

1993

Walters v. Walters : Brief of Respondent

Utah Court of Appeals

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Robert L. Moody; Taylor, Moody & Thorne; Attorneys for Appellant.

Dana D. Burrows; Attorney for Respondant.

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UTAH COURT OF APPEALS
BRIEF

UTAH
F. COOK, JR.
KPU
CD
JAO

DOCKET NO. 930272 CA

IN THE COURT OF APPEALS
OF THE STATE OF UTAH

HELEN JAYNE WALTERS, :
Plaintiff/Respondent, :
vs. : Case No. 930272-CA
LEWIS MARK WALTERS, : Priority 15
Defendant/Appellant. :

BRIEF OF RESPONDENT

APPEAL FROM AN ORDER AMENDING DECREE OF DIVORCE
OF THE FOURTH JUDICIAL DISTRICT COURT,
JUDGE RAY M. HARDING, PRESIDING

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ATTORNEY FOR RESPONDENT

FILED

OCT 27 1993

COURT OF APPEALS

HELEN JAYNE WALTERS, :
Plaintiff/Respondent, :
vs. : Case No. 930272-CA
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ATTORNEYS FOR APPELLANT

ATTORNEY FOR RESPONDENT

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**IN THE COURT OF APPEALS
OF THE STATE OF UTAH**

HELEN JAYNE WALTERS,	:	
Plaintiff/Respondent,	:	
vs.	:	Case No. 930272-CA
LEWIS MARK WALTERS,	:	Priority 15
Defendant/Appellant.	:	

BRIEF OF RESPONDENT

JURISDICTION

The Court of Appeals has appellate jurisdiction over this domestic relations matter pursuant to Utah Code Ann. §78-2a-3(2)(i)(Supp. 1992).

**STATEMENT OF THE ISSUES AND
STANDARDS OF REVIEW**

I. The trial court did not err when it determined there were unique and/or exception circumstances which warranted the distribution of the Defendant's pre-marital property.

This question challenges the trial court's Findings of Fact. The applicable standard of review is a clearly erroneous standard. The appellate court may disturb the trial court's Findings of Fact only if such findings are clearly erroneous. Hagan v. Hagan, 810

P.2d 478, 481 (Utah App. 1991); Hinckley v. Hinckley, 815 P.2d 1352 (Utah App. 1991). The appellate court should also review the trial court's decision if in fact the appellate court makes a determination that the decision is clearly unjust and a clear abuse of discretion. Smith v. Smith, 751 P.2d 1149, 1151 (Utah App. 1988).

II. The trial court did not err when it did not apply partnership dissolution rules when it reallocated the Defendant's pre-marital property after determining that the parties had a partnership relationship prior to the solemnization of their marriage.

This question challenges the trial court's Findings of Fact. The applicable standard of review is a clearly erroneous standard. The appellate court may disturb the Findings of Fact only if such findings are clearly erroneous. Hagan v. Hagan, 810 P.2d 478, 481 (Utah App. 1991); Hinckley v. Hinckley, 815 P.2d 1352 (Utah App. 1991). The appellate court should also review the trial court's decision if in fact the appellate court makes a determination that the decision is clearly unjust and a clear abuse of discretion. Smith v. Smith, 751 P.2d 1149, 1151 (Utah App. 1988).

III. Respondent is entitled to an award of her reasonable attorney's fees and costs incurred in responding to Appellant's appeal?

The award of attorney's fees on appeal is based on the authority of Rule 33(a) of the Utah Rules of Appellate Procedure as a sanction for frivolous appeal.

DETERMINATIVE STATUTES AND LAW

The statutory law that is determinative to the issues presented in this brief are:

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

(2) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, and parties.

UTAH RULES OF CIVIL PROCEDURE, Rule 52. Findings by the court.

(a) **Effect.** In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58A; ... Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.

33(a) UTAH RULES OF APPELLATE PROCEDURE.

(a) **Damages for delay or frivolous appeal.** If the court determines that a motion made or an appeal taken under these rules is either frivolous or for delay, it shall award just damages and single or double costs, including reasonable attorney fees, to the prevailing party.

