

1992

Jeanette Crawford Osguthorpe v. Jerry Silver Osguthorpe : Brief of Respondent

Utah Court of Appeals

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UTAH COURT OF APPEALS

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DOCKET NO. 920395

IN THE UTAH COURT OF APPEALS

JEANETTE CRAWFORD OSGUTHORPE,	:	
	:	
Plaintiff-Respondent,	:	Case No. 920395-CA
	:	
v.	:	Priority No. 16 15
	:	
JERRY SILVER OSGUTHORPE,	:	District Court No. 874904967
	:	
Defendant-Appellant	:	
	:	

BRIEF OF RESPONDENT

AN APPEAL FROM AN ORDER DATED JUNE 19, 1992, FINDING
DEFENDANT IN CONTEMPT AND IMPOSING JAIL SENTENCE AND
JUDGMENT ENTERED IN THE THIRD JUDICIAL DISTRICT, SALT
LAKE COUNTY, UTAH, THE HONORABLE HOMER F. WILKINSON,
JUDGE, PRESIDING.

=====

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IN THE UTAH COURT OF APPEALS

JEANETTE CRAWFORD OSGUTHORPE,	:	
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Plaintiff-Respondent,	:	Case No. 920395-CA
	:	
v.	:	Priority No. 16
	:	
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IN THE UTAH COURT OF APPEALS

JEANETTE CRAWFORD OSGUTHORPE,	:	
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	:	
v.	:	Priority No. 16
	:	
JERRY SILVER OSGUTHORPE,	:	District Court No. 874904967
	:	
Defendant- Appellant	:	
	:	

BRIEF OF RESPONDENT

RESPONDENT'S JURISDICTIONAL STATEMENT

Jurisdiction of this Court is conferred pursuant to the provisions of Section 78-2a-3(g) Utah Code Ann. (1953, as amended). This action involves the appeal of an Order Finding Defendant (Appellant) in Contempt and Imposing Jail Sentence and Judgment signed and entered June 19, 1992, in the Third Judicial District Court in and for Salt Lake County, State of Utah. A Notice of Appeal was filed on June 24, 1992. No cross-appeal has been filed.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Should substantial portions of Dr. Osguthorpe's Brief be disregarded because they relate to events and claims which

allegedly occurred after the entry of the Order from which this appeal is taken?

II. Did the trial court properly find Dr. Osguthorpe in contempt of its previous order and impose proper sanctions upon him for such contempt?

III. Can this Court consider Dr. Osguthorpe's claim of error related to an order awarding Mrs. Osguthorpe certain attorney's fees and costs, when no appeal has been taken in connection with that order?

IV. Is Mrs. Osguthorpe entitled to be awarded all of her attorney's fees and costs incurred by her in defending this appeal?

DETERMINATIVE STATUTORY PROVISIONS

As to those portions of Appellant's Brief which address and argue events, hearings, incidents, and orders which occurred after June 19, 1992, the provisions of Rules 3(a) and 4(a) of the Utah Rules of Appellate Procedure are controlling and determinative.

Those Rules provide in pertinent part:

RULE 3. Appeal as of right: how taken.

(1) **Filing appeal from final orders and judgments.** An appeal may be taken from a district, juvenile, or circuit court to the appellate court with jurisdiction over the appeal from all final orders and judgments, except as otherwise provided by law, by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal

does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal or other sanctions short of dismissal, as well as the award of attorney fees.

RULE 4. Appeal as of right: when taken.

(1) **Appeal from final judgment and order.** In a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from . . .

STATEMENT OF THE CASE

This is an appeal of an Order signed by the Honorable Homer F. Wilkinson on June 19, 1992, imposing a jail sentence and judgment on Appellant. That Order resulted from an earlier Order dated January 24, 1992, which was the result of an evidentiary hearing held on January 7, 1992, where the Respondent requested, among other things, that the Appellant be held in contempt of the trial court's prior orders based on the Appellant's repeated non-compliance with those orders. No appeal has been taken from the January 24, 1992, Findings, Conclusions and Order which made the original contempt finding. The January 24, 1992, Order stayed the imposition of sanctions, provided the Appellant pay certain sums towards his child support obligations. The Appellant failed to do so, requiring the Respondent to seek imposition of the previously imposed sanctions. That resulted in a May 18, 1992, hearing where the trial court determined that Appellant had not satisfied the earlier requirements to stay imposition of the sanctions. At the

conclusion of that hearing, an Order was entered which reactivated the sanctions which had been stayed, but again gave Appellant the opportunity to avoid imposition of the sanctions previously ordered, if certain payments towards past due child support and alimony were made. It is from this June 19, 1992, Order that this appeal is taken.

Appellant, in his Statement of the Case, claims that this is also "an appeal from the Order of Judge Wilkinson upon remand awarding attorney's fees to the plaintiff as to litigation in the Utah Supreme Court and the Federal District Court of Utah." (Appellant's Brief, p.3.) That Order was signed and entered on December 3, 1992. No Notice of Appeal has been filed in connection with that Order.

RELIEF SOUGHT ON APPEAL

Mrs. Osguthorpe seeks the following relief from this Court in connection with Dr. Osguthorpe's appeal:

- 1) That the trial court's Findings, Conclusions and Orders related to Dr. Osguthorpe's contempt be affirmed in all respects.
- 2) That Point VI of Dr. Osguthorpe's Brief be disregarded in its entirety.
- 3) That Mrs. Osguthorpe be awarded all of her attorney's fees and costs related to defending this Appeal.
- 4) For such other relief as this Court may deem appropriate and fair under the circumstances of this case.

RESPONDENT'S STATEMENT OF FACTS

Dr. Osguthorpe's Statement of Facts contains allegations of

facts not pertinent to this appeal. These begin at page 15 of his Brief. Mrs. Osguthorpe objects to the inclusion of those allegations in his Statement of Facts and respectfully requests this Court to disregard the same.

Mrs. Osguthorpe will supplement Appellant's Statement of Facts to the extent necessary so that this Court will have an accurate historical perspective about the parties and what has transpired since the parties were divorced in February of 1989.

In addition, Mrs. Osguthorpe has included in the Addendum to this Brief, copies of the pleadings, Findings and Orders, and certain Exhibits received at the January 7, 1992, hearing and which serve as the basis for the trial court's finding of contempt and imposition of sanctions on Dr. Osguthorpe.

The parties have four children as issue of this marriage, Jeffrey, age 15; John, age 14; and twins, Julie and Jennifer, age 11. Under the original Decree, among other things, Dr. Osguthorpe was ordered to pay to Respondent, Mrs. Osguthorpe, the sum of \$150.00 per month, per child, as and for child support for the parties' four minor children, for a total of \$600.00 per month, together with the sum of \$150.00 per month alimony for a period of five years. At the end of five years, the alimony award was ordered to be reduced to the sum of \$1.00 per year for an additional five year period, or until such time as Mrs. Osguthorpe remarried, cohabited or died, whichever of the four events was first to occur. (R-272.)

On March 28, 1989, Dr. Osguthorpe filed an appeal of the trial

court's ruling on a number of issues, including alimony and child support. This Court affirmed the trial court's ruling in all respects and awarded Mrs. Osguthorpe the attorney's fees she incurred on appeal. [Osguthorpe v. Osguthorpe, 804 P.2d 530 (Utah App. 1990), a copy of this opinion has been included in the Addendum to this Brief.]

In its principal opinion, this Court deferred to the trial court's assessment of witness credibility in finding that, "Defendant was not being candid as to his actual current income, or was purposefully underemployed," and that, "Defendant was either understating his actual income or had chosen employment which paid less than he could otherwise earn." Osguthorpe at 534. With regard to the child support, this Court also deferred to the trial court's assessment that, "Defendant had an ability to earn more than he purported to earn and find no abuse of discretion in the Court's award of child support in accordance with that assessment." Id. at 535. Since the Decree, Dr. Osguthorpe has not sought to modify any provision of the Decree.

In September, 1991, Mrs. Osguthorpe filed Plaintiff's Verified Motion for Judgments, Contempt Order, Sanctions and Other Relief. (R-466.) That Motion came on regularly for hearing before the Domestic Relations Commissioner on October 8, 1991. Defendant filed an Objection to the Commissioner's Recommendation. (R-488.) Mrs. Osguthorpe then noticed a hearing on Defendant's Objection to Plaintiff's Written Order and Judgment, Enforcement of Decree of Divorce, Contempt Order, etc., filed January 11, 1991, and

Defendant's Objections to Domestic Commissioner's Recommendations related to Plaintiff's Verified Motion for Judgment, Contempt Order, Sanctions, and other relief made October 8, 1991. This Motion came on regularly for full evidentiary hearing on January 7, 1992, before Judge Wilkinson. Both sides were present, testified, called witnesses and introduced documentary evidence.

Findings of Fact and Conclusions of Law and an Order and Judgment from the January 7, 1992, hearing were signed and entered on January 24, 1992, and have been included in the Addendum to this Brief. The trial court found Dr. Osguthorpe in contempt and ordered him to serve thirty days in the Salt Lake County Jail, but stayed the jail sentence if, by January 13, 1992, Dr. Osguthorpe paid \$5,000.00 towards the child support arrearages already reduced to judgment. The jail sentence was further stayed, provided Dr. Osguthorpe pay to Mrs. Osguthorpe, in a timely fashion, the sum of \$900.00 per month (\$600.00 regular child support and \$300.00 towards child support arrearages). If Dr. Osguthorpe did not make these monthly payments, as ordered, then the stay of the jail sentence was to be lifted and Dr. Osguthorpe was ordered to immediately commence serving that sentence. The order allowed Dr. Osguthorpe to purge himself of this contempt by paying the amounts he was ordered to pay. Dr. Osguthorpe paid the \$5,000.00, as ordered by the Court, on January 13, 1992. However, he did not make his regular child support payments and payments on the arrearages as required. (R-589, 590.)

On April 30, 1992, Mrs. Osguthorpe filed a Verified Motion

for Judgment, Attorney's Fees and Immediate Imposition of Jail Sentence, a copy of which has been included in the Addendum to this Brief. It, together with a Notice of Hearing, was properly served on Dr. Osguthorpe by mailing to his home and business addresses. That Motion, among other things, requested that the stay of sanctions imposed by the January 24, 1992, Order of Contempt be lifted and that an additional judgment for child support and alimony not paid by Dr. Osguthorpe between January and May, 1992, be entered against him. (R-588.) The Motion was heard by the Court on May 18, 1992. Both parties were present. Documentary evidence was presented by Dr. Osguthorpe and received by the Court. During the course of that hearing, the trial court stated:

That this matter has already been up before the Court of Appeals on one occasion, that the Court sustained this Court, and that the Court indicated the same as this Court has, that Defendant's income as stated by him is just not realistic. The Court of Appeals took the position that the unknown amounts of income, that there was an unknown amount of income that this Court has taken into consideration and it was justified in doing so, and no matter how you look at it, we still have children there that do need to be supported. (Transcript May 18, 1992, hearing Vol. 2 p. 2.)

A final Order emanating from that hearing was signed and entered on June 19, 1992. A copy has been included in the Addendum to this Brief. Pursuant to the terms of this Order, Dr. Osguthorpe was ordered to be incarcerated in the Salt Lake County jail for a period of thirty days and such longer time as the Court deemed fit, if Dr. Osguthorpe failed to pay the sum of \$3,050.00 by June 24, 1992, at 12:00 noon. He has failed to make the required payments.

On or about June 24, 1992, Dr. Osguthorpe filed a Motion for Stay of Jail Sentence in the Utah Court of Appeals. On that same day, Judge Russell W. Bench granted a temporary stay, until the matter could be heard on its merits.

On July 16, 1992, the Court of Appeals issued its Order denying the stay and wrote in part as follows:

It is hereby ordered that the motion for stay pending appeal is denied, and the temporary stay previously granted is vacated, based upon the court's determination that appellant has not sufficiently demonstrated that he would be likely to succeed on the merits of the appeal. See Jensen v. Schwendiman, 744 P.2d 1026, 1027 (Utah App. 1987) (per curiam), and

It is further ordered that the case is temporarily remanded to the trial court for determination and entry of an award of appellee's costs and attorney's fees reasonably incurred in opposing the motion for stay. (Emphasis Added.)

As of the January 7, 1992, hearing, Dr. Osguthorpe owed Mrs. Osguthorpe over \$32,000.00 in unpaid child support, alimony and attorney's fees. (See Exhibits 2, 3, 4, and 5, Addendum to this Brief.) As of the May 18, 1992, he had failed to pay \$2,550.00 in child support and alimony, which had accrued between the January and May hearings. (R-615.)

During the January 7th hearing, he testified that he was a doctor of veterinarian medicine, practicing for 15 years, and earned only \$5.00 per hour. (Transcript, January 7, 1992, hearing Vol. II p. 69.) He acknowledged he understood all of his obligations under the original Decree and had not complied with them. Id. pp. 56-61. He said he hadn't paid child support

because he hadn't had certain items of personal property returned to him. Id. p. 35. Later, during the hearing, he denied making that statement. Id. p. 64. He couldn't recall if he paid child support in November and December 1991, and January 1992. Id. p. 62. He couldn't identify a picture of the new \$155,000.00 home his new wife had just purchased in which they were living. (Id. p. 69 and Exhibit 14 Addendum.) He said he was paying her \$500.00 per month to live there. Id. p.76.

During the hearing, a tape recording of a conversation he had had with Mrs. Osguthorpe was listened to and the tape and a transcript of that conversation was received in evidence. After it was presented to the trial court, Dr. Osguthorpe denied that he had said,

God, I thought you were going to have my ass
in jail.(Laughter) Id. p. 74.

(A copy of the transcript is included in the Addendum to this Brief and the original tape recording is in the Exhibit Envelope for the January 7, 1992, hearing.)

SUMMARY OF ARGUMENT

POINT I

All claims, allegations and arguments contained in Dr. Osguthorpe's Brief which pertain to anything occurring after June 19, 1992, should be disregarded entirely, these matters not being properly before this Court in connection with this Appeal.

POINT II

The Appellant's claim of error in relation to the contempt issue is without merit. First, the January 1992, Findings and

Order giving rise to the contempt citation have never been appealed. This appeal pertains only to the June 1992, Order imposing the jail sentence after the Appellant had failed to purge himself of his earlier contempt. Assuming only for the sake of argument, that Appellant could challenge the January Order in this appeal, the evidence presented at the January hearing fully supports the trial court's written findings and satisfies all of the legal requirements for a finding of contempt. Further, the Appellant was afforded the procedural due process requirements required by the United States and Utah Constitutions as have been outlined and set forth by the Utah Supreme Court.

POINT III

The Order granting Mrs. Osguthorpe her attorney's fees and costs incurred in connection with Dr. Osguthorpe's Petition's for Extraordinary Writ and Writ of Habeas Corpus has not been appealed, and therefore, this Court lacks jurisdiction to consider the same.

POINT IV

The points raised by Dr. Osguthorpe on appeal are without merit. In addition, his actions throughout the course of this litigation reveal motives and attitudes which should not be tolerated by the judicial system. Mrs. Osguthorpe should be awarded the attorney's fees and costs she has incurred in connection with this appeal.

ARGUMENT

POINT I

THE PORTIONS OF DR. OSGUTHORPE'S BRIEF WHICH RELATED TO EVENTS AND CLAIMS THAT OCCURRED AFTER JUNE 24, 1992, SHOULD NOT BE CONSIDERED BY THIS COURT IN CONNECTION WITH THIS APPEAL.

Dr. Osguthorpe filed his Notice of Appeal in this case on June 24, 1992. (R-632.) (See Addendum.) The Appeal was taken from an Order entered by the lower court on June 19, 1992. A substantial portion of Dr. Osguthorpe's brief contains allegations and argument related to events, hearings and orders which occurred after the June 19, 1992, Order. No appeal has been taken from any subsequent Orders. Pursuant to Rules 3(a) and 4(a) of the Utah Rules of Appellate Procedure, those claims and matters are not properly before this Court and Mrs. Osguthorpe respectfully requests this Court to disregard all such allegations and argument in their entirety. (See, Yost v. State, 640 P.2d 1044 (Utah 1981), Burgers v. Maiben, 652 P.2d 1320 (Utah 1982).) In addition, no Notice of Appeal has been filed in relation to the trial court's January 24, 1992, Order and, therefore, any claim of error assigned to this Order should also be disregarded.

POINT II

THE DECISION OF THE TRIAL COURT FINDING DR. OSGUTHORPE IN CONTEMPT OF IT'S PREVIOUS ORDERS AND IN IMPOSING SANCTIONS SHOULD BE AFFIRMED IN ALL RESPECTS.

In arguing that the trial court committed reversible error in finding Dr. Osguthorpe in contempt and in imposing sanctions, Appellant has not clearly explained the nature and outcome of the

January 7, 1992, and May 18, 1992, hearings. Dr. Osguthorpe has claimed error in findings and orders not appealed from and has based much of his argument on a period of time which occurred after his Notice of Appeal of the June 19, 1992, Order was filed. Before his claims of error regarding the contempt issues can be addressed, the chronology and interrelationship of the January and May hearings must be understood.

In January, a full evidentiary hearing was held on the issue of Dr. Osguthorpe's contemptuous behavior. Proper notice of the hearing was given. (R-543, 544.) Mrs. Osguthorpe's Motion seeking a contempt citation, among other things, was verified and set forth that she was seeking imposition of a jail sentence based upon Dr. Osguthorpe's repeated violations of prior court orders. Fourteen months before, after his trial counsel had withdrawn, Dr. Osguthorpe had been given proper notice to retain new counsel or appear in person. (R-381.) Since that time, and until June 11, 1992, Dr. Osguthorpe appeared pro se at all hearings, filed pleadings, objections and other papers with the court on his own behalf.

At the January hearing both parties appeared. Consistent with his practice over the prior 14 months, Dr. Osguthorpe represented himself. At this hearing he testified, introduced documentary evidence, called his own witnesses and cross-examined Mrs. Osguthorpe and her counsel. Furthermore, he made opening and closing statements. (Transcript January 7, 1992, hearing, Vol. II.)

Also at this hearing, evidence was presented as to Dr. Osguthorpe's ability to earn income and his knowledge and understanding of his obligations to pay support under the original Decree. Id. pp. 56-62. This hearing lasted almost a full day and at it's conclusion, the trial court made its Findings and Conclusions and an Order, all of which were reduced to writing and not signed until Dr. Osguthorpe had had the proper time to file objections.

The Findings and Conclusions, ultimately signed and entered on January 24, 1992, in pertinent part state:

5. UNPAID CHILD SUPPORT AND ALIMONY.

a. Defendant has failed to pay child support and alimony for considerable periods of time (See plaintiff's Exhibits 2, 3, 4 and 5). Between December 1990 and January 1992, plaintiff owed defendant \$8,400 in child support, \$2,100 in alimony (total \$10,500 plus accrued interest). Defendant paid \$750 leaving an unpaid arrearage of \$9,750 (See plaintiff's Exhibit 5 and \$750 owed for January, 1992.) No child support has been paid since February, 1991.

b. Defendant and his current wife both testified 'He would pay child support if his personal items were returned.'

c. Defendant further testified the plaintiff had plenty of money and could sell one of her houses.

d. Defendant has not demonstrated good faith in connection with attempting to pay his ongoing support obligations.

e. Defendant testified he was paying his new wife \$500 per month rent in order to reside with her in a home she recently purchased at 6808 Courtland Circle, Salt Lake City, Utah.

f. Defendant is a veterinarian practicing in excess of 15 years and testified he earned \$5.00 per hour in connection with consultation he claimed he provided to the Osguthorpe Animal Hospital. Defendant had and has the means to pay child support.

g. The credibility of the defendant and his present wife is lacking. Both refused to answer questions on the stand. Both were evasive. The defendant did not answer questions truthfully.

h. The defendant's failure to pay his support obligations as previously ordered was done willfully, voluntarily and with the full knowledge of those obligations as previously ordered by the Court.

6. CONTEMPT. The Court finds the defendant is in contempt of this Court pursuant to Section 78-32-1(5) Utah Code Annotated (1953, as amended), in that he has been disobedient of lawful judgments, orders and processes of this Court. The defendant had the opportunity to have a full hearing and evidence has been taken regarding that contempt. The defendant has not answered the questions put to him truthfully. The Court specifically finds that this is one of the most flagrant violations of the law as far as support of children that has come before this Court, in that the Defendant owes plaintiff in excess of \$16,000 in unpaid child support alone. Defendant is further in contempt for his failure to pay alimony and attorney's fees as previously ordered by the Court. (R-557-559.) (Emphasis added.)

