1992

Marcus P. Randolph v. Mary E. Randolph : Reply Brief

Utah Court of Appeals

Ephraim H. Fankhauser; Attorney for Defendant/Appellant;.
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IN THE UTAH COURT OF APPEALS

MARCUS P. RANDOLPH,	*	
Plaintiff/Appellee,	*	Appellate Court No. 920623-CA
	*	Priority No. 15
vs.	*	
MARY E. RANDOLPH,	*	
Defendant/Appellant.		

APPELLANT'S REPLY BRIEF

Appeal and Cross-Appeal from Supplemental Decree of Divorce, Third Judicial District Court, Salt Lake County, Honorable James S. Sawaya

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IN THE UTAH COURT OF APPEALS

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SUMMARY OF ARGUMENT

Plaintiff/Appellee's Statement of Facts contain errors, mis-statements and is principally a summation of his own testimony that was disputed and/or contradicted by Defendant/Appellant's testimony and evidence.

There is no set formula for the division of assets or debts. In the exercise of its discretionary authority, the trial Court is not required to divide marital assets or debts equally and may make such orders concerning property distribution and debts as are equitable.

Plaintiff/Appellee's contention that the Order that required him to pay 1/2 of the cost of private school for the two (2) minor children, in addition to child support was abuse of discretion is

without merit where he essentially agreed to private schooling and to pay the cost.

The question of maintaining life insurance coverage lies within the sound discretion of the trial Court. The Order that Plaintiff/Appellee continue to maintain his present policy of life insurance for the protection and benefit of Defendant/Appellant, wife and children, was not abuse of discretion where the combined ordered child support and alimony obligation would exceed $222,000.00.

The denial of Plaintiff/Appellee's post trial Motion to set aside the Stipulation to custody was proper where a material change of circumstances had not occurred and the Motion failed to meet the Hogge test.

ARGUMENT

I

PLAINTIFF/APPELLEE'S STATEMENT OF FACT CONTAINED ERRORS, MIS-STATEMENTS AND IS PRINCIPALLY A SUMMATION OF HIS OWN TESTIMONY THAT WAS DISPUTED AND/OR CONTRADICTED BY DEFENDANT/APPELLANT'S TESTIMONY AND EVIDENCE.

1. Plaintiff/Appellee testified that he received, in addition to his base salary from Kennecott, an annual "performance bonus." His use of the term "commissions" is misleading and incorrect. (T. 14-15).

2. The statement that Plaintiff/Appellee's income, at the time of trial was $114,500.00 annually, which included a

substantial bonus ($26,000.00) is true and correct. The bonus amount set forth in the Statement of Facts of $14,500.00 is not correct. The bonus amount was $26,000.00 and the net amount was approximately $16,900.00. (T. 14) Plaintiff's base annual salary of $88,500.00 ($ 7,375.00 per month) with the $26,000.00 bonus made his total income, at the time of trial, $114,500.00 annually ($9,542.00 per month), for the purpose of determining the child support obligation of $1,361.00 per month, in compliance with the statutory Guidelines. The determination and the amount of the support was not disputed. (T. 22) The $26,000.00 bonus he received prior to trial was $6,000.00 more than the $20,000.00 bonus he received in 1991. (T. 14).

3. Plaintiff/Appellee's statement, "Defendant worked different jobs during the marriage" is misleading and contrary to the testimony of Defendant/Appellant. She testified, without contradiction, she worked the first two (2) years of the marriage. That she had not worked since 1979, other than tending children in the home when they lived in Boston and Mr. Randolph attended Harvard University to get his Master's Degree during 1988-90. (T. 153-154)

4. The statement of Plaintiff/Appellee that he contested the request of Defendant/Appellant that he pay 1/2 of the children's private school cost is not supported by the record. Plaintiff stated, in response to a question from his counsel, "he believed that the child support award of $1,361.00 would be adequate to meet

the needs of the children, including private school." (T. 22-23) Plaintiff/Appellee did not dispute or contradict the statement of Defendant/Appellant that he agreed to private schooling for the minor children, that the cost was approximately $1,700.00 per year (not including summer camp) and the understanding was he would share in the cost of the children's private schooling. (T. 138;140)

5. The statement of Plaintiff/Appellee that he proposed to pay alimony to Defendant of $1,100.00 per month is basically correct and disputed. However, it is important to point out that the "Troy receivable" was a joint marital asset which the Defendant held a 1/2 interest. The inference and innuendo is that Plaintiff is treating the "Troy receivable" as his sole asset in his proposal to award it to Defendant in lieu of additional alimony.

6. Plaintiff/Appellee's statement that the ready access loan and tax liability were marital debts is disputed by the record. He acknowledges the ready access loan was taken out by him solely after separation (T. 32); had essentially closed the parties joint bank accounts or removed all of the funds from the joint accounts and placed them in accounts solely in his name; (T. 122-127) had at his disposal $48,000.00 before taxes (T. 119-120) paying only $500.00 to the Defendant, which he claimed to be alimony for July, 1991 (T. 127); leaving Defendant and the minor children without adequate finances and in near destitute circumstances, in contrast to the past practice of providing $1,500.00 to $2,000.00 per month to Defendant for household expenses. (T. 172)

7. The statement in Plaintiff/Appellee's Statement of Facts that Defendant testified she used $1,500.00 of joint funds for her initial attorney's fees and costs is true and not disputed. Plaintiff neglects to set forth and state that he paid more than $1,700.00 as attorney's fees and costs to his first attorney, Mr. Hettinger, from the parties joint funds that he had removed from their joint money market account. (T. 129-30)

II.

THERE IS NO SET FORMULA FOR THE DIVISION OF ASSETS OR DEBTS. IN THE EXERCISE OF ITS DISCRETIONARY AUTHORITY, THE TRIAL COURT IS NOT REQUIRED TO DIVIDE MARITAL ASSETS OR DEBTS EQUALLY AND MAY MAKE SUCH ORDERS CONCERNING PROPERTY DISTRIBUTION AND DEBTS AS ARE EQUITABLE.

1. In dividing a marital estate, the trial Court is empowered to enter equitable orders concerning property distribution, as well as debts and obligations. 30-3-5(1)(c) U.C.A. The Court is permitted considerable discretion in making such orders, which will not be disturbed unless it is clearly unjust or a clear abuse of discretion. Rasband v. Rasband, 752 P.2d 1313 (Ut. C.A. 88) There is no fixed formula upon which to determine a division of properties in a divorce action. Watson v. Watson, 837 P.2d 1 (Ut. C.A. 92); Naranjo v. Naranjo, 751 P.2d 1144 (Ut. C.A. 88) Plaintiff/Appellee's argument that property should be divided "equally" is not supported by law or the facts and circumstances

present in this case.

