1984

John David Schmidt v. Darlene D. Schmidt : Brief of Respondent

IN THE SUPREME COURT OF THE

STATE OF UTAH

-------oooOooo-------

JOHN DAVID SCHMIDT, :

Plaintiff and Respondent, :

vs. : Case No. 19015

DARLENE J. SCHMIDT, :

Defendant and Appellant. :

----------oooOooo----------

BRIEF OF RESPONDENT

Appellant's Petition for Rehearing

Thomas N. Arnett, Jr.
900 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 363-5650
Attorney for Plaintiff and Respondent

Darlene J. Schmidt
1450 East 9175 South
Sandy, Utah 84092
Telephone: (801) 571-1480
Pro se

IN THE SUPREME COURT OF THE

STATE OF UTAH

-------oooOooo-------

JOHN DAVID SCHMIDT, :

Plaintiff and Respondent, :

vs. : Case No. 19015

DARLENE J. SCHMIDT, :

Defendant and Appellant. :

----------oooOooo----------

BRIEF OF RESPONDENT

Appellant's Petition for Rehearing

Thomas N. Arnett, Jr.
900 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 363-5650
Attorney for Plaintiff and Respondent

Darlene J. Schmidt
1450 East 9175 South
Sandy, Utah 84092
Telephone: (801) 571-1480
Pro se

TABLE OF CONTENTS

AUTHORITIES CITED

CASES

STATUTES

IN THE SUPREME COURT OF THE

STATE OF UTAH

-------oooOooo-------

JOHN DAVID SCHMIDT, :

Plaintiff and Respondent, :

vs. : Case No. 19015

DARLENE J.SCHMIDT, :

Defendant and Appellant. :

----------oooOooo----------

STATEMENT OF THE NATURE OF THE CASE

This is an action by the plaintiff, John David Schmidt, against the defendant, Darlene J. Schmidt, for divorce.

DISPOSITION IN THE LOWER COURT

The case was tried to the Court on the 25th day of August, 1982. The trial court entered its Decree of Divorce and Findings of Fact and Conclusions of Law on the 23rd day of November, 1982, granting a divorce to the defendant, and entering Judgment in the case on the issues of child custody, child support, alimony, division of property and other matters between the parties. Defendant filed a Motion for Modification of Order or, in the alternative, for a Re-Hearing; Re: Assets Not Divided and Matters Not Resolved Plus New Evidence on Valuation of Assets Divided

on the third day of December, 1982, which motion was denied by the trial court in its Order on Order to Show Cause dated the 20th day of January, 1983.

DISPOSITION IN THE SUPREME COURT

This Court issued its decision in the instant case on the 20th day of December, 1983, affirming the decision of the lower court.

RELIEF SOUGHT ON PETITION FOR REHEARING

Defendant's Petition for Rehearing alleges that this Court has not addressed certain issues raised by appellant on appeal.

STATEMENT OF FACTS

Plaintiff and defendant were married on the 21st day of September, 1963. (R.7) During the course of their marriage, four minor children were born and the parties acquired various marital assets and properties. (R. 2, 3, 8 & 9)

Plaintiff filed his Complaint for divorce on the 26th day of October, 1981, defendant filed her Answer and Counterclaim on the first day of February, 1982, and plaintiff filed his Reply to Counterclaim on the fifth day of February, 1982. (R. 2, 7 & 1[illegible] Trial was had on the 25th day of August, 1982 before the Honorable Kenneth Rigtrup. (R. 86 & 164) Judge Rigtrup announced his decision from the bench and a Decree of Divorce and Findings

Findings and Conclusions of Law were subsequently entered on the 14th day of November, 1982. (R. 94 & 101)

Thereafter, defendant brought her Motion for Modification of Order or, in the Alternative, for a Re-Hearing; Re: Assets Not Divided and Matters Not Resolved Plus New Evidence on Valuation of Assets Divided. (R. 110) Defendant's motion was heard before Judge Rigtrup on the 28th day of December, 1982. (R. 132) The Court subsequently entered its Order on Order to Show Cause, denying defendant's motion. (R. 142) Defendant thereafter filed her Notice of Appeal on the 17th day of February, 1983. (R. 152)

Defendant filed her Brief on Appeal on the 11th day of March, 1983. Plaintiff filed his Brief on Appeal on the 27th day of June, 1983. Defendant filed her Supplement to Appellant's Brief and Reply to Respondent's Brief on the 12th day of July, 1983. On the 20th day of December, 1983, this Court issued its decision, affirming the decision of the trial court. Defendant filed her Petition for Rehearing on the 4th day of January, 1984.

ARGUMENT

POINT I

DEFENDANT'S PETITION FOR REHEARING NEITHER ALLEGES NOR CITES ANY ERROR ALLEGEDLY MADE BY THE SUPREME COURT IN ITS DECISION IN THE INSTANT CASE.

Rule 76(e)(1) of the Utah Rules of Civil Procedure provides as follows:

(e) Petition for Rehearing.

