hereby ordered that for income tax deduction purposes, the plaintiff will be allowed to claim the minor children, Sarah Marie Springer and Robyn Springer, and that the defendant will be allowed to claim the minor child Hazel Springer. At such time as the minor child Hazel Springer reaches her majority, then the parties shall alternate claiming the minor child Robyn Springer for income tax deduction purposes.

11. The defendant is hereby ordered to pay to the plaintiff the sum of ~~\$217.88~~ ^{child support in accordance with the Uniform Child Support Act} ~~per~~ ^{\$259.65} month ~~per child~~ for the support and maintenance of the minor children until the child reaches ~~18~~ ¹⁸ years of age or is graduated from the child's high school graduation class.

12. The defendant is ordered to pay \$300.00 per month to the plaintiff as alimony.

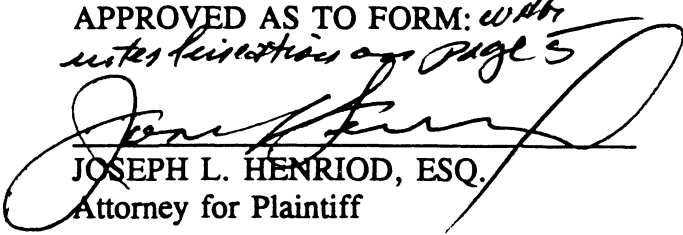
13. The defendant is ordered to pay \$2,064.00 for the use and benefit of plaintiff's attorney.

DATED this 18th day of April 1992.

BY THE COURT


GEORGE E. BALLIF
DISTRICT COURT JUDGE

APPROVED AS TO FORM: *with*
notes & corrections on page 3


JOSEPH L. HENRIOD, ESQ.
Attorney for Plaintiff

ADDENDUM "B"

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FILED
IN THE DISTRICT COURT
WASATCH COUNTY, UT. H
5-21-92 Date
[Signature] Clerk
[Signature] Deputy

L: spring2.fof
Our File No. 20,669

Attorneys for Defendant

IN THE FOURTH JUDICIAL DISTRICT COURT OF WASATCH COUNTY
STATE OF UTAH

KAREN SPRINGER,	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW
Plaintiff,	:	
vs.	:	
JERRY SPRINGER,	:	
Defendant.	:	Case No. 6913
	:	Hon. George E. Ballif

The above-entitled matter came on regularly for hearing on January 30, 1992. The plaintiff appeared in person and was represented by her attorney, Joseph L. Henriod. The defendant appeared in person and was represented by his attorney, Don R. Petersen. The parties having stipulated as to certain issues; reserving the issue of what, if any, alimony and/or attorney's fees should be paid to the plaintiff, the court having taken certain issues under

advisement; and the court having issued its Memorandum Decision on March 12, 1992, and being fully advised in the premises, it now makes and enters the following:

FINDINGS OF FACT

1. The plaintiff is a resident of Wasatch County, State of Utah, and has been for three months prior to the commencement of this divorce action.

2. The parties hereto are husband and wife, having been married on March 15, 1963, in Cache County, State of Utah.

3. There have been six children born as issue of this marriage, three of whom are minors, to-wit: Sarah Marie Springer, born June 26, 1975; Hazel Springer, born May 18, 1978; and Robyn Springer, born January 4, 1980. It is reasonable and proper that the plaintiff and defendant shall be awarded joint custody of the minor children, with the plaintiff being awarded ^{physical and legal} residential custody and the defendant being awarded reasonable rights of visitation.

4. During the course of the marriage irreconcilable differences have developed between the parties making it impossible for them to continue their marriage relationship.

5. It is reasonable and proper that the defendant should pay to the plaintiff child support based upon the schedules adopted by the State of Utah.

6. The parties have entered into a Stipulation respecting the family home of the parties. It is reasonable and proper that the court abide by said Stipulation dated July 30, 1991, and the Court's Order dated August 26, 1991, with the following modifications:

a. The defendant hereby waives any right, title or interest he has in any off-sets in the home received by way of inheritance and/or gifts contributed to or aided in construction of the family home and the purchase of the property upon which it is located. The parties agree that the home will be sold through Davis Brothers ERA Real Estate Company. The plaintiff and defendant shall reserve the right in said listing to purchase the home. The home will be listed for sale at \$140,000.00 or more. The sale price may be reduced by mutual agreement of the parties, in the event the home does not sell.