2. Plaintiff/Appellee, in his argument, did not mention the fact he retained a 1972 Porsche 911 that he reportedly sold for $8,400.00. He retained all of these proceeds as his separate property and used them to purchase the 1992 Ford Explorer, listing the loan he obtained as one of his debts. (Plaintiff's Addendum F) The sale of the Porsche and purchase of the Ford Explorer occurred after separation, during the pendency of the action. Plaintiff sought and obtained an Order that he be authorized to sell the Porsche, as well as the marital residence. (R. 50-51; 71-76) After the marital residence was sold and the proceeds divided pursuant to the earlier order of the Court, Defendant did not pay off the Ford Explorer loan, using the loan as a deduction against income. (Exhibit P-7, Addendum F) As a side note, it should be pointed out that the calculations on Plaintiff's Exhibit P-7, Addendum F, contain errors with estimated and unverified deductions for taxes. Plaintiff deducted as an expense against gross income his personal tax exemption. The personal tax exemption is not a payment but a tax credit against income for the purpose of determining tax liability. This error, coupled with estimated unverified tax liability, without considering the Court awarded Plaintiff the two (2) minor children as additional tax exemptions, results in Plaintiff's claimed "actual monthly income" to be substantially understated.

3. Plaintiff, in his argument, did not mention the fact that

the original ready-credit loan account had been paid off in full. That the ready-credit debt was incurred solely by him after separation. He played a "shell game" with the parties joint funds that he removed from joint accounts approximating $11,900.00, and deposited into various new accounts in his name solely. That he retained for his own use funds in excess of $8,000.00. (T. 123-126) That he paid temporary alimony to Defendant out of the joint funds transferred from the parties joint money market account. (T. 127) Defendant only received $2,000.00 of the joint money market funds, which he deposited in her checking account that he sometimes wrote checks against. (T. 123-127) Plaintiff deliberately had the bank statements sent to his work address so the Defendant would not have knowledge of these financial dealings. Although Plaintiff stated it was his intent to equalize the funds he took control of, it didn't happen. (T. 128)

4. Plaintiff does not mention in his Argument that he retained the entire amount of the bonus he received in 1992 as a performance bonus for 1991 in the net amount of approximately $16,900.00. Also, that he had at his disposal in the first three (3) months of 1992, net income of $32,000.00, more than enough to meet his expenses and pay off in full the ready-access debt, as well as the tax liability he claimed. The trial Court was well within its discretionary authority to consider these facts in rendering its decision.

5. Plaintiff proposed that Defendant be awarded the "Troy

receivable," a jointly owned asset, to in effect reduce his alimony obligation to Defendant. He now advances the argument, because the Court did what he asked, but awarded $1,500.00 alimony to Defendant, this was an unequal division of marital property and the Court abused its discretion. This argument is inconsistent and should be disregarded. Plaintiff does not claim the division of property was "inequitable or that it was not fairly divided" only that it is not "equal." Under the law and the circumstances at the time of the divorce, Plaintiff's argument fails to meet his burden that the division of property and the order he pay the post separation debts is so inequitable, to be clearly unjust, and a clear abuse of discretion. Rasband v. Rasband, supra.

6. Plaintiff points out that the Court must issue sufficient findings to demonstrate an award of property other than equal. This issue was addressed by the Utah Supreme Court in Jones v. Jones, 700 P.2d 1072 at Page 1074. Plaintiff, Mr. Randolph, as in the Jones case, prepared the Findings of Fact and claims that there has been an unequal division of property. The Utah Supreme Court, on this issue, stated:

> Normally, we would grant the remedy sought by the wife and remand for findings on the specific value of assets. In this case, however, the wife's attorney prepared the inadequate Findings of Fact, she challenges on appeal, and the Conclusions of Law and Decree of Divorce, all of which the Court entered without alteration. Counsel for the wife made no motion to have the trial Court amend the Findings to include values. (See Ut. R. CIV. P. 52(b) The wife cannot come now, ... and complain of her own failure to include specific

property values in the Findings of Fact.

In order to challenge the trial Court's Findings of Fact, Plaintiff as Cross-Appellant, must first marshall the evidence which supports the Findings and then demonstrate that, despite this evidence, it is clearly erroneous. Plaintiff has not met his burden of overriding the presumption of the validity of the Court's Order distributing property and ordering Defendant to pay the post separation debts.

III

PLAINTIFF/APPELLEE'S CONTENTION THAT THE ORDER THAT REQUIRED HIM TO PAY 1/2 OF THE COST OF PRIVATE SCHOOL FOR THE TWO (2) MINOR CHILDREN, IN ADDITION TO CHILD SUPPORT WAS ABUSE OF DISCRETION IS WITHOUT MERIT WHERE HE ESSENTIALLY AGREED TO PRIVATE SCHOOLING AND TO PAY THE COST.

1. Mr. Randolph, during the marriage, before separation and after separation, agreed with Mrs. Randolph that the children attend private school. He agreed to share the cost after separation to the time of trial. The worksheet he presented at trial, of Defendant's living expenses, to demonstrate, in his opinion, that the base support required under the Guidelines was sufficient to cover the expense of private school, is flawed. Addendum I (Exhibit P-6) did not include the cost for summer camp or uniforms for the girls. He estimated college expenses for Mrs. Randolph to be $177.00 per month, dividing the quarterly expenses of $707.00 by four (4) months. Quarterly expenses should be

divided by three (3) months and in fact exceeded $236.00 per month. Mr. Randolph only provided for eight (8) months of child care (3 quarters) rather than a full year, although Mrs. Randolph testified that she would attend college during the summers to meet her anticipated graduation where she was carrying less than 12 hours per quarter.

2. Plaintiff's argument that school expenses should be considered part of the base support amount calculated under the Guidelines is not supported. Review of Section 78-45-2 (Definitions) and 78-45-7.14 (Base Support) does not indicate that the cost of private school is included in the base support table. The Uniform Support Act does state that the base support table is adjusted for taxes and the claiming of tax exemptions. The Court awarded Plaintiff the tax exemptions for both children without a corresponding increase in the base support amount without considering the higher tax liability resulting to Mrs. Randolph. Given the fact that the cost of private schooling is not included in the base support table under the Uniform Guidelines, there is no maximum limit on the base child support award that may be ordered, except where it would exceed 50% of the obligor's adjusted income, Plaintiff's argument on this issue must fail. (See 78-45-7.18 U.C.A.) The Order that Plaintiff pay 1/2 of the cost of private schooling for the minor children, in addition to base child support, does not exceed the 50% limitation, is not a deviation or rebuttal of the Guidelines requiring specific findings by the

Court. It should be pointed out that child care expenses and uninsured medical and dental expenses are not included in the base child support tables. (78-45-7.15 and 7.16 U.C.A.) Therefore, it is reasonable to conclude that cost of private schooling is a separate issue to be determined by the trial Court. The Order that Plaintiff continue to share the cost of private schooling was not abuse of discretion under the facts and circumstances.