(1) Within 20 days after the filing of the decision of the Supreme Court, either party may petition for a rehearing. The petition shall state briefly the points wherein it is alleged that the appellate court has erred. The petition shall be supported by a brief of the authorities relied upon to sustain the points listed in such petition. Both the petition and brief in support thereof must be prepared in accordance with the requirements of Rule 75(p), and shall be served upon the adverse party prior to filing. [Emphasis added]

Nowhere in defendant's Petition for Rehearing does she allege that this Court erred in its decision in this case. Rather, the defendant merely alleges that this Court addressed the issues raised in the plaintiff's brief on appeal but failed to address the issues raised by the defendant in her brief on appeal. This contention by the defendant is clearly incorrect. This Court specifically referred to the allegations contained in defendant's brief on appeal. This Court stated in its decision in this case:

> Defendant challenges the decree in its entirety and charges that the trial judge, motivated by sex discrimination and religious bias, deprived her of her constitutional rights. The record reveals the following:

This Court then discussed the facts contained in the record concerning defendant's allegations and reached the following conclusion:

> Defendant points to the judge's remarks as evidence of sex discrimination and religious bias. We see nothing in these remarks, however, that would substantiate this accusation. Moreover, defendant has failed to show that her rights were prejudiced in any way. The evidence supports the findings and decree. [Footnote omitted]

This Court has repeatedly held that where the party petitioning for a rehearing fails to show any error in the decision of the appellate court, the petition for rehearing should be denied. In Cummings v. Nielson, 42 U. 157, 129 P. 619 (1913), this Court ruled in favor of the appellants in a contract dispute. The respondents brought a petition for rehearing. This Court denied the petition, stating in part as follows:

> We desire to add a word in conclusion respecting the numerous applications for rehearings in this court. To make an application for a rehearing is a matter of right, and we have no desire to discourage the practice of filing petitions for rehearings in proper cases. When this court, however, has considered and decided all of the material questions involved in a case, a rehearing should not be applied for, unless we have misconstrued or overlooked some material fact or facts, or have overlooked some statute or decision which may affect the result, or that we have based the decision on some wrong principle of law, or have either misapplied or overlooked something which materially affects the result. In this case nothing was done or attempted by counsel, except to reargue the very propositions we had fully considered and decided. If we should write opinions on all the petitions for rehearings filed, we would have to devote a very large portion of our time in answering counsel's contentions a second time; and, if we should grant rehearings because they are demanded, we should do nothing else save to write and rewrite opinions in a few cases. Let it again be said that it is conceded, as a matter of course, that we cannot convince losing counsel that their contentions should not prevail, but in making this concession let it also be remembered that we, and not counsel, must ultimately assume all responsibility with respect to whether our conclusions are sound or unsound. Our endeavor is to determine all cases correctly upon the law and the facts, and, if we fail in this, it is because we are incapable of arriving at just conclusions. As a general rule, therefore, merely to reargue the grounds originally presented can be of little, if any, aid to us.

In the earlier case of Brown v. Pickard, 4 U. 292, 9 P. 11 P. 512 (1886), this Court stated, in denying the appellant's petition for a rehearing:

> The appellant moves for a rehearing. He alleges that the facts as stated by this court in its opinion are not sustained, but are opposed by a preponderance of the evidence, and that the court erred in its conclusions. Nothing is now submitted as a reason why a rehearing should be granted that was not fully considered in the argument. No showing is made that satisfies the court that it should review its conclusions, and we are not convinced that we erred. We long ago laid down the rule that, to justify a rehearing, a strong case must be made. We must be convinced that the court failed to consider some material point in the case, or that it erred in its conclusions, or that some matter has been discovered which was unknown at the time of hearing:

POINT II

PLAINTIFF SHOULD BE AWARDED HIS ATTORNEY'S FEES INCURRED IN RESISTING DEFENDANT'S PETITION FOR REHEARING.

As pointed out above, not only has the defendant failed to cite any error allegedly made by this Court in rendering its decision in this case, but her contention that this Court failed to consider the issues raised in her brief on appeal is simply untrue. The defendant's petition for rehearing is totally without merit and is simply one more step in her campaign to punish the plaintiff. This Court recognized the defendant's motives in its decision in this case, stating: "Defendant is apparently dissatisfied with the decree because she believes that the 'guilty party' should be awarded nothing in a divorce decree, and since she was awarded

the divorce, plaintiff is the guilty party." This Court further held: "We find the property division in the decree here under review to be fair and equitable to both parties in every respect. In contrast, defendant's demands for an award of all the property, and more, is most unreasonable."

Defendant's petition for rehearing was not brought in good faith and is only motivated by her desire to harass, intimidate and punish the plaintiff. The Utah Legislature has provided some redress for this type of situation when it enacted Section 78-27-56, Utah Code Annotated (1953 as amended) which provides as follows:

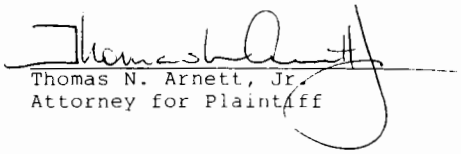
> In civil actions, where not otherwise provided by statute or agreement, the court may award reasonable attorney's fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith.

CONCLUSION

Defendant's petition for rehearing fails to raise any conceivable reason why this Court should review its previous decision and the petition should therefore be denied. The case should then be remanded to the trial court for a hearing upon plaintiff's reasonable attorney's fees and costs incurred in connection with the petition for rehearing, and a judgment awarded to the plaintiff and against the defendant for those attorney's fees and costs.

Respectfully submitted this 13 day of January, 19

THOMAS N. ARNETT, JR.