b. The parties have agreed that with respect to an offer to purchase the home, they will make a counter offer in the amount of \$132,500.00. The Safire wood burning stove would be left in the premises and made part of the sale to any prospective buyers.

c. In addition to the family home and the property upon which it is located in Midway, Utah, there is an additional parcel of real property in Midway, Utah, held in the names of the parties. Said property shall be awarded to the defendant, it being stipulated that the defendant received the same by way of inheritance, and the plaintiff shall quit claim all right, title and interest she has in and to said property to the defendant. This property is more particularly described as follows:

Beginning at a point 273.42 feet North of the Southeast corner of the Southwest quarter of Section 26, Township 3 South, Range 4 East, of the Salt Lake Meridian; and running thence North 398 feet; thence West 152 feet; thence South 398 feet; thence East 152 feet to the point of beginning.

7. It is reasonable and proper that each party will provide health and accident insurance for the use and benefit of the minor children, if available through their employment at a reasonable cost. Any expenses not paid for by health insurance which are non-routine health care expenses, shall be paid for one-half by the plaintiff and one-half by the defendant.

8. Each party represents that they have made a full disclosure of all assets in which they have an interest.

9. Each party will cooperate with the other in implementing the terms of the Decree of Divorce entered by the court.

10. It is reasonable and proper that the plaintiff maintain a life insurance policy on her life in the amount of \$15,000.00 designating the minor children as beneficiaries thereof.

11. It is reasonable and proper that the defendant maintain a life insurance policy on his life in the amount of \$50,000.00 designating the minor children as beneficiaries thereof.

12. It is reasonable and proper that the parties divide equally all retirement accounts which they have acquired, and that a Qualified Domestic Relations Order be entered with respect to said retirement accounts, it being understood that the plaintiff has a retirement account and a 401K account through the State of Utah, and that likewise, the defendant has a retirement account and a 401K account through the State of Utah. Counsel for the plaintiff shall prepare the necessary QDRO's to divide said accounts equally between the plaintiff and defendant, and said division shall be effective as of January 30, 1992.

13. Each party is awarded the personal property as set forth on Exhibit 15 attached hereto, which exhibit sets forth property awarded to the plaintiff and the defendant with the following exceptions: the Safire wood burning stove set forth on the exhibit to be awarded to the defendant shall be left in the family home and made part of the sale price of the home. As to the property in dispute, the plaintiff shall be awarded the oak/maple hutch which matches the kitchen set and the wagon axle. The defendant shall be awarded the Japanese Geisha doll, large Navajo rug, pool table (slate bed), and cemetery lots. In order to equalize the division of the personal property, the defendant shall pay to the plaintiff the sum of \$700.00, which sum shall be paid to the plaintiff when the family home is sold.

14. It is reasonable and proper that the parties file a joint tax return for the year 1991, and divide any refunds received therefrom equally. The defendant shall pay for the cost of preparing the tax returns, and said tax returns shall be prepared by K. Alan Zabel, who has prepared tax returns for the parties in previous years.

15. It is reasonable and proper that for income tax deduction purposes, the plaintiff will be allowed to claim the minor children, Sarah Marie Springer and Robyn Springer, and that the defendant will be allowed to claim the minor child Hazel Springer. At such time as the minor child Hazel Springer reaches her majority, then the parties shall alternate claiming the minor child Robyn Springer for income tax deduction purposes.

16. The Court finds that the plaintiff is employed by Wasatch County School District at a salary of \$21,335.00 per year which computes to a monthly gross of \$1,777.91.

In 1991, plaintiff received \$405.00 as the team leader for the career ladder program of tumbling. This activity is not required as part of her regular salary. The amount she receives for this career ladder work varies from time to time. There are expenses involved in this work which are reimbursed to her. The work is performed outside of her regular teaching duties.

17. Title 78-45-7.5 Utah Code Annotated defines gross income as used in the child support guidelines and under subparagraph (2) it is provided that "income from earned income sources is limited to the equivalent of one full time job." Subsection 7(d)(iii) provides that income may not be imputed if (iii) "a parent engaged in career or occupational training to establish basic job skills . . . "

18. It appears, and the Court concludes from the above cited statutes that the monies earned by plaintiff in her career ladder work in tumbling should not be included as income for purposes of child support. (The Court also notes that the defendant has income similar to plaintiff's in that he earns about \$400.00 annually as a lecturer at other education institutions.) However, the question here also relates to whether this amount of money shall also be included in arriving at her income as it may relate to her need for alimony.