IV

THE QUESTION OF MAINTAINING LIFE INSURANCE COVERAGE LIES WITHIN THE SOUND DISCRETION OF THE TRIAL COURT. THE ORDER THAT PLAINTIFF/APPELLEE CONTINUE TO MAINTAIN HIS PRESENT POLICY OF LIFE INSURANCE FOR THE PROTECTION AND BENEFIT OF DEFENDANT/APPELLANT, WIFE AND CHILDREN, WAS NOT ABUSE OF DISCRETION WHERE THE COMBINED ORDERED CHILD SUPPORT AND ALIMONY OBLIGATION WOULD EXCEED $222,000.00 .

1. Plaintiff does not claim he has been prejudiced in any manner by the trial Court's Order that he continue to maintain in force 1/2 of his present life insurance through his employment at Kennecott for the benefit of Plaintiff until termination of alimony. In fact, the premium cost for his $200,000.00 term life policy is $15.93 per month, which is deemed nominal. (Exhibit P-3) The fact Plaintiff had the policy in force at the time of trial is deemed a sufficient basis for the Court's Order. Given the additional facts that there are substantial bond funds ordered to be held for the children's post high school education, and that Defendant has an incurable disease, as stated by Plaintiff,

(T. 9) it is highly conceivable that alimony may be extended beyond the time period ordered by the Court, should there be a substantial change in Defendant's circumstances.

2. The combined ordered obligation of alimony and child support exceeds $220,000.00. The amount of insurance ordered to be carried by Plaintiff for the benefit of both Defendant and the two (2) minor children, is $200,000.00, (FOF Index 251-252) $22,000.00 less than the combined total. Absent a clear showing of abuse of discretion, it was not error for the Court to divide Defendant's present life insurance coverage between the minor children and Defendant, in view of the bond funds held for the benefit of the children. The Order of the trial Court should not be disturbed. The requirement that Plaintiff maintain part of his life insurance coverage for the benefit of the Defendant, wife, until alimony terminates, is a proper exercise of the trial Court's discretion in adjusting the financial and property interests of the parties.

IV

A DENIAL OF PLAINTIFF/APPELLEE'S POST TRIAL MOTION TO SET ASIDE THE STIPULATION TO CUSTODY WAS PROPER WHERE A MATERIAL CHANGE OF CIRCUMSTANCES HAD NOT OCCURRED AND THE MOTION FAILED TO MEET THE HOGGE TEST.

1. Plaintiff was provided ample opportunity to pursue the issue of custody during the entire pendency of the divorce action. At various times he used the threat of pursuing custody to harass

Defendant and in an effort to enhance his bargaining position. After the initial hearing on the Temporary Order for Relief, which awarded temporary custody to Defendant, to the time of the October Pre-trial Conference, Plaintiff did very little to pursue the custody issue. Upon Plaintiff's representation that he was going to actively pursue the custody issue, the October, 1991 Pre-trial Settlement Conference was continued, without date, to allow him to obtain a custody evaluation. (R. 125) Plaintiff changed attorney's and without pursuing the requested custody evaluation, notified the Domestic Relations Commissioner, Michael Evans, that he no longer was seeking custody of the two (2) minor children, did not intend to pursue the custody evaluation as previously ordered, and requested that the case be certified to the Court for trial. (R. 126-128) The case was certified for trial by written Minute Entry, November 21, 1991. The case was set for trial February 18, 1992, at which time Plaintiff obtained a bifurcated Decree of Divorce. He then hastily remarried. Trial of the financial and property issues was held March 24, 1992, giving Plaintiff more than adequate time to pursue the custody issue if he truly desired.

2. The Motion of Plaintiff to withdraw his Stipulation to Custody did not meet the required test of Hogge v. Hogge, 649 P.2d 51 (Ut. 1982) clarified by Becker v. Becker, 694 P.2d 608 (Ut. 1984), to-wit:

> The party seeking custody must prove that there has been a change in the circumstances upon which the previous custody award was based, which substantially

and materially affects the custodial parent's parenting ability or the functioning of the custodial relationship.

Plaintiff claims, in his Motion, that he entered into the Stipulation to Custody upon a faulty premise. The matters set forth in paragraphs 1 through 4 of his Motion relate to circumstances which existed prior to filing the divorce Complaint, and the trial of March, 1992. The claimed faulty premise was Plaintiff's not the Defendant's or the trial Court. The statements, claims and allegations of Plaintiff set forth in paragraphs 5 through 10 of his Motion deal with claimed insulting and demeaning messages alleged to have been left on Plaintiff's answering machine by Defendant, directed at Plaintiff and his new wife, together with unsubstantiated and unsupported claims relating to problems with visitation. Defendant's Verified Reply to Plaintiff's Motion contested and thoroughly refuted the claims of Plaintiff. It is apparent that the trial Court, after review of Plaintiff's Motion, Defendant's Verified Reply thereto and the history of this case, concluded that under the Hogge and Becker standard, there was no showing of a change in circumstances materially affecting Defendant's ability or fitness, as the custodial parent, to care for the children. That any claimed changes in the circumstances of Plaintiff as the noncustodial parent, to-wit: his remarriage and relationship with his new wife, were irrelevant. There being no showing of a material change of circumstances affecting Defendant's ability or fitness to care for

the children as the custodial parent, the denial of Plaintiff's Motion by the trial Court was proper.

CONCLUSION

The relief sought by Plaintiff on his Cross-Appeal should be denied. The arbitrary reduction of alimony awarded Defendant (wife) and automatic termination after four (4) years, being contrary to law, should be reversed and Defendant awarded permanent alimony under the circumstances established by the evidence.

The award of alimony to Defendant should be increased to an amount sufficient to meet the reasonable and necessary needs of Defendant, under the financial circumstances established by the evidence, so as to equalize the parties post divorce standard of living as near as possible to that enjoyed by the parties prior to the divorce.

The award of attorney's fees to Defendant should be increased to $2,800.00 and she awarded attorney's fees on this Appeal.

Respectfully submitted this 17 day of June, 1993.

EPHRAIM H. FANKHAUSER
Attorney for Defendant/Appellant

MAILING CERTIFICATE

I certify a true and correct copy of the foregoing was mailed to Kellie F. Williams, Attorney for Plaintiff/Appellee, 310 South Main Street, Suite 1400, Salt Lake City, Utah 84101 on this 7th day of June, 1993.