It was from these findings that the trial court entered its Order of January 24, 1992, sentencing the Defendant to jail, but also staying that jail sentence provided Dr. Osguthorpe pay certain sums towards the arrearages. (R-552.) The court also gave Dr. Osguthorpe the opportunity to purge himself of this contempt by paying the sums required. (R-553.)

Dr. Osguthorpe never appealed the January 24th Findings,

Conclusion and Order. On that basis alone he is precluded from claiming any error in connection with that Order in this appeal. (See Rule 4(a) Utah Rules of Appellate Procedure.)

After the hearing, Dr. Osguthorpe not only failed to make the required monthly payments on the arrearage, but also again did not make his full regular child support and alimony payment. He paid only \$1,500.00 on a \$3,000.00 obligation between February and May of 1992. Because of his failure to make the payments on the arrearages as required by the January 24th Order, and his failure to make ongoing support payments, Mrs. Osguthorpe filed a new Motion seeking judgment on the new arrearages and imposition of the jail sentence which was imposed under the January 24th Order, but stayed, provided Dr. Osguthorpe made the required payments.

(R-588-592, See Addendum.)

Dr. Osguthorpe was again given proper notice of this hearing and he again testified, by way of proffer, and again introduced documentary evidence. (Transcript May 18, 1992, hearing, Vol. I.) During this hearing he admitted he had not paid the amounts required in order to stay the earlier imposed jail sentence, (Id. p. 6.) and admitted he had not paid all of his regular ongoing child support and alimony payments. (Id. p.7.)

At the conclusion of this second hearing, the Court imposed the jail sentence which had been stayed in January and gave Dr. Osguthorpe yet another chance to avoid the jail sentence by including in its Order:

However the Court will stay its imposition of jail sentence, as long as the following conditions are met: (a) the Court shall stay this Order until June 24, 1992, at 12:00 noon, at which time \$4,050.00 shall be paid by Defendant to Plaintiff to bring the delinquent child support and alimony through June 1992, (\$1,800.00 in child support through June 1992, and alimony of \$750.00 through June, 1992; and attorney's fees of \$500.00 for purpose of these proceedings). If the \$3,050.00 is not paid by June 24, 1992, at 12:00 noon, a bench warrant shall issue, unless the defendant submits himself to the Salt Lake County Jail for incarceration. (b) The Court further orders that if the on-going child support and payment on arrearages of \$900.00 per month due on the 5th day of July, 1992, is not paid at that time, a bench warrant shall issue, unless Defendant submits himself voluntarily to the Salt Lake County Jail. (R-615.)

And again Dr. Osguthorpe failed to comply. It was only after all of this did a Bench Warrant issue for Dr. Osguthorpe's arrest.

Appellant's argument pertaining to the contempt issue can be distilled into two simple questions.

- 1) Was there sufficient evidence and are the Findings sustainable in connection with the contempt citation which resulted from the January hearing?
- 2) Was Dr. Osguthorpe afforded adequate procedural due process in connection with the finding of contempt made by the trial court in January 1992?

The answer to the first question is "yes" in both respects. Throughout the history of this case, Dr. Osguthorpe, a doctor of veterinarian medicine practicing for over 15 years with his father Dr. D. A. Osguthorpe, at the Osguthorpe Veterinary Hospital, claimed he only made/makes \$1,000.00 per month. At the initial

divorce trial, the trial court found otherwise concluding that Dr. Osguthorpe either understated his income or was underemployed. On appeal, this Court affirmed that finding. Osguthorpe v. Osguthorpe, 804 P.2d 530 (Utah App. 1990). A copy of this case has been included in the Addendum to this Brief.

Since that time and continuously through the present, Dr. Osguthorpe has maintained that same position. However, simply because Dr. Osguthorpe says that's the case doesn't mean that his claim is true. In fact, in all evidentiary hearings conducted in this case, the trial court has specifically found to the contrary.

The January 7th hearing is no exception. After a full hearing, the trial court specifically found:

- 1) That he said he would pay the child support ordered if certain personal property was awarded to him;
- 2) That he had not acted in good faith in paying his ongoing child support obligations;
- 3) That he had and has the means to pay child support;
- 4) That he did not answer questions truthfully;
and
- 5) That his failure to pay his support obligations was done willfully, voluntarily and with full knowledge of those obligations. (R-557-559; Addendum to this Brief.)

This Court recently enumerated the elements necessary for a trial court to find a person in contempt in State v. Hurst, 821

P.2d 467 (Utah App. 1991), where Judge Greenwood stated:

For the court to hold Hurst in contempt for failure to comply with a court order, it had to find that she (1) knew what was required, (2) had the ability to comply and (3) intentionally failed to do so. Von Hake v. Thomas 759 P.2d 1162, 1172 (Utah 1988). These elements must be proven beyond a reasonable doubt in a criminal contempt proceeding, and by clear and convincing evidence in a civil contempt proceeding. Id. Hurst, at 471.

Even assuming that this was a criminal contempt proceeding, that burden was met not only by the language of the Findings themselves, but also by the statements of Judge Wilkinson when he issued his order from the bench at the conclusion of the January hearing.

He (Dr. Osguthorpe) just perjures himself in this courtroom . . .

He has not answered the questions truthfully . . .

The Court finds that this is one of the most flagrant violations of the law as far as support of children that has come before this court.

(Transcript January 7, 1992, hearing, Vol. III p. 9, 10; parenthetical language added.)

Judge Greenwood, in affirming the trial court's finding of contempt in the Hurst case goes on to state:

We affirm the trial court's findings and the conclusions logically flowing therefrom-if the findings are based on sufficient evidence, viewing the evidence in the light most generous to the trial court. West Valley City v. Majestic Inv. Co., 818 P.2d 1311,1312-14 (Utah App. 1991). We will not set aside a finding unless it is clearly erroneous. Utah R. Civ. P. 52(a). We give 'due regard' to the 'opportunity of the trial court to judge the

credibility of the witnesses.' Id. To show insufficiency of the evidence, Hurst is required to 'marshal all the evidence supporting the challenged findings and then show that despite that evidence, the findings are clearly lacking in support.' (State of Utah, in the Interest of M.S., 815 P.2d 1325, 1328 (Utah App. 1991)).

Rather than marshaling the evidence supporting the challenged findings, Hurst has restated only the evidence favorable to her position. Because she failed to marshal the evidence, we accept the challenged finding and the resulting conclusions. See Majestic Inv., at 1312-14; Turnbaugh v. Anderson, 793 P.2d 939, 44 (Utah App. 1990). Id. at 471.

In the present case, Dr. Osguthorpe has failed to marshal all of the evidence in support of the trial court's findings and then demonstrate that that evidence was insufficient. Like Ms. Hurst, he has attempted only to restate evidence which he thinks is favorable to his position. His challenge of the adequacy of the findings must fail.

Dr. Osguthorpe goes on to argue that the contempt citation in his case was criminal in nature, however a review of both the January 24th and June 19th Orders shows that this is not the case when applying the criteria for civil contempt as established by the Utah Supreme Court in Von Hake v. Thomas 759 P.2d 1162 (Utah 1988). Justice Zimmerman thoroughly and comprehensively analyzes the contempt remedy in Utah and states:

A contempt order is civil if it has a remedial purpose, either to coerce an individual to comply with a court order given for the benefit of another party or to compensate an aggrieved party for injuries resulting from the failure to comply with an order. See, e.g., Bradshaw v. Kershaw, 627 P.2d 528, 530 (Utah 1981); Shillitani v. United States, 384

U.S. 364, 368-70, 86 S.Ct. 1531, 1534-36, 16 L.Ed.2d 622 (1966); cf. In re Whitmore, 9 Utah 441, 35 P. 524, 526-29 (1894) (discussing the differences between criminal and civil contempt). It is important to note that it is the purpose, not the method of the punishment, that serves to distinguish the two types of proceedings. Both fines and imprisonment may be used to coerce a party or remedy a failure to perform as well as to vindicate a court's authority. See Bradshaw, 627 P.2d at 530; Utah Code Ann. §§ 78-32-10 to -12 (1987). One distinguishing factor is whether the fine or sentence is conditional. A remedial purpose is indicated when the contemner is allowed to purge him-or herself of the contempt by complying with the court's orders. Maggio v. Zeitz, 333 U.S. 56, 68, 68 S.Ct. 401, 407, 92 L.Ed. 476 (1948); see Utah Code Ann. § 78-32-12 (1987) (allowing conditional imprisonment). Id. at 1168. (Emphasis added.)

This distinction was also discussed and acknowledged by this Court in Boggs v. Boggs, 824 P.2d 478, 481 (Utah App. 1991), when Judge Jackson analyzed the nature of a contempt citation that had been made against a husband in a divorce proceeding.

Husband's imprisonment was unconditional. He was not permitted any opportunity to remedy or purge himself of the alleged contempt. Thus, the principal purpose of the judgment was to punish rather than obtain compliance with prior orders. Accordingly, the judgment was criminal in nature and appealable. Id. at 1168; Thomas v. Thomas, 569 P.2d 1119, 1121 (Utah 1977.) Id.

Both the January and June Orders were remedial in nature because they provided Dr. Osguthorpe with a way of avoiding the jail sentence and contempt citation by simply making the child support payments required by the Court. In fact, the January 24th Order, the only Order which should be analyzed in connection with the contempt issue, specifically states:

(g) Defendant may purge himself of his contempt as has been found by the Court by paying the amounts required in a Paragraph's (e) and (f) above. (R-553.)

Clearly, the contempt citation before the court falls within the civil contempt definition established in Von Hake, and Boggs supra. Dr. Osguthorpe's argument that this is a criminal contempt citation is without merit.

Secondly, the adequacy and propriety January 24, 1992, Findings and Order, are not subject to challenge because no appeal has ever been taken from the same. Based upon that fact alone, no consideration should be given to any of Dr. Osguthorpe's argument attempting to challenge the contempt finding. [See Boggs at 481 and Utah R.App. p.3(a).]

Turning now to the second question raised by Dr. Osguthorpe regarding the adequacy of procedural due process, that argument must likewise fail based upon the Utah Supreme Court decision of Burgers v. Maiben, 652 P.2d 1320 (Utah 1982) which was relied on and cited with approval in the Von Hake and Boggs cases supra. In Burgers, the Defendant violated a permanent injunction and consequently, the trial court found him in contempt based upon the evidence and his own admissions and sentenced him to serve 30 days in jail. On appeal, the Defendant claimed, among other things, that he was imprisoned without due process of law. In addressing and ultimately rejecting that claim, the Court stated:

The defendant claims that he was denied due process in the order to show cause hearing held June 30, 1991. Both this Court and the United States Supreme Court have held that an individual's constitutional rights must be

protected during a contempt of court action. Thus, in a prosecution for contempt, not committed in the presence of the court, due process requires that the person charged be advised of the nature of the action against him, have assistance of counsel, if requested, have the right to confront witnesses, and have the right to offer testimony on his behalf. See, In re Oliver. 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682 (1948); Cooke v. United States, 267 U.S. 517, 45 S.Ct. 390, 69 L.Ed. 767 (1925); Powers v. Taylor, 14 Utah 2d 118, 378 P.2d 519 (1963); Robinson v. City Court of Ogden, supra.

In the present case, the defendant was given notice of the contempt charge against him when he was served with a copy of the order to show cause. The defendant appeared as his own counsel and offered testimony on his behalf. From an examination of the trial court transcript, it is clear that the trial court never denied the defendant the opportunity to confront adverse witnesses or call witnesses on his own behalf. On the contrary, the defendant himself never requested to confront or call a witness. Id. at 1322. (Emphasis added.)

In the present case, Dr. Osguthorpe received proper notice of the hearing and the fact that Mrs. Osguthorpe was requesting imposition of a jail sentence. He appeared. Almost a full day of evidence was presented. He never requested counsel. He made opening and closing statements. He testified. He called his own witnesses. He submitted documentary evidence which was received. He cross-examined Mrs. Osguthorpe and her counsel. He submitted pleadings, objections and motions in connection with the hearing. Based upon the foregoing, and the guidelines provided in Burgers and Boggs, supra., Dr. Osguthorpe's claim that he was denied due process must likewise fail.

It is respectfully requested that this court affirm the trial court's decision in relation to the contempt issue in all respects.

POINT III

DR. OSGUTHORPE'S CLAIM THAT THE TRIAL COURT ERRED IN AWARDING MRS. OSGUTHORPE CERTAIN ATTORNEY'S FEES RELATED TO THE UTAH SUPREME COURT EXTRAORDINARY WRIT ACTION AND THE FEDERAL HABEAS CORPUS ACTION IS NOT PROPERLY BEFORE THIS COURT AND SHOULD NOT BE CONSIDERED.

In Point VI of Dr. Osguthorpe's Brief, he argues that the trial court erred in awarding Mrs. Osguthorpe the attorney's fees and costs she incurred in connection with the Petition for Extraordinary Writ filed by Dr. Osguthorpe in the Utah Supreme Court and the Petition for Writ of Habeas Corpus filed by Dr. Osguthorpe in the United States District Court, both of which were determined to be without merit and denied.

Dr. Osguthorpe's claim that the trial court erred in awarding Mrs. Osguthorpe certain attorney's fees should be summarily denied, since it is not properly before this Court in connection with this Appeal. Dr. Osguthorpe filed his Notice of Appeal in this matter on June 24, 1992. (R-632.) (See Addendum.) The trial court's Order awarding Mrs. Osguthorpe those fees was signed and entered by Judge Wilkinson on December 3, 1992. (See Addendum.) No Notice of Appeal has been filed in connection with that Order.

Rules 3(a) and 4(a) of the Utah Rules of Appellate Procedure provide the following deadline in which to appeal a trial court's order:

RULE 3. Appeal as of right: how taken.

(1) **Filing appeal from final orders and judgments.** An appeal may be taken from a district, juvenile, or circuit court to the appellate court with jurisdiction over the appeal from all final orders and judgments, except as otherwise provided by law, by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal or other sanctions short of dismissal, as well as the award of attorney fees.

RULE 4. Appeal as of right: when taken.

(1) **Appeal from final judgment and order.** In a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from . . .

The 30 day time period has passed and consequently this Court lacks jurisdiction to consider this claim of error. (See, Yost v. State, 640 P.2d 1044 (Utah 1981), Burgers v. Maiben, 652 P.2d 1320 (Utah 1982).)

Additionally, what appears to be an attempt by Dr. Osguthorpe to argue an issue that clearly is not properly before this Court, should be considered in connection with Mrs. Osguthorpe's request for an award of her attorney's fees and costs incurred by her in relation to this appeal. (See POINT IV below.)

POINT IV

MRS. OSGUTHORPE SHOULD BE AWARDED ALL OF HER
ATTORNEY'S FEES AND COSTS INCURRED IN
CONNECTION WITH THIS APPEAL

Section 30-3-3 Utah Code Ann. (1953, as amended) is the
statutory basis for an award of attorney's fees in divorce actions.
It states that:

The Court may order either party to pay to the
clerk a sum of money . . . to enable such
party to prosecute or defend the action.

Id. (Emphasis added.)

This section has been interpreted to apply to attorney's fees
incurred both at the trial and appellate levels. See [Dahlberg v.
Dahlberg, 77 Utah 157, 292 P. 214 (1930) Carter v. Carter, 584,
P.2d 904 (Utah 1978) and Maughan v. Maughan, 770 P.2d 162 (Utah
App. 1989).]

In considering whether or not to award Mrs. Osguthorpe the
attorney's fees and costs she has been required to incur in
connection with this appeal, it becomes imperative for this Court
to understand the history of this case as it relates to Dr.
Osguthorpe's obstinate and contumacious behavior and lack of
respect for the judicial process, the court's authority and the
substantial financial and emotional hardship his attitude has
created for Mrs. Osguthorpe.

The following are but a few examples of Dr. Osguthorpe's
behavior and attitude demonstrated since this case was originally
filed.

1) The original Findings of the trial court in relation to Dr. Osguthorpe's income and ability to earn:

The Defendant has chosen to be employed by his father at a salary which appears to be less than he could make in another independent employment situation, and it appears that the Defendant has the ability to earn more than he presently does. The Court further received conflicting testimony as to whether or not the tax returns of the parties accurately reflected the amount of monies available to meet the family's financial needs, and the Court finds that the tax returns appear to understate the actual net income that was available to the parties during the marriage for family and living expenses. (R-256.)

2) Dr. Osguthorpe's testimony at the January 7, 1992, hearing on contempt where he:

a) Stated he'd pay child support when certain minor items of personal property were returned to him and later on in the proceedings denied he'd so testified. (January 7, 1992, hearing, Transcript Vol. II p. 35, 64);

b) Denied he had made statements reflecting a total lack of concern about his potential for being incarcerated for not paying child support. The actual tape recording and transcript of that conversation were received as evidence and listened to during the course of the hearing. (January 7, 1992, Transcript p. 74, 111.) A copy of that transcript is included in the Addendum to this Brief;

c) Would not identify the \$155,000.00, 4,000+ square foot home he and his new wife were residing in, even when shown a picture of the same. (January 7, 1992, Transcript p. 69, 99, and Exhibit 14, a copy of which has been included in

the Addendum to this Brief);

d) In all stages of these proceedings, (pre-trial, trial, first appeal, numerous hearings after remand) attorney's fees have been assessed against Dr. Osguthorpe and he has paid nothing towards any such award.

e) The Trial Court's statements made in connection with the January 7, 1992, contempt hearing:

Counsel hit the nail on the head, that if you came into this court showing good faith, that would be something else. But not one dime has been paid; and yet he testified as to how, 'this is my wife's house, and I have to pay her \$500 a month rent.'

If I had three children, and I loved those children, I would be paying that child support long before I paid \$500 to live in a house of that means. If I had an education, and I was a veterinarian, and I was only earning \$5 an hour, I would certainly be looking to another type of work to earn a living for my family. I'm just not persuaded, just not persuaded.

And the testimony of the Defendant, his credibility is lacking, both he and his wife; they refuse to answer questions on the stand, very evasive instead of just saying the truth as to what is taking place.

And to---when asked about paying any child support, how did he word it? It was, 'not definite,' or something of that sort. He either knows or he doesn't know. He just perjures himself in this courtroom . . . The court would further find that the Defendant has had an opportunity to have a hearing here in the courtroom, that evidence has been taken regarding the contempt, that his credibility is in question, he has not answered the questions put to him truthfully . . . (Transcript no. 3 January 7, 1992, hearing, pp. 8,9);

f) The trial court's Findings made in connection with the January 7, 1992, hearing on contempt;

5. UNPAID CHILD SUPPORT AND ALIMONY.

a. Defendant has failed to pay child support and alimony for considerable periods of time (See plaintiff's Exhibits 2, 3, 4 and 5). Between December 1990 and January 1992, plaintiff owed defendant \$8,400 in child support, \$2,100 in alimony (total \$10,500 plus accrued interest). Defendant paid \$750 leaving an unpaid arrearage of \$9,750 (See plaintiff's Exhibit 5 and \$750 owed for January, 1992.) No child support has been paid since February, 1991.

b. Defendant and his current wife both testified 'He would pay child support if his personal items were returned.'

c. Defendant further testified the plaintiff had plenty of money and could sell one of her houses.

d. Defendant has not demonstrated good faith in connection with attempting to pay his ongoing support obligations.

e. Defendant testified he was paying his new wife \$500 per month rent in order to reside with her in a home she recently purchased at 6808 Courtland Circle, Salt Lake City, Utah.

f. Defendant is a veterinarian practicing in excess of 15 years and testified he earned \$5.00 per hour in connection with consultation he claimed he provided to the Osguthorpe Animal Hospital. Defendant had and has the means to pay child support.

g. The credibility of the defendant and his present wife is lacking. Both refused to answer questions on the stand. Both were evasive. The defendant did not answer questions truthfully.

h. The defendant's failure to pay his support obligations as previously ordered was done willfully, voluntarily and with the full

knowledge of those obligations as previously ordered by the Court.