Thomas N. Arnett, Jr.
Attorney for Plaintiff

AFFIDAVIT OF MAILING

STATE OF UTAH)
: ss.
County of Salt Lake)

Maggie Lee, being duly sworn, says:

That she is employed in the law office of Thomas N. Arnett, Jr., attorney for plaintiff, John David Schmidt, herein; that she served the attached Respondent's Brief upon the party listed below by placing two true and correct copies thereof in an envelope addressed to:

Darlene J. Schmidt
1450 East 9175 South
Sandy, Utah 84092

and depositing the same, sealed, with first class postage prepaid thereon, in the United States Mail at Salt Lake City, Utah, on the 13th day of January, 1984.

Maggie Lee

Subscribed and sworn to before me this 13th day of January, 1984.

Jan Bagley
Notary Public
Residing at Salt Lake City, Utah

My commission expires:

[illegible]

IN THE SUPREME COURT OF THE STATE OF UTAH

KEITH DAVID SCHMIDT, Plaintiff and Respondent, vs. LA LENE D. SCHMIDT Defendant and Appellant.	:	SUPPLEMENT TO APPELLANT'S BRIEF AND REPLY TO RESPONDENT'S BRIEF

The appellant after reading the respondents brief finds it necessary to reply since she did not have access to the trial transcript that the respondent had and because of her inexperience with legal matters wishes to clarify any resulting confusion, as follows:

1. In point 1 the respondent discusses and provides evidence to "make it clear that the decision was fair and equitable to the parties." This point discusses a by-product of the issue involved; therefore it is not an issue before the Supreme Court of Utah nor is it part of my appeal. The issue before the Supreme Court deals with the deprivation of my civil rights, i.e., the loss of equality and thus forcing me into slavery. Slavery is abolished. There are no exceptions. Therefore divorce, religion or sex discrimination, and civil priviledges cannot be used as vehicles for the institution of slavery and the denial of equality.

A prisoner who has lost the right to be free cannot be forced into slavery, even to pay for his keep. How much greater is the crime when one who has not lost the right to come and go in society is forced by a judge to be exploited for the benefit of another?

The confusion in the respondent's brief probably comes from the use of the trial court's division of the goods to show how the defendant was denied her civil rights. I will clearify:

A. THE TRIAL COURT ESTABLICHED AREAS [illegible] PROPERTIES.

Defendant Jobs & Benefits*	Designation	Plaintiff Jobs & Benefits*
Carpet cleaning	marital	carpet cleaning
Aloe	"	Ambulance shift
sub. teaching	"	Fire shift
real estate	"	phonic ear
teaching	"	savings acct.
*furniture, residence, van, taxes, cleaning equip., plymouth, tiller, vacations, motor cycle, trees, lot assessments. (R. 248, 254, 256)		* used for the benefit of his personal self.
wife & mother homemakers etc. (R. 246, 253, 264, 245, [illegible]	" nonmarital	husband and father (R. 232)

This shows the denial of equality in one area, job benefits, which the court gave to the plaintiff and refused the defendant. This is one aspect I am appealing and am asking for the benefits of my jobs. Denial to the defendant forced her into slavery to be exploited for the benefit of the plaintiff. Slavery is abolished in both the Utah and United States Consitututions.

This solution for a marriage that is unique like the instand case is very simple and yet brilliant. It is simple because it does in hours what would take weeks and brilliant because it is just from very approach. (This will be appreciated after reading the brief)

B. TRIAL COURT DEFINED THE TERMS INHERITANCE TO INCLUDE GIFTS FROM PARENTS (R. 237, 231, 232, 233, 234, 235.) AND REFUSED TO GRANT ME MINE. (R. 235, 234, 233, 232, 231, 237.)

> The Court would honor the same thing with respect to Mrs. Schmidt. (R. 170)
>
> ...that would be considered as your seperate property. (R. 170)
>
> Even if his parents said, "We are going to give you [illegible] it is simply an expectancy in his inheritance, and [illegible] your parents, I would have honored that as your seperate property...(R. 237)

I agree with the trial court's decision to grant the plaintiff

this information and I for an order is granted.

That is not how Respondent is making "the decision was fair and equitable to the parties" is not the issue be fore the Court, therefore none of his arguments, cases, rules, etc. are relevant.

Points 2 and 3 are part of the Respondent's Memorandum of Points and Authorities in Support of Respondent's Motion to Dismiss. It was striken. This Court has read, discussed, and stricken these points.

For the benefit of the respondent I will point out the errors of the trial court using the word error (R. 133-139)

RELIGION: Religious principles and comments were mentioned throughout the trial (R. 170, 171, 284). The authors of the Utah Constitution are LDS leaders. They, too, were aware of the religious principles entered into by Mormons in temple vows. In fact, they had made the same vows with their wives, and yet they wrote into the Constitution equality (Art. 4) and abolished slavery (Art. ').

Using Sis. Kimball's words to imply that the defendant doesn't possess any of the listed qualities is an error (R. 118) A year before, I had been given the gift of "faith" by a Mormon leader. The gift is not given to those who have not achieved personal righteousness. Thus I must have all the listed qualities.