19. The concept and reason for the exception in the child support income area and those in a determination of alimony appear to be the same and should similarly be excluded in a determining of plaintiff's income as it relates to her need for alimony. To include it would bring uncertainty on a year to year basis, as well as penalize her for seeking extra compensation while pursuing career advancement. The Career Ladder Program could lead to a higher

salary which could lead to less alimony in the future. The Court therefore concludes that this item should not be included in the determination of her income for purposes of alimony.

20. Plaintiff's annual income is \$21,335.00. This amounts to a gross monthly income of \$1,777.91. Plaintiff has net take home pay of \$1,350.00 after deducting for a credit union debt of \$186.00, as well as other state and federal tax withholding. She has the primary care, custodial responsibility of the parties' three minor children, she will also receive a portion of defendant's Utah State Retirement, and his 401K benefit, the precise amount of these benefits has not been determined although it is apparent that plaintiff will receive additional income over that which defendant will receive from similar benefits the plaintiff has.

21. Defendant's expert on job skills and career changes to obtain higher pay can be given little weight since plaintiff is happy with her position and is not now desirous of a career change.

22. Plaintiff's Exhibit No. 17 sets forth the monthly expenses she will have for herself and the three minor children. It is apparent from the exhibit that certain economies concerning monthly expenses have not been taken into consideration in the exhibit. The house payment listed at \$741.59 could be reduced approximately by \$200.00 by the acquisition of a less expensive new home as is shown by plaintiff's Exhibit No. 18. The automobile expenses particularly "replacement" appears to be misplaced as does the ~~\$1~~^{my}230.00 contribution items which would not be considered as an essential expense per month to the plaintiff. The Court notes that other items such as Christmas, birthdays, entertainment and \$100.00 per month for

clothes are also somewhat overstated. The Court has reduced the house payment to \$500.00, the food and sundries to ~~2~~400.00, eliminated the replacement items under auto expense and has eliminated the contributions in the sum of \$230.00 and has rounded off the last six entries of monthly expenses (Exhibit No. 17) to \$400.00. This would make the total monthly expense for her of \$1,760.00. The Court will round off the figure for the plaintiff's support to be reasonably at \$1,800.00 per month.

23. Even with the Court's findings as to plaintiff's listed needs and the economies and reductions in some areas, the plaintiff has need for assistance in meeting her monthly expenses.

24. As to the defendant's income, according to Exhibit No. 7, he has a present salary of approximately \$36,240.00 and a net monthly income of \$2,016.15. The defendant's monthly expenses are listed on his financial declaration as \$2,312.00. However, it appeared to the Court that there were some overstated items on his total monthly expense detail, one of which is a \$655.00 item of payment of support re: his prior marriage. This is the amount of child support that will be awarded in this proceeding and this should be deleted since the plaintiff did not enter the amount of child support she is charged with in this matter which is \$412.00. Also, the item on the declaration indicating incidentals is principally a donation or gift which should be eliminated. Other areas of defendant's monthly expenses are high such as entertainment, incidentals and auto payments, which both parties have and therefore further reduces defendant's monthly needs.

25. Considering the income of each of the parties, their monthly necessary expenditures, and the need which the plaintiff has to meet her expenses, the Court has concluded that the defendant should pay to the plaintiff as alimony the sum of \$300.00 per month. This will tend to equalize the burden that the plaintiff has in maintaining the home for three children as well as herself and having a lifestyle somewhere near that which she had while married to the defendant.

26. The final item for consideration is plaintiff's claim for assistance in paying attorney's fees. The Court finds that the plaintiff has need for such assistance, and that the defendant has the ability to provide assistance in the payment of attorney's fees and costs charged to her by her counsel and orders that the defendant pay one-half of the charges shown on plaintiff's Exhibit No. 31 which the Court finds to be reasonable for the services he has performed.

The court having entered the foregoing Findings of Fact, now makes and enters the following:

CONCLUSIONS OF LAW

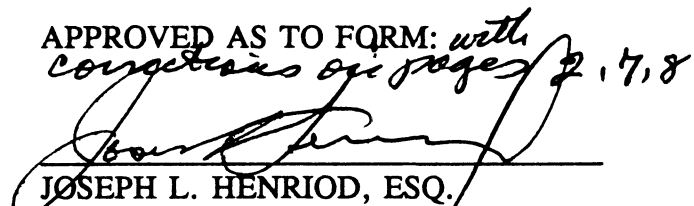
1. The plaintiff is granted a Decree of Divorce divorcing her from the defendant, said Decree to become absolute and final upon signing and entry of the same in the office of the clerk of the court.