6. CONTEMPT. The Court finds the defendant is in contempt of this Court pursuant to Section 78-32-1(5) Utah Code Annotated (1953, as amended), in that he has been disobedient of lawful judgments, orders and processes of this Court. The defendant had the opportunity to have a full hearing and evidence has been taken regarding that contempt. The defendant has not answered the questions put to him truthfully. The Court specifically finds that this is one of the most flagrant violations of the law as far as support of children that has come before this Court, in that the Defendant owes plaintiff in excess of \$16,000 in unpaid child support alone. Defendant is further in contempt for his failure to pay alimony and attorney's fees as previously ordered by the Court. (R-557-559);

g) As of the January 7, 1992, hearing, Dr. Osguthorpe owed Mrs. Osguthorpe over \$32,000 in unpaid child support, alimony and attorney's fees. (See Exhibits P-2, 3, 4, and 5 included in the Addendum to this Brief);

h) Between the January 7, 1992, hearing and the May 18, 1992, hearing, Dr. Osguthorpe failed to pay an additional \$2,550.00 in child support and alimony. (R-615.)

The foregoing are but a few of the many examples of Dr. Osguthorpe's attitude towards "the system."

Now Dr. Osguthorpe has filed a second appeal. Evidently, the cost of this appeal is being born by Dr. Osguthorpe's father (page 14 of Appellant's Brief). Also, it appears that Dr. Osguthorpe wants this to be a "test case" (Appellant's Brief p.15). The Brief raises points and argues issues outside the scope of the appeal (Appellant's Brief Point VI).

When viewed cumulatively, no conclusion can be drawn other than that Dr. Osguthorpe wants to wear Mrs. Osguthorpe down. This Court should not let that occur. Mrs. Osguthorpe is regularly reminded of the trial testimony of Mr. Lynn Turnbow, a neighbor of the parties, about a conversation he had with Dr. Osguthorpe while this action was pending:

MR. TURNBOW:

A. Well, what I remember, he says that she really hasn't got a pot to piss in. And he says, my parents have a lot of money. And he says, I have a checking account. And my family can go out and hire the best lawyers. And he says that she is going to end up with nothing. And he says, the amount of money that I show I make is just not enough that she's even going to be able to survive with four kids, and she's going to be out on the street with nothing. She's going to starve.

MR. KASTING:

Q. Is there anything else that you can recall about that conversation as it pertains to this divorce action that Mr. Osguthorpe said to you?

MR. TURNBOW:

A. He just told me that she would be out on the streets with nothing. And he said, she's going to have one hell of a time raising four kids. Because he said, we have the money that we can drag this on. We can fight it forever. He said, her parents have no money to help her. And he said that the only way she can hire a lawyer is to go take a second mortgage on a second house that they have, I guess. (R-318-320.)

When a party to a divorce action acts or fails to act in such a way as to cause the other party to incur unnecessary attorney's fees, it is most appropriate for the Court to require the recalcitrant party to reimburse the other those fees. [(See Porco v. Porco, 752 P.2d 365 (Utah App. 1988).]

This Brief has demonstrated that the points raised by Dr. Osguthorpe on this appeal are without merit. In addition, his actions throughout the course of this litigation reveal motives and attitudes which should never be tolerated by the judicial system.

It is respectfully requested that Mrs. Osguthorpe be awarded all of her attorney's fees and costs incurred in connection with this appeal.

CONCLUSION

The appeal which has now been taken by Dr. Osguthorpe is wholly lacking in merit. Utah law is clear on the trial court's powers and duties in relation to contempt proceedings. Dr. Osguthorpe's appeal is fatally flawed in that 1) the claims of error he argues arise from Findings and Orders on which no appeal has been taken and 2) even assuming that such failure to properly appeal is not fatal, the trial court cited correctly and in accord with Utah law in the manner it dealt with the contempt proceeding.

Given the history of this case, Dr. Osguthorpe's questionable credibility and the lack of merit of this appeal, Mrs. Osguthorpe should be awarded all of her attorney's fees and costs incurred in having to respond to this appeal.

RESPECTFULLY SUBMITTED this 2 day of February, 1993.

DART, ADAMSON & DONOVAN

By 

SHARON A. DONOVAN

KENT M. KASTING

SHANNON W. CLARK

Attorneys for

Plaintiff-Respondent.

CERTIFICATE OF SERVICE

The undersigned, a representative of Dart, Adamson and Donovan, hereby certifies that two (2) true and correct copies of the foregoing, BRIEF OF RESPONDENT, dated February 2, 1993, was mailed, postage prepaid, to the following counsel of record:

Craig S. Cook, Esq.
3645 East 3100 South
Salt Lake City, Utah 84109

A handwritten signature in cursive script, appearing to read "Shannell Clark", is written over a horizontal line.

ADDENDUM

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by rendering advisory services. Neither the performance of these functions nor this Court's approval of the budget transforms the Bar into a "public agency."²

In addition, the Utah State Bar Association has a number of attributes of nongovernmental organizations. It is a private organization. It has the capacity to sue and be sued. It owns real property in its own name, and the State has no interest therein.³ See Rules for Integration and Management of the Utah State Bar, Rule (A)1. The Bar pays taxes on its real and personal property. Although it is subject to the supervision of the Utah Supreme Court, it is in large part self-governed by Bar commissioners who are elected by Bar members. Employees are not paid by the state and are not entitled to any benefits given state employees. The Bar is funded completely by the dues and fees paid by its members and Bar applicants; it receives no public funds or tax revenues. It exists independently of the legislative and executive branches of state government. When it is sued, it hires its own counsel. It is not treated as a state agency by the Attorney General, the State Auditor, or the Treasurer, nor is it under the control or supervision of the Administrative Office of the Courts. Although its budget has recently been approved by this Court, it is not subject to the approval of the Legislature.

Further, the Bar conducts a number of activities not related to its regulatory functions in the admission and discipline of attorneys. The Bar provides a number of public services, such as numerous professional educational courses and seminars, a lawyer referral program, and public education programs. It staffs small claims courts, publishes a newsletter containing educational and disciplinary information, and collects funds through a voluntary program which are used to reimburse clients for financial losses caused by the unethical conduct of lawyers. The Bar has acquired, operates, and maintains the Law and Jus-

tice Center. The acquisition was accomplished entirely without governmental funds.

The Utah Constitution assigns to this Court the power to "govern the practice of law." Article VIII, § 4. We need not, and therefore do not, decide whether that grant ousts the Legislature from all control over the Bar or whether the Records Act and Writings Act would be unconstitutional if applied to the Bar. We decide only that, as written, those acts do not apply to the Bar because it is not a "state agency" or "public office" within the meaning of those acts.

Because the judgment of the trial court must be reversed, it follows that the plaintiff is not entitled to attorney fees or exemplary damages.

Reversed in part; affirmed in part.

HALL, C.J., HOWE, Associate C.J.,
and DURHAM and ZIMMERMAN, JJ.,
concur.



**Jeanette OSGUTHORPE, Plaintiff
and Respondent,**

v.

**Jerry OSGUTHORPE, Defendant
and Appellant.**

No. 890219-CA.

Court of Appeals of Utah.

March 19, 1990.

On Rehearing May 10, 1990.

Husband in divorce action appealed from factual findings, legal conclusions and

2. It was of no consequence in *Keller* that the California Legislature approved the budget of the California State Bar. See *Keller v. State Bar of California*, 495 U.S. —, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990).

3. The Bar's present facility was financed by contributions and fees paid by Bar members, by contributions from the public and charitable trusts, and by a mortgage loan from a bank.

divorce decree entered in the Third District Court, Salt Lake County, Homer F. Wilkinson, J. The Court of Appeals held that: (1) trial court, in determining alimony award, was not required to make specific finding regarding husband's income, but could determine that husband was either earning more than evidence indicated or had ability to earn more money; (2) evidence supported trial court's determination that cash gift from husband's father was intended for both parties and, thus, court did not abuse its discretion in refusing to award such cash to husband; (3) trial court was not required to award husband interest on husband's equitable lien against parties' property as lien had not yet been reduced to judgment; and (4) evidence of reasonableness and need was sufficient to support award of attorney fees to wife.

Affirmed.

1. Divorce ⇐237

In determining alimony, trial court must consider financial conditions and needs of receiving spouse, ability of receiving spouse to produce sufficient income for him or herself, and ability of responding spouse to provide support.

2. Divorce ⇐239

Trial court, in determining alimony award, was not required to make specific finding regarding husband's income, but could determine that husband was either earning more than evidence indicated or had ability to earn more money; trial court stated that husband, a veterinarian claiming monthly income of \$1,192.80, had chosen to be employed by his father at lower salary than he could have earned.

3. Divorce ⇐307

Trial court did not abuse its discretion in failing to make specific finding regarding husband's income in awarding wife monthly child support of \$150 per child; trial court determined that husband was either understating his actual income or had chosen employment which paid less than he could otherwise earn. U.C.A.1953, 30-3-5.

4. Divorce ⇐252.1, 286(5)

In determining division of property in divorce action, trial court has wide discretion in adjusting financial and property interests and its actions are entitled to presumption of validity.

5. Divorce ⇐252.3(3)

In making equitable property division in divorce action, trial courts should generally award property acquired by one spouse by gift and inheritance during marriage to that spouse, together with any appreciating or enhancement of its value, unless other spouse has contributed to enhancement, maintenance, or protection of that property, thereby acquiring equitable interest in it, or property has been consumed or its identity lost through commingling or exchanges or where acquiring spouse has made gift of interest in property to other spouse. U.C.A.1953, 30-3-5.

6. Divorce ⇐253(2)

Evidence supported trial court's determination in divorce action that cash gift from husband's father was intended for both parties and, thus, court did not abuse its discretion in refusing to award such cash to husband; while husband's father testified that gifts were given solely for husband, wife testified that she had always believed gifts were for both parties and, with exception of gift made at about time of parties' separation, gifts were made in form of checks payable jointly to both parties.

7. Interest ⇐52

Trial court in divorce proceeding cannot stay statutory accrual of interest on judgment for unpaid child support. U.C.A. 1953, 15-1-4.

8. Liens ⇐7

"Equitable lien," unlike "judgment" required to bear interest at statutory rate, only gives lienholder right to collect debt out of charged property, whereas "judgment" is final consideration and determination of court on matters submitted to it in action or proceeding. U.C.A.1953, 15-1-4.

See publication Words and Phrases for other judicial constructions and definitions.

9. Interest ⇨21

Trial court in divorce proceeding was not required to award husband interest on husband's equitable lien against parties' property as lien had not yet been reduced to judgment: court stated that lien amount should be paid to husband when wife remarried, cohabited, sold home, moved from home, or when youngest child reached age of majority, whichever occurred first. U.C.A.1953, 15-1-4.

10. Divorce ⇨227(1)

To recover attorney fees in divorce proceeding, movant must demonstrate that award is "reasonable" and that need of requesting party compels award; factors for determining reasonableness include necessity for number of hours utilized, reasonableness of rate charged in light of difficulty of case and result accomplished, and rates commonly charged for similar services in community.

See publication Words and Phrases for other judicial constructions and definitions.

11. Divorce ⇨226

Evidence of reasonableness and need was sufficient to support award of attorney fees to wife in divorce action; wife's attorney stated that his hourly rate of \$100 per hour was reasonable and court found that wife did not have ability to pay fees and that husband did have ability to pay portion of wife's fees and costs.

On Petition for Rehearing

12. Divorce ⇨224

Before court will award attorney fees, trial court must find requesting party is in need of financial assistance and that fees requested are reasonable. U.C.A.1953, 30-3-3.

13. Divorce ⇨226

Evidence supported trial court's findings that wife in divorce action did not have ability to pay attorney fees incurred at trial and that husband should pay portion of wife's attorney fees, warranting award to wife of her costs and reasonable attorney fees incurred on husband's appeal. U.C.A. 1953, 30-3-3.

David S. Dolowitz, M. Joy Douglas, Cohne, Rappaport & Segal, Salt Lake City, for defendant and appellant.

Kent M. Kasting, Dart, Adamson & Kasting, Salt Lake City, for plaintiff and respondent.

Before GARFF, BILLINGS and DAVIDSON, JJ.

MEMORANDUM DECISION**PER CURIAM:**

Defendant, Jerry Osguthorpe, appeals from the trial court's findings of fact, conclusions of law and divorce decree. On appeal, he claims the trial court's findings of fact regarding alimony and child support are unsupported by the evidence and the trial court erred in allocating the parties' resources, failing to award him the gifts his father gave to him during the marriage, and requiring him to pay plaintiff's attorney fees. We affirm.

The parties were married in 1974 and separated in 1988. Four children, who at the time of the divorce ranged in age from eight to twelve, were born as issue of the marriage. Prior to the marriage, both parties essentially completed their undergraduate degrees. In 1974, defendant began veterinarian school, and his father paid for tuition and books. While defendant was in school, plaintiff worked as a waitress and cashier. In 1977, defendant received his degree and began working in his father's veterinary clinic. At trial, defendant testified that he was a consultant for his father and received \$2,000 per month. Additionally, defendant stated that he receives \$350 per month rental income. After taxes and business expenses, defendant testified that his net income was \$1,192 per month and his monthly living expenses were \$2,049.60.

Plaintiff testified that she had a college education with an outdated teaching certificate. She worked as a cashier and waitress while defendant was in veterinarian school and was a housewife and mother from 1977 until the parties' separation. At the time of trial, she was employed as an

insurance claims processor, earning a net wage of \$770 per month. She testified that she earned \$160 from rental property and her monthly living expenses were \$2,027.

During the marriage, defendant's father provided the parties with \$18,500 for a downpayment on their home on Chris Lane. He also gave them various cash gifts, including a \$10,000 Christmas gift in both 1982 and 1983, a \$5,000 Christmas gift in 1985, and a \$1,000 Christmas gift in both 1986 and 1987.

The court found that defendant's testimony indicated a net monthly income of \$1,192.80, including \$350 per month from rental property. However, based on a review of all the documents, the court found that defendant understated his income or was underemployed. The court also found plaintiff had a net rental income of \$160, and a net monthly salary of \$770 due to her employment as an insurance claims processor. Plaintiff's monthly expenses, the court found, were \$2,027. The court noted that it had received conflicting testimony regarding whether the parties' tax returns accurately reflected the amount of money available to meet the family's needs and found that the tax returns understated the actual net income available to the parties during the marriage for family and living expenses. The court also found that plaintiff assisted defendant in completing his education by working, caring for the home and raising the children. Based on those facts, the court ordered defendant to pay plaintiff \$150 alimony per month for a period of five years, and \$1 per year for an additional five year period, or until such time as plaintiff remarries, cohabits or dies, whichever occurs first. In addition, the court ordered defendant to pay child support of \$150 per month per child.

With regard to the parties' property, the court awarded plaintiff the home on Hillrise Circle which plaintiff purchased prior to the marriage. In addition, plaintiff was awarded exclusive use and occupancy of the parties' home on Chris Lane, subject to defendant's non-interest bearing equitable lien in the amount of \$22,500. The court further found that defendant's father's

cash gifts, including the \$18,500 downpayment on the Chris Lane home were intended by defendant's father as a gift to both parties for their mutual use and benefit during the marriage. Lastly, the court ordered defendant to pay \$3,939.65 of plaintiff's attorney fees.

I. ALIMONY

Defendant claims the trial court's alimony award is based on erroneous findings of fact regarding defendant's income. Defendant asserts the trial court erred in failing to enter a specific finding regarding defendant's income and in finding defendant was undercompensated or underemployed. Defendant contends that instead of entering an alimony award based on speculation, the court should have made a finding and entered an alimony award based on the evidence. He also claims his alimony and child support award leave him with \$442 per month, an insufficient amount on which to support himself.

[1] Trial courts have broad discretion in awarding alimony. *Davis v. Davis*, 749 P.2d 647, 649 (Utah 1988). We will not disturb the trial court's alimony award so long as the trial court exercises its discretion within the standards set by the court. *Id.* In determining alimony, the trial court must consider three factors: 1) the financial conditions and needs of the receiving spouse; 2) the ability of the receiving spouse to produce a sufficient income for him or herself; and 3) the ability of the responding spouse to provide support. *Schindler v. Schindler*, 776 P.2d 84, 90 (Utah Ct.App.1989). If the trial court considers these factors, this court will not disturb the alimony award unless such a serious inequity has resulted as to manifest a clear abuse of discretion. *Id.*

[2] With regard to plaintiff's financial conditions and needs, the court found that plaintiff had a net monthly income of \$770, received \$160 per month from rental property, and had \$2027 in monthly expenses. The court also reviewed plaintiff's ability to produce a sufficient income for herself in stating that plaintiff assisted defendant in

completing veterinarian school by working and caring for the house and children. The court also found that plaintiff has a college education with a teaching certificate but that her certificate was not presently renewed. At the time of trial, although plaintiff was employed, her employment would soon end. However, the court found that she is capable of finding good, gainful substitute employment.

Regarding defendant's ability to provide support, the trial court found that defendant testified he received \$2,000 per month from his employment as a veterinarian and an additional \$350 per month from barn rental. After taxes and business expenses, defendant claimed to have a net monthly income of \$1,192.80 and monthly expenses of \$2049.60. The court reviewed the testimony and the tax returns of the parties and found that defendant receives more monthly income than that reflected on his exhibit. Further, the court found that defendant is employed by his father and was either overpaid when he began his employment or underpaid at present. In determining the amount of alimony to award, the court stated that defendant has the ability to earn more than his present income and has chosen to be employed by his father at a lower salary. Also, the court stated that the tax returns, which indicated a yearly adjusted gross income of between \$15,000 and \$21,000 from 1982 to 1987, appear to understate the parties' income during the marriage. Based on these facts, the court awarded plaintiff \$150 monthly alimony for five years. After five years the court reduced alimony to \$1 per year for five years, until plaintiff remarries, cohabits or dies, whichever occurs first.

We find no error in the trial court's failure to make a specific finding regarding defendant's income in this circumstance. The trial court found that defendant was not being candid as to his actual current income or was purposefully underemployed. We defer to the trial court's assessment of the credibility of the witnesses. Utah R.Civ.P. 52(a); *Riche v. Riche*, 784 P.2d 465, 467 (Ct.App.1989). Given the evidence in the record, it was well within

the court's discretion to determine that defendant was either earning more than the evidence indicated or had the ability to earn more money. We therefore will not disturb the trial court's alimony award.

II. CHILD SUPPORT

[3] Similarly, defendant argues the trial court erred in awarding plaintiff monthly child support of \$150 per child without entering a specific finding regarding defendant's income. Defendant claims the trial court failed to consider all of the factors set forth in Utah Code Ann. § 78-45-7 (Supp.1989) in accordance with *Jefferies v. Jefferies*, 752 P.2d 909, 911 (Utah Ct.App. 1988).

Under Utah Code Ann. § 30-3-5 (1989), the trial court has broad equitable power to order child support, taking into account the needs of the children and the ability of the parent to pay. *Woodward v. Woodward*, 709 P.2d 393, 394 (Utah 1985). The trial court's finding of fact will not be overturned unless they are clearly erroneous. *Jefferies*, 752 P.2d at 911. "Failure of the trial court to make findings on all material issues is reversible error unless the facts in the record are 'clear, uncontroverted, and capable of supporting only a finding in favor of the judgment.'" *Acton v. J.B. Deliran*, 737 P.2d 996, 999 (Utah 1987) (quoting *Kinkella v. Baugh*, 660 P.2d 233, 236 (Utah 1983)). Further, section 78-45-7 enumerates the following material factors that the court must consider in setting prospective support:

- (a) the standard of living and situation of the parties;
- (b) the relative wealth and income of the parties;
- (c) the ability of the obligor to earn;
- (d) the ability of the obligee to earn;
- (e) the need of the obligee;
- (f) the age of the parties;
- (g) the responsibility of the obligor for the support of others.

Jefferies, 752 P.2d at 911.

Defendant claims the trial court erred in failing to make specific findings on all of the factors. However, the court made find-

ings regarding the relative wealth and income of the parties, their respective abilities to earn, and the children's mother's monthly expenses to provide for the children's needs. Further, the evidence in the record indicates that defendant was thirty-seven at the time of trial, while plaintiff was thirty-five. Defendant again claims the court erred in failing to enter a specific finding regarding defendant's income. Without such a finding, defendant claims, the court cannot determine an appropriate level of child support. We disagree. The trial court considered the evidence and assessed the credibility of defendant's testimony. Given the evidence, the court determined that defendant was either understating his actual income or had chosen employment which paid less than he could otherwise earn. We defer to the trial court's assessment that defendant had an ability to earn more than he purported to earn and find no abuse of discretion in the court's award of child support in accordance with that assessment.

III. GIFTS

Defendant also contends the trial court erred in failing to award him gifts his father gave to him during the marriage while returning to plaintiff her premarital property. Defendant claims entitlement to various cash gifts and an \$18,500 loan his father made available to the parties for a downpayment on the Chris Lane home. Because defendant's father testified that the gifts were intended for his son and not the parties jointly, defendant claims the court should have awarded him those gifts.