> A noble and Godlike character is not a thing of favour or chance, but is the natural result of continued effort in right thinking, effect of long-cherished association with Godlike thoughts. An ignoble and bestial character, by the same process, is the result of the continual harbouring of grovelling thoughts. As a Man Thinketh, James Allen, supported by Mormon Apostles.

A year later is not long enough for me to loose the personal righteousness I have attained.

> THE PROJECTION OF THE TRIAL JUDGE"S WIFE AND CHILDREN'S "WANTS" UPON THE DEFENDANT AND SCHMIDT MINORS TO EASE PERSONAL FRUSTRATION, WHICH IS AN ERROR.

The trial judge's wife has a reputation throughout city hall of being a "poor mother who is raise selfish bratts" to "do what they want" and to "ignore papa's direction." I am not this kind

of mother (R. Facemeyer's affidavit in [illegible]). [illegible] judge to project his wife's "failings" upon me and then [illegible] to punish me (R. 280, 283, 387, 231, 234, 234, 236, 273, 234, [illegible] and the children because of his "anger for what is going [illegible] home is an unconstitutional error.

> THE TRIAL JUDGE DENIED THE DEFENDANT THE RIGHT TO BE [illegible] TO PRESENT THE FACTS AND TO HAVE THE FACTS USED IN THE JUDGMENTS.

I testified that the current market value for the residence was $69,000 (approx. less) and gave the reasons that I might [illegible] that value (R. 224, 350, 251). I testified that I had been in real estate and was not currect with market values to explain my feelings about the appraisal. (R. 221, 251). Judgment:

> "that the defendant testified that the home was worth the sum of $76,000, that the defendant had previous experience as a real estate sales person.(R 142,147)

The judge had reversed the figures. To further verify the current market values, Barry McKay showed other real estate agents who verified my values and unverified the plaintiff's; showing perjury by the plaintiff. They would not benefit the plaintiff and the judge refused them because I had an opportunity in trial? I used that trial opportunity!! With my attorney's attitude and that of the judge, I kept my mouth shut as much as I could. I used Mr. McKay as a new spokesman. The newspaper ads also verify perjury:

7-18-82	Gump & Ayers	Summit Park	Lot	$25,000
7-25-82	United Homes	" "	"	30,000
8-1-82	Century 21	" "	"	22,500
8-30-82	Phelps Realty	" "	"	23,900

The value of the lot is determined by it's assessability, buildability, and view.

> DENIED RIGHT TO BE HEARD ON CHILD CUSTODY AND VISITATION (R. 167, Utah Code 78-45c-12)

> DENIED RIGHT TO HAVE PLAINTIFF SUPPORT HIMSELF

> R. 142-7) That the Court finds the defendant had the exclusive use and possession of the home of the parties... and there is therefore no basis for the defendant's claim that the plaintiff should be liable for [illegible] of the obligation respecting the home and such claim is therefore denied.

The record shows that the plaintiff's body left premises [illegible] 7 . 82.

[illegible] about ½ year in the home without paying his [illegible] . 177,2[illegible]3,25.)

TRIAL COURT MADE FIGURES THAT WERE EXTREMELY BENEFICIAL TO PLAINTIFF AND DENIED DEFENDANT HER EQUALITY IN THESE AREAS

$[illegible],000 for Summit Lot instead of $25,000
$1,200 for Plymouth instead of $400 or less
$30,000 for residence instead of $67-69,000 (R.284,284, 142-147, 133-139)

TRAIL COURT DEPRIVED DEFENDANT OF HER INJURY SETTLEMENT BY INCREASING PRICE OF HOME AND LOTS AND THEN SUBTRACTING THE $9,000. (See above) IT WAS AN ERROR FOR THE COURT TO DO.

TRIAL COURT GAVE PLAINTIFF 15% INTERST PLUS ON HIS LEIN

Both parties had agrreed that child support would be half his salary (R. 170) which the court refused to honor. Interest was determined by lowering child support to $165.00 (R.288). Thus the court has established and increasing interest rate by taking ½ plaintiff's salary, minus 650.00 equals $350. which is 14.2% of $24,000., rounded off with court's rule is 15% (R.288)

TRIAL COURT DENIED DEFENDANT RIGHT TO RESTRAINING ORDER BY JUDGE UNO. (R. 27,28) (R. 142-147)

The plaintiff's affidavit #3 R. 128 "and is not in danger of physical abuse from your affiant," is simply not true. There would not have been ordered a restraining order if this were true. Judge Rigtrup has denied the defendant the right to have this order effective, or to have the plaintiff pay for the medical bills resulting from his abuse. (R. 142-147, copy of hospital diagnosis.)

TRIAL JUDGE DENIED DEFENDANT THE RIGHT TO BE HEARD ON THE FUTILITY OF COUNSELING.

This solution has been tried for years before the break in the marriage. There were no changes in the situations and more of a nonworking medium is not a solution to the problems with the parties. The defendant has met all of the requirements for counseling. She is not uncooperative. She allowed the plaintiff to take the children on June 14, 1983 when she would be a place to meet Ann Marie's needs. The plaintiff did not come nor indicate that he would not be there on his night, June 15, 1983.

