2003

Blain v. Blain : Brief of Appellee

Utah Court of Appeals

Randy S. Ludlow; attorney for appellant.
Richard S. Nemelka; Stephen R. Nemelka; attorneys for appellee.

IN THE UTAH COURT OF APPEALS

JULIE D. BLAIN (HORROCKS),	:	
	:	
Petitioner/Appellee,	:	
	:	
vs.	:	
	:	
DENNIS BLAIN,	:	**Civil No.** 20030864
	:	
Respondent/Appellant.	:	
	:	

BRIEF OF THE APPELLEE

AN APPEAL FROM THE THIRD DISTRICT COURT SALT LAKE COUNTY, STATE OF UTAH THE HONORABLE WILLIAM BOHLING PRESDING

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Attorneys for the Petitioner/Appellee

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JURISDICTION

This Court has jurisdiction over this Appeal pursuant to, Utah Code Ann. §78-2A-3(2)(h) amended; and Rules 3 and 4, Utah Rules of Appellate Procedure.

RESTATEMENT OF AND OBJECTIONS TO THE ISSUES PRESENTED BY APPELLANT

A. Should the child support have been modified pursuant to each child reaching the age of majority.

1. **Standard of Review**

Questions of law which the court reviews for correctness with out deference to the District Court. *Brinkerhoff v. Brinkerhoff*, 945 P.2d 113 (Utah Ct. App. 1997). *Ball v. Peterson*, 912 P.2d 1006 (Utah Ct. App. 1996).

Objections:

Appellee objects to and disagrees with both the issue above presented by the Appellant and the standard of review under which the Court should consider the issue. Appellee sets forth this position in the argument section of this brief below.

B. Did the trial court act correctly allowing evidence of an alleged agreement when there were no pleadings filed by the Petitioner alleging any affirmative defenses as required pursuant to Rule 8(c) of the Utah Rules of Civil Procedure.

1. **Standard of Review**

Correction of error standard. Question of law which the court reviews without deference to the District Court. *State v. Leyva*, 951 P.2d 738 (Ut. 1997).

Objections:

Appellee objects to and disagrees with both the issue above presented by the Appellant and the standard of review under which the Court should consider the issue. Appellee sets forth this position in the argument section of this brief below.

C. Should the court have awarded the respondent the child for all tax purposes.

1. **Standard of Review**

Abuse of Discretion. *Hill v. Hill*, 841 P.2d 722 (Ut. Ct. App. 1992). Failure to make findings, is itself an abuse of discretion. *Jefferies v. Jefferies*, 752 P.2d 909 (Ut. Ct. App. 1988).

Objections:

Appellee objects to the above issue as one that was not properly before the trial court and thus incapable of an abuse of discretion. Appelle sets forth the basis for this position in the argument section of this brief below.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

A. Constitutional Provisions

There are no Constitutional provisions that would be or are applicable in this matter.

B. Statutes

Utah Code Ann. §78-45-7.10 provides as follows:

(1) When a child becomes 18 years of age, or has graduated from high school during the child's normal and expected year of graduation, whichever occurs later, the base child support award is automatically adjusted to reflect the base combined child support obligation shown in the table for the remaining number of children due child support, unless otherwise provided in the child support order.

(2) The award may not be reduced by a per child amount derived from the base child support award originally ordered.

(3) If the incomes of the parties are not specified in the last order or the worksheets, the information regarding the incomes is not consistent, or the order deviates from the guidelines, automatic adjustment of the order does not apply and the order will continue until modified by the issuing tribunal. If the order is deviated and the parties subsequently obtain a judicial order that adjusts the support back to the date of the emancipation of the child, the Office of Recovery Services may not be required to repay any differences in the support collected during the interim.

Utah Code Annotated §78-45-7.21 provides:

(1) No presumption exists as to which parent should be awarded the right to claim a child or children as exemptions for federal and state income tax purposes. Unless the parties otherwise stipulate in writing, the court or administrative agency shall award in any final order the exemption on a case-by-case basis.