STATEMENT OF THE CASE

This matter comes before the appellate court for the second time. The trial court originally ruled that the parties had a marriage-like relationship on or about January 1, 1980 (R. 99, 103) (though the marriage was not solemnized until October 5, 1984) and distributed the property of the parties on the basis that they had a common law marriage pursuant to Utah Code Ann. §30-1-4.5. (R. 147). The Court of Appeals remanded to the trial court to properly categorize the parties' property as marital or pre-marital based on

the marriage date of October 5, 1984. (R. 210). The Court of Appeals then instructed the trial court to consider whether unique or exceptional circumstances existed meriting premarital property to be included in the marital estate.

On remand, the trial court determined that "unique circumstances" existed allowing the court to exercise its discretion to reallocate pre-marital property. (R. 231). In particular, the court determined that Plaintiff had made a substantial contribution to the growth of Defendant's separate assets. The Plaintiff helped arrange for and make considerable improvements to Defendant's realty on which her mobile home was placed as well as to another parcel that Defendant was purchasing at the time. Further, Defendant's realty was acquired and improved during the time of the marriage and prior to the marriage, during which times the parties were commingling their earnings and efforts, and as such the court found that said assets were accumulated or enhanced by the joint efforts of the parties. (R. 233). On such basis, the trial court ruled that Plaintiff was entitled to a reallocation of Defendant's pre-marital property. (R. 232).

There are principally three parcels of real property which are at issue: Parcel 1, located in a trailer park at 625 South 50 West, Pleasant Grove, Utah; Parcel 2, located in a trailer park at 640 South 50 West, Pleasant Grove, Utah; and Parcel 3, located at 6072 West 9600 North, Highland, Utah.

Parcel 1 was acquired by the Defendant on May 27, 1980.

Plaintiff and her friends performed substantial labor and improvements on the Parcel 1 as well as to the Plaintiff's 1974 72-foot Concord mobile home located thereon. Glenda Edwards observed Plaintiff using a roto-tiller and tractor to prepare the yard for sod, which roto-tiller and tractor was purchased by Plaintiff. (Tr. 10, 11). Leo Webber, a friend of Plaintiff, helped put in the driveway; laid brick around the skirting of the trailer; tore out the closet and relocated it in the trailer; and made numerous repairs, all at no charge. These services were performed as arranged by Plaintiff and assisted by Plaintiff. (Tr. 14, 15, 16). Another friend of Plaintiff, Lester Freeman, helped lay two sections of driveway (Tr. 22) which was accomplished in two pours with tools provided by Lester Freeman (Tr. 23). Another friend of Plaintiff, Janice Copes, observed Plaintiff doing yard work which included sod, flowers and trees on Parcel 1. (Tr. 26).

Plaintiff herself testified that she personally arranged and assisted with the following improvements on Parcel 1: sewer; water and gas lines; helped pour slab under trailer; poured driveway; assemble out buildings; level ground and put in grass. (Tr. 33). The improvements were arranged by Plaintiff with the labor being performed by Plaintiff's friends at no charge. (Tr. 34). The Plaintiff also assisted in making substantial improvements to her own 1974 72-foot Concord mobile home. The improvements to the trailer include the following: closet built in living room; sheet rocking and window change in living room; floor built up in back of living room; and bar put in living room. (Tr. 35). Plaintiff also

testified that the trailer would be severely damaged, especially in regards to the closet and sheet rocking, if it were moved from its present location. (Tr. 35).

Parcel 2 was acquired in 1985 after the parties were married. Plaintiff and her friends performed the following labor and improvements on Parcel 2: poured pad for mobile home (Tr. 16); poured driveway; and installed plumbing, water lines and gas lines. (Tr. 37). All of the work performed by Plaintiff and her friends was at no charge. (Tr. 17). Subsequent to the improvements set forth above, Defendant's 1975 70-foot Brighton mobile home was relocated on Parcel 2. Prior to relocation, said mobile home was used for storage purposes. (Tr. 37, 38). Prior to becoming habitable, Plaintiff cleaned out Defendant's trailer; painted inside of trailer; and put up siding and painted the siding. (Tr. 37).