[4] There is no fixed formula for determining a division of property in a divorce action. *Naranjo v. Naranjo*, 751 P.2d 1144, 1146 (Utah Ct.App.1988). The trial court has wide discretion in adjusting financial and property interests, and its actions are entitled to a presumption of validity. *Id.* Absent a showing of a clear and prejudicial abuse of discretion, we will not interfere with a property award. *Throckmorton v. Throckmorton*, 767 P.2d 121, 123 (Utah Ct.App.1988).

[5] Section 30-3-5 (1989), provides: "When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, and parties." In making an "equitable" division, trial courts should generally award property acquired by one spouse by gift and inheritance during the marriage to that spouse together with any appreciating or enhancement of its value unless: 1) the other spouse has contributed to the enhancement, maintenance, or protection of that property, thereby acquiring an equitable interest in it, or 2) the property has been consumed or its identity lost through commingling or exchanges or where the acquiring spouse had made a gift of an interest in the property to the other spouse. *Mortensen v. Mortensen*, 760 P.2d 304, 308 (Utah 1988). However, in making equitable orders pursuant to section 30-3-5, the court has consistently concluded that the trial court is given broad discretion in dividing property, regardless of its source or time of acquisition. *Burke v. Burke*, 733 P.2d 133, 135 (Utah 1987).

[6] Defendant claims that because the gifts were intended for him, the trial court erred in failing to award him those gifts in accordance with *Mortensen*. However, the trial court found the gifts were intended for both parties and we will not overturn the court's factual findings unless they are clearly erroneous. Utah R.Civ.P. 52(a). The record indicates that although defendant's father testified that the \$18,500 downpayment and the other cash gifts given during the marriage were solely for his son, plaintiff testified that she always believed the gifts were for both parties. In addition, both defendant and his father testified that, with one exception, the gifts were made in the form of checks made payable jointly to both defendant and plaintiff. The one check that was made out to defendant only was made at about the time of the parties' separation. The trial judge stated from the bench that the past history of gift giving as compared to the gift given at the time of the separation indicated that defendant's father intended the previous gifts to be for both parties. In light of the evidence in the record, the court's finding

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that the cash gifts were intended for both parties is not clearly erroneous. Thus, *Mortensen*, which sets forth a test for gifts given to one spouse during the marriage, is inapplicable. Further, we find no abuse of discretion in the trial court's decision not to award defendant those gifts.

IV. INTEREST

Defendant also claims the trial court failed to award him interest on his equitable lien on the Chris Lane property pursuant to Utah Code Ann. § 15-1-4 (1986).

[7, 8] According to section 15-1-4 (1986), all judgments, other than those rendered on a lawful contract, shall bear interest at the rate of 12% per annum. In addition, the trial court in a divorce proceeding cannot stay statutory accrual of interest on a judgment for unpaid child support. *Stroud v. Stroud*, 758 P.2d 905, 906 (Utah 1988). However, an equitable lien, unlike a judgment, only gives the lienholder a right to collect the debt out of the charged property. *Citizens Bank v. Elks Bldg., N.V.*, 663 P.2d 56, 58 (Utah 1983). A judgment, on the other hand, is "the final consideration and determination of a court on matters submitted to it in an action or proceeding." *Crofts v. Crofts*, 21 Utah 2d 332, 445 P.2d 701, 702 (1968).

[9] The decree awarded plaintiff exclusive use and occupancy of the Chris Lane home subject to a non-interest bearing equitable lien in favor of defendant for one-half of the present equity in the home. The court stated that the lien amount should be \$22,500 and should be paid to defendant when plaintiff remarries, cohabits, sells the home, moves from the home, or when the youngest child reaches the age of majority, whichever occurs first. The equitable lien awarded defendant has not yet been reduced to judgment. Thus, defendant was awarded an equitable lien to which interest does not attach under section 15-1-4. We therefore affirm the trial court's award to defendant of a non-interest bearing equitable lien on the parties' property for \$22,500.

V. ATTORNEY FEES

[10] Finally, defendant maintains the trial court erred in awarding plaintiff attorney fees because there was insufficient evidence of need and reasonableness. To recover attorney fees in a divorce proceeding, the movant must demonstrate that the award is reasonable and that the need of the requesting party compels the award. *Sorensen v. Sorensen*, 769 P.2d 820, 832 (Utah Ct.App.1989). Factors for determining reasonableness include the necessity for the number of hours utilized, the reasonableness of the rate charged in light of the difficulty of the case and the result accomplished and the rates commonly charged for similar services in the community. *Id.*

[11] In this case, there is sufficient evidence to demonstrate plaintiff's need, given her income and financial responsibilities. In addition, plaintiff's attorney proffered that he had been practicing in the area of domestic relations law for fifteen years and was familiar with the rates charged in domestic actions. He also stated that his hourly rate was \$100 per hour and he considered that to be reasonable. He itemized the rates charged for associates, paralegals and clerks and stated that those rates were reasonable in his professional opinion. Plaintiff's attorney reviewed his time records and estimated the total fee and cost award would be \$7,869.30. The court found that plaintiff's evidence of attorney fees in the amount of \$7,879.30 was reasonable and necessary. The court further found that plaintiff does not have the ability to pay the fees and that defendant has the ability to pay a portion of plaintiff's fees and costs. Finally, the court found that the hourly rate is reasonable and consistent with the rate for similar services in the community and the hours expended were necessary.

In light of the evidence in the record, we find sufficient evidence of reasonableness and need regarding the attorney fees. Accordingly, we affirm the award of attorney fees.

Affirmed.

All concur.

ORDER ON PETITION FOR
REHEARING

STATE of Utah, Plaintiff and Appellee,

v.

Kevin Jon NIELD, Defendant
and Appellant.

No. 890465-CA.

Court of Appeals of Utah.

Dec. 28, 1990.

This matter is before the court pursuant to plaintiff's petition for rehearing. Plaintiff claims she is entitled to attorney fees and costs on appeal.

[12] Utah Code Ann. § 30-3-3 (1989) provides that this court may order either party to pay attorney fees incurred, including attorney fees incurred on appeal. *Riche v. Riche*, 784 P.2d 465, 470 (Utah Ct.App.1989). Before a court will award attorney fees, the trial court must find the requesting party is in need of financial assistance and that the fees requested are reasonable. *Bagshaw v. Bagshaw*, 788 P.2d 1057, 1061 (Utah Ct.App.1990).

[13] Defendant claims plaintiff has sufficient means to pay her attorney fees incurred on appeal in light of the court's finding that plaintiff is capable of finding good, gainful employment, the award of alimony and child support, and the property distribution. However, the trial court found that plaintiff did not have the ability to pay her attorney fees incurred at trial and that defendant should pay a portion of plaintiff's attorney fees. Because those findings are supported by the evidence we award plaintiff her costs and reasonable attorney fees incurred on appeal and remand to the trial court for a determination of reasonable attorney fees plaintiff has incurred on appeal.

All concur.



Defendant was convicted of burglary of business after jury trial in the Fourth District Court, Millard County, Cullen Y. Christensen, J. Defendant appealed. The Court of Appeals, Jackson, J., held that: (1) bolt cutters seized from defendant's apartment in course of carrying out search for items specified in valid warrant, were lawfully seized pursuant to plain view doctrine and, thus, were properly admissible, and (2) defendant's Sixth Amendment confrontation right was not abridged by trial court's admission of edited version of codefendant's confession which made no reference whatsoever to defendant's existence.

Affirmed.

1. Searches and Seizures ⇐149

Bolt cutters seized from defendant's apartment in course of carrying out search for items specified in valid warrant were lawfully seized pursuant to plain view doctrine, and thus, were properly admissible in trial on charge of burglary of business, where bolt cutters were in plain view in part of defendant's apartment in which police were authorized by warrant to search for other specified items, and bolt cutters were clearly incriminating in that burglary had been accomplished by cutting medium link chain on door to gain entry. U.S.C.A. Const.Amend. 4.

2. Searches and Seizures ⇐149

In course of carrying out search for items specified in valid warrant, other items not so listed may be lawfully seized under plain view doctrine. U.S.C.A. Const. Amend. 4.

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KENT M. KASTING (1772)
DART, ADAMSON & KASTING
Attorneys for Plaintiff
310 South Main, Suite 1330
Salt Lake City, Utah 84101
(801) 521-6383

FILED
JUN 10 1991
M7

IN THE DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH

---oooOooo---

JEANETTE CRAWFORD OSGUTHORPE, : PLAINTIFF'S VERIFIED MOTION
Plaintiff, : FOR JUDGMENTS, CONTEMPT ORDER,
: SANCTIONS AND OTHER RELIEF

v. :

JERRY SILVER OSGUTHORPE, : Case No. D87-4967
Defendant. : Judge Wilkinson

---oooOooo---

Plaintiff by her attorney Kent M. Kasting, hereby moves
the Court for an Order as follows:

1. Awarding plaintiff a judgment against defendant in
the amount of \$6,930.53 together with interest, representing
\$6,750.00 for additional child support and alimony arrearages
accruing since the last hearing in this matter in November, 1990,
plus \$180.53 representing defendant's one-half share of medical
expenses incurred for the parties' children;

2. Finding defendant in contempt of court for his
willful and contemptuous refusal to abide the orders of this
Court in regard to his child support and alimony obligations, his
failure to pay previously ordered judgments for attorney's fees
and costs, and his repeated violation and disregard of the

restraining orders set forth in paragraph 4 of the Decree of Divorce and subsequent recommendations and orders, and imposing appropriate sanctions against defendant for said actions of contempt, including a specified term in the Salt Lake County Jail;

3. Awarding plaintiff her attorney's fees and costs in the bringing of this Motion before the Court;

4. Such other relief as the Court deems appropriate in the circumstances.

This Motion is more fully supported by the following facts and circumstances:

1. A hearing was held in this matter in November, 1990, before the Honorable Sandra N. Peuler, Commissioner, in which she recommended plaintiff be awarded total judgments against defendant in the sum of \$22,438.10. Included in this judgment were child support and alimony arrearages accrued through November, 1990 of \$11,678.26 together with interest. The detail of the amounts making up this total judgment is summarized on the attached Exhibit "A". Defendant rejected that recommendation and a hearing on that rejection was held before the Honorable Homer Wilkinson on January 4, 1991. Judge Wilkinson ruled on that rejection. Plaintiff prepared an Order, and defendant objected to the same. No hearing has been held on those objections.

2. Since the November 1990 hearing before Commissioner Peuler, defendant has continued his blatant disregard of his obligations of child support and alimony as shown by the payment record below:

<u>Month</u>	<u>Accrued Child Support</u>	<u>Accrued Alimony</u>	<u>Paid</u>
December, 1990	\$600	\$150	\$375
January, 1991	600	150	-0-
February	600	150	375
March	600	150	-0-
April	600	150	-0-
May	600	150	-0-
June	600	150	-0-
July	600	150	-0-
August	600	150	-0-
September	<u>600</u>	<u>150</u>	<u>-0-</u>
TOTALS	\$6,000	\$1,500	\$750
TOTAL UNPAID ARREARAGES			<u>\$6,750</u>

Plaintiff requests judgment against defendant in the amount of \$6,750 plus interest for these arrearages.

3. Plaintiff has incurred additional medical expenses in 1991 for the parties' children in the total amount of \$361.06 as set forth in Exhibit "B" attached hereto. Defendant has failed and refused to pay his one-half share in the amount of \$180.53 and plaintiff requests judgment for that amount.

4. Defendant has repeatedly demanded that certain items of personal property be given to him over and above those awarded him in the Decree. Plaintiff has attempted on several occasions to give these items to defendant but he has failed and refused to make arrangements for pick-up and transportation of these items. Attached hereto as Exhibit C is a Statement of a police officer whom plaintiff had asked to come to her home to serve as a neutral witness and, if necessary, keeper of the peace on February 23, 1991, to be present during the appointed time period when defendant and plaintiff had agreed he could pick up his personal property. The Statement at Exhibit C sets forth that defendant never did show up, but called numerous times to demand that plaintiff bring the items to him, despite the fact that she explained to him that she did not have a truck or any means of transporting the items. Defendant does own a truck and had the means of picking up the items, but refused to do so, and ultimately never did show up.

5. Defendant has repeatedly violated restraining orders in the Decree of Divorce and in the Order issued by the Court following the November, 1990 hearing against him coming upon the residence of plaintiff and against threats and physical violence. Defendant has continued to violate these orders on numerous occasions, requiring the police to be called. Attached hereto as Exhibit "D" is a Report of the Salt Lake County Sheriff's Office describing a kidnapping and assault incident on

June, 10, 1991. Plaintiff's father, Don Crawford, was driving the parties' children in his truck from plaintiff's home to his own when he passed defendant on the road near plaintiff's home. Defendant slammed on his brakes, jumped out of his own vehicle and then leaped into the back of Mr. Crawford's truck. He then proceeded to physically assault Mr. Crawford through an open window into the cab while Mr. Crawford was trying to drive. When Mr. Crawford stopped the car, defendant forced the children from the vehicle and forcibly took them with him. Despite intervention of the Salt Lake County Sheriff's Department, defendant refused to reveal the whereabouts of the children. He was subsequently arrested and booked on charges of felony kidnap assault. Defendant obviously has no regard for the safety or physical welfare of other persons, including his own children, and should be found in contempt of court for his repeated and willful violations and disregard of the restraining orders previously entered by this court.

6. Defendant's attitude of contempt for the orders of this Court throughout the history of this case, and since the November, 1990 hearing, is blatant and shameless. Plaintiff requests the Court impose appropriate sanctions against defendant, including but not limited to sentencing him to an

appropriate term in the County Jail for his contemptuous behavior.

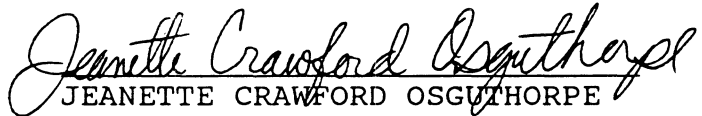
DATED this 25 day of September, 1991.


KENT M. KASTING

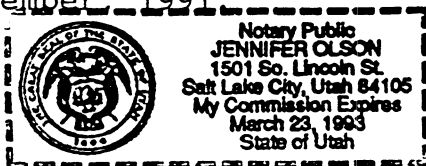
STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

JEANETTE CRAWFORD OSGUTHORPE, being first duly sworn under oath, deposes and says:

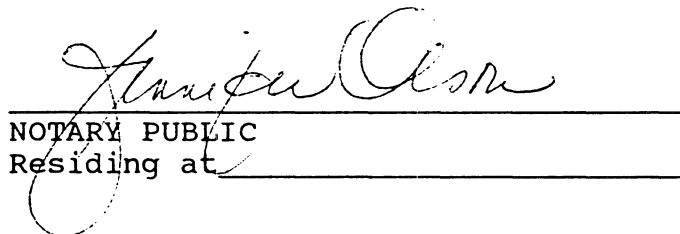
She is the Plaintiff in the above-entitled matter and has read the foregoing Motion and knows the contents thereof and that the same is true of her own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, she believes them to be true.


JEANETTE CRAWFORD OSGUTHORPE

SUBSCRIBED AND SWORN TO before me this 25 day of September, 1991.



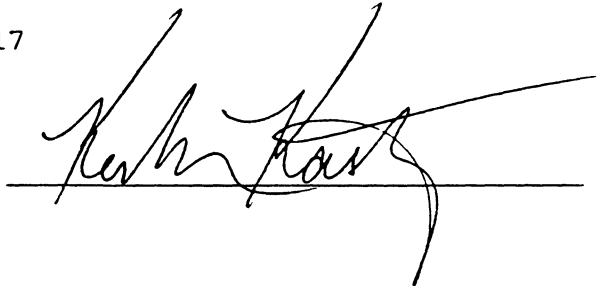
Commission expires _____


NOTARY PUBLIC
Residing at _____

MAILING CERTIFICATE

I hereby certify that on the 25 day of September,
1991, I mailed a copy of the foregoing Verified Motion to:

Dr. Jerry Osguthorpe
4850 South 2126 East
Salt Lake City, Utah 84117
Defendant Pro Se.

A handwritten signature, likely "Kerk Haskins", is written over a horizontal line. The signature is in cursive and extends above and below the line.

SUMMARY OF JUDGMENT ENTERED NOVEMBER, 1990

Child support and alimony arrearages September, 1988 - October, 1990	\$10,928.26
Interest on support/alimony arrearages through October, 1990	857.55
Credit to Jerry for net amount owed by Jeanette to Jerry for uninsured medical expenses of children	(56.59)
Credit to Jerry for repair costs to his truck	(150.00)
Replacement value of VCR removed by Jerry from Jeanette's home (Paragraph 13(A)(2) Decree of Divorce)	300.00*
Attorney's fee judgment entered 3/1/89 (Paragraph 14 Decree of Divorce)	3,939.65
Interest on Attorney's fee judgment @12% per annum through October, 1990 (\$39.40 per month simple interest x 20 months)	788.00
Judgments for car rental fees \$320 and attorney's fees \$200 (Order, January 1989)	520.00
Interest on Judgments 1/89 @12% interest = \$5.20 per month for 21 months through October, 1990	109.20
SUBTOTAL	\$17,236.07
Appeal: Attorney's fees	3,820.00
Costs	590.50
Amounts accruing November, 1990 (see attachment)	891.53
Credit to Jerry for skis sold at garage sale	(100.00)
TOTAL	\$22,438.10

***Note:** Since entry of the judgment, defendant has returned the VCR to plaintiff, and plaintiff is willing to credit \$300 against the judgment for that item.

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000473

The following additional amounts were
due by the end of November, 1990:

Child support \$600; Alimony \$150	\$750.00
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Interest on support/alimony arrearages for November: \$11,678.26 x .0083	96.93
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Interest on attorney's fee judgment, Decree	39.40
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Interest on car rental/atty fee judgments 1/89 Order	5.20
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TOTAL ADDITIONAL AMOUNTS, November, 1990	\$891.53
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ADDITIONAL HEALTH EXPENSES PAID BY JEANETTE OSGUTHORPE
SINCE JANUARY, 1991

<u>Date</u>	<u>Provider</u>	<u>Charges</u>	<u>Ins. Paid</u>	<u>Uninsured</u>
1/14/91	Dr. Swinyer (Jennifer, wart)	\$41.50	\$0.00	\$41.50
1/14/91	University Pharmacy (wart)	7.63	0.00	7.63
1/6/91 3/25	Dr. Morgan (John, dental)	102.00	55.00	47.00
1/6/91 3/25	Dr. Morgan (Jennifer, dental)	141.00	49.00	92.00
1/4/91	Oscos Drug (Julie, Rx)	10.70	0.00	10.70
1/25/91	Dr. Morgan (Jeff, dental)	60.00	20.00	40.00
1/25/91	Dr. Morgan (Jennifer, dental)	51.00	15.00	36.00
1/18/91	Dr. Homer Smith (Jennifer)	50.00	0.00	50.00
1/1/91	Utah Optical (Jennifer)	36.23	0.00	36.23
		<hr/>	<hr/>	<hr/>
TOTALS		\$500.06	\$139.00	\$361.06
TOTAL HEALTH EXPENSES PAID BY JEANETTE				\$361.06
JERRY OSGUTHORPE'S SHARE @ ONE-HALF				\$180.53

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000475

STATEMENT

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B 2 123191

Case No.

REPORTING Afford Hall	ADDRESS 2243 W. Canyonlands Cir.	PHONE: H 965-6943 W 571-2300 Ext 55
DATE OF BIRTH 1/55	SEX <input checked="" type="radio"/> M <input type="radio"/> F	LOCATION OF OCCURRENCE

DESCRIBE WHAT YOU OBSERVED

Contact:

At 1830 I arrived at the residence of Janette Osguthorpe 249 So ^{1766 E} Canyonlands Cir. as requested. It had been agreed that I would stand-by as a neutral witness for her while her ex-husband was given permission to come by and pick up some personal belongings. I met with Janette at the front door of her home and was invited in. Her ex-husband was suppose arrive around 1900.

Observation:

Shortly after 1900 Janette received a phone call which I later advised me that it was her ex-husband. I could not hear what he was saying to Janette. I overheard her telling him that his stuff was ready to be picked-up and that she was giving him approval to get it. She then stated "I can't bring it there - I don't have a truck. Why can't you come get it?" There was a short pause. She stated "I can't; I don't have a truck I told you. You can come get it yourself - I've put the dresser in the living room." She explained after she hung-up that he had a restraining order against him and that she was giving her ex-husband permission to get his stuff.