(2) In awarding the exemption, the court or administrative agency shall consider:

(a) as the primary factor, the relative contribution of each parent to the cost of raising the child; and

(b) among other factors, the relative tax benefit to each parent.

(3) Notwithstanding Subsection (2), the court or administrative agency may not award any exemption to the noncustodial parent if that parent is not current in his child support obligation, in which case the court or administrative agency may award an exemption to the custodial parent.

(4) An exemption may not be awarded to a parent unless the award will result in a tax benefit to that parent.

C. Rules

Appellee rejects the Appellant's position that Rule 8 of the Utah Rules of Civil Procedure applies in this matter, so she has not set forth herein any applicable rules.

STATEMENT OF ADDITIONAL FACTS

Appellee herein sets forth relevant additional facts to supplement that which has previously submitted by the Appellant in his brief. Appellee concedes also that the facts set forth in the Appellant's "Relevant Facts" section of his brief are incorporated herein so far as they speak specifically to those portions of the record that accurately reflect the same.

In supplement thereof, the Appellee states and sets forth herein the specific findings of the Court as follows:

1. "That paragraph 5 of the Amended Order on Stipulation dated the March 20, 1998 is ambiguous and it was necessary for the Court to receive extrinsic evidence in regard to the intent of the parties relating to the payment of $831 per month as child support." (R738 at ¶1)

2. "At the time the Stipulation of the parties was entered on February 2, 1998 from which the Amended Order on Stipulation was drafted, the Defendant was indebted to the Plaintiff for child support and alimony arrears in the sum of $4,670 under the Supplemental Decree of Divorce and an additional $2m078 in child support pursuant to other orders of the Court. Further, the Petitioner had obtained an Order on Order to Show Cause dated the 14th of November, 1997 wherein Petitioner was awarded the $35,000 of Respondent's 401K for Respondent's failure to comply with the Orders of the Court in regard to paying the second mortgage of $390 per month with the issue of taxes and penalties on the 401K to be reserved until the money was withdrawn. Petitioner also had additional judgments in the Order on Order to Show Cause dated the 14th of

November, 1997 for the sum of $420.47 for medical expenses, for over payment of insurance premiums in the sum of $111.30 and $750 for attorney's fees." (R738 at ¶2).

3. "The Petitioner testified that it was her understanding that the intent of the language of paragraph 5 of the Amended Order on Stipulation was to have the monthly child support amount of $831 per month continue on a monthly basis until the youngest child of the parties turned 18 or her normal class graduated from high school, whichever occurs last. She was willing to agree to the same and to waive her claims for the aforementioned arrearages and judgments in consideration for receiving the $831 each month. Petitioner also understood that the monthly amount $831 per month would not be decreased when two of the children turned 18 or their normal class graduated from high school and would only terminate when the youngest child had turned 18 or her normal class graduated from high school." (R738-739 at ¶3).

4. "The Court further finds that at the time the Stipulation was entered into by and between the parties in February of 1998 that the Respondent had not paid to the Petitioner the monthly payment of $390 on the second mortgage, as was ordered in the Supplemental Decree of Divorce. The Court finds, based upon the foregoing, that the Petitioner's understanding in regard to the intent of the language contained in paragraph 5 of the Amended Order on Stipulation dated March 20, 1998 is correct and that she is entitled to receive the sum of $831 per month until the youngest child of the parties reaches 18 or her normal class graduates from high school." (R739 at ¶4).

5. "The Court further finds that the Amended Order on Stipulation dated March 20, 1998 is a deviation from the base combined child support obligation table contained in Utah Code §78-45-7.14 and that automatic adjustment statute contained in Utah Codes §78-45-7.10 is not applicable to the facts of this case." (R739 at ¶5)

6. "Both parties have incurred attorneys fees and neither party's claims or position are asserted in bad faith and, therefore, it is reasonable that both parties assume and pay their own attorneys fees and costs incurred herein." (R739 at ¶6)

7. "The Respondent did not over pay his child support obligations and, therefore, is not entitled to any reimbursement in regard to any over payment." (R739 at ¶7).