Parcel 3 was purchased by Defendant in August of 1977 with a down payment of \$2,200 with annual payments toward the balance of \$5,800 in amounts of \$1,000 each. Defendant made the final payment for Parcel 3 in the amount of \$1,682.15 in 1984 or 1985. (Tr. 74, 75). Plaintiff and her friends contributed labor toward the following improvements on Parcel 3: cement for floor; laid pipe and concrete for reinforcing; poured concrete; finished concrete; and started building the structure. (Tr. 17). The labor performed by Plaintiff and her friends was at no cost to Defendant. The following services were also performed by Plaintiff in improving Parcel 3: backfilling and levelling; laying PVC pipe; mesh and

rebar; and organizing work crew to raise building. (Tr. 39).

The trial court found that Parcels 1 and 3 were Defendant's pre-marital property, whereas each of the parties' had a one-half interest in Parcel 2. The court then determined that based upon unique circumstances, the court would exercise its discretion to reallocate pre-marital property and as such the court awarded Parcel 1 to the Plaintiff and Parcels 2 and 3 to the Defendant.

On April 21, 1993, the Defendant filed his Notice of Appeal from the decision rendered by Judge Ray M. Harding.

SUMMARY OF THE ARGUMENT

There were unique and exceptional circumstances which warranted the trial court in reallocating the Defendant's pre-marital property. The facts and circumstances which the trial court listed were unique and in fact established that Plaintiff in this case clearly made a substantial contribution to the growth of Defendant's separate assets and that the assets were accumulated and/or enhanced by the joint efforts of the parties.

The circumstances considered by the court in determining whether or not unique and exceptional circumstances occurred are as follows: whether one spouse has made any contribution for the growth of the separate assets of the other spouse and whether the assets were accumulated or enhanced by the joint efforts of the parties; amount and kind of property to be divided; whether the property was acquired before or during the marriage; source of the property; health of the parties; the parties' standard of living; respective financial conditions; needs and earning capacity; the

duration of the marriage; the children of the marriage; the parties' ages at the time of marriage and at divorce; what the parties gave up by the marriage; and a necessary relationship that property division has with the amount of alimony and child support to be awarded; whether one spouse has made any contribution toward the growth of the separate assets of the other spouse and whether the assets were accumulated or enhanced by the joint efforts of the parties.

The trial court found that from January of 1980 until the time the parties were married, the nature of the parties' relationship for all intents and purposes was a partnership. Because Defendant's realty at issue was acquired and improved during the time in which the parties were commingling their earnings and efforts, the court found that such assets were accumulated or enhanced by the joint efforts of the parties. The source of the property was that of purchase by Defendant in each of the cases of the pre-marital property. However, Plaintiff was also a financial contributor to the relationship which allowed Defendant the ability to pool his resources and use for the purchase of said properties. Were it not for Plaintiff's help however, Defendant would have needed to use his resources in other manners and would not have been able to purchase said properties. The term "partnership" was used by the court to describe the parties' pre-marital relationship. The court is entitled to look at pre-marital and post-marital property in making a property distribution. The court then went on to say that during the time of the beginning of their

relationship up until the time of their separation subsequent to the ceremonial marriage, Plaintiff made substantial contributions toward the growth of the separate assets of Defendant, which assets were accumulated and enhanced by the joint efforts of the parties. Based upon Plaintiff's efforts of contributing toward Defendant's separate assets which were accumulated by the joint efforts of the parties, the court determined that Plaintiff was entitled to a distribution of the Defendant's pre-marital property. As such, partnership distribution rules are not dispositive and in fact the partnership relationship was only considered in the larger context of the contributions made by Plaintiff toward the separate assets of Defendant before and after the ceremonial marriage.

Plaintiff is entitled to an award of her reasonable attorney's fees incurred to respond to Appellant's appeal by virtue of Rule 33(a) of the Utah Rules of Appellate Procedure in that the court has established by its specific findings that Plaintiff has made substantial contributions toward the growth of the separate assets of Defendant which were accumulated or enhanced by the joint efforts of the parties. As such, there has been no abuse of discretion on the part of the trial court and Defendant's appeal is frivolous.

ARGUMENT

POINT I

THERE WERE UNIQUE AND/OR EXCEPTIONAL CIRCUMSTANCES WHICH WARRANTED THE DISTRIBUTION OF THE DEFENDANT'S PRE-MARITAL PROPERTY.