Second phone call:

Around 1930 Janette answered the phone and stated it was her ex-husband again. The next thing I heard was Janette saying, "How can I meet you at Harmon's? I told you I don't have a truck. You can come here! I can't come over to your house. If you want the stuff you can pick it up here." After a few moments of arguing Janette hung-up the phone and came into the livingroom some what upset. Her ex-husband was giving her a hard time.

B

Signature

Officer Receiving Report

Person Completing Report

STATEMENT

1 of 2

Date / /

Case No.

PERSON REPORTING		ADDRESS	PHONE: H W
DATE OF BIRTH	SEX M F	LOCATION OF OCCURRENCE	

DESCRIBE WHAT YOU OBSERVED

Third phone call:

Janette answered the phone a 3rd time and stated that it was her ex-husband again. This was at 2000 and the conversation with Janette went pretty much the same way.

Fourth call:

The phone rang again and Janette confirmed that it was her ex-husband on the phone. Again the discussion was repetitive. And after a few moments Janette hung up again.

Fifth call:

Another call came in with 5 minutes of Janette hanging up on the Fourth call. She again, stated it was her ex-husband. This time she said, "I'm not in contempt of court, I told you you could get your stuff - I don't have any way to get it to you. I don't have a truck, you do. Just get it out of here."

Final:

At 20:30 my wife arrived to pick me up and Janette's ex-husband had not shown to pick up his items. I helped Janette move the stuff back into the garage and advised her to call me if she needed a witness again. Her main concern was to avoid any violent behavior on his part. The main reason for an observer was to insure that he picked up his property without causing trouble.

Signature

Officer Receiving Report

Signature

Person Completing Report

000177

K D O O

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INITIAL REPORT

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FOLLOW-UP

WANG DOCUMENT #: 1539E

Offense Classification & Type of Offense: PERS./SOCIETY *SEE BELOW		Method: FORCIBLE CUSTODY		Date of Occurrence: MM 06 DD 10 YR 91		Time of Occurrence: 1902	
Address of Occurrence: 1760 East 7000 South (Fort Union Blvd.)				Name of Business, School, Organization: (N/G) JUN 11 3 08 PM '91		Phone Number: (N/G)	
Victim:	Last Name: X OSGUTHORPE	First Name: Jeanette	Middle Name: C. Q	D.O.B./Age: 01-13-53	Race: C	Sex: F	
Address: 7049 South Chris Lane		City: (N/G)	State: (N/G)	Zip Code: (N/G)	Home Phone: 942-4096	Business Phone: (N/G)	

*TYPE OF OFFENSE:

Custodial interference/kidnap.

WITNESSES:

W EVANNS, Randy, no middle initial given, DOB: 06-29-49, Caucasian male, address: 7031 South Chris Lane, residence phone: 943-5610.

W EVANNS, Sondra, no middle initial given, DOB: 04-15-48, Caucasian female, address: 7031 South Chris Lane, residence phone: 943-5610.

VICTIM:

✓ (Assault victim) CRAWFORD, Don W., DOB: 07-20-23, Caucasian male, residence address: 5466 Wood Crest Drive, Murray, Utah, phone #: 278-0072.

✓ (Victim of kidnap) OSGUTHORPE, Jeff, age 14, Caucasian male, address: 7049 South Chris Lane, phone #: 942-4096.

✓ (Victim of kidnap) OSGUTHORPE, John, age 13, same address and phone number.

✓ (Victims of kidnap) twin sisters, OSGUTHORPE, Julie and Jennifer, ages 10 years, same address and phone number as listed above.

ARRESTEE:

A OSGUTHORPE, Jerry S., DOB: 11-15-51, Caucasian male, residence address: 2126 East 4850 South, Holiday, Utah 84117, home phone: 278-8675. Subject is a veterinarian, is co-owner of Osguthorpe Animal Hospital at 4696 Highland Drive, also the location of the arrest. Subject was arrested 06-10-91 at 2015 hours, he was transported to the Salt Lake County Jail, arriving there at 2054 hours, and was booked in on the following charges: 1) kidnapping, Utah Code 76-5-301.1 paragraph 1 and 2. 2) Assault, Utah Code 76-5-102. Charges will be files via a fax sheet through the Salt Lake County Attorney's Office. Referred to a District Court.

Name: DEPUTY CLEMENTS bli		D.P.# 314 Y	Report Date: MM 06 DD 11 YR 91	Page ____ of ____
DISTRIBUTION		CASE STATUS		
IRDS	SID	PATROL WAY MAN	S DU	Active <input type="checkbox"/> Inactive <input type="checkbox"/>
A	JUVENILE	TRAFFIC		Cleared <input checked="" type="checkbox"/> Completed <input type="checkbox"/>
	DETECTIVE	BIKE ROOM	S-PATROL	Unfounded <input type="checkbox"/> CRP <input type="checkbox"/> ARP <input type="checkbox"/>

NARRATIVE CONTINUATION SHEET

☐ INITIAL REPORT
☐ FOLLOW-UP

91-54848

PROPERTY:

No property loss or damage reported or observed.

PREMISES:

Not given.

NARRATIVE SECTION:

The complainant, Jeanette Osguthorpe, indicates that her father, Don Crawford, arrived home at about 6:45 p.m. on this date with the eldest of her children, Jeff Osguthorpe, from a fishing trip. She was getting ready to leave for a wedding reception, and at the suggestion of her father, it was determined that all of the children would go with him to his residence for a couple of hours, while she was away. Jeanette was leaving the residence in company with Randy Evanns and his wife, Sondra Evanns, in their car; and Mr. Crawford, with the children, in his pick up truck.

They were northbound on Chris Lane. At the intersection of Chris Lane and Fort Union Blvd. (1760 East), they observed the Arrestee, Jerry Osguthorpe, in his white Dodge pick up, Utah Listing 9288 BF, approaching that intersection. He slammed on his brakes, jumped out of his vehicle, and jumped into the back end of the pick up belonging to Mr. Crawford, and being driven by Mr. Crawford. They did not know exactly what was happening, and Mr. Crawford turned and went eastbound on Fort Union Blvd.

Mr. Evans was driving his vehicle and had turned to go westbound on Fort Union Blvd., when they observed Mr. Osguthorpe climbing into the back of the Crawford vehicle. They immediately returned to the Evanns residence where Jeanette ran into the Evanns residence, and called the Sheriff's Office for assistance.

Just prior to my arrival at the Evanns residence at 7301 South Chris Lane, Mr. Crawford had arrived back, and he was alone in his pick up. He told a story or relayed information to me indicating that the suspect, Jerry Osguthorpe, had jumped into the back of his pick up, and forced the rear sliding window into the cab open. Through that window, Mr. Osguthorpe was assaulting Mr. Crawford by hitting him on the side of the face, and on the arms, trying to get him to stop the vehicle. The assault became so intense, that Mr. Crawford finally had to stop his vehicle, and did so near the entrance of Dan's Food parking lot on the Highland Drive side. He was northbound at that time on Highland Drive. Mr. Crawford indicated that he was unable to safely drive the vehicle because of the assault being perpetrated on him by Mr. Osguthorpe. Mr. Crawford then indicates that Mr. Osguthorpe, through the back window, reached far enough to unlock the right front door of the pick up truck, and when the vehicle came to a stop alongside the road, he jumped out, and forced, or pulled his children from Mr. Crawfords' vehicle. He then herded them, and made them run across Highland Drive, westbound, through the Highland Plaza, or Highland Point strip mall

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NARRATIVE CONTINUATION SHEET

☐ INITIAL REPORT
☐ FOLLOW-UP

91-54848

parking lot, and continued westbound, running with the children. Mr. Crawford yelled after them to stop, and that he would take them back to Mr. Osguthorpe's vehicle, however, they did not stop. Mr. Crawford indicates that the children were indeed very frightened, and did not appear to want to go with their father.

Mr. Crawford returned to Chris Lane and found his daughter standing out at 7031 South Chris Lane, at the Evanns residence, and that's where I made contact with them. Mrs. Osguthorpe provided information regarding the license plate on her husbands Dodge vehicle, and also another vehicle he owns, a GMC van, Utah Listing 4737 CC. She also gave me an address for Mr. Osguthorpe as being 4050 South 2126 East. That was determined to not be a correct address. Getting directions from her, I found the correct address to be 2126 East 4850 South. At that location, contact was made with the current Mrs. Osguthorpe, and she indicated that Jerry and the children had left town, and were in route to Delta.

If felt that the current Mrs. Osguthorpe was not telling me the truth, so I went to the Osguthorpe Animal Hospital at 4696 South Highland Drive, and did indeed find the GMC customized van parked in a driveway on the west end of the building. I waited in my car for a period of time to observe any movement inside the building, however, all the blinds were shut, and I could not see into the building. Mr. Osguthorpe, the suspect and arrestee, exited through a passage door in the basement of the building, and saw me parked in front of his van. He momentarily started back into the building, and then hesitated, and came back out, and started walking towards me. As we met, I confronted him with the question about where the children were. He indicated that he wasn't going to tell me where the children were, and that they were alright. At that point in time, I indicated to Mr. Osguthorpe that charges were being filed against him for an assault, and for custodial interference; the assault charges being filed by his ex-father-in-law, and the custodial interference charges being filed by his ex-wife, Jeanette Osguthorpe. I also indicated to him that it was imperative at this point in time that I make contact with the children to determine their well being and welfare. He refused to do this, consequently I arrested Mr. Osguthorpe at that location at approximately 2015 hours. Deputies from the Eastside Patrol Division had arrived, and were assisting me with the situation.

I requested presence from the shift supervisor, Sergeant Dennis Coleman, and we discussed the situation, and were going over statutes of the Utah State Code Book. It appeared to us from the circumstances that we had been informed of that a more appropriate charge at this time would probably be the kidnapping charge, as stated in the Utah Code 76-5-301.1, specifically paragraphs one and two. The circumstances mentioned being the forceful nature with which Mr. Osguthorpe chose to take custody of his children on this date. We both felt that he not only endangered the lives of his children and his ex-father-in-law, but also his own life in the irrational actions that he took of jumping into the Crawford vehicle, and assaulting Mr. Crawford as he was driving that vehicle on Fort Union Blvd.

Subsequently, I transported Mr. Jerry Osguthorpe to the Salt Lake County Jail and had him booked on a felony charge of kidnap, using Utah Code 76-5-301.1, para-

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Name: DEPUTY CLEMENTS

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D.P.#
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Page 3 of 4

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NARRATIVE CONTINUATION SHEET

☐ INITIAL REPORT
☐ FOLLOW-UP

graphs one and two; and also booked him on the assault charge, using Utah Code 76-5-102. A County Attorney's fact sheet is being submitted. I also filled out a no warrant arrest fact sheet at the Salt Lake County Jail, indicating these circumstances surrounding the arrest of Mr. Osguthorpe. Based on the information I received from the witnesses, the complainant, and Mr. Crawford, the victim, I felt comfortable in making this type of an arrest.

When I made contact with the children at the veterinary clinic, I also asked them whether or not they had voluntarily gone with their father. The eldest, Jeff, indicated that no, they had not gone voluntarily with him, and that they were aware it was not his time to have them for visitation. They said they didn't necessarily want to go to Delta with him for the next couple of days, which he indicated he was going to do. The two little girls were especially frightened, and indicated that they were afraid because of the irrational behavior they had seen in their father. All four of the children also indicated that contrary to what Mr. Osguthorpe said, he did strike and hit Mr. Crawford while Mr. Crawford was driving the vehicle.

No further information is available at this time.

JUN 11 3 08 PM '91

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Name:
DEPUTY CLEMENTS

blj

D.P.#
314 Y

Report Date:
06 01 91

Page 4 of 4

KENT M. KASTING (1772)
DART, ADAMSON & KASTING
Attorneys for Plaintiff
310 South Main, Suite 1330
Salt Lake City, Utah 84101
(801) 521-6383

JAN 24 1992

SALT LAKE COUNTY

By _____
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

---oooOooo---

JEANETTE CRAWFORD OSGUTHORPE,

Plaintiff,

v.

JERRY SILVER OSGUTHORPE,

Defendant.

:
: FINDINGS OF FACT AND
: CONCLUSIONS OF LAW IN RE:
: HEARING ON DEFENDANT'S
: OBJECTIONS TO PLAINTIFF'S
: WRITTEN ORDER AND JUDGMENTS,
: ENFORCEMENT OF DECREE OF
: DIVORCE, CONTEMPT ORDER, ETC.
: FILED JANUARY 11, 1991 AND
: DEFENDANT'S OBJECTIONS TO
: DOMESTIC COMMISSIONER'S
: RECOMMENDATIONS RELATED TO
: PLAINTIFF'S VERIFIED MOTION
: FOR JUDGMENTS, CONTEMPT ORDER,
: SANCTIONS, AND OTHER RELIEF
: MADE OCTOBER 8, 1991 AND
: PLAINTIFF'S REQUEST FOR
: CONTEMPT CITATION

:
: Civil No. 874904967

:
: Judge Homer F. Wilkinson
:
: ---oooOooo---

The Hearing on Defendant's Objections to Plaintiff's Written Order and Judgements, Enforcement of Decree of Divorce, Contempt Order, Etc., Filed January 11, 1991 and Defendant's Objections to Domestic Commissioner's Recommendations Related to Plaintiff's Verified Motion for Judgments, Contempt Order, Sanctions, and Other Relief Made October 8, 1991 and Plaintiff's Request for Contempt Citation came on for argument and evidentiary hearing on

Tuesday, January 7, 1992, at the hour of 10:30 a.m. The proceedings concluded at the hour of 4:30 p.m. The plaintiff was present and represented by her counsel Kent M. Kasting of Dart, Adamson & Kasting. The defendant was present and represented himself pro se. The parties presented testimony and documentary evidence and argument in support of their respective positions. Each party was sworn and testified under oath. The Court reviewed the file, the pleadings, motions, and other documents before the Court and considers itself fully advised in the premises. The Court issued its ruling from the bench and now in connection with that ruling now makes the following Findings of Fact.

FINDINGS OF FACT

1. NOTICE. Both parties had proper notice of these proceedings and the Court has jurisdiction over each of these parties. Defendant had the opportunity for a full hearing on Plaintiff's Request for Contempt.
2. OBLIGATIONS UNDER DECREE OF DIVORCE. The defendant at all times knew and understood the obligations imposed upon him under ¶s 4, 6, 7 and 15 of the Decree of Divorce entered in this matter.
3. PERSONAL PROPERTY. Disputes as to the exchanges of personal property have arisen between the parties in the past and those disputes have not been able to be voluntarily resolved by the parties. Any such disputes are independent from, and not related to, the defendant's ongoing obligations to pay plaintiff

Plaintiff has in the past attempted to make arrangements for the orderly exchange of this property.

4. UNREIMBURSED MEDICAL AND DENTAL EXPENSES. The defendant has challenged plaintiff's claims for reimbursement of medical and dental expenses not covered by insurance. Those unreimbursed expenses through January 4, 1991 were reduced to judgment in connection with previous hearings held before the Commissioner and this Court. With regard to unreimbursed medical and dental expenses incurred after January 4, 1991 through September 25, 1991, the date of the filing of plaintiff's last Motion, plaintiff stated she would not seek reimbursement from defendant for the same.

5. UNPAID CHILD SUPPORT AND ALIMONY.

a. Defendant has failed to pay ongoing child support and alimony for considerable periods of time (See plaintiff's Exhibits 2, 3, 4 and 5). Between December 1990 and January 1992, plaintiff owed defendant \$8,400 in child support, \$2,100 in alimony (total \$10,500 plus accrued interest). Defendant paid \$750 leaving an unpaid arrearage of \$9,750 (See plaintiff's Exhibit 5 and \$750 owed for January, 1992.) No child support has been paid since February, 1991.

b. Defendant and his current wife both testified "He would pay child support if his personal items were returned".

c. Defendant further testified the plaintiff had plenty of money and could sell one of her houses.

d. Defendant has not demonstrated good faith in connection with attempting to pay his ongoing support obligations.

e. Defendant testified he was paying his new wife \$500 per month rent in order to reside with her in a home she recently purchased at 6808 Courtland Circle, Salt Lake City, Utah.

f. Defendant is a veterinarian practicing in excess of 15 years and testified he earned \$5.00 per hour in connection with consultation he claimed he provided to the Osguthorpe Animal Hospital. Defendant had and has the means to pay child support.

g. The credibility of the defendant and his present wife is lacking. Both refused to answer questions on the stand. Both were evasive. The defendant did not answer questions truthfully.

h. The defendant's failure to pay his support obligations as previously ordered was done willfully, voluntarily and with full knowledge of those obligations as previously ordered by the Court.

6. CONTEMPT. The Court finds the defendant is in contempt of this Court pursuant to Section 78-32-1(5) Utah Code Annotated (1953, as amended), in that he has been disobedient of lawful judgments, orders and processes of this Court. The defendant had the opportunity to have a full hearing and evidence has been taken regarding that contempt. The defendant has not answered the questions put to him truthfully. The Court specifically finds that this is one of the most flagrant violations of the law

as far as support of children that has come before this Court, in that the defendant owes plaintiff in excess of \$16,000 in unpaid child support alone. Defendant is further in contempt for his failure to pay alimony and attorneys fees as previously ordered by the Court.

7. ATTORNEYS FEES.

a. The defendant has paid nothing towards the attorneys fees he was previously ordered to pay by this Court in connection with the trial of this matter and his subsequent appeal of this Court's decision to the Utah Court of Appeals.

b. The plaintiff has incurred attorneys fees and costs in connection with this hearing and will be required to pay those fees.

c. Plaintiff does not have the financial means to pay her fees.

d. Plaintiff's counsel bills at the rate of \$125 per hour. That rate is consistent with rates charged in the community for domestic relations work. Plaintiff's counsel expended in excess of 7 hours in connection with preparation for and attendance at the hearing. The rate charged and hours expended are reasonable and necessary. Plaintiff's counsel requested an award of \$875 in attorneys fees.

From the foregoing Findings of Fact the Court now makes the following:

CONCLUSIONS OF LAW

1. OBJECTIONS TO JANUARY 1991 PROPOSED ORDER. Defendant's Objections to Plaintiff's Proposed Order and Judgments on Plaintiff's Motion for Judgment, Enforcement of Decree of Divorce, Determination of Attorneys Fees on Appeal, Contempt Order and Sanctions and Other Relief filed in January, 1991, are without merit and overruled and the Order has been signed as proposed and without modification.

2. DEFENDANT'S REJECTION OF DOMESTIC COMMISSIONER'S RECOMMENDATIONS OF OCTOBER 8, 1991. Defendant's Rejection of Domestic Commissioner's Recommendation dated October 8, 1991 is denied and the Recommendation is affirmed in all respects, except as to plaintiff's claim for \$180.53 in medical expenses which she agreed to relinquish.

3. PERSONAL PROPERTY EXCHANGE. Any personal property to be exchanged under the original Decree of Divorce shall occur at the residence of the plaintiff at 12:00 noon on January 11, 1992. Plaintiff's counsel shall have a representative present. Defendant shall attend and secure possession of any such property to which he may be entitled. Following that exchange the issue of personal property shall be fully, finally and completely resolved and neither shall raise any further claims to personal property.

4. UNREIMBURSED MEDICAL AND DENTAL EXPENSES. Plaintiff's claims for unreimbursed medical and dental expenses incurred prior to January 4, 1991, have previously been reduced to

Judgment and, therefore, defendant's attempt to challenge those expenses is barred by the doctrine of res judicata. Plaintiff by stipulation has waived her right to seek reimbursement from defendant for the children's medical and dental expenses from January 4, 1991 through September 25, 1991, the date which she filed her motion seeking such reimbursement.

5. JUDGMENT - UNPAID CHILD SUPPORT AND ALIMONY. Plaintiff is granted a judgment against defendant in the sum of \$9,750, together with any accrued interest thereon, representing unpaid child support and alimony from December 1990 through January 1992. This judgment shall be in addition to prior judgments for unpaid child support and alimony previously entered by the Court.

6. JUDGMENT - ATTORNEYS FEES. Plaintiff is granted judgment against defendant in the sum of \$875 for attorneys fees. This judgment shall be in addition to prior judgments for attorneys fees previously entered by the Court.