SUMMARY OF THE ARGUMENT

A. Under Utah Code Ann. §78-45-7.10(3), "If the incomes of the parties are not specified in the last order or the worksheets, the information regarding the incomes is not consistent, or the order deviates from the guidelines, automatic adjustment of the order does not apply and the order will continue until modified by the issuing tribunal." The argument for the Appellee on the first issue presented by the Appellant need not address whether child support should have been modified pursuant to each child reaching majority because the Court did not rule that the Order contemplated that even occurring. Instead the Appellee argues herein that the Court was correct in finding that ¶5 of the Amended Order on Stipulation (R506 at ¶5) was ambiguous, needed extrinsic evidence and that it was a deviated order. As the Court has clear and unambiguous statutory authority to rule, and did in fact rule, that child support did not automatically reduce when each child reaches majority in this case, the Appellee argues that the Court did not error under any provision within UCA §78-45-7.10(3) and that the record supports such a finding.

B. Appellant sets forth in his second presented issue that the Court erred in allowing evidence of an agreement when there were no pleadings filed by the Appellee setting forth a specific affirmative defense under Rule 8 of the Utah Rules of Civil Procedure. Appellee argues

herein that she was not required to set forth an affirmative defense on this issue and the Appellant had full knowledge of the Appellees position per his own Verified Petition for Modification of Decree of Divorce (R594-605) and the Appellee's Answer to Verified Petition for Modification (R623-624). The Court therefore, correctly allowed evidence on the agreement first because the agreement need not be affirmatively defended by the Appellee and; second, because the Court found *sua sponte* that ¶5 of the Amended Order on Stipulation (R506 at ¶5) was ambiguous and needed extrinsic evidence to show intent and understanding. (R608 at pg. 38).

C. In his third presented issue, the Appellant asks this Court to consider whether it was an abuse of discretion for the trial court to award the Petitioner the child for all tax purposes. The Appellee, notwithstanding the Appellants argument proposed authority, sets forth that the Court did not abuse discretion in allowing the Petitioner to take the child for tax purposes because above all, that issue was not properly before it and it therefore had no discretion to abuse nor findings to make.

D. Lastly, Appellant takes issue to the trial court's failure to award attorney's fees and believes the Respondent should be awarded his attorney's fees. Foremost, the Appellant will argue that if anyone should be provided fees it is the Appellee as she is the party who prevailed in the trial court and an award for attorney's fees was contemplated within the Amended Order on Stipulation (R508 at ¶12).

ARGUMENT

A. NO ERROR OF LAW HAS OCCURRED ON THE ISSUE OF CHILD SUPPORT MODIFICATION AS THE COURT PROPERLY FOUND THE AMENDED ORDER ON STIPULATION WAS AMBIGUOUS AND TOOK EXTRINSIC EVIDENCE TO FIND THAT CHILD SUPPORT WAS NOT MODIFIABLE PER THE PARTIES STIPULATION.

Appellant is essentially arguing that the Court erred by not modifying support pursuant to Utah Code and the *Johansen v. Johansen* case. First, and relevant case law clearly support the court's decision to allow parole evidence on the agreement and interpret the stipulation between the parties. Second, *Johansen v. Johansen* is easily distinguishable in this matter as that case is one regarding the "automatically adjusted" section of Utah Code §78-45-7.10 and the case at bar relates specifically to the Court finding an ambiguous provision within a stipulated order, allowing testimony to clarify and finding that the order for support deviates from the guidelines and does not therefore fall within the "automatic" provisions of the code.

Utah Code §78-45-7.10 states in whole that:

(1) When a child becomes 18 years of age, or has graduated from high school during the child's normal and expected year of graduation, whichever occurs later, the base child support award is automatically adjusted to reflect the base combined child support obligation shown in the table for the remaining number of children due child support, unless otherwise provided in the child support order.

(2) The award may not be reduced by a per child amount derived from the base child support award originally ordered.

(3) If the incomes of the parties are not specified in the last order or the worksheets, the information regarding the incomes is not consistent, or the order deviates from the guidelines, automatic adjustment of the order does not apply and the order will continue until modified by the issuing tribunal. If the order is deviated and the parties subsequently obtain a judicial order that adjusts the support back to the date of the emancipation of the child, the Office of Recovery Services may not be required to repay any differences in the support collected during the interim.