2. The plaintiff and defendant are entitled to judgment consistent with the foregoing Findings of Fact.

DATED this 18th day of ~~April~~^{July}, 1992.

BY THE COURT


GEORGE E. BALLIF
DISTRICT COURT JUDGE

APPROVED AS TO FORM: *with*
corrections on pages 2, 7, 8

JOSEPH L. HENRIOD, ESQ.
Attorney for Plaintiff

ADDENDUM "C"

IN THE FOURTH JUDICIAL DISTRICT COURT

WASATCH COUNTY, STATE OF UTAH

KAREN SPRINGER

Plaintiff,

vs.

JERRY SPRINGER

Defendant.

Case Number:

DECISION

GEORGE E. BALLIF, JUDGE

FILED
IN THE DISTRICT COURT
WASATCH COUNTY, UTAH
3-16-92 Date
Clerk
Deputy

The above matter came on for hearing on January 30, 1992. Plaintiff and her counsel, Joseph Henroid appeared as did the defendant and his counsel, Don R. Petersen. The parties stipulated to certain issues, and reserved for the Court to decide the question of what, if any, alimony should be paid to the plaintiff; should the Court consider, in calculating plaintiff's income, the money she receives from the school district in a Career Ladder Program. Also, what if any attorney's fees should be awarded.

The Court will also take up the issues reserved in the following order; the Career Ladder Program, alimony and attorney's fees.

The Court finds that the plaintiff is employed by the Wasatch County School District at a salary of \$21,335.00 per year which computes to a monthly gross of \$1,777.91. In 1991 she received \$405.00 as the team leader for the career ladder program of tumbling. This activity is not required as part of her regular salary. The amount she receives for this career ladder work varies

from time to time. There are expenses involved in this work which are reimbursed to her. The work is performed outside of her regular teaching duties.

Title 78-45-7.5 Utah Code Annotated defines gross income as used in the child support guidelines and under subparagraph (2) it is provided that "income from earned income sources is limited to the equivalent of one full time job." Subsection 7(d)(iii) provides that income may not be imputed if (iii) "a parent is engaged in career or occupational training to establish basic job skills". . .

It appears, and the Court concludes from the above cited statutes that the monies earned by the plaintiff in her career ladder work in tumbling should not be included as income for purposes of child support. (The Court also notes that defendant has income similar to plaintiff's in that he earns about \$400 annually as a lecturer at other educational institutions). However, the question here also relates to whether this amount of money shall also be included in arriving at her income as it may relate to her need for alimony.

The concept and reason for the exceptions in the child support income area and those in a determination of alimony appear to be the same and should similarly be excluded in a determining of plaintiff's income as it relates to her need for alimony. To include it would bring uncertainty on a year to year basis, as well as penalize her for seeking extra compensation while pursuing career advancement. The Career Ladder Program could lead to a

3.

higher salary which could lead to less alimony in the future. The Court therefore concludes that this item should not be included in the determination of her income for purposes of alimony.

The next issue to be decided is what, if any, alimony the plaintiff should receive.

Plaintiff's annual income is \$21,335.00 This amounts to a gross monthly income of \$1777.91. Plaintiff has net take home pay of \$1,350.00 after deducting for a credit union debt of \$186.00, as well as other state and federal tax withholding. She has the primary care, custodial responsibility of the parties' three minor children, she will also receive a portion of defendant's Utah State Retirement, and his 401(k) benefit, the precise amount of these benefits has not been determined although it is apparent that plaintiff will receive additional income over that which defendant will receive from similar benefits the plaintiff has.

Defendant's expert on job skills and career changes to obtain higher pay can be given little weight since plaintiff is happy with her position and is not now desirous of a career change.

Plaintiff's exhibit #17 sets forth the monthly expenses she will have for herself and the three minor children. It is apparent from the exhibit that certain economies concerning monthly expenses have not been taken into consideration in the exhibit. The house payment listed at \$741.59 could be reduced approximately \$200.00 by the acquisition of a less expensive new home as is shown by plaintiff's exhibit #18. The automobile expenses particularly

4.