ADDENDUM

1

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MARCUS P. RANDOLPH, Plaintiff, vs. MARY E. RANDOLPH, Defendant.	DEFENDANT'S VERIFIED REPLY TO PLAINTIFF'S MOTION TO WITHDRAW STIPULATION Civil No. 914902308 DA Judge Sawaya

Defendant, Mary Randolph, by and through her attorney of record, E. H. Fankhauser, pursuant to Rules 6.401 and 4.501(b), Utah Code of Judicial Administration, submits the following Verified Reply and Objection to Plaintiff's Motion to Withdraw Stipulation regarding the issue of custody.

OBJECTION TO MOTION

Plaintiff has failed to comply with the provisions of Rule 6-401(1), Utah Code of Judicial Administration, which requires all domestic relation matters filed in the District Courts, in Counties

where Commissioners are appointed and serving, to be referred to the Commissioner, upon filing with the Clerk of the Court unless otherwise ordered by the presiding Judge of the District. Plaintiff has not sought or obtained an order from the presiding Judge which would authorize the Plaintiff to bring this Motion directly before the Court pursuant to Rule 4-501, Utah Code of Judicial Administration. The Motion of Plaintiff is improperly before the Court and should be dismissed and denied.

VERIFIED REPLY TO MOTION

1. In the event the Court should authorize Plaintiff's Motion to be brought and determined pursuant to Rule 4-501, Utah Code of Judicial Administration, his statement as to filing a Complaint, requesting award of custody, the birthdates of the two (2) minor children and that the Plaintiff wilfully withdrew his request for custody of the children is basically true and correct. The reason(s) Plaintiff claims that he withdrew his request for the award of custody is disputed and denied by the Defendant on the basis that the same is deemed to be a misrepresentation on the part of Plaintiff and without merit.

2. The statements of Plaintiff regarding Defendant's illness in paragraph 2 of his Verified Motion is a situation and fact that was well known to Plaintiff, both prior to the filing of his Complaint for divorce seeking custody, the hearing on the Temporary Order which awarded temporary custody to the Defendant during the

pendency of the action. Plaintiff relied upon Defendant's illness as the basis for him being awarded temporary custody which was rejected and denied by the Domestic Relations Commissioner. Plaintiff, at the Pre-trial Settlement Conference, voluntarily withdrew his quest for custody, without any representations made on the part of Defendant or his reliance on such. Defendant takes issue with Plaintiff's categorization of her illness as being an incurable mental illness due to the fact that it is diagnosed as a bi-polar disorder, directly associated with a chemical imbalance. That her condition is controlled and treated with Lithium Carbonate is not disputed. The mere fact that Lithium is prescribed and Defendant takes Lithium on a regular basis does not mean another episode will occur. There is no medical basis for that statement by Plaintiff.

3. During Defendant's first manic episode, which began in January, 1990, she continued caring for the family and the minor children. She was attending school, taking night courses, in addition to providing day care for five (5) other children during the day time hours from 8:00 A.M. to 5:00 P.M. without any assistance or help from Plaintiff, who failed to notice Defendant was experiencing any problem. Defendant continued working and providing day care service up to the day before she entered the hospital. One of the day care mothers, who is a registered psychiatric nurse practitioner, observed Defendant's condition of fatigue, brought on by lack of sleep, weight loss and the inability

to concentrate. She called the Plaintiff, requesting that he do something to assist Defendant in that she was concerned about Defendant's welfare. Plaintiff's claim that Defendant became deeply religious and ignored the children and her family responsibility is denied to the extent that Defendant continued to perform up to the time that her condition was brought to the attention of Plaintiff and she was required to be hospitalized for medical treatment.

One month prior to the first manic episode, the Plaintiff, Mr. Randolph, lost his temper during an argument and physically abused Defendant by throwing her from room to room and into furniture, walls and finally on to the floor, while the children watched in horror, crying and protesting. This incident contributed to Defendant's manic episode, according to Defendant's physicians and researchers at McLeans Hospital in Massachusetts.

4. Plaintiff's claim that the second manic episode occurred in February, 1991 is true. The statement that it was because Defendant was experimenting with a reduced drug dosage of Lithium is denied on the basis that it is a misrepresentation of the true facts. Defendant previously filed an Affidavit with the Court in connection with the hearing for temporary custody, detailing the situation which occurred in February, 1991. Defendant requests the Court to review the Affidavit. Defendant states that she did not begin "experimenting with Lithium." Defendant's psychiatrist felt that her condition had improved substantially and that all had gone

well for approximate one (1) year, rendering it possible to reduce the dosage gradually in increments from 900 mg. to 450 mg. At the level of 450 mg., Defendant began to experience symptoms similar to those of the previous year. During this exact time Defendant decided to divorce Plaintiff and packed bags for herself and the children, intending to drive to Denver, at which time she would notify her family of her decision to divorce Plaintiff. Defendant did not tell Plaintiff that she was going to divorce him, due to the fact she was afraid of his rages of anger and that the Plaintiff would harm her physically, as well as the children. Defendant did go to Denver as planned and it was during this time that she began to suffer the second manic episode.

Plaintiff's claim that Defendant skipped psychiatric counseling during this period is denied. The fact is Defendant did not skip psychiatric counseling during this period and her doctor was monitoring her closely because of the changes in dosage, until Defendant drove to Denver with the children in anticipation of filing divorce against Plaintiff. Defendant missed one (1) appointment and that was the day she left for Denver. Defendant did not stop taking her medication, Synthroid, until she entered Western Institute of Neuropsychology. The staff at Western Institute did not provide or offer the medication to Defendant.

Defendant's sister, who was pregnant, is a psychiatric nurse, employed at a drug and rehab hospital in Denver. Defendant's sister contacted Defendant's psychiatrist in Salt Lake City, Dr.

Joe. Culbertson, and told him that Defendant's behavior seemed normal but the unexpected trip concerned her and discussed with Dr. Culbertson the feasibility of hospitalizing Defendant for Lithium stabilization in Denver or Salt Lake City.

At the time Defendant returned to Salt Lake City, Plaintiff began making dinner, turkey meatloaf in a heart shaped pan and became very demanding and adamant that their 4 year old daughter, who had snacked most of the way back from Denver, be forced to eat it. The child was crying and Defendant tried to intercede and requested that the Plaintiff not force the child to eat food when she was not hungry. Plaintiff flexed his arm muscles and made growling noises, causing Defendant to be fearful for her safety and the safety of the youngest daughter. Defendant sought shelter at the Catholic Church until the coordinator from Marillac House (this woman also spent three months living in our basement) could come and pick Defendant up. Their records will show Defendant spent one (1) night there because the following day Defendant notified her psychiatrist, Dr. Culbertson, that she was in town, made an appointment with him. She kept the appointment and at that time Dr. Culbertson decided that Defendant should check into Western Institute. Defendant agreed to follow the advise of her doctor and go to Western Institute because she felt it was safer than her own home. The statement of Plaintiff that Defendant refused to be admitted to hospitalization is not true in that Defendant was referred to Western Institute by her doctor.