The trial court acknowledged the general rule cited in Haumont

v. Haumont, 793 P.2d 421 (Utah Ct.App. 1990) which states that typically, each party is to "retain the separate property he or she brought into the marriage." At 424. (R. 231). It further noted that trial courts have the discretion to "reallocate premarital property" where "unique circumstances" exist. Id. (R. 231). Such unique circumstances include those set forth in paragraphs 10A-L of the court's findings and conclusions signed October 5, 1989, but are not necessarily limited to those findings. The court also considered the following exceptional circumstances outlined in Burke v. Burke, 733 P.2d 133, 135 (Utah 1987) in effectuating an equitable distribution of the marital and pre-marital property. The court then went on to find that Defendant's realty at issue was acquired and improved during the time in which the parties were commingling their earnings and efforts, and that as such the assets that are in dispute were accumulated or enhanced by the joint efforts of the parties.

Both parties derived benefits from their pre- and post-marital relationship with the other party. The Defendant helped Plaintiff satisfy debts that Plaintiff brought into the relationship. On the other hand, Plaintiff allowed the Defendant to live in her trailer, which was on property that was brought into the marriage, which trailer was habitable and in excellent condition. Defendant's trailer, on the other hand, was uninhabitable when the parties first met and later became habitable only because of the extensive work that Plaintiff spent in cleaning and repairing the trailer. Furthermore, Defendant had a place to stay in town when he returned

such that it was not necessary for him to maintain his own trailer. During the period of time that Defendant was away at work, Plaintiff arranged for and made physical improvements to Defendant's realty. A substantial amount of the improvements were performed by Plaintiff and her friends at no cost to Defendant except for materials. Furthermore, Plaintiff was expending income on behalf of the Defendant which allowed the Defendant to use earnings from his income to be applied towards the materials for the improvements as well as payments on the parcels of real property. Otherwise, it would have been necessary for Defendant to use a substantial amount of his resources to pay the ongoing expenses that Plaintiff was otherwise satisfying and Defendant would not have had the resources to pay for materials and payments on additional parcels of property.

It is evident that the trial court's findings are not erroneous and that Defendant has not met his burden of establishing that the findings were clearly erroneous. There was ample testimony by Plaintiff and a host of other witnesses that substantial services were performed by Plaintiff and her friends which substantially improved pre-marital assets of Defendant and that the parties' commingled their earnings and efforts to the benefit of Defendant. While it is true that Defendant himself testified contrary, the court chose to believe Plaintiff and her witnesses as well as the valuations and the evidence supporting Plaintiff's position and the court's decision. In any event, the judge's ruling was not clearly erroneous. The record is clear that

there were unique circumstances which warrant the reallocation of the Defendant's pre-marital property. The trial court's decision is clearly just and is most definitely not a clear abuse of discretion.

POINT II

THE TRIAL COURT DID NOT ERR WHEN IT DID NOT APPLY PARTNERSHIP DISSOLUTION RULES WHEN IT REALLOCATED THE DEFENDANT'S PRE-MARITAL PROPERTY AFTER DETERMINING THAT THE PARTIES HAD A PARTNERSHIP RELATIONSHIP PRIOR TO SOLEMNIZATION OF THEIR MARRIAGE.

The court found that from January of 1980 until the time of the parties' marriage, the parties commingled their earnings and efforts in such a way as to establish for all intents and purposes a partnership. (R. 232). The term "partnership" was used by the court to describe the relationship between the parties and in particular the arrangements that they had made in regards to Plaintiff arranging for and making improvements upon the real property and mobile homes, and also being responsible for many of the day-to-day expenses incurred by the parties, with Defendant on the other hand being responsible for the major expenses such as purchasing of property and making the ongoing payments as well as costs of materials for improvements. At no time did the court state that the parties had engaged in an official partnership which would require dissolution at the time of the parties' marriage. As set forth above, the Utah Supreme Court determined in Burke v. Burke, 733 P.2d 133, 135 (Utah 1987), that under unique and exceptional circumstances a court may award property such that one party would be entitled to an equitable share of pre-marital assets

brought by the other party into the marriage. The court specifically applied the standards required by the Court of Appeals. Defendant's attempt to circumvent the court's ruling by arguing that partnership dissolution laws should apply to these particular parties' relationship is an attempt to reap the substantial benefit derived by Defendant as a result of the contributions made by Plaintiff toward the growth of the separate assets of Defendant, which assets were substantially enhanced by both parties' efforts.