As stated above, this issue is not about erring in the application of this provision. Instead, the Court found *sua sponte* that ¶5 of the Amended Order on Stipulation was ambiguous as it related to the Appellee's testimony (R807 at 36-37) regarding when child support would terminate or how long it would continue. The Court states in referring to ¶5, "At this point, as I read this thing, I think it's ambiguous." (R807 at 38) The Court further found that it could receive extrinsic evidence to determine what is the meaning of the language. (R807 at pgs. 38 and 99-100) The Court was accurate in its position. Since the Court was considering language in an Order that came pursuant to a Stipulation (R422), "a stipulation will be construed like other contracts," the parties' intentions must be determined solely from the language of the [stipulation] unless the language of the stipulation is ambiguous. *Patton v. Patton*, 2003 Ut App 184; (quoting *Yeargin, Inc. v. Auditing Division of the Utah State Tax Comm'n*, 2001 Ut 11, ¶ 39, 20 P.3d 287.) As such, "A contract is ambiguous only if the words...may be understood to reach two or more possible meanings...If the contract provisions above are ambiguous, then relevant extrinsic evidence, including parol evidence, can be admitted to determine the parties' intent." *Aspenwood v. C.A.T.*, 2003 Ut App 28, 73 P.3d 947, 954. Seemingly then, the Court in its own judgment opined that ¶5 was ambiguous and properly took extrinsic evidence to decipher the meaning.

Essentially, the Appellant is objecting to the interpretation of ¶5 that the Court reached, more so than he has any basis for the objection. The Court did not decide that an automatic reduction or any modification was proper. Instead, the Court heard extrinsic testimony from both parties on the meaning of ¶5 and found that the intent of the ¶5 was to grant to the Appellee a right to "receive the sum of $831 per month until the youngest child of the parties reaches 18 or her normal class graduates from high school." (R739 at ¶4). In reality this is the end of the discussion regarding the stipulated order because the remainder of the Court's findings as to child support are result oriented. To explain, once the Court found as it did, that the meaning of ¶5 was to entitle the Appellee to continuing and unmodified child support until the time the youngest child turns 18, the child support order deviated from the guidelines in amount and duration and fell into the exception of UCA 78-45-7.10(3) wherein a deviated order is not subject to automatic adjustment and outside the confines of and ruling set forth in *Johansen v. Johansen.* Conclusively then, the Appellant's issue as to the award of child support does not amount to an error at law based upon what the Court actually did, what it found and how it concluded which is obviously in striking contrast to what the Appellant would have apparently liked the Court to have done.

In addition, the Appellee sets forth here that the Court's decision to deviate from the guidelines and allow the support to continue beyond the eldest child turning 18 is entirely proper. "The courts can also enforce an agreement by the parties in a divorce action to continue support beyond that allowed by statutory law." *Johansen v. Johansen,* 2002 Ut App 75, 45 P.3d 520 ¶18. (citing also *Despain v. Despain*, 627 P.2d 526, 528 (Utah 1981) and *Balls v. Hackley*, 745 P.2d 836, 837-38 (Utah Ct. App. 1987) (affirming trial court's enforcement of parties' stipulation that child support would continue after eighteen years under specified circumstances.) Therefore, the Appellee prays that this court find that the Court acted properly and did not error or abuse its

discretion by finding the stipulated order ambiguous, taking extrinsic evidence, and finding that the child support deviated from the guidelines.

B. THE EXISTENCE AND UNDERSTANDING OF THE AGREEMENT THAT FORMED THE BASIS FOR THE AMENDED ORDER ON STIPULATION NEED NOT BE AFFIRMATIVELY DEFENDED AS IT DOES NOT QUALIFY AS AN AFFIRMATIVE DEFENSE AND WAS PROPERLY SET FORTH IN THE APPELLEE'S ANSWER AS A DENIAL.