7. SANCTIONS FOR CONTEMPT. The Court imposes the following sanctions on defendant for his contempt:

- a. The defendant is fined \$200.
- b. The defendant is ordered to serve 30 days in the Salt Lake County Jail.
- c. Pursuant to Section 78-32-12 Utah Code Annotated (1953 as amended), the imprisonment is for his omission to perform an act required by law, which he has the power and ability to perform. He shall continue to serve the time in jail until he pays the child support as ordered by the Court.

d. Pursuant to Section 78-32-12.1(5) Utah Code Annotated, (1953 as amended), if the Court in its discretion finds that the defendant would benefit from performing community service, participating in workshop classes and/or individual counselling to educate him about the importance of compliance with the Court's Orders and the need to support his children, then the Court may so order if it elects to do so.

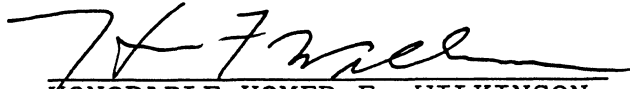
e. The jail sentence ordered above may be stayed for a period of 6 days or until January 13, 1992. If by that time defendant has paid to plaintiff \$5,000 towards the child support arrearages reduced to judgment in ¶5 above. If he fails to pay the \$5,000 by January 13, 1992, then the defendant is to report to the Salt Lake County Jail at 12:00 noon, January 14, 1992. If he does not so report, a bench warrant will be issued for his arrest.

f. Further, in addition to and independent of the requirements in the preceding paragraph, the jail sentence shall be stayed, provided the defendant pay to plaintiff in a timely fashion the sum of \$900 per month (\$600 regular child support and \$300 towards support arrearages). Should defendant not make these monthly payments as ordered, then the stay of the jail sentence shall be lifted and he shall immediately commence serving such sentence. This \$900 monthly payment shall continue until all child support arrearages have been paid. It shall be in addition to the \$150 monthly alimony payment he is required to pay plaintiff under the Decree of Divorce.

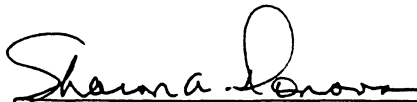
g. Defendant may purge himself of his contempt as has been found by the Court by paying the amounts required in ¶s (e) and (f) above.

DATED this 24 day of January, 1992.

BY THE COURT


HONORABLE HOMER F. WILKINSON
District Court Judge

Approved as to Substance and Form:


Kent M. Kasting
Attorneys for Plaintiff

1/15/92
Date

CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of January, 1992, a true and correct copy of the foregoing Findings of Fact and Conclusions of Law In Re: Hearing on Defendant's Objections to Plaintiff's Written Order and Judgements Enforcement of Decree of Divorce, Contempt Order, Etc., Filed January 11, 1991 and Defendant's Objections to Domestic Commissioner's Recommendations Related to Plaintiff's Verified Motion for Judgments, Contempt Order, Sanctions, and Other Relief Made October 8, 1991 and Plaintiff's Request for Contempt Citation and accompanying transcript of Ruling from bench, was mailed, postage prepaid, to:

Jerry Osguthorpe
6808 Courtland Circle
Salt Lake City, UT 84121

Jerry Osguthorpe
c/o Osguthorpe Veterinarian Clinic
4696 South Highland Drive
Holladay, UT 84117

Kristine Whinner

JAN 24 1992

SALT LAKE COUNTY
By Deputy Clerk

KENT M. KASTING (1772)
DART, ADAMSON & KASTING
Attorneys for Plaintiff
310 South Main, Suite 1330
Salt Lake City, Utah 84101
(801) 521-6383

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

2171567

---oooOooo---

1-28-92-8:18 am

JEANETTE CRAWFORD OSGUTHORPE,	:	ORDER AND JUDGMENT IN RE:
	:	HEARING ON DEFENDANT'S
Plaintiff,	:	OBJECTIONS TO PLAINTIFF'S
	:	WRITTEN ORDER AND JUDGMENTS,
	:	ENFORCEMENT OF DECREE OF
v.	:	DIVORCE, CONTEMPT ORDER, ETC.
	:	FILED JANUARY 11, 1991 AND
	:	DEFENDANT'S OBJECTIONS TO
	:	DOMESTIC COMMISSIONER'S
	:	RECOMMENDATIONS RELATED TO
	:	PLAINTIFF'S VERIFIED MOTION
JERRY SILVER OSGUTHORPE,	:	FOR JUDGMENTS, CONTEMPT ORDER,
	:	SANCTIONS, AND OTHER RELIEF
Defendant.	:	MADE OCTOBER 8, 1991 AND
	:	PLAINTIFF'S REQUEST FOR
	:	CONTEMPT CITATION
	:	
	:	Civil No. 874904967
	:	
	:	Judge Homer F. Wilkinson
	:	

---oooOooo---

The Hearing on Defendant's Objections to Plaintiff's Written Order and Judgements, Enforcement of Decree of Divorce, Contempt Order, Etc., Filed January 11, 1991 and Defendant's Objections to Domestic Commissioner's Recommendations Related to Plaintiff's Verified Motion for Judgments, Contempt Order, Sanctions, and Other Relief Made October 8, 1991 and Plaintiff's Request for Contempt Citation came on for argument and evidentiary hearing on

A-25

Tuesday, January 7, 1992, at the hour of 10:30 a.m. The proceedings concluded at the hour of 4:30 p.m. The plaintiff was present and represented by her counsel Kent M. Kasting of Dart, Adamson & Kasting. The defendant was present and represented himself pro se. The parties presented testimony and documentary evidence and argument in support of their respective positions. Each party was sworn and testified under oath. The Court reviewed the file, the pleadings, motions, and other documents before the Court and considers itself fully advised in the premises. The Court issued its ruling from the bench and has made Findings of Fact and Conclusions of Law. Based upon the foregoing, it is hereby ORDERED as follows:

1. OBJECTIONS TO JANUARY 1991 PROPOSED ORDER. Defendant's Objections to Plaintiff's Proposed Order and Judgments on Plaintiff's Motion for Judgment, Enforcement of Decree of Divorce, Determination of Attorneys Fees on Appeal, Contempt Order and Sanctions and Other Relief filed in January, 1991, are without merit and overruled and the Order has been signed as proposed and without modification.

2. DEFENDANT'S REJECTION OF DOMESTIC COMMISSIONER'S RECOMMENDATIONS OF OCTOBER 8, 1991. Defendant's Rejection of Domestic Commissioner's Recommendation dated October 8, 1991 is denied and the Recommendation is affirmed in all respects, except as to plaintiff's claim for \$180.53 in medical expenses which she agreed to relinquish.

3. PERSONAL PROPERTY EXCHANGE. Any personal property to be exchanged under the original Decree of Divorce shall occur at the residence of the plaintiff at 12:00 noon on January 11, 1992. Plaintiff's counsel shall have a representative present. Defendant shall attend and secure possession of any such property to which he may be entitled. Following that exchange the issue of personal property shall be fully, finally and completely resolved and neither shall raise any further claims to personal property.

4. UNREIMBURSED MEDICAL AND DENTAL EXPENSES. Plaintiff's claims for unreimbursed medical and dental expenses incurred prior to January 4, 1991, have previously been reduced to Judgment and, therefore, defendant's attempt to challenge those expenses is barred by the doctrine of res judicata. Plaintiff has waived her right to seek reimbursement from defendant for the children's medical and dental expenses from January 4, 1991 through September 25, 1991, the date which she filed her motion seeking such reimbursement.

5. JUDGMENT - UNPAID CHILD SUPPORT AND ALIMONY. Plaintiff is granted a judgment against defendant in the sum of \$9,750, together with any accrued interest thereon, representing unpaid child support and alimony from December 1990 through January 1992. This judgment shall be in addition to prior judgments for unpaid child support and alimony previously entered by the Court.

6. JUDGMENT - ATTORNEYS FEES. Plaintiff is granted judgment against defendant in the sum of \$875 for attorneys fees. This

judgment shall be in addition to prior judgments for attorneys fees previously entered by the Court.

7. SANCTIONS FOR CONTEMPT. The Court imposes the following sanctions on defendant for his contempt:

a. The defendant is fined \$200.

b. The defendant is ordered to serve 30 days in the Salt Lake County Jail.

c. Pursuant to Section 78-32-12 Utah Code Annotated (1953 as amended), the imprisonment is for his omission to perform an act required by law, which he has the power and ability to perform. He shall continue to serve the time in jail until he pays the child support as ordered by the Court.

d. Pursuant to Section 78-32-12.1(5) Utah Code Annotated, (1953 as amended), if the Court in its discretion finds that the defendant would benefit from performing community service, participating in workshop classes and/or individual counselling to educate him about the importance of compliance with the Court's Orders and the need to support his children, then the Court may so order if it elects to do so.

e. The jail sentence ordered above may be stayed for a period of 6 days or until January 13, 1992. If by that time defendant has paid to plaintiff \$5,000 towards the child support arrearages reduced to judgment in ¶5 above. If he fails to pay the \$5,000 by January 13, 1992, then the defendant is to report to the Salt Lake County Jail at 12:00 noon, January 14, 1992. If

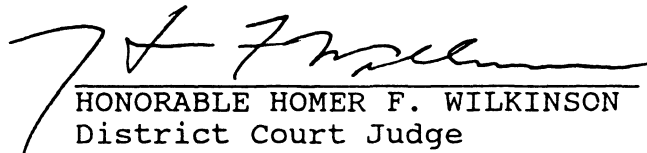
he does not so report, a bench warrant will be issued for his arrest.

f. Further, in addition to and independent of the requirements in the preceding paragraph, the jail sentence shall be stayed, provided the defendant pay to plaintiff in a timely fashion the sum of \$900 per month (\$600 regular child support and \$300 towards support arrearages). Should defendant not make these monthly payments as ordered, then the stay of the jail sentence shall be lifted and he shall immediately commence serving such sentence. This \$900 monthly payment shall continue until all child support arrearages have been paid. It shall be in addition to the \$150 monthly alimony payment he is required to pay plaintiff under the Decree of Divorce.

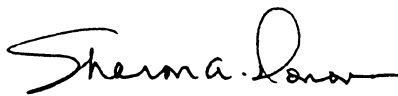
g. Defendant may purge himself of his contempt as has been found by the Court by paying the amounts required in ¶s (e) and (f) above.

DATED this 24 day of January, 1992.

BY THE COURT


HONORABLE HOMER F. WILKINSON
District Court Judge

Approved as to Substance and Form:


for Kent M. Kasting
Attorneys for Plaintiff

1/15/92
Date

CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of January, 1992, a true and correct copy of the foregoing Order and Judgment In Re: Hearing on Defendant's Objections to Plaintiff's Written Order and Judgements Enforcement of Decree of Divorce, Contempt Order, Etc., Filed January 11, 1991 and Defendant's Objections to Domestic Commissioner's Recommendations Related to Plaintiff's Verified Motion for Judgments, Contempt Order, Sanctions, and Other Relief Made October 8, 1991 and Plaintiff's Request for Citation and accompanying transcript of Ruling from bench was mailed, postage prepaid, to:

Jerry Osguthorpe
6808 Courtland Circle
Salt Lake City, UT 84121

Jerry Osguthorpe
c/o Osguthorpe Veterinarian Clinic
4696 South Highland Drive
Holladay, UT 84117

Dustin W. Winters

LAW OFFICES
DART, ADAMSON & KASTING

B. L. DART, P.C.
CRAIG G. ADAMSON, P.C.
KENT M. KASTING, P.C.
SHARON A. DONOVAN, P.C.
JOHN D. SHEAFFER, JR.
ERIC P. LEE
SHANNON W. CLARK

*ALSO ADMITTED TO PRACTICE IN THE STATE OF MONTANA
*ALSO ADMITTED TO PRACTICE IN THE STATE OF WASHINGTON

SUITE 1330
310 SOUTH MAIN
SALT LAKE CITY, UTAH 84101

TELEPHONE
(801) 521-6383
FAX (801) 355-2513

OF COUNSEL
JOHN T. EVANS, P.C.
DAVID E. ROSS II

March 5, 1992

Dr. Jerry Osguthorpe
4850 South 2126 East
Salt Lake City, UT 84117

Dr. Jerry Osguthorpe
c/o Osguthorpe Veterinarian Clinic
4696 South Highland Drive
Holladay, UT 84117

RE: Osguthorpe v. Osguthorpe, Civil No. 874904967

Dear Dr. Osguthorpe:

I just received a telephone call from Jeannette and she advised me that she had received a check from you for \$500, representing partial payment towards your February support obligation. I have advised her to cash that check, inasmuch as she needs those monies to support the children. That is not intended, in any way to be a waiver on our part or a consent to any reduced payment by you.

As you are aware, you are under Order to pay the sum of \$900 per month towards child support, in addition to other ongoing alimony obligation. If Jeannette has not received an additional \$400 check by close of business March 9, we will immediately ask the Court for imposition of the jail sentence which the Court stayed, provided you made the payments ordered by the Court. Please govern yourself accordingly.

Very truly yours,

DART, ADAMSON & KASTING


Kent M. Kasting

KMK/kw
pc. Honorable Homer F. Wilkinson
Jeanette Osguthorpe

KENT M. KASTING (1772)
of Counsel to
DART, ADAMSON & DONOVAN
Attorneys for Plaintiff
310 South Main, Suite 1330
Salt Lake City, Utah 84101
(801) 521-6383

1992 FEB 22

mf

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

---oooOooo---

JEANETTE CRAWFORD OSGUTHORPE,	:	PLAINTIFF'S VERIFIED MOTION
	:	FOR JUDGMENT, ATTORNEY'S
Plaintiff,	:	FEES AND IMMEDIATE
	:	IMPOSITION OF JAIL SENTENCE
v.	:	
JERRY SILVER OSGUTHORPE,	:	Civil No. 874904967
	:	
Defendant.	:	Judge Homer F. Wilkinson

---oooOooo---

COMES NOW the plaintiff and moves the court for the following relief against defendant:

1. For the immediate imposition on the defendant of the 30 day jail sentence previously stayed by the Court.
2. For an additional judgment of \$1,400.00 against the defendant representing unpaid child support for the months of February, March, April and May, 1992, plus any additional amounts which accrue until this matter is heard.
3. For an additional judgment against defendant in the sum of \$600.00 representing unpaid alimony for the months of February, March and April of 1992, plus any additional amounts which accrue until this matter is heard.
4. For additional attorney's fees of not less than \$500.

A-42

5. For such other and further relief as may be appropriate under the circumstances.

As grounds for this Motion plaintiff represents to the Court as follows:

1. On the 28th day of January, 1992, this Court entered an Order against the defendant which provides in pertinent part as follows:

e. The jail sentence ordered above may be stayed for a period of 6 days or until January 13, 1992. If by that time defendant has paid to plaintiff \$5,000 towards the child support arrearages reduced to judgment in ¶5 above. If he fails to pay the \$5,000 by January 13, 1992, then the defendant is to report to the Salt Lake County Jail at 12:00 noon, January 14, 1992. If he does not so report, a bench warrant will be issued for his arrest.

f. Further, in addition to and independent of the requirements in the preceding paragraph, the jail sentence shall be stayed, provided the defendant pay to plaintiff in a timely fashion the sum of \$900 per month (\$600 regular child support and \$300 towards support arrearages). Should defendant not make these monthly payments as ordered, then the stay of the jail sentence shall be lifted and he shall immediately commence serving such sentence. This \$900 monthly payment shall continue until all child support arrearages have been paid. It shall be in addition to the \$150 monthly alimony payment he is required to pay plaintiff under the Decree of Divorce.

2. On January 13, 1992 defendant paid to plaintiff the \$5,000 which he was ordered to pay as was provided above.

3. Defendant has not paid the child support he was ordered to pay as is more particularly set out below.

<u>Month</u>	<u>Regular Child Support</u>	<u>Payments on Arrearage as Ordered</u>	<u>Total Due</u>	<u>Total Paid</u>
February, 1992	\$600	\$300	\$900	\$500
March	600	300	900	500
April	600	300	900	-0-
May	600	300	900	-0-
TOTAL	<u>\$2,400</u>	<u>\$1,200</u>	<u>\$3,600</u>	<u>\$1,000</u>

Plaintiff is entitled to an additional judgment against the defendant in the total sum of \$1,400.00 (\$100 February, \$100 March, \$600 April and \$600 May).

4. Defendant has not paid the \$150 per month alimony he was ordered to pay for the months of February, March, April and May, 1992, and plaintiff is entitled to the additional judgment of \$600 representing those unpaid alimony installments.

5. Plaintiff has been required to again retain the services of an attorney (defendant has paid nothing toward any of the numerous previous awards of attorney's fees made by the Court against him) and a reasonable fee to be awarded in connection with this matter is the sum of not less than \$500.

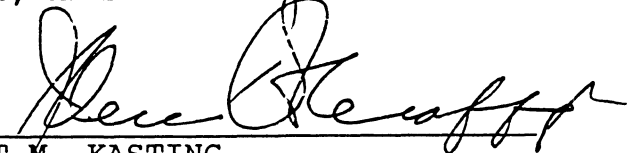
6. Defendant has again wilfully and intentionally violated the previous Orders of this Court and, therefore, is once again in blatant contempt of this Court's previous Orders and it is reasonable that he should be ordered to immediately commence serving the entire 30 day jail sentence which the Court had earlier imposed upon him but stayed conditioned upon his complying with the payments the Court required him to make to the

plaintiff and the Court should issue a bench warrant requiring the defendant to commence serving that jail sentence forthwith.

WHEREFORE, the plaintiff prays for the relief requested above and for such other and further relief as may be appropriate under the circumstances.

DATED this 30th day of April, 1992.

DART, ADAMSON & DONOVAN

for 
KENT M. KASTING
Attorneys for Plaintiff

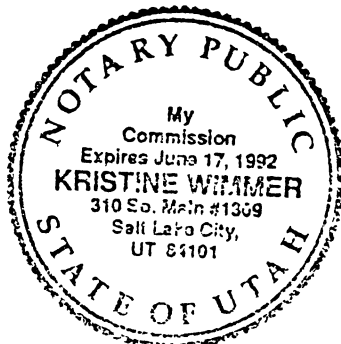
STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)


Jeannette C. Osguthorpe, being first duly sworn,
deposes and says:

That she is the plaintiff in the above-entitled matter and has read the foregoing Plaintiff's Verified Motion for Judgment, Attorney's Fees and Immediate Imposition of Jail Sentence and knows the contents thereof and that the same is true of her own knowledge except as to those matters therein stated upon information and belief, and, as to those matters, she believes them to be true.


JEANNETTE C. OSGUTHORPE

SUBSCRIBED AND SWORN to before me this 30 day of April, 1992.




Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on the 30 day of April, 1992, a true and correct copy of the foregoing Plaintiff's Motion for Judgment, Attorney's Fees and Immediate Imposition of Jail Sentence was mailed, postage prepaid, to:

Jerry Osguthorpe
6808 Courtland Circle
Salt Lake City, UT 84121

Jerry Osguthorpe
c/o Osguthorpe Veterinarian Clinic
4696 South Highland Drive
Holladay, UT 84117

Kristine Winters

KENT M. KASTING (1772)
of counsel to
DART, ADAMSON & DONOVAN
Attorneys for Plaintiff
310 South Main, Suite 1330
Salt Lake City, Utah 84101
(801) 521-6383

FILED
DISTRICT COURT

MAY 8 1 51 PM '92

BY mf CLERK

IN THE THIRD DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

---oooOooo---

JEANETTE CRAWFORD OSGUTHORPE, :

Plaintiff, : NOTICE OF HEARING

v. :

JERRY SILVER OSGUTHORPE, : Civil No. 874904967

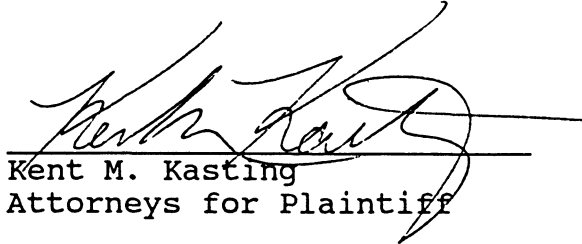
Defendant. : Judge Homer F. Wilkinson

---oooOooo---

PLEASE TAKE NOTICE that Plaintiff's Verified Motion for Judgment, Attorney's Fees and Immediate Imposition of Jail Sentence will come on for hearing on the 18th day of May, 1992, at 9:00 a.m. before the Honorable Homer F. Wilkinson, Judge of the above-entitled court.

DATED this 7 day of May, 1992.