The parties' partnership-like relationship prior to their actual ceremonial marriage is an indication of the joint efforts of the parties to accumulate and enhance assets that Defendant brought into the marriage. As such, the parties' partnership-like relationship is an exceptional circumstance that the court should consider in determining an equitable distribution of the marital and pre-marital property. This was the approach of the trial court and is not clearly erroneous nor is there an abuse of discretion. Furthermore, the Findings of Fact accurately set forth the considerations contemplated by the trial court in the pre-marital, partnership-like relationship.

The trial court should not have applied partnership dissolution rules when reallocating Defendant's pre-marital property. The partnership-like relationship that occurred between the parties prior to the marriage was correctly considered by the trial court in establishing whether or not unique circumstances existed to warrant the reallocation of Defendant's pre-marital

property.

POINT III

RESPONDENT IS ENTITLED TO AN AWARD OF HER REASONABLE ATTORNEY'S FEES AND COSTS INCURRED TO RESPOND TO APPELLANT'S APPEAL.

Rule 33(a) of the Utah Rules of Appellate Procedure allows the court to award attorney fees and costs as a sanction for a frivolous appeal.

In Porco v. Porco, 752 P.2d 365 (Utah App. 1988) this court ruled sanctions should be imposed for a frivolous appeal when

an appeal is obviously without merit and has been taken with no reasonable likelihood of prevailing, and results in delayed implementation of the judgment of the lower court; increased costs of litigation; and dissipation of the time and resources of the Law Court. [citation] Therefore, we award costs and attorney fees on appeal to [respondent].

The Porco court so ruled even though it "recognize[d] that sanctions for frivolous appeals should only be applied in egregious cases, lest there be an improper chilling of the right to appeal erroneous lower court decisions."

Likewise, in Fife v. Fife, 777 P.2d 512 (Utah App. 1989) this court imposed sanctions in the form of attorney fees incurred on appeal because of frivolous appeals. Both of these cases were remanded for a determination of the amount to be awarded. In neither of these cases was this court concerned with the Respondent's need for the award.

Here, Respondent seeks an award of her reasonable attorney fees incurred in this appeal under Rule 33(a) of the Utah Rules of Appellate Procedure, as this appeal is frivolous as defined by

Porco. Under this Rule Respondent seeks either the entire amount of her reasonable fees or such amount as may be determined to have been incurred for that portion of the appeal that this court find frivolous, if this court finds the appeal only partially frivolous.

CONCLUSION

The trial court did not err when it determined that unique circumstances existed sufficient to warrant the reallocation of Defendant's pre-marital property. The Plaintiff's contributions of time, money and work effort, as well as those of her friends, and Plaintiff's efforts to organize and make arrangements for others to perform labors at no cost to Defendant greatly enhanced the pre-marital properties accumulated by Defendant. There was ample testimony considered by the court to support this position and as such the trial court's findings are not clearly erroneous nor is the court's decision unjust or an abuse of discretion.

The trial court concluded that the parties' relationship from June of 1980 until the time of their marriage was, for all intents and purposes, a partnership-like relationship. This consideration was properly applied by the court and considered as a possible exceptional circumstance to justify reallocation of Defendant's pre-marital property, rather than using said the partnership-like relationship to rationalize using partnership dissolution rules.

The Plaintiff asks that the Court of Appeals affirm the trial court in all respects and that Plaintiff be awarded her reasonable attorney's fees and costs incurred in defending against the appeal.


DATED this 20th day of October, 1993.

A handwritten signature in black ink, appearing to read "Dana D. Burrows", is written over a horizontal line.

DANA D. BURROWS
Attorney for Plaintiff/Respondent

CERTIFICATE OF MAILING

I hereby certify that on the 20th day of October, 1993, I did mail two true and correct copies of the foregoing to Robert L. Moody, Attorney for Defendant/Appellant, 2525 North Canyon Rd., Provo, Utah 84604.

A handwritten signature in black ink, appearing to read "Dana D. Burrows", is written over a horizontal line.

DANA D. BURROWS
Attorney for Plaintiff/Respondent

ADDENDUM

4. DISTRICT COURT
S. J. 11-30-92

Dec 15 11 30 AM '92

HA

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

HELEN JAYNE WALTERS,

Plaintiff,

CASE NUMBER: 872408

vs.