On June 16, 1983, she again let him take the kids while she was in class, but he did not show up. At 9:30 he phoned to say he would be there in about an hour. She said to forget it, it was too late, the kids were tired, and she was putting them to bed. He started to argue; defendant hung up. Joshua beat her to the door or he would not have gotten in. He grabbed defendant's wrist and hand inflicting pain so that he got in. Defendant phoned Sandy Police who came and Tuft talked her into letting him take kids. She said, "No, he's on a motor cycle. Three kids without helmets is against the constitution." If he gets his car, will you? I agreed. They were all awake and wanted to go. I would be the villian again. He has taken them over night, on other nights when he has missed his visit, and on other weekends. Still there are problems. The defendant cannot be more cooperative unless she submits to slavery and does everything the plaintiff demands. She is not a slave and will not do this. Therefore counseling has not changed the plaintiff and the facts show that he is the one who now must change. There must be another solution to the problem.

USING THE ACTIONS OF BOTH ATTORNIES DURING TRIAL AS GROUNDS TO DEPRIVE DEFENDANT OF HER CIVIL RIGHTS IS AN ERROR.

1. Defendant's lawyer had made promises to her about how he would present her case which he did not keep. (brief and affidavit) The defendant knowing that Mr. Kostopulus had just helped deliver his baby, phoned and suggested that since they were not ready, they should grant the plaintiff's continuance. He promised he would be ready even if he stayed up all night. We went ahead with the trial.

2. Had Mr. Kostopulus complied with Utah Code 73-51-26 (a) the following would not have been different:

a. I would not have been granted a divorce I did not want (R. 171) which he knew I did not want before trial began.

b. an objection would have been raised when [illegible] announced his decision before the facts had been presented. (R. 170)

[illegible] would have been raised when trial judge [illegible] would be consistent with temporary order [illegible]

d. The trial judge would have know the defendant had not [illegible] custody and visitation (R. 167)

e. An objection to trial judge's forcing me to agree to visitation under duress (R.171). He knew and had promised that I could be heard at trial.

f. Mr. Kostopulus was unable to figure out if any back child support were missing. I had to explain the record to him (R.292.)

g. Mr. Kostopulus had sold his mother's car which was similar to mine and they gout about $200. and yet he did not object to the value the plaintiff set at $1,500. (R. 188, 220) I testified and told him before trial plaintiff offered $100.00 for it.

h. He never objected to the comments made from the bench concerning the defendant and yet took time to set the court straight on his accusations. (R. 293, 294,173.)

i. Had Mr. Kostopulus read the file, he would have noted the differences the plaintiff made: Financial Declaration on salary is $2,175 and on stand is $25,000, the $16,000 for the lot comes not from the listed opinion but from real estate books, and newspaper ads.

j. The point would have been made about the parties agreeing on the child support amount which took into account the advantages he had gained from classes, univeristy attendance outside the state, visiting deaf schools across the Nation, buying literature, spending long hours at his employment at the expense of the defendant's job-providing for the family-helping to raise the children-solving marital problems-carrying his share of the household maintainance, and providing job advancement that was lost to the defendant because of his insistance of attending all conventions, lectures, etc. This makes the ½ salary support very fair and equitable to the parties.

k. The judge should have known that I was [illegible] counseling and another method used to get penalty.

l. Mr. Kostopulus knew that I wanted witnesses [illegible] I had given my other attorney their names and [illegible] There is no excuse for not having witnesses so that [illegible] be placed before the bench. The judge would have known who harassing whom. Steve Scott being placed on the stand to tell about his phone call to me April 1982 would have clearified [illegible] Perhaps the "ammunition" given the plaintiff by the judge for further harassment could have been avoided.

m. The minibike was purchased when we had only one child. The doctors said we would not have any more so how could he have purchased the bike so he would have something for the children to ride? This should have been pointed out to the court.

Both attornies voilated Utah Code 78-51-26. One "twisting the facts" and the other "refusing to correct the facts." I believe this law was written because judges have the right to have all the facts placed before them. I believe Judge Rigtrup "had been set up" and yet Mr. Kostopulus could point out that he is the judge and had the right to ask questions or listen to what the defendant was saying. Nevertheless, the Utah Code 78-51-26 must have been created to protect the bench as well as the parti

I feel Mr. Arnett has no right giving the State Bar the comments he did. I have never seen any evidence from him to justify the facts he has quoted. Every lawyer that looked at my case after trial asked if I had had counsel! When I replied affirmative. They said go back to your counsel and ask why he didn't advocate for you in court. I even tried to get a "muckraker" but they would not touch it. Mr. McKay's conscious bothered him and that's the reason he tried for me. This is why I took Mr. Kostopulus to the State Bar. If I would have known then what know now, I would not have bothered. Every attorney I talked laughed and said they would do nothing. They were right. Mr. Poletti would not give me clean copies of the [illegible] to give to the Supreme Court. When the State Bar lawsuit request

[illegible] Court", how can we expect lawyers to abide by 78-51-26? Mr. Kerby said he felt I had cause to appeal but it would do me no good because of the attitude Rigtrup has about the system. [illegible] of this disrespect was very upsetting to me when I first met [illegible]. I have marveled at the criminal's attitude about the system but now I marvel about the executor's in the system. It is this experience that has prompted me to respectfully urge this Court to be anticipatory and wise in their decision and how it is written. I have not met the "check and balancing" mechanism for our system and from watching the news believe it must be the news media. When the majority of ~~women~~ voters are women, I believe the equality issue at the national level will be changed.