To the best of Defendant's knowledge, she did not physically attack anyone. Defendant does recall that staff members and her doctor assisted her into intensive care. Defendant denies the allegations of Plaintiff that she lit the garbage can on fire. However, there was an argument between Defendant and a staff member because Defendant put her cigarette out in the trash can instead of an ashtray.

Defendant was placed in isolation by her own choice. The staff personnel never used physical restraints on Defendant, in isolation or any other time. Defendant spent approximately two (2) weeks at Western Institute and two (2) weeks at the University Hospital

5. The statements contained in paragraph 3 of Defendant's Motion regarding the bifurcation of the divorce proceedings on February 28, 1992 and that the property matters proceeded to trial on March 24, 1992 is basically true. What Plaintiff did or not do regarding introducing the children to his present wife is unknown to Defendant and therefore denied. Defendant can state that she became aware of the Plaintiff's relationship with the other woman after he had filed divorce and before the granting of the Decree of Divorce, February 18, 1992.

6. Defendant cannot admit or deny Plaintiff's claim regarding concern set forth in paragraph 4 of his Motion but can only state that any express concerns regarding Defendant's mental health and her willingness to permit Plaintiff access and visitation with the

children is without basis or merit. Here again, the Plaintiff voluntarily, without any representations or promises on the part of Defendant, willingly abandoned his claim for custody and joint custody of the children. That it is the understanding and belief of Defendant that Plaintiff did so primarily for financial reasons and the fact that the Domestic Relations Commissioner had previously rejected his request for the award of temporary custody essentially on the same basis that he is now seeking to withdraw his Stipulation, to-wit: the illness of Defendant. Immediately after Defendant's release from the hospital in February, 1991, she returned to the marital home and resumed her duties and responsibilities of caring for the children, full time, as well as the home, with very little, if any, assistance from the Plaintiff. Further, Plaintiff did not provide her with a housekeeper or someone to assist her in caring for the children or the home in that it was not needed and the circumstances which existed then remain the same now.

6. In response to the statements and allegations of the Plaintiff in paragraph 5 of his Motion, Defendant states that the information contained therein is a distortion and misrepresentation of the true facts and is therefore denied on the following basis, to-wit:

(a) The only time that Defendant denied Plaintiff's request for visitation was after Defendant had exercised his mid-week visitation on a Tuesday. Plaintiff had returned the

children and requested that he take the children again on Thursday of that week. Defendant refused Plaintiff's request for additional mid-week visitation because of their schedule. It would throw the children off their schedule and be disruptive to them. Plaintiff very often disregards the children's schedule and visitation hours. Plaintiff has, on many occasions, brought the children home after their bed time, thereby affecting their school performance and sleep schedule. I agreed that the Plaintiff could have a mid-week visit every week instead of every other week, under the standard visitation schedule. Plaintiff has received every mid-week visit he was scheduled to receive.

(b) On one occasion in January, Defendant was not home because Plaintiff did not tell Defendant he was bringing the children back early at 6:00 P.M. as opposed to the scheduled visitation that was to terminate at 8:00 P.M. The only stress the children experienced was the stress Plaintiff imposed on them because he missed a flight to Arizona. Plaintiff knew the names of the babysitters Defendant used and could have notified one of the babysitters and left the children with them until he was to return the children at the appointed hour of 8:00 P.M. Plaintiff's claim that Defendant fails to have the children ready for him at the agreed time is disputed and denied. Plaintiff's claim that Defendant failed to be at home when the children were required

to be returned is a misrepresentation of the true facts and a situation created by Plaintiff's own lack of concern for the welfare of the children in failing to notify Defendant that he wanted to bring the children home earlier than the scheduled time, as stated:

(c) Plaintiff's claim that Defendant has been verbally abusive to the Plaintiff and his wife in the presence of the minor children is disputed and denied. Defendant has not been verbally abusive to the Plaintiff's wife, Lee, because Defendant had not seen or talked with her at any time prior to April 24, 1992. Further, the claim of Plaintiff that Defendant made a derogatory statement to Plaintiff in front of the children, to-wit: "did you know that you had little brothers and sisters all over South America?" and the companion statement set forth in his Motion is a misrepresentation and distortion of the true facts and circumstances. On the weekend of March 29, 1992, Plaintiff had the children over the weekend for visitation. Defendant took advantage of this weekend and went to visit her sister in Denver. During this time Defendant told her sister about the Plaintiff infecting Defendant with a sexually transmitted disease (crabs) in South America (Peru) while Defendant was pregnant with the parties youngest child. Plaintiff claimed that he had picked up the disease off a towel in a locker room. Defendant's sister, who is a nurse, said that this

was impossible and that Mary was very naive. When Defendant returned to Salt Lake City to pick up the children at the end of Plaintiff's weekend visitation, the children were in the car and not within hearing of the conversation between her and the Plaintiff. Defendant confronted Plaintiff about infecting her with the crabs and his apparent lie of how this occurred. She asked him if the children had any younger brothers and sisters in South America. Plaintiff shook his head. Defendant told Plaintiff that the crabs he had infected her with were "real comfortable," meaning very painful and distressful. As stated, the children were in the car which was in the drive-way of the home of Plaintiff's present wife, away from the conversation which took place on the porch outside of the hearing of the children. Defendant has never said anything remotely similar directly or indirectly to the children or in their presence.

During the same weekend that Defendant was visiting with her sister in Denver, March 29, 1992, Defendant's sister told her about a situation of Plaintiff having an affair with a woman from Chile while she (Defendant's sister) her husband and Marcus had gone on a trip in Peru. Marcus and the woman were blatantly fondling each other on a bus trip when Defendant's sister finally told Marcus that what he was doing was immoral, disgusting and revolting form of behavior in front of his own sister-in-law.

When Defendant was informed of Plaintiff's upcoming wedding and marriage plans, she called to congratulate him. He was not home and Defendant left the following message on his answering machine, "I'm glad you found somebody, although Roz (the wife of a co-employee of Marcus) says she is plain and uncouth, but I'm happy for you."

Plaintiff's attorney, asked Defendant, while under oath during the trial, March 24, 1992, about her making an alleged statement about Plaintiff's wife giving him good blow jobs. Defendant stated then, under oath, that she had not made such a statement and stated, she would never ask Plaintiff if she (meaning his wife) gives good blow jobs. The statements contained in paragraph 5 (c) of Defendant's Motion is denied and is a distortion of the statements made under oath by Defendant at trial.