LEWIS MARK WALTERS,

MEMORANDUM DECISION

Defendants.

This matter comes before the Court after defendant's appeal to the Utah Court of Appeals. The appellate court has remanded for this court's further consideration of the division of the parties' property. Consistent with the appellate court's decision, this court amends its prior ruling and finds that the parties' marriage began upon solemnization on October 5, 1984. Accordingly, parcels of real estate purchased by defendant prior to that date are deemed pre-marital property.

This Court acknowledges the general rule cited in Haumont v. Haumont, 793 P.2d 421,424 (Utah Ct. App. 1990) that each party is typically to "retain the separate property he or she brought into the marriage." However, as the Court of Appeals properly noted, trial courts have the discretion to "reallocate premarital property" where "unique circumstances" exist. Id. This Court

finds that unique circumstances exist in this case which warrant a reallocation of defendant's premarital property so as to grant the parcel upon which plaintiff's trailer is situated to the plaintiff as was awarded in this court's original Amended Decree of Divorce.

Such unique circumstances include those set forth in paragraph 10(a-1) of the Court's Findings and Conclusions signed October 5, 1989. In summary, the Court finds that from January 1980 until the time the parties were married, they commingled their earnings and efforts in such a way as to establish, for all intents and purposes, a partnership. The nature of the parties' relationship and plaintiff's contributions of time and money to partnership endeavors entitles plaintiff to a reallocation of defendant's "premarital property" in the manner described in the Court's Amended Decree.

After full consideration of the factors suggested in Burke v. Burke, 733 P.2d 133, 135 (Utah 1987), the Court finds that unique circumstances exist in this case. This Court has given special attention to the factor most emphasized by the Supreme Court: "Of particular concern . . . is whether one spouse has made any contribution toward the growth of the separate assets of the other spouse and whether the assets were accumulated or enhanced by the joint efforts of the parties." Id. Plaintiff in this case clearly made a substantial contribution to the growth of defendant's separate assets. As the Court noted in its Findings and Conclusions, plaintiff helped arrange for and make considerable improvements to defendant's realty on which her

mobile home was placed and to another parcel that defendant was purchasing at the time. Further, because defendant's realty at issue was acquired and improved during the time in which the parties were commingling their earnings and efforts, the Court finds that such assets "were accumulated or enhanced by the joint efforts of the parties." Accordingly, plaintiff is entitled to an equitable share of such assets, i.e., she is entitled to the parcel on which her mobile home was placed.

Counsel for plaintiff is to prepare an order within 15 days of this decision consistent with the terms of this memorandum and submit it to opposing counsel for approval as to form prior to submission to the Court for signature. This memorandum decision has no effect until such order is signed by the Court.

Dated this 18th day of December, 1992.

BY THE COURT:


RAY M. HARDING, JUDGE

cc: Dana D. Burrows, Esq.
Robert L. Moody, Esq.

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

HELEN JAYNE WALTERS,	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW
Plaintiff,	:	
vs.	:	
LEWIS MARK WALTERS,	:	Civil No. CV 87 2408
Defendant.	:	

This matter came on regularly for trial on the 23rd day of September, 1992, pursuant to those issues that were remanded by the Court of Appeals. The Appellate Court has remanded for this Court's further consideration the division of the parties' property. Plaintiff appeared personally and was represented by her attorney of record, Dana D. Burrows. Defendant also appeared personally and was represented by his attorney of record, Robert L. Moody. Both parties gave testimony, as did other witnesses. The parties each introduced several exhibits and stated their stipulations into the record. Being thereby and otherwise fully apprised of the stipulations, facts, law, and filings regarding this matter, this Court, having taken the matter under advisement and having issued its Memorandum Decision, now hereby enters the following:

FINDINGS OF FACT

1. Consistent with the Appellate Court's decision, this Court amends its prior ruling and finds that the parties' marriage began upon solemnization on October 5, 1984. Accordingly, parcels of real property purchased by Defendant prior to that date are deemed premarital property.