Appellant claims that he was the victim of an "ambush" because he was not properly notified through an Affirmative Defense set forth in the Answer to Petition to Modify, that the Appellee understood that the agreement that formed the Amended Order on Stipulation allowed for child support to continue unmodified until the last child turned 18 in consideration for Appellee waiver and satisfaction of numerous claims R807 (44-50. "Unless a matter be affirmatively pleaded as a defense under rule 8(c), a defendant can merely deny the plaintiff's averments under rule 8 (b)." *Prince v. Bear River Mutual Insurance Co.*, 2002 UT 68, 56 P.3d 524, 534; citing *Jones, Waldo, Holbrook & McDonough v. Dawson*, 923 P.2d 1366, 1374 (Utah 1996). "The purpose of requiring a party to plead affirmative defenses under rule 8 (c) is to ensure that parties 'have adequate notice of the issues and facts in the case.'" *Prince v. Bear Mutual Insurance Co.* at 534 citing in part *Price –Orem Inv. Co. v. Rollins, Brown & Gunnell, Inc.*, 713 P.2d 55, 59 (Utah 1986). "In other words, if a defense directly assails or 'merely controverts [a] plaintiff's prima facie case,' it is not an affirmative defense and can be simply denied under rule 8 (b)." *Prince* at 534; citing *Jones, Waldo, Holbrook & McDonough*, 923 P.2d at 137.

In application here, the Appellee argues that she need not set forth the agreement as an affirmative defense and properly denied the same because it directly controverted the Appellant's Petition to Modify and did not fall outside those matters plead. Appellant's Verified Petition to Modify states in ¶3(b) that the supplemental decree does not clearly set forth that child support shall cease for each child. (See R595 ¶3(b)) In response, Appellee answered the Petition by stating in ¶1 of the Answer that any supplemental orders speak for themselves. (R623 at ¶1). An affirmative defense is not necessary in the Answer as the Appellee stated that documents speak for themselves and denied directly anything else contained in the allegations. In other words, at the time the answer was given until such time as the Court changed the meaning of the child support obligation, the Appellee admitted the document spoke for itself and that it stated that which she clearly understood to be that the child support would continue unabated to compensate her for waiving arrears.

Additionally, Appellee argues that the only defense available should be that of estopping the Appellant from claiming the Appellee failed to set forth a defense. As this Court can clearly find from the record (R807 at pgs. 38-46 and 81-84), the parties apparently interpreted the child support provision division and in accordance to their respective understandings of the agreement. These respective understandings were proper both at the time it was plead and answered. The decree in which Appellant was petitioning to modify was clear to both parties apparently. Just because they differed in interpretation did not mean that the matter fell outside the pleading. Appellee denied everything else and Appellant has no basis to say then or now that the document had only one possible interpretation. Certainly he knew that Appellee differed based upon her denial and even more so, based upon the fact that the Court had to rule upon the meaning and intent of the child support language. This issue is neither one of accord and satisfaction nor is it

one of estoppel or any other extrinsic defense. This issue is one of differing interpretations of language within a document that was properly set forth by the Appellant in his Petition and properly conceded to by the Appellee in her Answer.

C. IT WOULD BE IMPROPER FOR THE COURT TO ALLOW THE APPELLANT THE CHILD FOR TAX PURPOSES AS THAT ISSUE WAS NEVER PROPERLY BEFORE THE COURT AND WOULD BE A MODIFICATION OF A DECREE PREVIOUSLY AND SEPARATELY ENTERED BETWEEN THE PARTIES.