The statement contained in paragraph 5(c) of Plaintiff's Motion regarding a recently left message on Plaintiff's telephone answering machine, calling Plaintiff's wife plain and uncouth has already been responded to. The statement that the children could be heard protesting in the background is confusing and disputed. The claim that Defendant has left insulting messages on Plaintiff's answering machine while the children could be heard protesting in the back ground is likewise disputed and denied. Defendant can only assume that Plaintiff is referring to the usual

background noise of children who are playing and some times arguing or acting as children usually do. Defendant often has to shut her office door when making phone calls because of the noise generated by the children when playing or engaging in other activities. Defendant can only assume that Plaintiff is referring to one situation over souvenir toiletry bags given to the girls during one of Plaintiff's periods of visitation. Defendant called the Plaintiff to thank him for the children's gifts and in doing so stated that she wanted to thank him for the girls toiletry bags, at which time the youngest child commented "oh mamma," thinking that she had said toilet as a bad word, which was not the case at all.

(d) The statement that Defendant has taken the minor child, Kira, to counseling sessions is true. That these have been over Kira's objection is disputed and denied. Defendant has taken Kira to counseling because she has been showing signs of depression, sadness and confusion related to the divorce and her father's recent marriage. The therapist has informed Defendant that this is a usual reaction in situations where there is divorce and a quick marriage by one spouse. Each time that Kira goes to therapy, the therapist states, reminds her and reaffirms that she does not have to be in therapy or sit through any of the sessions if she does not want to. That he does not want her to feel that she is being forced to sit through sessions. Kira is beginning to

build a rapport with the therapist and it appears that the Plaintiff is trying to sabotage Defendant's efforts to deal with the child's depression, sadness and confusion brought on by the divorce and Plaintiff's recent marriage in that he has argued with Defendant over the expense of therapy and has told Defendant he does not believe in it. Defendant is of the opinion that the concerns of the Plaintiff are more financial rather than what is in the best interest of the minor child.

(e) Defendant denies the statements of Plaintiff that she threatened to cut off his visitation rights. Defendant has never threatened to do so. Defendant told the Plaintiff that he should not have the children and could not have the children over night when he is in the presence of his girlfriend, Lee, to whom he was not married. That she deemed this to be immoral and not in the best interest of the minor children. Defendant suggested that Plaintiff bring the children home Saturday night and then pick them up on Sunday mornings if he wanted to spend Saturday nights with his girlfriend in her home. His usual weekend visits with the children are Saturday at 9:00 A.M. to Sunday, 3:00 P.M. Defendant has requested often that Plaintiff take the children for a longer period of time to which his response was "these are only guidelines - I don't have to take the kids on Fridays and later on Sunday, if I don't want to - I have

errands to run and things to do." This is clearly an example that Plaintiff is more concerned about his own interest, rather than the best interest and welfare of the minor children.

(f) The statement of Plaintiff that Defendant would not allow visitation if he and his wife discuss visitation or custody with the children is a mis-statement of the facts and circumstances and therefore denied as untrue. Defendant asked Plaintiff (Marcus) and his wife to not discuss custody issues with Kira, due to the fact it was confusing and upsetting to her. Defendant did state to Plaintiff that if Plaintiff and his wife continued to discuss custody issues with Kira, she would have to contact her lawyer and request that a Restraining Order be issued, restraining the Plaintiff and his wife from discussing custody matters and other divorce issues with the children. Also, the fact that Plaintiff's wife, Lee, had demanded Erika (age 5) to call Lee "mom" which confused and traumatized her to the point of tears.

(g) The statements of Plaintiff in paragraph 5(g) of his Motion are disputed and denied. Some time last summer, after Defendant had visited her family in Denver, Colorado, with the minor children, the subject came up on inquiry of the children. The children asked Defendant if she intended to move to Colorado. Defendant responded that she thought it would be nice after she graduated and had obtained

her masters and teaching certificate because jobs for teaching in Utah were scarce. Defendant denies that she ever stated that she would move to Colorado so that she could have the children all to herself. Defendant does not recall the subject coming up or being discussed since last summer. The fact remains that the children have grandparents and many loving aunts, uncles and cousins in Denver which they know, love and enjoy visiting..

(h) The statements of Plaintiff in subparagraph 5(h) of his Motion that Defendant has acted in a manner to intentionally upset the minor children when he picks them up for scheduled visitation is a total mis-statement, is false and denied. Defendant would never try to intentionally upset her own children.

(i) The statements of Plaintiff in paragraph 5(i) of his Motion that Defendant left messages on Plaintiff's answering machine, insulting and demeaning Plaintiff's wife is denied and untrue. If Plaintiff is referring to Defendant repeating the statement made by Roz to Defendant, this was only a comment to Plaintiff regarding such statement and how other people, who knew Lee, his wife, perceived her. Defendant did leave a request and warning on Plaintiff's answering machine to the effect that he and his wife were not to talk to Kira about custody and to discontinue upsetting and traumatizing the children by forcing Erika to call Lee

mom. That if the Plaintiff and his wife persisted in this course of conduct, Defendant would have no alternative but to contact her attorney in an effort to seek a Restraining Order, as stated above.

7. The statements of Plaintiff in paragraph 6 of his Motion are disputed and denied in that they are without fact, merit or basis. The upset and trauma the children have experienced is a direct result of Plaintiff and his wife discussing the issues of custody with the children and forcing the children to do things against their will.

8. Defendant denies and disputes all of the statements and allegations of Plaintiff in paragraphs 7, 8 and 9 of his Motion on the basis of hearsay and supposition on the part of Plaintiff. Defendant is unable to admit or deny what Plaintiff believes or does not believe. However, the statements of Plaintiff, based on his belief, are without factual basis or merit.

When the children return home from visits with their father and his new wife, they are generally irritable and at times moody. The children have stated they do not like sharing their father with Lee, his wife, all the time. The youngest child came home crying and upset from one of the latest visits with her father because he and his wife were trying to force her to eat everything on her plate and she wasn't hungry. The children have informed Defendant that on weekend visits that they have had so far, they are left to play with the children across the street most of the afternoon.

Plaintiff's new wife, Lee, has never been married before, has never had children of her own and apparently has little or no parenting skills, evidenced by her attempts to force the youngest child to eat when she is not hungry. The children have related to Defendant that Lee, Plaintiff's wife, does not like the word "step-mom" and has forced the children to call her "mom." Defendant is informed that Plaintiff's wife does not approve of the clothing the children wear. It is not good enough and not presentable to her friends. The last weekend visitation, April 25,1992, Plaintiff's wife took the children to Nordstrom's and bought them new clothing and then took them and introduced

them to her friends as "her children" when in fact they are not her children. The clothing she purchased for Erika was too tight. When Erika returned home, she complained about her pants hurting her and started to cry. When her pants were removed, there were red rings around her waist, evidencing that the clothing was the wrong size and her pants had been too tight, causing her discomfort and pain. Also, on the last weekend visitation, April 25, 1992, Defendant contacted Plaintiff by phone and informed him that she would drive by and pick up the children Sunday afternoon at the time he had indicated he would return the children in anticipation of her running some errands. Plaintiff refused, stating he did not want Defendant to come to the home of his present wife because he was afraid there might be a confrontation. Defendant stated she did not feel this would occur in that there had been a smooth

exchange of the children on Friday afternoon with his wife when the children were picked up. Defendant then suggested that she remain in the car and Plaintiff bring the children out to the car. Plaintiff again refused, stating he did not want to do it that way. It was then suggested that the parties meet on mutual ground, at Mervyn's at 4:30 P.M. Plaintiff agreed. Defendant stated to Plaintiff, "you are still having a power struggle with me. You are just going to have to get an emotional divorce, not just a physical divorce." Defendant regarded this, as well as his Motion, to be a continuation of Plaintiff's power struggle against Defendant in that he continues to try and control and dominate Defendant through the children, via visitation, payment of alimony and the children's school expenses.