"replacement" appears to be misplaced as does the \$230.00 contributions items which would not be considered as an essential expense per month to the plaintiff. The Court notes that other items such as Christmas, birthdays, entertainment and \$100.00 per month for clothes are also somewhat overstated. The Court has reduced the house payment to \$500.00, the food and sundreys to \$400.00, eliminated the replacement items under auto expense and has eliminated the contributions in the sum of \$230.00 and has rounded off the last six entries of monthly expenses (exhibit #17) to \$400.00. This would make the total monthly expense for her of \$1,760.00. The Court will round off the figure for the plaintiff's support to be reasonably at \$1,800.00 per month.

Even with the Court's finding as to plaintiff's listed needs and the economies and reductions in some areas, the plaintiff has need for assistance in meeting her monthly expenses.

As to the defendant's income, according to exhibit #7 he has a present salary of approximately \$36,240.00 and a net monthly income of \$2,016.15. The defendant's monthly expenses are listed on his financial declaration as \$2,312.00. However, it appeared to the Court that there are some overstated items on his total monthly expense detail one of which is a \$655.00 item of payment of child support re: his prior marriage. This is the amount of child support that will be awarded in this proceeding this should be deleted since the plaintiff did not enter the amount of child support she is charged with in this matter which is \$412.00 also the item on the declaration indicating incidentals is principally

5.

a donation or gift which should be eliminated. Other areas of defendant's monthly expenses are high such as entertainment, incidentals and auto payments, which both parties have, and therefore further reduces defendant's monthly needs

Considering the income of each of the parties, their monthly necessary expenditures, and the need which the defendant has to meet her expenses, the Court has concluded that the defendant should pay to the plaintiff as alimony the sum of \$300.00 per month. This will tend to equalize the burden that the plaintiff has in maintaining the home for three children as well as herself and having a lifestyle somewhere near that which she had while married to the defendant.

The final item for consideration is plaintiff's claim for assistance in paying attorney's fees. The Court finds that the plaintiff has need for such assistance, and that the defendant has the ability to provide assistance in the payment of attorney's fees and costs charged to her by her counsel and orders that the defendant pay one half of the charges shown on plaintiff's exhibit #31 which the Court finds to be reasonable for the services he has performed in this matter.

Counsel for the defendant is directed to prepare a final findings of fact, conclusions of law and decree incorporating the findings of the Court on the three issues reserved to it together with the stipulations contained in the findings of fact and conclusions of law submitted by Mr. Petersen and approved by Mr. Henroid. The Court also finds the plaintiff is entitled to a

6.

divorce due to irreconcilable differences between the parties. The decree of divorce will be final upon its signing and entry.

Dated at Provo, Utah this 12 day of March, 1992.

BY THE COURT


GEORGE E. BALLIF, JUDGE

cc: Joseph Henroid
Don Petersen

ADDENDUM "D"

FILED
 IN THE DISTRICT COURT
 WASATCH COUNTY, UTAH
5-21-97 Date
 _____ Clerk
 _____ Deputy

IN THE FOURTH DISTRICT COURT
WASATCH COUNTY, STATE OF UTAH

KAREN SPRINGER)	
)	
)	CHILD SUPPORT OBLIGATION WORKSHEET
)	(SOLE CUSTODY)
vs.)	
)	Civil No. <u>6913</u>
JERRY SPRINGER)	
)	
)	

BASE AWARD CALCULATION

	Mother	Father	Combined
1. Enter the number of children of this mother and father for whom support is to be awarded.	//////////	//////////	3
2a. Enter the father's and mother's gross monthly income. Refer to Instructions for definition of income.	\$ 1,777.91	\$ 3,020.00	//////////
2b. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case).	-	-	//////////
2c. Enter previously ordered child support. (Do not enter payments ordered for the child(ren) in this case).	-	-	//////////
2d. For modification and paternity actions only: Enter the amount from Line 12 of the Present Family Worksheet for the non-custodial parent.	-	-	//////////
3. Subtract Lines 2b, 2c, and 2d from 2a. This is the Adjusted Monthly Gross for child support purposes.	\$ 1,777.91	\$ 3,020.00	\$ 4,797.91
4. Take the COMBINED figure in Line 3 and the number of children in Line 1 to the Support Table. Find the Base Combined Support Obligation. Enter it here.	//////////	//////////	\$ 1,088.00
5. Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	37 %	63 %	//////////
6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$ 402.56	\$ 685.44	//////////
7. Enter the child(ren)'s portion of monthly medical and dental insurance premiums paid to insurance company.	-	-	//////////
		31.79	//////////
8. BASE CHILD SUPPORT AWARD			
Subtract Line 7 from Line 6 for the Obligor parent. Continue to Page 2 for Extraordinary Medical and Child Care Expenses.			\$ 653.65
9. BASE AMOUNT PER CHILD			
Divide Line 8 by Line 1.			\$217.88