I probably would have overlooked Mr. Arnett's obvious coaching of the plaintiff's answers (R.182) to how thehouse was paid for etc. especially when the facts showed that I had paid for it from the benefits of my jobs (R. 225) had he not have involved himself with the State Bar. Ibelieve he deliberately misrepresented facts to the bench in private. Mr. Arnett is very skillful at using a technique I call "distraction". I use it all the time with my kids--look at the ducks, what are they doing, and I slip out the doorand they don't know I'm gone til it's too late. I witnessed Mr. Arnett in front of Commissioner Peuler. I saw the look on her face change and the ooo's in the background as he told how defiant I was of judges, how I believed that in Utah I would not get justice, how there was not a court nor a judge who could tell me what to do, how there was not a judgment I was go-into to obey, and how there was no remedy for resolving any of these problems. What judge upon hearing this nonbiased advocator would disbelieve him? Judge Peuler hesitated a long time when deliberating the part about sending me to jail. The facts show that I am not this rebellious citizen--look at my driving record for the last 20 years compare it to that of the Plaintiff.

The Utah Code 78 deals with juveniles and compare with the [illegible] and examples of the care given the minor children by their loving father. Mr. Kostopulus is aware of the penalty

for not reporting suspected child abuse [illegible] this to the attention of the bench. I believe it is time that both attornies need to be reprimanded and get him to that has been abused their their acts. There's no [illegible] the one compensated.

I am not trying to destroy the children's father. They need his love and care very much. I have found that short visits with him are best. He does not seem to tire of them and they of him. I hate to say it, but he will always be their father and I have had to analyze my part to their relationship. I believe that if I were vested complete control over visitation that the power would be gone for using them to inflict pain upon me. We would then know if he really cares about the children and if he really wanted to be with them.

I am not out to destroy the plaintiff's teaching job. He has finally found a job that he likes and that meets his needs. There are not many jobs available like this one. He can't be stuck in the classroom and his present job he is good at and enjoys.

I am not out to destroy Mr. Kostopulus. After reading his final remarks, I marveled at his "lawyering skills", but the final remarks are too late to decide to advocate for me. I'm not sure what happened to him during that trial because it appears to me that there are two skills present representing me.

I cannot allow these others to destroy me. I have rights that must be respected.

TRIAL JUDGE USED JUDICIAL ENTRAPMENT TO INDICATE I DID NOT TELL THE TRUTH (R. 260-262)

From the figures presented to the court, there is no way that I can see to show the figure the court arrived at. The most I can get is several thousand lower.

In point 4 the respondent requests costs and attornies on appeal. To me this is the epitome of this brief. Because of financial burden he has placed upon the children and I, he asks for attornies fees. The children and I have not had any [illegible]

[illegible] pressure and we need it. A history follows:

1. He told me December 25, 1980 that he was leaving (R.259)

2. He then decided to give me ½ his salary for child support which the judge refused to honor (R. 174)

3. He was still living at home. He said he would split the bills (overdraws). (R. 174)

4. He refused to split the bills and did not give any money for his own support. (R. 243)

5. I put in 100% of all my monies and he put in about 35-40%. (R243.)

6. I paid all taxes and he was living with me. (R.142-147)

7. Before giving me the child support, he would subtract a tank full of gas and whatever else his car needed.

8. He used child support for trips to Begas.

9. He used the van for trips in the mountains and did not replace all of the gas used. He used my food, blankets, camping equipment. He told me he got near God when camping. I put a stop to this when I found he went camping with other broads.

10. He came back after leaving and took shampoo, conditioners, after shave lotions etc. He helped himself to food that I had boughten.

11. The period of time between when he decided to leave and getting into court has never been before court and Rigtrup refused to look at it. (R. 27,28)

12. He will not replace the children's clothing he has lost.

13. He will not pay for any medical bills above what his ins. does. I have paid for them and I delivered a baby after he left. I have given both he and Mr. Arnett billing info. He has instructed his ins. company to now work with me. He has refused to allow doc.s offices to send him bills.

14. I asked for all child support before Christmas, 1981. He used $250.00 for buying skiis. He phoned on the eve to see if I needed help. The oldest child and I didn't get any Christmas.

15. I am constantly being assulted. There is a restraining order to keep him off the property but Rigtrup will not abide it nor give me any monies for the injuries. (R.142-147)

16. I had 3 hrs. left in my auto mechanics class. KrisTina wanted me to fix her car. John told her if I drove it, he would come and get it. I didn't fix it and she asked him to but he has done nothing. He has told me to fix it now that I don't have the professional mechanic or equipment to use. I feel he constantly uses the children to try to inflict pain upon me and they get hurt because of it.

17. I pay 15% interest to him on [illegible] child support. (R.174)

18. I found several heads turned off [illegible] explaining the years I had to water by hand. [illegible] why someone would turn off heads to cause [illegible] me to spend time watering.

19. I have had to take classes to try to figure what [illegible] surprises I would find in the work he was [illegible]

20. Currently, I have about 3 months sick pay [illegible] and I live on $60.00 per month. He promised to [illegible] financial problems and has done a nice job of it.

The only issues in Mr. Arnett's brief that seem appropriate is the title, it includes the Order on Order to show cause. His first point is not before the court, his next two points have been before the court and have been dismissed, and his last point reflects the "greed of his client." Therefore I respectfully urge this Court to grant the appellant's appeal.