DART, ADAMSON & DONOVAN



Kent M. Kasting
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of May, 1992, a true and correct copy of the foregoing Notice of Hearing was mailed, postage prepaid, to:

Jerry Osguthorpe
6808 Courtland Circle
Salt Lake City, UT 84121

Jerry Osguthorpe
c/o Osguthorpe Veterinarian Clinic
4696 South Highland Drive
Holladay, UT 84117

A handwritten signature, likely "Ken Kase", is written over a horizontal line.

FILED DISTRICT COURT
Third Judicial District

JUN 5 1992

SHARON A. DONOVAN (0901)
DART, ADAMSON & DONOVAN
Attorneys for Plaintiff
310 South Main, Suite 1330
Salt Lake City, Utah 84101-2167
Telephone: (801) 521-6383

SALT LAKE COUNTY
By Bryan Stark
Deputy Clerk

IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----oOo-----

JEANETTE CRAWFORD OSGUTHORPE,	:	
	:	AFFIDAVIT OF
Plaintiff,	:	JEANETTE CRAWFORD OSGUTHORPE
	:	
v.	:	
	:	Civil No. 874904967
JERRY SILVER OSGUTHORPE,	:	
	:	Judge Homer F. Wilkinson
Defendant.	:	

-----oOo-----

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

COMES NOW Jeanette Crawford Osguthorpe, after being first duly sworn upon oath, deposes and states as follows:

1. I am the Plaintiff in the above-entitled matter.
2. I appeared before the above-entitled Court on May 18, 1992, on my Motion for Judgment, Attorney's Fees and Immediate Imposition of Jail Sentence.
3. Pursuant to the Court's ruling, the Court imposed a jail sentence of thirty days for my ex-husband, Jerry Silver Osguthorpe, if he did not pay \$2,000.00 to me by May 26, 1992, at 12:00 o'clock noon, and Bench Warrant would issue at that time.

4. Further, the Court also ordered that the child support through the month of June, 1992, would also need to be paid; otherwise, a Bench Warrant would issue.

5. I did not receive the \$2,000.00 ordered to be paid by May 26, 1992, at 12:00 o'clock noon.

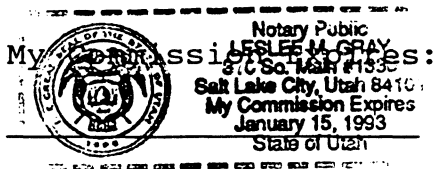
6. I am asking that the Court issue a Bench Warrant, pursuant to the Court's Order, to impress upon Defendant his obligation to meet the terms of the Decree of Divorce and subsequent Orders.

DATED this 4th day of June, 1992.

Jeanette Crawford Osguthorpe
JEANETTE CRAWFORD OSGUTHORPE

SUBSCRIBED AND SWORN to before me this 4th day of June, 1992.

Leslie M. Gray
NOTARY PUBLIC
Residing in Salt Lake County, Ut.



SHARON A. DONOVAN, 0901
DART, ADAMSON & DONOVAN
Attorneys for Plaintiff
310 South Main, Suite 1330
Salt Lake City, Utah 84101-2167
Telephone: 521-6383

Third Judicial District

JUN 19 1992

SALT LAKE COUNTY

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY

STATE OF UTAH

JEANETTE CRAWFORD OSGUTHORPE,

Plaintiff,

vs.

JERRY SILVER OSGUTHORPE,

Defendant.

2175325

6-23-92-825am

ORDER FINDING DEFENDANT
IN CONTEMPT AND IMPOSING
JAIL SENTENCE AND JUDGMENT

Civil No. 874904967
Judge Homer F. Wilkinson

Plaintiff's Motion for Judgment, attorneys' fees and
immediate imposition of jail sentence came on regularly for
hearing on May 18, 1992 before the Honorable Homer F. Wilkinson,
one of the judges of the above-entitled Court, Plaintiff
appearing in person and by and through Sharon A. Donovan on
behalf of Kent M. Kasting, and Defendant appearing pro se, and
the Court having heard evidence and during the proceedings having
received documentary evidence regarding Defendant's income,
Defendant's Exhibit Nos. 1 and 2.

Pursuant to such hearing an Order was entered by the Court
on June 5, 1992 finding the defendant in contempt and imposing a
jail sentence and judgment. Because of procedural irregularities

the parties have stipulated that such Order should be withdrawn and that a new Order should be issued in Order to allow the defendant the opportunity to take appropriate action with reference to such Order.

The Court considers itself very familiar with the file of this case, having had numerous proceedings before this Court prior to the above-referenced hearing. The Court has carefully listened to the profer and evidence of the parties and reviewed prior testimony of the parties regarding prior imposition of jail sentence and considers itself fully advised in the premises. Based upon the foregoing, and the Court having made and entered adequate and sufficient Findings of Fact, now, therefore, the Court being fully advised,

IT IS HEREBY ORDERED, ADJUGED, AND DECREED AS FOLLOWS:

1. The Court finds that this matter has been before this Court before, has been up to the Court of Appeals on one occasion and that Court has sustained this Court, and the Court finds the defendant's income, as he states, is just not realistic.

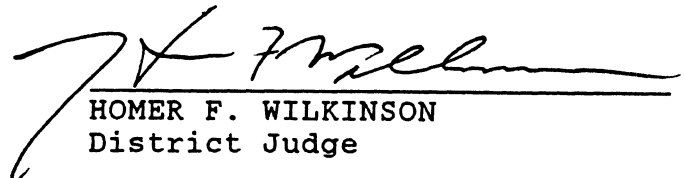
2. The Court finds that the parties' children need to be supported and Defendant has failed to meet his obligations, pursuant to the Decree of Divorce.

3. The Court sustains its previous order. The Court further orders that Defendant shall be incarcerated in the Salt Lake County Jail for a period of thirty days, and such longer time as the Court deems fit to impose sentence, pursuant to Utah Code Annotated §78-32-12, if the acts performed as ordered by this Court are not fully complied with. However, the Court will

stay its imposition of jail sentence, as long as the following conditions are met: (a) the Court shall stay this Order until the June 24, 1992, at 12:00 noon, at which time \$3,050.00 shall be paid by Defendant to Plaintiff to bring the delinquent child support and alimony through June 1992 (\$1,800.00 in child support through June 1992, and alimony of \$750.00 through June, 1992; and attorneys' fees of \$500.00 for purpose of these proceedings). If the the \$3,050.00 is not paid by June 24, 1992 at 12:00 noon, a bench warrant shall issue, unless the defendant submits himself to the Salt Lake County Jail for incarceration. (b) The Court further orders that if the on-going child support and payment on arrearages of \$900.00 per month due on the 5th day of July, 1992 is not paid at that time, a bench warrant shall issue, unless Defendant submits himself voluntarily to the Salt Lake County Jail. (c) If Defendant submits himself voluntarily to the Salt Lake County Jail, he is ordered to inform this Court of such, so that the necessary paperwork can be taken care of. ~~the~~ Judgment shall enter against Defendant in favor of Plaintiff in the amount of \$1,800.00 in delinquent child support through June 1992; \$750.00 in alimony through June 1992 and attorneys' fees of \$500.00 for purposes of these proceedings, for a total judgment of \$3,050.00.

DATED this 19 day of June, 1992.

BY THE COURT:


HOMER F. WILKINSON
District Judge

Approved as to form:

Leray S. Cook
Craig S. Cook
Attorney for Defendant

SHARON A. DONOVAN (0901)
DART, ADAMSON & DONOVAN
Attorneys for Plaintiff
310 South Main, Suite 1330
Salt Lake City, Utah 84101-2167
Telephone: (801) 521-6383

FILED
DISTRICT COURT
JUN 20 8:17 AM '92
BY 771
CLERK

IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----oOo-----

JEANETTE CRAWFORD OSGUTHORPE,	:	
	:	WARRANT AND ORDER
Plaintiff,	:	OF COMMITMENT
	:	
v.	:	
	:	Civil No. 874904967
JERRY SILVER OSGUTHORPE,	:	
	:	Judge Homer F. Wilkinson
Defendant.	:	

-----oOo-----

TO ANY CONSTABLE OR ANY SHERIFF WITHIN THE STATE OF UTAH:

WHEREAS, it appearing that Jerry S. Osguthorpe, the Defendant in the above-entitled action, has failed to obey previous orders of this Court directing him to pay to Plaintiff the amount of \$900.00 in delinquent child support through May, 1992; \$600.00 in alimony through May, 1992; and attorney's fees of \$500.00, for a total judgment of \$2,000.00, and has further willfully and contemptuously ignored prior orders of this Court; and

WHEREAS, the Court by its Order duly entered on the 5th day of June, 1992, adjudged and decreed that Jerry S. Osguthorpe was guilty of contempt of Court in failing to obey this Court's orders;

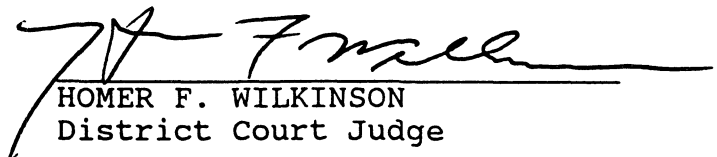
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NOW, THEREFORE, in obedience to an Order of the Court made and entered on the 5th day of June, 1992, you are commanded to take into your custody and commit to the Salt Lake County Jail Jerry S. Osguthorpe and to confine him therein for a period of thirty (30) days, or until such time as he shall purge himself of this Court's finding of contempt by fully cooperating with this Court's previous orders related to payment of the amount of \$900.00 in delinquent child support through May, 1992; \$600.00 in alimony through May, 1992; and attorney's fees of \$500.00, for a total judgment of \$2,000.00 to Plaintiff, Jeannette C. Osguthorpe, and his child support payment (including arrearages) of \$900.00 on June 5, 1992, or until he is otherwise legally discharged.

YOU ARE FURTHER COMMANDED to make due return of this Writ within _____ days from the date hereof showing how you executed the same.

DATED this 5 day of June, 1992.

BY THE COURT:


HOMER F. WILKINSON
District Court Judge

SERVE DEFENDANT:
Jerry Osguthorpe
6808 Courtland Circle
Salt Lake City, Utah 84121

Jerry Osguthorpe
c/o Osguthorpe Veterinarian Clinic
4696 South Highland Drive
Holladay, Utah 84117

A

621240167

CRAIG S. COOK, Bar No. 713
Attorney for Defendant
3645 East 3100 South
Salt Lake City, Utah 84109
Telephone: 485-8123

FILED
DISTRICT COURT

JUN 24 2 20 PM '92
The
SALT LAKE DISTRICT
BY Sharon A. Donovan
CLERK

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

JEANETTE CRAWFORD OSGUTHORPE,

Plaintiff,

NOTICE OF APPEAL

vs.


JERRY SILVER OSGUTHORPE,

Defendant.

Civil No. 874904967
Judge Homer F. Wilkinson

Defendant Jerry Silver Osguthorpe by and through his
attorney hereby appeals to the Utah Court of Appeals the decision
entered by the lower court on June 19, 1992.

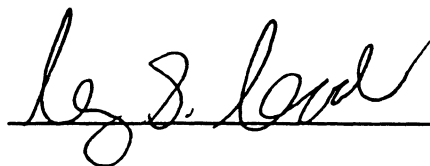
DATED this 24th day of June, 1992.



Craig S. Cook
Attorney for Defendant

CERTIFICATE OF HAND DELIVERY

I hereby certify that I personally delivered a true and
correct copy of the foregoing Notice of Appeal to Sharon A.
Donovan, Attorney for Plaintiff, 310 South Main, Suite 1330, Salt
Lake City, Utah 84101-2167 this 24th day of June, 1992.



JUDGEMENT

FILED DISTRICT COURT
Third District

DEC 03 1992

SHARON A. DONOVAN (0901)
DART, ADAMSON & DONOVAN
Attorneys for Plaintiff
310 South Main, Suite 1330
Salt Lake City, Utah 84101-2167
Telephone: (801) 521-6383

SALT LAKE COUNTY
By DG Deputy Clerk

IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----oOo-----

JEANETTE CRAWFORD OSGUTHORPE,	:	ORDER ON PLAINTIFF'S MOTION
	:	FOR JUDGMENT, ATTORNEY'S FEES
Plaintiff,	:	AND OTHER RELATED MATTERS
	:	
v.	:	
	:	Civil No. 874904967
JERRY SILVER OSGUTHORPE,	:	
	:	Judge Homer F. Wilkinson
Defendant.	:	

-----oOo-----

2179337
12-7-92-802am.

Plaintiff's Verified Motion for Judgment, Attorney's Fees and Other Related Matters came on regularly for hearing on October 9, 1992, before the Honorable Homer F. Wilkinson, one of the Judges of the above-entitled Court, Plaintiff appearing in person and by and through her attorney, Sharon A. Donovan, and Defendant appearing in person and being represented by his attorney, Craig S. Cook, and Plaintiff having been called as a witness on her Motion, and the Court having heard the testimony and reviewed the pleadings and argument of counsel, and being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Judgment shall enter against Defendant in the sum of \$1,625.00, which represents \$1,100.00 unpaid child support through

the first half of October, 1992, and \$525.00 alimony through the first half of October, 1992.

2. The Court finds that Defendant has filed an appeal in the Utah Court of Appeals from the District Court's finding of contempt, has filed a Petition for Extraordinary Relief in the Utah Supreme Court and further filed a Federal Writ of Habeas Corpus against the Sheriff's Department, necessitating action and attorney's fees on behalf of the Plaintiff.

The Court finds that pursuant to Utah Code Ann., §30-3-3, this Court has the authority in divorce actions to grant fees as may be appropriate in this matter. Based thereon, the Court orders a judgment of \$5,214.25 against Defendant for attorney's fees Plaintiff has reasonably incurred in defending the matters filed by Defendant in the Court of Appeals, Supreme Court and Federal Court. The Court further finds that the Court of Appeals specifically remanded to the trial Court the award of Appellee's costs and attorney's fees reasonably incurred in opposing the stay. The Court further finds that the judgment for attorney's fees in the Supreme Court of \$3,196.60 and the Federal Court of \$620.70 shall be awarded by way of judgment, unless the Federal Court or Supreme Court specifically indicate that it was their intention not to award attorney's fees to Plaintiff in this matter. The relief requested by Defendant in the Court of Appeals, Federal Court and Supreme Court have all been denied by those Courts. The Court

further finds that Defendant shall receive credit for time served from the previous jail sentence in this matter.

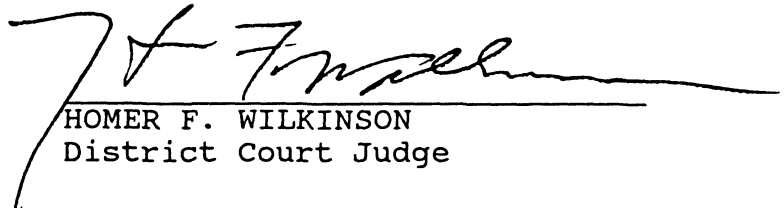
The Court further finds that Plaintiff does not have the ability to pay these fees and that these fees are reasonable, in light of the actions of Defendant, and that Defendant has the ability to pay said fees. The Court further finds that these fees are segregated as follows:

Court of Appeals	\$1,396.95
Supreme Court	3,196.60
Federal Court	<u>620.70</u>
Total:	\$5,214.25

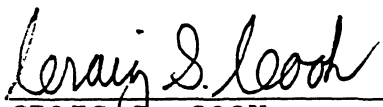
The Court further finds that judgment shall enter against Defendant in the sum of \$300.00 for additional fees, for purposes of this hearing, for a total judgment for this hearing of \$7,139.25.

DATED this 3 ^{Dec}~~November~~, 1992.

BY THE COURT:


HOMER F. WILKINSON
District Court Judge

Approved as to form:


CRAIG S. COOK
Attorney for Defendant

MAILING CERTIFICATE

I hereby certify that on the 20th day of November, 1992, a true and correct copy of the foregoing Order on Plaintiff's Motion for Judgment, Attorney's Fees and Other Related Matters was mailed, postage prepaid, to the following:

Craig S. Cook, Esq.
Attorney for Defendant
3645 East 3100 South
Salt Lake City, Utah 84109

Leslie M. Gray

CHILD SUPPORT AND ALIMONY ARREARAGES OWED BY JERRY OSGUTHORPE

Month	Accrued Child Support	Accrued Alimony	Paid	Accrued Arrearages	Interest .0083/mo. (10%/Year)
September, <u>1988</u>	\$600	\$150	\$600	\$150.00	
October	600	150	724.74	175.26	\$1.24
November	600	150	600	325.26	2.70
December	600	150	647	428.26	3.55
January, <u>1989</u>	600	150	750	428.26	3.55
February	600	150	750	428.26	3.55
March	600	150	375	803.26	6.66
April	600	150	375	1,178.26	9.78
May	600	150	375	1,553.26	12.89
June	600	150	375	1,928.26	16.00
July	600	150	375	2,303.26	19.12
August	600	150	375	2,678.26	22.23
September	600	150	375	3,053.26	25.34
October	600	150	375	3,428.26	28.45
November	600	150	375	3,803.26	31.57
December	600	150	375	4,178.26	34.68

<u>Month</u>	<u>Accrued Child Support</u>	<u>Accrued Alimony</u>	<u>Paid</u>	<u>Accrued Arrearages</u>	<u>Interest .0083/mo. (10%/Year)</u>
January, <u>1990</u>	600	150	375	4,553.26	37.79
February	600	150	-0-	5,303.26	44.02
March	600	150	-0-	6,053.26	50.24
April	600	150	375	6,428.26	53.35
May	600	150	-0-	7,178.26	59.58
June	600	150	-0-	7,928.26	65.80
July	600	150	-0-	8,678.26	72.03
August	600	150	-0-	9,428.26	78.25
September	600	150	-0-	10,178.26	84.48
October	600	150	-0-	10,928.26	90.70
TOTALS	\$15,600.00	\$3,900.00	\$8,571.74	\$10,928.26	\$857.55

TOTAL ACCRUED ARREARAGES THROUGH OCTOBER, 1990 **\$10,928.26**

PLUS SIMPLE INTEREST ACCRUED THROUGH OCTOBER, 1990 **857.55**

TOTAL ARREARAGES AND INTEREST DUE **\$11,785.81**

SUMMARY OF AMOUNTS OWED BY JERRY OSGUTHORPE

Child support and alimony arrearages September, 1988 - October, 1990 (See Exhibit "A" attached to Motion)	\$10,928.26
Interest on support/alimony arrearages through October, 1990 (See calculations on Exhibit "A")	857.55
Credit to Jerry for net amount owed by Jeanette to Jerry for uninsured medical expenses of children (See Exhibit "B" attached to Motion)	(56.59)
Credit to Jerry for repair costs to his truck (See paragraph 3 of Order and Judgment attached as Exhibit "C")	(150.00)
Replacement value of VCR removed by Jerry from Jeanette's home (Paragraph 13(A)(2) Decree of Divorce)	300.00
Attorney's fee judgment entered 3/1/89 (Paragraph 14 Decree of Divorce)	3,939.65
Interest on Attorney's fee judgment @12% per annum through October, 1990 (\$39.40 per month simple interest x 20 months)	788.00
Judgments for car rental fees \$320 and attorney's fees \$200 (See Order, January 1989 at Exhibit "C")	520.00
Interest on Judgments 1/89 @12% interest = \$5.20 per month for 21 months through October, 1990	109.20
 SUBTOTAL	 <hr/> \$17,236.07
Appeal: Attorney's fees	3,820.00
Costs	590.50
TOTAL	<hr/> \$21,646.57

Note: See next page for additional amounts accruing November, 1990.