EXTENDED VISITATION

The BASE AMOUNT PER CHILD (Line 9) will be reduced by 50% for each child for time periods during which specific extended visitation of that child with the non-custodial parent is granted in the order for at least 25 of any 30 consecutive days.

Addendum D

ADDENDUM "E"

INCOME OF PLAINTIFF



Wasatch County

Teacher Step #5 with ES degree + 30 hours

$\$21,335 + 12 = \$1,777.92$

Career Ladder Incentive

$\$825 + 12 = \$ \underline{68.75}$

Subtotal $\$1,846.67$

[Additional \$700 to \$1100 possible. Was \$772.29 in 1991. Lump sum if qualify.] $\$ \underline{64.36}$

Average Monthly $\underline{\underline{\$1,911.03}}$

Withholding

FICA	\$111.50
Federal Withholding	232.67
State Withholding	85.89
UEA Dues	<u>35.89</u>

Total Withholding $(\underline{495.75})$

Net excluding annual
Career Lump Sum of
\$772.29 in 1991 $\underline{\underline{\$1,350.92}}$

ADDENDUM "F"



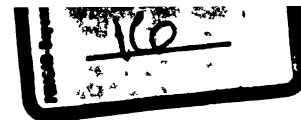
MONTHLY EXPENSES FOR PLAINTIFF
AND THREE MINOR CHILDREN

House Payment (including taxes and insurance)	\$741.59	500
Heat	101.00	
Lights	62.00	
Telephone	28.00	
Sewer	30.00	
Water	30.00	
Garbage	9.30	
Unreimbursed Medical/Dental	40.00	
Food/Sundries	475.00	400
Auto Expense		
Gas/Oil	80.00	
Repairs	25.00	
Insurance	54.00	
Replacement	150.00	60
Contributions	230.00	60
Dues UEA	35.89*	
Christmas/Birthdays	91.00	
Entertainment	75.00	
Lessons for Children	100.00	350
School Activities	75.00	
School Lunches	83.00	
Clothing	100.00	
Total Expenses	\$2,579.89	

*not included in total as it is deducted from income.

ADDENDUM "G"

LIABILITIES INCURRED DURING THE MARRIAGE



	<u>Balance Owed</u>	<u>Monthly Payment</u>
R.C. Willey	\$ 395.11	\$ 25.00
WASCO (for 1988 Chevrolet)	1,912.38	150.00
Henriod, Henriod & Nielsen	3,555.36	-0-
Carlile Knight	500.00	25.00
Cemetery Lot Assessment	39.00	
Dr. Burton	6.93	
Dr. John Prince	713.24	
Defendant's overdraft	200.00	
Plaintiff's overdraft	225.00	

ADDENDUM "H"



173 East 2nd North - Heber City, Utah 84032
(801) 654-0280

WASATCH COUNTY SCHOOL DISTRICT

January 29, 1992

Mr. Joseph L. Henriod
60 East South Temple
Salt Lake City, Utah 84103
Fax - 321-7874

Dear Mr. Henriod:

As a follow-up to our telephone conversation, I would like to offer the following information with regards to Mrs. Karen Springer. In 1990-91, our records show that we paid \$772.30 in the May Career Ladder payment, which covers Performance Bonus and Career Ladder. In 1989-90, we paid \$798.50. The figures that we had mentioned before, with a range of \$900.00-\$1,100.00, was an estimate that came out of a Career Ladder plan. This estimate does not include the fact that the Wasatch School District Career Ladder Plan reduced its Performance Bonus amount in order to pay for the increased cost of the seven days for each teacher; therefore, this year the Performance Bonus money available is less than it was last year. I would, therefore, inform you that it will be likely, depending on the number of teacher candidates who complete their Career Ladder plans, that our averages will be lower this year than in previous years. We, however, do not know the exact amounts until the teachers have completed their Career Ladder agreements and the final tabulations have been made. That will occur in May.