2. This Court acknowledges the general rule cited in Haumont v. Haumont, 793 P.2d 421,242 (Utah Ct. App. 1990) that each party is typically to "retain the separate property he or she brought into the marriage." However as the Court of Appeals properly noted, trial courts have the discretion to "reallocate premarital property" where "unique circumstances" exist. Id. This Court finds that unique circumstances exist in this case which warrant a reallocation of Defendant's premarital property so as to grant the parcel upon which Plaintiff's trailer is situated to the Plaintiff as was awarded in this Court's original Amended Decree of Divorce.

3. Such unique circumstances include those set forth below:

A. The parties met on the Defendant's birthday, 4 December, 1978.

B. At the time they met, Plaintiff resided in her mobile home which was situated on a rental space at 155 South 1200 West, Orem, Utah. Although Defendant's employment sometimes required temporary duty (TDY) assignments out of state at guided missile sights, beginning shortly after the parties first met, when not on TDY assignments, Defendant stayed with Plaintiff in her mobile home.

C. In May of 1980, Defendant purchased, in his own name, a trailer pad at 625 South 50 West, Pleasant Grove, Utah. At that same time the parties moved Plaintiff's mobile home onto that pad where they continued to cohabit. Defendant paid for the costs of moving the mobile home to the Pleasant Grove location as well as the costs incurred for culinary water and sewer connections.

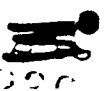
D. Defendant did not charge Plaintiff rent for the placement of her mobile home on the pad or for her use of the realty as her residence.

E. At various times when Defendant was on TDY assignments, Plaintiff helped arrange for and make physical improvements to the Defendant's realty on which her mobile home was placed and to another parcel that Defendant was purchasing and situated at 6072 West 9600 North, Highland, Utah. Such improvements included the laying of concrete pads at each location, leveling, laying water lines, planting of a lawn, and construction of outbuildings and a metal building.

F. While employed, Plaintiff contributed her earnings toward the purchase of food, utilities, and other regular living expenses. Defendant's earnings were used to make payments on the realty.

G. When Plaintiff was not employed, and while Defendant was on TDY assignments, Defendant sent monies home to maintain Plaintiff and her daughter.

H. Defendant made contributions toward Plaintiff's separate debts owed to the I.R.S., the Utah State Tax Commission,



an encumbrance on her mobile home, and debts owed for the purchase of her car, a T.V., and medical expenses incurred in an automobile accident.

I. Although not adopted by Defendant, Plaintiff's minor daughter from a prior marriage, with Defendant's knowledge and permission, and prior to solemnization of the marriage, attended school under Defendant's family name of Walters.

J. Defendant listed his address on his federal and state income tax returns as 625 South 50 West, Pleasant Grove, Utah--the same as Plaintiff's residence--for each of the years 1979, 1980, 1981, 1982, and 1983.

K. Defendant listed Plaintiff's daughter "Schanny" in his federal income tax returns under the category of "dependent children who lived with you" for each of the years 1982, 1983, and 1984.

L. The evidence does not indicate that the parties' relationship changed after the solemnization of their marriage.

4. Plaintiff and her daughter, Shirley Schantell Hunter (Walters) have both resided in their present residence situated at 625 South 50 West, Pleasant Grove, Utah, continuously since on or about May 1980. Plaintiff's daughter has attended the elementary and secondary schools servicing that address for her entire education and has been and is a member of the local ward of the church also servicing that address. Prior to May 1980, Plaintiff and her minor daughter resided in the same mobile home which was then located at 155 South 1200 West, Orem, Utah. This mobile home

has been the minor's only home.

5. Defendant has been employed as a civilian employee of the federal government from and since 1967 through the time of trial.

6. During the parties' marriage, Plaintiff has been an employee of United States Steel Corporation except for a period when her employer ceased operations at the Geneva plant which was the location where she was employed. At the time of the original trial, Plaintiff had been re-employed by Geneva Steel for a period of approximately one year.

7. As of the date of the original trial Defendant was the record owner of four parcels of realty, to wit:

A. Parcel 1--

625 South 50 West, Pleasant Grove, Utah, on which is located Plaintiff's aforementioned mobile home, a 1974 72-foot Concord.