9. Defendant questions the sincerity of Plaintiff in entering into his recent marriage. Plaintiff told Defendant, in the presence of Kira's therapist, just before he entered into marriage, that he did not want to get married. He wanted Defendant to sign a statement that the children could visit with him over night in the presence of his girlfriend, without the benefit of marriage and requested that the therapist be a witness to such statement. Defendant indicated that the situation he wanted to create and place the children in, in her opinion was immoral, not in the best interest of the minor children, and contrary to their religious training and principals. Plaintiff became angry. At that time Defendant told Plaintiff that he should get married if he wanted to

visit with the children on an overnight basis in the presence of his girlfriend, who would then be his wife. In a matter of days, the Plaintiff remarried.

Plaintiff told Defendant on another occasion, that he did not desire to marry again, he was only doing so because he could not afford to pay rent for a separate apartment and because Defendant would not let him take the children over night with an unmarried woman, his girlfriend, in her house, since it would conflict with the morals and values of the children that their Catholic upbringing had taught and was teaching them, which Defendant has tried to foster and instill in them.

10. Despite all of the stress that has occurred the past winter and spring, related to the divorce, Defendant has maintained an over all 3.8 grade average while attending the University and was accepted into the School of Education in an extremely competitive field of applications (See attachments hereto).

11. Contrary to the statements of Plaintiff, based on his beliefs, Kira's therapist has related to Defendant that Kira seems like a very mature girl and other than some depression, characterized by crying, and confusion because of the problems associated with the divorce, Kira is alright. Erika, the youngest, is in kindergarten, knows how to read and do simple math problems. Neither child has ever stated to Defendant that they would like to see their father more often.

12. It has been necessary for the Defendant to incur

additional cost and expense for attorney's fees in connection with this Motion. It is appropriate that the Plaintiff be required to pay Defendant's attorney's fees and costs.

WHEREFORE, Based upon this Reply, Defendant prays that the Motion of Plaintiff be dismissed and denied and that she be awarded her attorney's fees and such other and further relief as the Court deems proper.

DATED this 5th day of May, 1992.

E. H. FANKHAUSER
Attorney for Defendant

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

Personally appeared before me, MARY E. RANDOLPH, who acknowledged to me that she is the Defendant named in the foregoing action. That she has read the foregoing Reply to Plaintiff's Motion and the matters stated therein are true to her own knowledge, except as to matters stated on information and belief and as to such matters she believes them to be true.

Mary E. Randolph
MARY E. RANDOLPH, Defendant

Subscribed and sworn to before me this 5 day of May, 1992.

NOTARY PUBLIC
My Commission Expires May 11, 1992
LOU JEANNE LEFLER
243 East 400 So., Suite 200
Salt Lake City, UT 84111
STATE OF UTAH

Lou Jeanne Lefler
NOTARY PUBLIC
Residing in Salt Lake County, Utah
My Commission Expires: 5/11/92

MAILING CERTIFICATE

I certify a true and correct copy of the foregoing was mailed to Kellie F. Williams, Attorney for Plaintiff, 310 South Main Street, Suite 1400, Salt Lake City, Utah 84101 on this 5th day of May, 1992.

THE UNIVERSITY OF UTAH

January 7, 1992

Education Advising Center
226 Milton Bennion Hall
University of Utah

To the Admissions Committee:

As her professor in two fairly demanding courses in Research Methods (Winter, 1991) and Community Psychology (Spring, 1991), I highly recommend Ms. **Mary E. Randolph** for admission to the program in elementary teacher education.

The methods course took a generalist and practical approach to the conduct and consumption of social science research. Since I am an applied research psychologist, most of the illustrations of research design were relevant to educational studies (program evaluation, need assessment, survey, consultation, etc.). The content of the community psychology course is even more relevant to a degree in education (including school-based prevention programming and community mental health, stress, coping and social support, theories of applied social ecology, self help, citizen participation and empowerment, community intervention, etc.).

Mary received received an A- in Research Methods. The centerpiece of the course requirements was the planning and completion of a community-based empirical research project in each lab. Mary worked on a valuable and well-researched project in conjunction with the Salt Lake Community Services Council (CSC) evaluating the Salt Lake Food Bank's free food distribution program. Mary was primarily responsible for conducting the pilot survey of clients at a food pantry site and for helping to develop the final questionnaire for the project. The report from this project was used and greatly appreciated by the CSC.

In the community psychology course, Mary received a strong A grade. This course involved an even more ambitious class project: a community needs assessment, in which Mary interviewed residents in a low-income neighborhood and wrote a section of the final report. She received an A for her participation in the project. This project was so successful that it spun off an on-going student volunteer service project in that same community to follow-up on the needs that were identified.

She received a perfect (extremely rare) score on her final essay exam and an almost perfect score on a critical research article review assignment.

Finally, on a more personal plane, during the time that Mary was taking these two courses she was experiencing a tremendous amount of family-related stress in her life. She nevertheless responded with a conscientious and diligent commitment to scholastic achievement and to teaching and helping children.

Again, given her ability to adapt with a positive, good natured personality to the difficult and diverse requirements of my courses, not to mention the course of life, I recommend Ms. Randolph highly.

Douglas D. Perkins, Ph.D.
Assistant Professor
Family and Consumer Studies

THE UNIVERSITY OF UTAH

February 20, 1992

Mary Randolph
1156 So. Foothill #135
SLC, UT 84102

Dear Mary,

Congratulations on your admission to the Elementary Teacher Education Program!

Over the next year, you will be intensely involved in learning to become a teacher. Our hope is that you'll develop an in-depth understanding of schooling, teaching, and learning essential to functioning as a professional educator.

To provide a system of support while enrolled, students take the professional core courses as members of a cohort group. The cohort organization has been adopted to encourage peer support and criticism, enhance growth, and provide for continuous evaluation and feedback. It is our belief that collaborative work like this will carry over into the schools.