As to the other question concerning whether or not we have twelve month teachers - No, the Wasatch School District has no twelve-month teaching positions. We do hire approximately five regular education teachers for summer school for a five-week period. Those applications are put out on a competitive basis and there are generally two applications for every teacher hired for summer school but that is determined each year by the number of candidates available.

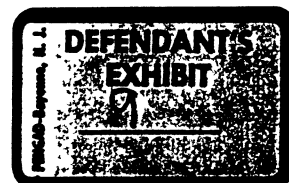
If I can be of further assistance, please feel free to let me know.

Sincerely,


Dr. Henry E. Jolley
Superintendent of Schools

HEJ/bj
CC: Don R. Petersen

Better Schools Make Better Communities



Addendum H

ADDENDUM "I"

78-45-7.5. Determination of gross income — Imputed income.

- (1) As used in the guidelines "gross income" includes:
 - (a) prospective income from any source, including nonearned sources, except under Subsection (3); and
 - (b) income from salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment compensation, disability insurance benefits, and payments from "nonmeans-tested" government programs.
- (2) Income from earned income sources is limited to the equivalent of one full-time job.
- (3) Specifically excluded from gross income are:
 - (a) Aid to Families with Dependent Children (AFDC);
 - (b) benefits received under a housing subsidy program, the Job Training Partnership Act, S.S.I., Medicaid, Food Stamps, or General Assistance; and
 - (c) other similar means-tested welfare benefits received by a parent.
- (4) (a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-employment or operation of a business shall be reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support award. Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts.
 - (b) Gross income determined under this subsection may differ from the amount of business income determined for tax purposes.
- (5) (a) When possible, gross income should first be computed on an annual basis and then recalculated to determine the average gross monthly income.
 - (b) Each parent shall provide suitable documentation of current earnings, including year-to-date pay stubs or employer statements. Each parent shall supplement documentation of current earnings with copies of tax returns from at least the most recent year to provide verification of earnings over time and shall document income from nonearned sources according to the source. Verification of income from records maintained by the Office of Employment Security may be substituted for employer statements and income tax returns.

- (c) Historical and current earnings shall be used to determine whether an underemployment or overemployment situation exists.
- (6) Gross income includes income imputed to the parent under Subsection (7).
- (7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed or a hearing is held and a finding made that the parent is voluntarily unemployed or underemployed.
- (b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community.
- (c) If a parent has no recent work history, income shall be imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.
- (d) Income may not be imputed if any of the following conditions exist:
- (i) the reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn;
 - (ii) a parent is physically or mentally disabled to the extent he cannot earn minimum wage;
 - (iii) a parent is engaged in career or occupational training to establish basic job skills; or
 - (iv) unusual emotional or physical needs of a child require the custodial parent's presence in the home.
- (8) (a) Gross income may not include the earnings of a child who is the subject of a child support award, nor benefits to a child in the child's own right, such as Supplemental Security Income.
- (b) Social Security benefits received by a child due to the earnings of a parent may be credited as child support to the parent upon whose earning record it is based, by crediting the amount against the potential obligation of that parent. Other unearned income of a child may be considered as income to a parent depending upon the circumstances of each case.

History: C. 1953, 78-45-7.5, enacted by L. 1989, ch. 214, § 7; 1990, ch. 100, § 5.

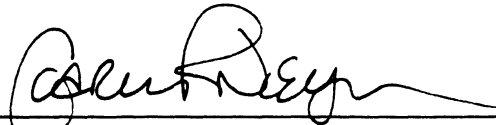
Amendment Notes. — The 1990 amendment, effective April 23, 1990, added the last sentence in Subsection (5)(b), in Subsection (7)(b) substituted "If income is imputed to a

parent, the income shall be based" for "Income shall be imputed to a parent based," and made a stylistic change in Subsection (7)(c).

Effective Dates. — Laws 1989, Chapter 214 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Appellee's Brief by mailing 4 copies thereof, postage prepaid to Appellant's counsel, Don R. Peterson, Leslie W. Slauch, HOWARD, LEWIS & PETERSON, 120 East 300 North, P.O. Box 778, Provo, Utah 84603, on the 8th day of March, 1993.

A handwritten signature in black ink, appearing to read "Clark R. Nielsen", written over a horizontal line.

Clark R. Nielsen
Attorneys for Plaintiff/Appellee