On or about the 2nd day of January, 1992, the Third Judicial District Court entered a Decree of Divorce between the Appellant and the Appellee, case number 914902600, of which is hereto attached as Exhibit "A" and incorporated herein by reference. Said Decree in paragraph 14 clearly states: "That plaintiff be and is hereby awarded the right to claim the parties' three minor children as dependents for income tax purposes." The Supplemental Decree of Divorce entered into between the parties in 1997 makes further reference to said 1992 Decree. Paragraph 1 of the 1997 Decree states "That all of the terms and provisions of the Decree of Divorce entered into by and between the parties by the Honorable Richard H. Moffat on approximately the 2nd of January, 1992 in the above-entitled Court in Civil No. 914902600 shall remain in full force and effect unless amended or modified by this Supplemental Decree of Divorce." (R209 at ¶1). Clearly, the Supplemental Decree states not only that the previous Decree shall remain in force but does not specifically incorporate anything from that Decree to the subsequent action. As such, the 1997 Supplemental Decree does not modify or change in any way the provision within the 1992 Decree whereby the Appellee was awarded the use of the minor children for tax purposes. Appellee therefore has a definitive right to claim the children that has not been relinquished or changed by Court Order. In fact, nothing is properly before the Court now that can modify the 1992 Decree.

True the Appellant sets forth in his Petition to Modify (R595 at ¶5) that he should be entitled to use the minor child for tax purposes, but the Appellant asked for something that should have been asked for in a different case. As such, the Court cannot rule upon the Appellant's request for the tax exemption as the Court has not been petitioned nor has a change of circumstances been alleged or shown within the action that first and still does grant the Appellee the right to claim the children as dependents for tax purposes.

Additionally, even if the Court were able to rule on the tax exemption issue, the same is not vested with the Appellant. Utah Code §78-45-7.21(1) states specifically, that "No presumption exists as to which parent should be awarded the right to claim a child or children as exemptions for federal and state income tax purposes. Unless the parties otherwise stipulate in writing, the court or administrative agency shall award in any final order the exemption on a case-by-case basis." There was in this case, testimony by the Appellee on the tax exemption issue. (R807 at pgs. 74-75). Appellee states in her testimony essentially that she still incurs an expense on behalf of the minor child and that the exemption will certainly result in a benefit for her. As such, notwithstanding the inability of the Court to rule on this issue or the changes in circumstance never set forth, evidence has been presented that validates the Appellee's claim for the exemption and in reality is proper here in consideration of the Utah Code above and the lack of presumption to award said exemptions to any one party.

D. IF ATTORNEY'S FEES ARE AWARDED APPELLEE SHOULD RECEIVE THE SAME.

As stated in the Amended Order on Stipulation (R508 at ¶12) the Court had the discretion to award attorney's fees to the prevailing party. The Appellee was the prevailing party in regard to the Appellant's Petitioner for Modification. Therefore, the Appellee should have been awarded

attorney's fees. However, the Court found that the Petition to Modify was not brought in bad faith and there was a legitimate dispute as to the interpretation of ¶5 of said order and therefore the Court ordered both parties to pay their own attorney's fees and costs incurred. Appellant's request for attorney's fees appears to be based upon assumption that the above Court should rule that Appellant should have prevailed at the trial in the lower Court. However, as stated, the Appellant did not prevail and therefore, no attorney's fees should be awarded since none were awarded to either party in the lower Court.

CONCLUSION

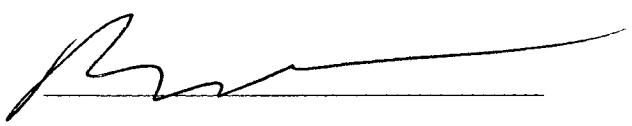
Based upon the foregoing and specifically based upon the clear support of the record, the Appellee respectfully requests that this Court find and rule that the Trial Court did not abuse its discretion or make any errors of law regarding the issues set forth above and that the Trial Court's decision in this matter be affirmed accordingly.

Respectfully submitted this the 28 day of June, 2000.

Richard S. Nemelka
Attorney for Petitioner/Appellee

CERTIFICATE OF SERVICE

I hereby certify that I served by United States Mail, postage prepaid, two copies of the foregoing Brief of the Appellee to Randy S. Ludlow, Attorney for the Respondent/Appellant, 185 South State Street, Suite 208, Salt Lake City, Utah 84111, this the 28 day of June, 2004.