SUPPLEMENT TO APPELANT'S BRIEF

I am requesting that assistance be granted as follows:

1. That the plaintiff reimburse the defendant for the items damaged as a result of pushing her to her breaking point.
2. That the plaintiff be ordered to stop revealing to others the damage she did resulting from the stress of the plaintiff's refusing to obey the restraining order in the divorce decree.
3. That the plaintiff be ordered to deed to the defendant the Summit Park Lot because of his deliberate and willful perjury during the trial about its value and the obtaining of that value which deceived the defendant into believing that was a true value because of his alledged sources.
4. That the plaintiff reimburse the defendant for all values given under oath which led the court to believe they were accurate.
5. That the plaintiff reimburse the defendant $[illegible] for board, room, and laundry while living at home during the time he only paid child support and that $250.00/mo. be granted for time one partially [illegible] him.
6. That the plaintiff pay his half of all medical [illegible] perscriptions, and herbs used in place of [illegible]
7. That the plaintiff replace all lost [illegible] and machine damaged clothing belonging to the children.
8. That the plaintiff be ordered to [illegible] defendant to do what he wants or he will [illegible] his jobs and I will not have child support.
9. That the plaintiff provide an insurance [illegible]

dant to pay for all medical costs resulting from injuries sustained from his assulting her. That he pay for all costs for injuries already accrued.

11. That the plaintiff reveal all dangerous hazards he has placed in the home when doing repairs and building. See photo to see the type of work done for family.
12. That the plaintiff maintain a card from the U of U granting the defendant tuition reductions as she seeks rehabilitation.
13. That the plaintiff be ordered to obtain a private phone so the defendant and children don't have to talk to him on his parents phone and automatically initiate accusations for slander.
14. That the plaintiff be ordered to stop coercing the Sandy Police in his favor also the Sandy firemen who are the authorities in the area where the defendant lives--not the plaintiff.
15. That the plaintiff be restrained from discussing the defendant with her colleagues and relatives.
16. That the plaintiff's counsel be restrained from making disparaging remarks to prejudice the court against her.
17. That the child support be set at 50% of his salary after one exemption and taxes in accordance with this one exemption. The defendant is willing in years where she cannot benefit from claiming the ~~dxf~~ minors to allow the plaintiff to claim all of them. She will give him written permission. See details in brief.
18. That the defendant be granted complete power to determine visitation. (see agrument in reply to respondent's brief)
19. That the minor child be allowed to nurse without interference with visitation til she is ready to be weaned.
20. That the plaintiff maintain at his expense the auto given the teenager because of his refusal to allow the defendant to learn how to fix it--see previous reply.
21. That back child support set by Judge Uno be brought current using the plaintiff's checks written to defendant.
22. That the plaintiff pay defendant's attorneys fees, and court costs.
23. That the defendant be granted her civil right of equality giving her all benefits from her jobs since her obligation to the marriage is wife, mother, and housekeeper. That she receive this as the plaintiff has which is not being appealed before this court.
24. That the defendant be granted her inheritances and injury settlement as outlined with not less that the interest rates as established by the court for the amount of years used in marriage to the benefit of the PLAINTIFF.
25. That the plaintiff pay the defendant $200.00 for the child support subtracted when he kidnapped theoldest child from the Foreign Services Center going against the explicit orders of the defendant. This issue was not before the court and yet Judge Rigtrup depriving defendant of her court ~~rxi~~ rights granted this financial burden. (R. 133-139, 142-147, 122, 123)

25. That the respondent's counsel reply to all [illegible]
26. That plaintiff obtain written proof of [illegible] inadequacies for manning their shifts, causing him to be late for visitation.
27. That plaintiff be ordered to not discuss defendant with his colleagues since they come to defendant's [illegible] mingle with her colleagues.

I believe the above requests are adequately explained in her brief and demonstrate the great injustices done her. Therefore she respectfully urges this Court to grant her appeal and the request therein to correct the injustices resulting from her deprivation of her civil rights.

DATED this 11 day of July, 1983.

DARLENE D. SCHMIDT, M.S.

Darlene D. Schmidt M.S.
Pro se

AFFIDAVIT

STATE OF UTAH)
:ss
County of Salt Lake)

Darlene D. Schmidt, being first duly sworn, deposes and says:

that Reiner R. Prawitt did fill out the affidavit in his own handwritting. The reason it was not notorized was because he was leaving for Oregon on vacation and it was 9:00 at night.

Dated this 16th day of June, 1983.

Darlene D. Schmidt

Subscribed and Sworn to before me this 17th day of June, 1983.

My Commission Expires:

4/5/87

Notary Public
Residing in: Salt Lake City, Utah

AFFIDAVIT

STATE OF UTAH)
:ss
County of Salt Lake)

_____, being first duly sworn, dep
and says:

Darlene Schmidt some months ago was
asked by President Scott Dean if she felt
that John Schmidt had been honest in his
church court testimony. She answered she
did not really know —

Dated this 16th day of June, 1983.