The following additional amounts will
be due by the end of November, 1990:

Child support \$600; Alimony \$150	\$750.00
Interest on support/alimony arrearages for November: \$11,678.26 x .0083	96.93
Interest on attorney's fee judgment, Decree	39.40
Interest on car rental/atty fee judgments 1/89 Order	5.20
	<hr/>
TOTAL ADDITIONAL AMOUNTS, November, 1990	\$891.53

Basis of Nov 1990
Judgment

\$21,646.57
+ 891.53
<hr/>
\$22,538.10

SUMMARY OF JUDGMENT ENTERED NOVEMBER, 1990

Child support and alimony arrearages September, 1988 - October, 1990	\$10,928.26
Interest on support/alimony arrearages through October, 1990	857.55
Credit to Jerry for net amount owed by Jeanette to Jerry for uninsured medical expenses of children	(56.59)
Credit to Jerry for repair costs to his truck	(150.00)
Replacement value of VCR removed by Jerry from Jeanette's home (Paragraph 13(A)(2) Decree of Divorce)	300.00*
Attorney's fee judgment entered 3/1/89 (Paragraph 14 Decree of Divorce)	3,939.65
Interest on Attorney's fee judgment @12% per annum through October, 1990 (\$39.40 per month simple interest x 20 months)	788.00
Judgments for car rental fees \$320 and attorney's fees \$200 (Order, January 1989)	520.00
Interest on Judgments 1/89 @12% interest = \$5.20 per month for 21 months through October, 1990	109.20
SUBTOTAL	\$17,236.07
Appeal: Attorney's fees	3,820.00
Costs	590.50
Amounts accruing November, 1990 (see attachment)	891.53
Credit to Jerry for skis sold at garage sale	(100.00)
TOTAL	\$22,438.10

***Note:** Since entry of the judgment, defendant has returned the VCR to plaintiff, and plaintiff is willing to credit \$300 against the judgment for that item.

The following additional amounts were
due by the end of November, 1990:

Child support \$600; Alimony \$150	\$750.00
Interest on support/alimony arrearages for November: $\$11,678.26 \times .0083$	96.93
Interest on attorney's fee judgment, Decree	39.40
Interest on car rental/atty fee judgments 1/89 Order	5.20
	<hr/>
TOTAL ADDITIONAL AMOUNTS, November, 1990	\$891.53

Month	Accrued Child Support	Accrued Alimony	Paid
December, 1990	\$600	\$150	\$375
January, 1991	600	150	-0-
February	600	150	375
March	600	150	-0-
April	600	150	-0-
May	600	150	-0-
June	600	150	-0-
July	600	150	-0-
August	600	150	-0-
September	600	150	-0-
October	600	150	-0-
November	600	150	-0-
December	<u>600</u>	<u>150</u>	<u>-0-</u>
TOTALS	\$7,800	\$1,950	\$750
TOTAL UNPAID ARREAPAGES			\$9,000 =====



Transcript of conversation
between Jerry and Jeanette Osguthorpe

13) Jerry: "God, I thought you were going to have my ass in jail, ha ha ha ha ha".

Jeanette: "you know your in error'.

Jerry: "Like hell, I'm not in error. Hell the judge hasn't even signed that last order. Christ, your attorney's taking you for a ride, Jeanette and you're going to end up paying the whole god damn bill for those attorneys. I'll tell you, you'll end up paying the whole thing couse it's gonna come out of the real assets that we have."

Jeanette: Well, I'll tell you what, what about these kids that need new shoes, that have holes in their shoes..."

Jerry: By God, I'll take care of them,

Jeanette: Well why don't you?' They don's even dare ask."

Jerry: If these kids need something you just send em over, I'll take care of them, I'll take custody of them. I'll do the whole god damn thing.

Jeanette: You're not taking custody of them, you just pay your part and that will do the trick.

14) Jerry: Yeah, thats right, that's right, because you can't providefor them.

Jeanette: I've provided for them.

Jerry: You can't provide for them. You can't take em ski racing.

Jeanette: Yeah but they're happier

Jerry: Yeah

You think you're a smart ass, don't ya? God,

I'll tell you, you're gonna find out, By God it's like I told you at the start, if you want joint custody of these kids, let's just sign a joint custody and we'll go ahead and take care of them.

Jeanette: Why don't you just pay your child support and we won't have a problem.

I can live up to my obligations.

Jerry: Hell, I won't be paying any child support if I have joint custody. I'll fulfill my obligation.

Hell, That's not an obligation. How come the ORS (Office of Recovery Services) hasn't come after me

Jeanette: It's a court order and you are responsible.

Jerry: How come the ORS hasn't come after me?

Jeanette: If it's a court order you are responsible for it.

Jerry: You know what he told me during court, you heard what he said, come on in and we'll change it.

Jeanette: No, He (Judge Wilkinson), said you were responsible for every single penny of it, Jerry.

Jerry: No well..

Jeanette: Yes he did.

Jerry: Well, where is it? Where is it? How you gonna get it out of me, the money?

Jeanette: It doesn't matter how I'm gonna get it out of you, If you can live with yourself ..

Jerry: I can, I can

This occurred Tuesday evening 7:00 P.M. on Mar. 27, 1991 when Jerry came to return Jeff



PENGAD-Bayonne, N. J.
**PLAINTIFF'S
EXHIBIT**
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(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:

- (a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;
- (b) election and voting contests;
- (c) reapportionment of election districts;
- (d) retention or removal of public officers; and
- (e) those matters described in Subsections (3)(a) through (d).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Title 63, Chapter 46b, in its review of agency adjudicative proceedings. 1992

78-2-3. Repealed. 1986

78-2-4. Supreme Court — Rulemaking, judges pro tempore, and practice of law.

(1) The Supreme Court shall adopt rules of procedure and evidence for use in the courts of the state and shall by rule manage the appellate process. The Legislature may amend the rules of procedure and evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature.

(2) Except as otherwise provided by the Utah Constitution, the Supreme Court by rule may authorize retired justices and judges and judges pro tempore to perform any judicial duties. Judges pro tempore shall be citizens of the United States, Utah residents, and admitted to practice law in Utah.

(3) The Supreme Court shall by rule govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to the practice of law. 1986

78-2-5. Repealed. 1988

78-2-6. Appellate court administrator.

The appellate court administrator shall appoint clerks and support staff as necessary for the operation of the Supreme Court and the Court of Appeals. The duties of the clerks and support staff shall be established by the appellate court administrator, and powers established by rule of the Supreme Court. 1986

78-2-7. Repealed. 1986

78-2-7.5. Service of sheriff to court.

The court may at any time require the attendance and services of any sheriff in the state. 1988

78-2-8 to 78-2-14. Repealed. 1986, 1988

CHAPTER 2a

COURT OF APPEALS

Section	
78-2a-1.	Creation — Seal.
78-2a-2.	Number of judges — Terms — Functions — Filing fees.
78-2a-3.	Court of Appeals jurisdiction.
78-2a-4.	Review of actions by Supreme Court.
78-2a-5.	Location of Court of Appeals.

78-2a-1. Creation — Seal.

There is created a court known as the Court of Appeals. The Court of Appeals is a court of record and shall have a seal. 1986

78-2a-2. Number of judges — Terms — Functions — Filing fees.

(1) The Court of Appeals consists of seven judges. The term of appointment to office as a judge of the Court of Appeals is until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office of a judge of the Court of Appeals is six years and commences on the first Monday in January, next following the date of election. A judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified. The presiding judge of the Court of Appeals shall receive as additional compensation \$1,000 per annum or fraction thereof for the period served.

(2) The Court of Appeals shall sit and render judgment in panels of three judges. Assignment to panels shall be by random rotation of all judges of the Court of Appeals. The Court of Appeals by rule shall provide for the selection of a chair for each panel. The Court of Appeals may not sit en banc.

(3) The judges of the Court of Appeals shall elect a presiding judge from among the members of the court by majority vote of all judges. The term of office of the presiding judge is two years and until a successor is elected. A presiding judge of the Court of Appeals may serve in that office no more than two successive terms. The Court of Appeals may by rule provide for an acting presiding judge to serve in the absence or incapacity of the presiding judge.

(4) The presiding judge may be removed from the office of presiding judge by majority vote of all judges of the Court of Appeals. In addition to the duties of a judge of the Court of Appeals, the presiding judge shall:

- (a) administer the rotation and scheduling of panels;
- (b) act as liaison with the Supreme Court;
- (c) call and preside over the meetings of the Court of Appeals; and
- (d) carry out duties prescribed by the Supreme Court and the Judicial Council.

(5) Filing fees for the Court of Appeals are the same as for the Supreme Court. 1988

78-2a-3. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, Board of State Lands, Board of Oil, Gas, and Mining, and the state engineer;
- (b) appeals from the district court review on:
 - (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
 - (ii) a challenge to agency action under Section 63-46a-12.1;

- (c) appeals from the juvenile courts;
- (d) appeals from the circuit courts, except those from the small claims department of a circuit court;
- (e) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;
- (f) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;
- (g) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;
- (h) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons except in cases involving a first degree or capital felony;
- (i) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;
- (j) appeals from the Utah Military Court; and
- (k) cases transferred to the Court of Appeals from the Supreme Court

3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, in its review of agency adjudicative proceedings. 1992

78-2a-4. Review of actions by Supreme Court.

Review of the judgments, orders, and decrees of the Court of Appeals shall be by petition for writ of certiorari to the Supreme Court. 1986

78-2a-5. Location of Court of Appeals.

The Court of Appeals has its principal location in Salt Lake City. The Court of Appeals may perform any of its functions in any location within the state. 1986

CHAPTER 3

DISTRICT COURTS

- Section
- 78-3-1 to 78-3-2. Repealed.
- 78-3-3. Term of judges — Vacancy.
- 78-3-4. Jurisdiction — Transfer of cases to circuit court — Appeals — Jurisdiction when court does not exist.
- 78-3-5. Repealed.
- 78-3-6. Terms — Minimum of once quarterly.
- 78-3-7 to 78-3-11. Repealed.
- 78-3-11.5. State District Court Administrative System.
- 78-3-12. Repealed.
- 78-3-12.5. Costs of system.
- 78-3-13. Repealed.
- 78-3-13.4. Counties joining court system — Procedure — Facilities — Salaries.
- 78-3-13.5, 78-3-14. Repealed.
- 78-3-14.5. Allocation of district court fees and fines.
- 78-3-15 to 78-3-17. Repealed.

- Section
- 78-3-17.5. Application of savings accruing to counties.
- 78-3-18. Judicial Administration Act — Short title.
- 78-3-19. Purpose of act.
- 78-3-20. Definitions.
- 78-3-21. Judicial Council — Creation — Members — Terms and election — Responsibilities — Reports.
- 78-3-22. Presiding officer — Compensation — Duties.
- 78-3-23. Administrator of the courts — Appointment — Qualifications — Salary.
- 78-3-24. Court administrator — Powers, duties, and responsibilities.
- 78-3-25. Assistants for administrator of the courts — Appointment of trial court executives.
- 78-3-26. Courts to provide information and statistical data to administrator of the courts.
- 78-3-27. Annual judicial conference.
- 78-3-28. Repealed.
- 78-3-29. Presiding judge — Election — Term — Compensation — Powers — Duties.
- 78-3-30. Duties of the clerk of the district court.
- 78-3-31. Court commissioners — Qualifications — Appointment — Functions governed by rule.

78-3-1 to 78-3-2. Repealed. 1971, 1981, 1988

78-3-3. Term of judges — Vacancy.

Judges of the district courts shall be appointed initially until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office for judges of the district courts is six years, and commences on the first Monday in January, next following the date of election. A judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified. 1988

78-3-4. Jurisdiction — Transfer of cases to circuit court — Appeals — Jurisdiction when court does not exist.

(1) The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

(2) The district court judges may issue all extraordinary writs and other writs necessary to carry into effect their orders, judgments, and decrees.

(3) Under the general supervision of the presiding officer of the Judicial Council and subject to policies established by the Judicial Council, cases filed in the district court, which are also within the concurrent jurisdiction of the circuit court, may be transferred to the circuit court by the presiding judge of the district court in multiple judge districts or the district court judge in single judge districts. The transfer of these cases may be made upon the court's own motion or upon the motion of either party for adjudication. When an order is made transferring a case, the court shall transmit the pleadings and papers to the circuit court to which the case is transferred. The circuit court has the same jurisdiction as if the case had been originally commenced in the circuit court and any

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- (h) irreconcilable differences of the marriage;
 - (i) incurable insanity; or
 - (j) when the husband and wife have lived separately under a decree of separate maintenance of any state for three consecutive years without cohabitation.
- (4) A decree of divorce granted under Subsection (3)(j) does not affect the liability of either party under any provision for separate maintenance previously granted.
- (5) (a) A divorce may not be granted on the grounds of insanity unless: (i) the defendant has been adjudged insane by the appropriate authorities of this or another state prior to the commencement of the action; and (ii) the court finds by the testimony of competent witnesses that the insanity of the defendant is incurable.
- (b) The court shall appoint for the defendant a guardian ad litem, who shall protect the interests of the defendant. A copy of the summons and complaint shall be served on the defendant in person or by publication, as provided by the laws of this state in other actions for divorce, or upon his guardian ad litem, and upon the county attorney for the county where the action is prosecuted.
- (c) The county attorney shall investigate the merits of the case and if the defendant resides out of this state, take depositions as necessary, attend the proceedings, and make a defense as is just to protect the rights of the defendant and the interests of the state.
- (d) In all actions the court and judge have jurisdiction over the payment of alimony, the distribution of property, and the custody and maintenance of minor children, as the courts and judges possess in other actions for divorce.
- (e) The plaintiff or defendant may, if the defendant resides in this state, upon notice, have the defendant brought into the court at trial, or have an examination of the defendant by two or more competent physicians, to determine the mental condition of the defendant. For this purpose either party may have leave from the court to enter any asylum or institution where the defendant may be confined. The costs of court in this action shall be apportioned by the court. 1987

30-3-2. Right of husband to divorce.

The husband may in all cases obtain a divorce from his wife for the same causes and in the same manner as the wife may obtain a divorce from her husband. 1953

30-3-3. Temporary alimony and suit money.

The court may order either party to pay to the clerk a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute or defend the action. 1953

30-3-4. Pleadings — Findings — Decree — Sealing.

- (1) (a) The complaint shall be in writing and signed by the plaintiff or plaintiff's attorney.
- (b) A decree of divorce may not be granted upon default or otherwise except upon legal evidence taken in the cause.
- (c) If the plaintiff and the defendant have a child or children and the plaintiff has filed an action in the judicial district as defined in Section 78-1-2.1 where the pilot program shall be administered, a decree of divorce may not be granted until both parties have attended a man-

datory course provided in Section 30-3-11.3 and have presented a certificate of course completion to the court. The court may waive this requirement, on its own motion or on the motion of one of the parties, if it determines course attendance and completion are not necessary, appropriate, feasible, or in the best interest of the parties.

(d) All hearings and trials for divorce shall be held before the court or the court commissioner as provided by Section 78-3-31 and rules of the Judicial Council. The court or the commissioner in all divorce cases shall make and file findings and decree upon the evidence.

(2) The file, except the decree of divorce, may be sealed by order of the court upon the motion of either party. The sealed portion of the file is available to the public only upon an order of the court. The concerned parties, the attorneys of record or attorney filing a notice of appearance in the action, the Office of Recovery Services if a party to the proceedings has applied for or is receiving public assistance, or the court have full access to the entire record. This sealing does not apply to subsequent filings to enforce or amend the decree. 1992

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

1990

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

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

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

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

- (i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;
- (ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and
- (iii) provisions for the enforcement of these orders.

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

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the support and

commission, or board from which the appeal is taken. The term "appellate court" means the court to which the appeal is taken.

(c) **Procedure established by statute.** If a procedure is provided by state statute as to the appeal or review of an order of an administrative agency, commission, board, or officer of the state which is inconsistent with one or more of these rules, the statute shall govern. In other respects, these rules shall apply to such appeals or reviews.

(d) **Rules not to affect jurisdiction.** These rules shall not be construed to extend or limit the jurisdiction of the Supreme Court or Court of Appeals as established by law.

(e) **Title.** These rules shall be known as the Utah Rules of Appellate Procedure and abbreviated Utah R. App. P.
(Amended effective October 1, 1992.)

Amendment Notes. — The 1992 amendment, effective October 1, 1992, substituted "trial court" for "district, juvenile, or circuit court" in Subdivision (a) and "administrative agency, commission, or board" for "tribunal" in Subdivision (b).

TITLE II.

APPEALS FROM JUDGMENTS AND ORDERS OF TRIAL COURTS.

Rule 3. Appeal as of right: how taken.

(a) **Filing appeal from final orders and judgments.** An appeal may be taken from a district, juvenile, or circuit court to the appellate court with jurisdiction over the appeal from all final orders and judgments, except as otherwise provided by law, by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal or other sanctions short of dismissal, as well as the award of attorney fees.

(b) **Joint or consolidated appeals.** If two or more parties are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal or may join in an appeal of another party after filing separate timely notices of appeal. Joint appeals may proceed as a single appeal with a single appellant. Individual appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party, or by stipulation of the parties to the separate appeals.

(c) **Designation of parties.** The party taking the appeal shall be known as the appellant and the adverse party as the appellee. The title of the action or proceeding shall not be changed in consequence of the appeal, except where otherwise directed by the appellate court. In original proceedings in the appellate court, the party making the original application shall be known as the petitioner and any other party as the respondent.

(d) **Content of notice of appeal.** The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment or order, or part thereof, appealed from; shall designate the court from which the appeal is taken; and shall designate the court to which the appeal is taken.

(e) **Service of notice of appeal.** The party taking the appeal shall give notice of the filing of a notice of appeal by serving personally or mailing a copy thereof to counsel of record of each party to the judgment or order; or, if the party is not represented by counsel, then on the party at the party's last known address.

(f) **Filing and docketing fees in civil appeals.** At the time of filing any notice of separate, joint, or cross appeal in a civil case, the party taking the appeal shall pay to the clerk of the trial court such filing fees as are established by law, and also the fee for docketing the appeal in the appellate court. The clerk of the trial court shall not accept a notice of appeal unless the filing and docketing fees are paid.

(g) **Docketing of appeal.** Upon the filing of the notice of appeal and payment of the required fees, the clerk of the trial court shall immediately transmit one copy of the notice of appeal, showing the date of its filing, the docketing fee, and a copy of the bond required by Rule 6 or a certification by the clerk that the bond has been filed, to the clerk of the appellate court. Upon receipt of the copy of the notice of appeal and the docketing fee, the clerk of the appellate court shall enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the trial court, with the appellant identified as such, but if the title does not contain the name of the appellant, such name shall be added to the title.

(Amended effective October 1, 1992.)

Amendment Notes. — The 1992 amendment, effective October 1, 1992, inserted "and a copy of the bond required by Rule 6 or a certification by the clerk that the bond has been filed" and made minor stylistic changes in Subdivision (g).

NOTES TO DECISIONS

Cited in *Boggs v. Boggs*, 824 P.2d 478 (Utah Ct. App. 1991).

Rule 4. Appeal as of right: when taken.

NOTES TO DECISIONS

ANALYSIS

Extension of time to appeal.
Post-judgment motions.
Cited.

Extension of time to appeal.

The time for filing an appeal is jurisdictional and ordinarily cannot be enlarged. *State v. Montoya*, 825 P.2d 676 (Utah Ct. App. 1991).

Post-judgment motions.

In accord with fourth paragraph in bound volume. *DeBry v. Fidelity Nat'l Title Ins. Co.*, 182 Utah Adv. Rep. 51 (Ct. App. 1992).

Cited in *Wiggins v. Board of Review*, 824 P.2d 1199 (Utah Ct. App. 1992).

Rule 4. Appeal as of right: when taken.

(a) **Appeal from final judgment and order.** In a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. However, when a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from.

(b) **Motions post judgment or order.** If a timely motion under the Utah Rules of Civil Procedure is filed in the trial court by any party (1) for judgment under Rule 50(b); (2) under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) under Rule 59 to alter or amend the judgment; or (4) under Rule 59 for a new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. Similarly, if a timely motion under the Utah Rules of Criminal Procedure is filed in the trial court by any party (1) under Rule 24 for a new trial; or (2) under Rule 26 for an order, after judgment, affecting the substantial rights of a defendant, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order of the trial court disposing of the motion as provided above.

(c) **Filing prior to entry of judgment or order.** Except as provided in paragraph (b) of this rule, a notice of appeal filed after the announcement of a decision, judgment, or order but before the entry of the judgment or order of the trial court shall be treated as filed after such entry and on the day thereof.

(d) **Additional or cross-appeal.** If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by paragraph (a) of this rule, whichever period last expires.

(e) **Extension of time to appeal.** The trial court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by paragraph (a) of this rule. A motion filed before expiration of the prescribed time may be ex parte unless the trial court otherwise requires. Notice of a motion filed after expiration of the prescribed time shall be given to the other parties in accordance with the rules of practice of the trial court. No extension shall exceed 30 days past the prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

NOTES TO DECISIONS**ANALYSIS**

Attorney fees.
Cross-appeal.
Extension of time to appeal.
Filing of notice.
Filing with county clerk.

Final order or judgment.
Post-judgment motions.
Premature notice.
Reconsideration of order.
Timeliness of notice.
—Date of notice.
Cited.