ADDENDUM

EXHIBITS

A. Decree of Divorce entered January 2, 1992.

EXHIBIT A

JAN - 2 1992
Kathy Ajiotapas

RICHARD S. NEMELKA NO. 2396
ATTORNEY AT LAW
2046 EAST 4800 SOUTH
SUITE 103
SALT LAKE CITY, UTAH 84117
(801) 272-4244

Attorney for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT IN AND

FOR SALT LAKE COUNTY, STATE OF UTAH

2171035
1-7-92-822am.

JULIE D. BLAIN,	)	
	)	
Plaintiff,	)	DECREE OF DIVORCE
	)	
v.	)	
	)	
DENNIS D. BLAIN,	)	Civil No. 914902600 DA
	)	
Defendant.	)	Judge Richard H. Moffat
	)	

The above-entitled matter came on regularly for hearing before the Honorable Richard H. Moffat of the above-entitled Court on the 16th day of December, 1991 plaintiff being present and being represented by her attorney, Richard S. Nemelka, and defendant being present and being represented by his attorney, Cheryl Jolley, and a Stipulation having been read into the record and the parties having agreed to the same and the

defendant having agreed to have his Answer withdrawn and his default entered and the default of the defendant having been entered and evidence on part of the plaintiff having been introduced, the Court being fully advised in the premises and the Court having heretofore made and entered its Findings of Fact and Conclusions of Law; therefore, upon motion of Richard S. Nemelka, Attorney for Plaintiff

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That the bonds of matrimony heretofore and now existing between the plaintiff and defendant are hereby dissolved and the plaintiff is granted a decree of divorce from the defendant the same to become absolute and final upon the filing of the same with the Salt Lake County Clerk, State of Utah.

2. That plaintiff be and is hereby awarded the care, custody and control of the minor children of the parties, to-wit: Douglas, age 10; Christopher, age 7; and Chelsea, age 2. Defendant be and is hereby awarded reasonable rights of visitation as specified in the visitation schedule attached hereto as Exhibit "A" and incorporated herein by reference.

3. That plaintiff be and is hereby awarded and defendant be and is hereby ordered to pay child support in the sum of Five Hundred Eighty-Three Dollars ($583.00) per month for said minor children to begin in the month of December, 1991.

4. That defendant be and is hereby ordered to pay to the plaintiff one-half (1/2) of all child care costs incurred by the plaintiff

5. That plaintiff be and is hereby awarded permanent alimony in the sum of Three Hundred Dollars ($300.00) per month to begin in the month of December, 1991.

6. That the support and alimony payments shall be paid one-half (1/2) by the 5th and one-half (1/2) by the 20th of the month.

7. That the plaintiff be and is hereby awarded all of the parties' rights, title and interest in and to the home and residence located at 8657 Piper Lane, Sandy, Utah, and the defendant be and is hereby ordered to forthwith sign and execute a Quit-Claim Deed deeding to the plaintiff all of his rights, title and interest in and to said property.

8. That the defendant be and is hereby awarded all of the parties rights, title and interest in and to the defendant's 401 K retirement plan.

9. That each party be and is hereby awarded all of the personal property presently in that parties' possession except that the defendant be and is hereby awarded his power tools that are in the possession of the plaintiff.

10. That defendant be and is hereby ordered to assume and pay all the debts and obligations incurred during the marriage and indemnify the plaintiff and hold her harmless therefrom.

11. That the defendant be and is hereby ordered to maintain a policy of health, accident, hospitalization and dental insurance for the benefit of the parties' minor children and each party be and is hereby ordered to pay one-half (1/2) of all medical, dental, orthodontic, optical and therapeutic expenses incurred not covered by insurance.

12. That the defendant be and is hereby ordered to maintain his current life insurance and name the minor children as irrevocable beneficiaries thereon until such time that they reach the age of majority or emancipation, whichever occurs first.

13. That each party be and is hereby ordered to pay their own attorney's fees and costs.

14. That plaintiff be and is hereby awarded the right to claim the parties' three minor children as dependents for income tax purposes.

DATED this 2nd day of ~~December~~ January, 1992.

BY THE COURT:

JUDGE RICHARD H. MOFFAT

APPROVED AS TO FORM:

CHERYL JOLLEY

STATE OF UTAH
THIRD DISTRICT COURT
SALT LAKE