Because space in each cohort is limited, you must make arrangements to meet with the Education Advisor. When you come in, you'll fill-out a program planning sheet and discuss which cohort you'll be entering. Please contact the Education Advising Center (226 MBH, 581-7789) to set-up an appointment.

As an admitted student, you're required to maintain certain standards. One of these is that your cumulative g.p.a. be no lower than 2.7. Additionally, you must obtain a grade of "C" or better in your education coursework. For a full description of departmental policies on retention, refer to "Retention Policies and Procedures" (available from the EAC).

If I can be of assistance to you, please let me know. I wish you much success in the program.

Sincerely,

Andrew Gitlin
sgn

Andrew Gitlin
Director, Teacher Certification Programs
Department of Educational Studies

AG/sg
xc: student file

UNIVERSITY OF UTAH CHILD AND FAMILY DEVELOPMENT CENTER

COMPETENCY RATING FORM

'or: Mary Randolph

)ritten by: Jenefer Rawley

)ate: Spring Quarter 1991

1 = excellent
5 = poor

A

PERSONAL QUALITIES:	1	2	3	4	5
1. General Appearance	☒	☐	☐	☐	☐
2. Self-confidence	☒	☐	☐	☐	☐
3. Punctuality	☒	☐	☐	☐	☐
4. Cooperation with staff	☒	☐	☐	☐	☐
5. Seeks assessment of self	☒	☐	☐	☐	☐
6. Creative model for children	☒	☐	☐	☐	☐
. Functions independently	☒	☐	☐	☐	☐
8. Attitude					
a. Greets or acknowledges the presence of children upon arrival	☒	☐	☐	☐	☐
b. Shows friendliness and affection towards children	☒	☐	☐	☐	☐
c. Engages in one to one conversations with children	☒	☐	☐	☐	☐
d. Shows pleasure/enjoyment/humor/playfulness by laughing or smiling when interfacing with children	☒	☐	☐	☐	☐
e. Speaks with a pleasant, distinct well-modulated voice	☒	☐	☐	☐	☐
9. Familiarity with facility routines					
a. Looks at written plans and/or consulted with other staff about schedule and/or procedure	☒	☐	☐	☐	☐
b. Appears to be aware of the schedule	☒	☐	☐	☐	☐

)MMENTS:

Mary puts alot of effort into everything

	1	2	3	4	5
Ability to help child interpret, verbalize and deal with emotions					
a. Allowed or encouraged children to help peers or help with routine tasks	☒	☐	☐	☐	☐
b. Thanks children for helping or being thoughtful	☒	☐	☐	☐	☐
c. Encourages children to take turns or share	☒	☐	☐	☐	☐
d. Praises/acknowledges children for taking turns or sharing	☒	☐	☐	☐	☐
e. Gives children the time to work out problems	☒	☐	☐	☐	☐
f. Models appropriate ways to solve interpersonal problems	☒	☐	☐	☐	☐
g. Encourages children to verbally express needs and/or feelings to others	☒	☐	☐	☐	☐
h. Encourages children to listen to one another	☒	☐	☐	☐	☐
i. Attempts to help peers understand each other intentions	☒	☐	☐	☐	☐
Ability to use appropriate guidance techniques					
a. Arranges environment to avoid problems	☒	☐	☐	☐	☐
b. Gives directions or sets limits positively	☐	☒	☐	☐	☐
c. Gives choices	☒	☐	☐	☐	☐
Ability to assess children in areas of creativity and talent	☒	☐	☐	☐	☐

OMMENTS:
Mary needs to practice proper guidance techniques and stop and think when she verbalizes them to the children. The children are sometimes uncertain of her meaning.

EACHER EFFECTIVENESS:

valuation of Student's Planned Projects

1.	Were all assigned projects completed:	Yes X No ___
2.	Were plans for assignments handed in on time?	Yes X No ___
3.	Was planning for each project adequate?	Yes X No ___
4.	Were projects appropriate for group?	Yes X No ___
5.	Was student able to hold children's interest?	Yes X No ___
6.	Was student creative in presentation and/or visual aids developed?	Yes X No ___
7.	Was student able to relate projects to individual children?	Yes X No ___
8.	Was student able to adjust to unforeseen incidents?	Yes X No ___

)RKING WITH CHILDREN:

	1	2	3	4	5
. Ability to accept and work with individuals	☒	☐	☐	☐	☐
. Ability to work with small groups	☒	☐	☐	☐	☐
. Ability to work with large groups	☐	☒	☐	☐	☐
. Classroom management skills					
a. Sets limits clearly and follows through	☐	☒	☐	☐	☐
b. Redirects	☒	☐	☐	☐	☐
c. Encourages independence and self-help skills	☒	☐	☐	☐	☐
d. Is usually positioned to be able to see most of the children at one time	☒	☐	☐	☐	☐
e. Often visually scans the entire area	☒	☐	☐	☐	☐
f. Prevents problems from occurring	☒	☐	☐	☐	☐
g. Responds quickly when misbehavior or problems occur	☒	☐	☐	☐	☐
Ability to relate to children					
a. Non-verbal skills					
1) Makes eye contact with children	☒	☐	☐	☐	☐
2) Matches nonverbal behavior with verbal behavior	☒	☐	☐	☐	☐
3) Remains calm and reasonable when setting limits or disciplining	☒	☐	☐	☐	☐
b. Verbal skills					
1) Encourages language use	☒	☐	☐	☐	☐
2) Uses vocabulary appropriate to the developmental level of the children	☐	☒	☐	☐	☐
3) Introduces new vocabulary in conversations with children	☒	☐	☐	☐	☐
4) Speaks with correct grammar	☒	☐	☐	☐	☐

000193

	1	2	3	4	5
9. Ability to implement learning					
a. Adaptability in curriculum	☒	☐	☐	☐	☐
b. Permits exploration	☒	☐	☐	☐	☐
c. Stimulates curiosity and creativity	☒	☐	☐	☐	☐
1) Asks open-ended questions	☒	☐	☐	☐	☐
2) Encourages pretend play and imagination	☒	☐	☐	☐	☐
10. Ability to relate to parents	☐	☒	☐	☐	☐
11. Skill in understanding procedures and policies	☐	☐	☒	☐	☐
12. Ability to meet individual needs and differences	☒	☐	☐	☐	☐
13. Willingness to participate in pre- and post-conference discussion	☒	☐	☐	☐	☐
14. Cooperation in helping other students with their activities	☐	☐	☒	☐	☐

COMMENTS:

Mary has improved in many ways since she began working in the lab. She always puts forth extra effort. Her learning activities are some of the best I have ever seen. She does need to be careful about communic guidance techniques to the children. (see comment on other page). Also, she is very good in evaluating the negatives in the performance of co-workers, but she often forgets to verbalize the positives. Both are important. Overall, she was a good teacher and did a very good job.

000199