_____

Subscribed and Swo n to before me this ____day of June,

My Commission Expires:

_____

_____
Notary Public
Residing in: Salt Lake
Utah

STATE OF UTAH)
: ss.
County of Salt Lake)

Kristina J. Schmidt, being first duly sworn, deposes and says:

1. Mom bought the carpet cleaning machine for the sole purpose of useing it only on the carpets in our home. Mother and I would move the machine from spot to spot throughout the house, from the shed to the trunk of mom's car, to the dem. We accomplished this amazing feat for about 4 monghs before dad stumbled or should I say fell over our little secret. Then you could say the meadow muffin hit the fan. Then he said we had to make a business out of it. It brought in some money but mostly trade. There were times dad and I would help people move furniture and then we would clean their carpet free of charge. I never once say or heard of a business license. Mom was never paid for the furniture equipment, we just used it. She made us replace the cleaner. John made up the name carpet cleaning business.

2. On Halloween, mom and I had a large argument over me driving dad's car without a license. She called the police and ordered me taken down to child services. The police came, dad, too. The police, dad, and I rode over to the fire station. The police took me to child services and checked me in. Dad came and picked me up and took me over to his parents house. He went to the fire station for the night.

3. On 6-27-83, mother and I went to Whitmore Library to read microfilm on newspapers. I checked July 1-15, 1982 and August 16-28, 1982. I saw ads ranging from $23,000 to $28,000. I asked a manager at my employment if he could buy a lot at Summit Park for $16,000 and he just laughed saying if he could buy a lot for that price, he would sell his baby.

4. At times, I feel mother has been more than cooperative on visitation rights because at certain times (often) she would allow dad to take the kids over night instead of the two hours allowed by the court. I also feel that if dad really wanted to spend time with us, it would be with us, and not Kim.

5. I've always felt unloved and unwanted around the family, because if I ever got hurt, it would be because I was a bawlbaby, that I couldn't play the game right, and I've always known that Evelyn loved Cindy more than I by the way favored her by buying things for Cindy and not for me, etc. The other grandchildren never respected me as the oldest grandchild and would always try to thward me in my efforts to get anything accomplished.

6. I walked in the kitchen at grandma's with Byron, his brother, and dad sitting at the table. Dad said a rude, slanderous comment about mother. I said dad you have a restraining order against you, too. He said,"Ya, see what I mean."

7. Dad gave me the Colt on the stipulation that Mom was not to drive it or it would be taken away. He would not let mom take it to her auto mechanics class to fix it. She could not work on it at all.

DATED this 11 day of July, 1983.

KrisTina Schmidt
KrisTina J. Schmidt

Subscribed and sworn to before me personally this 11th day of July, 1983.

Notary Public
Residing at Salt Lake County, Utah

My Commission Expires:

4/15/87

STATE OF UTAH)
: ss.
County of Salt Lake)

Darlene L. Schmidt, being first duly sworn, deposes and says:

1. That she phoned Bill Clough, Sandy Fire Chief, on July 9, 1983, at 8:30 a.m. and read him #3 of the plaintiff's affidavit. She asked him if this were true. He said you have not phoned me and I don't know of anyone you have phoned in the fire dept. The plaintiff's job is not in jeopardy.

2. The plaintiff has threatened to quit his jobs if the child support is raised.

3. The Sandy City Police have helped the plaintiff kidnap our oldest child from the Youth Center after he had heard Rigtrup twice tell me I had custody. The police "have shaded their reports" to make the plaintiff not look as badly as he is.

4. That Gail Campbell's trial transcript is missing some statements thatwere made about the defendant by the trial judge.

5. That the plaintiff has talked to Dr. Ron Hermansen, defendant's principal about the damage she has done to the van. The general feeling about Dr. Hermansen is that he is a gossip--therefore the defendant feels "it is all over the district" about what I have done. Dr. Hermansen told me he told theplaintiff that I should be in jail for doing this damage. This was told me in January, 1983 before a meeting with the district about my being on sick leave.

6. That the plaintiff stated in court that we started the carpet cleaning together. We did not. I bought the equipment to clean the home carpets because the Plaintiff would not eat at the table. I hid the equipment for months before he found it. He was in a rage after finding it and declared that I would make a business out of it. He then proceeded to buy equipment: spray cans, a van, 3 captain chairs for van, radios and speakers, finished van off, etc. There were about $10,000.00 in bills. I let him use my equipment for cleaning til I realized it was used to "buy his friends" and then I stopped him or took it over as I testified. I have paid for too many of his friends as it is.

7. That I have found the plaintiff to be neglent with the children. He allows then to play unsupervised by a busy road and shopping center, to be around machinery that is cutting through shoes, and to be run over with a mini bike while unsupervised.

8. That the relatives of the plaintiff have told lies about her and have phoned her while extremely upset and out of control. That he has told the wives of my brothers the things Rigtrup said about me in court.

9. That the plaintiff has not kept the restraining order in harassment and staying off the property. He is assulted me many times while on my property.

10. That the plaintiff has constantly [illegible] to a state of "hysteria" with the [illegible] about me.

11. That the plaintiff has committed perjury with my his statements. That it is impossible to be honest and that what most people are "hit and honest, the plaintiff is in reverse. That I believe he is a compulsive "lier".

DATED this 11 day of July, 1983.

DARLENE SCHMIDT

Pro se

SUBSCRIBED AND SWORN to before me this 11 day of July, 1983.

Notary Public
Residing in Salt Lake County

My Commission Expires:

1/4/84