B. Parcel 2--

640 South 50 West, Pleasant Grove, Utah, on which is located a 1975 70-foot Brighton mobile home.

C. Parcel 3--

6072 West 9600 North, Highland, Utah.

D. Parcel 4--

746 West 600 North, Orem, Utah.

8. Parcel 1 was deeded to Defendant on 27 May, 1980. Parcel 2 was deeded to Defendant on 18 July, 1985. Parcel 3 was deeded to Defendant on 4 August, 1978. Defendant entered into a Uniform Real Estate Contract for the purchase of Parcel 3 in July 1977, reciting

a down payment of \$2,200.00 with annual payments toward the balance of \$5,800.00 in amounts of \$1,000.00 each scheduled to commence in June 1978. Defendant made a final payment for Parcel 3 in the amount of \$1,682.15 on 23 May 1981. The parties have stipulated that Defendant has no equitable interest in the Orem parcel and that he is listed as legal owner of Parcel 4 only as an accommodation to his son to enable his son to acquire equitable interests in the property. Parcels 1 and 3 are not encumbered by any debt. Parcel 2 is encumbered by a purchase money debt with a balance as of the date of the original trial in the amount of approximately \$5,000.00.

9. The Walters' marriage began on October 5, 1984, and as such all marital property acquired prior to that time is premarital property of Defendant. Specifically, Parcels 1, 3 and 4 are premarital property of Defendant, whereas each of the parties has a 50% interest in Parcel 2.

10. The Court now considers the following exceptional circumstances in effectuating an equitable distribution of the marital and premarital property: whether one spouse has made any contribution toward the growth of the separate assets of the other spouse and whether the assets were accumulated or enhanced by the joint efforts of the parties; amount and kind of property to be divided; whether the property was acquired before or during the marriage; source of the property; health of the parties; the parties' standard of living, respective financial conditions, needs and earning capacity; the duration of the marriage; the children of

the marriage; the parties' ages at time of marriage and of divorce; what the parties gave up by the marriage; and the necessary relationship that property division has with the amount of alimony and child support to be awarded.

11. The court finds that based upon the exceptional circumstances set forth in paragraph 10 above, that Parcels 1, 3 and 4 were acquired prior to the actual marriage but during the time period that the parties were actually cohabiting as applied to Parcels 1 and 3. It appears that Parcel 4 was purchased prior to the time that the parties were cohabiting but that payments were made subsequent to cohabitation.

12. Plaintiff in this case clearly made a substantial contribution to the growth of Defendant's separate assets. As the Court noted in its Findings and Conclusions, Plaintiff helped arrange for and make considerable improvements to Defendant's realty on which her mobile home was placed and to another parcel the Defendant was purchasing at the time. Further, because Defendant's realty at issue was acquired and improved during the time in which the parties were commingling their earnings and efforts, the Court finds that such assets "were accumulated or enhanced by the joint efforts of the parties."

13. The source of the property was that of the purchase by Defendant in each of the cases of the premarital properties. However, Plaintiff was also a financial contributor to the relationship which allowed Defendant the ability to pool his resources and use for the purchase of said properties. Were it not

for Plaintiff's help however, Defendant would have needed to use his resources in other manners and would not have been able to purchase said properties.

14. The court finds that each of the parties are in good health. The parties each have standards of living that are reasonably consistent with that prior to entry into the marriage. However, Plaintiff was not employed for a period of time at the request of Defendant which has injured the Plaintiff as it relates to retirement and the opportunity to purchase items on her own while the parties were living together but prior to their marriage which occurred over a period of four to five years.

15. The parties were married for approximately three years prior to separation and lived together for a period of seven years total. The duration of the marriage was approximately five years and there are no children of this marriage, though Plaintiff has a child from a prior marriage who is presently age 16.

16. Defendant has no child support or alimony obligation to the Plaintiff and as such the property division is critical because it is the main asset that remains to be divided.

17. The court finds that Plaintiff has made substantial contributions toward the purchase and growth of the separate assets of Defendant, in particular Parcels 1, 3 and 4 and as such the value of the properties has been enhanced by the efforts of Plaintiff. Specifically, Plaintiff during the parties' relationship prior to the marriage was gainfully employed and spent a substantial portion of her income to provide food and clothing

for the parties as well as purchase of a transmission for Defendant's vehicle. Plaintiff also purchased a majority of the tools that were used to improve the properties which had a cost to the Plaintiff of approximately \$500. Plaintiff also engaged in physical labor on the properties such as laying the PVC pipe and wire mesh and rebar for the cement slabs. Plaintiff also acted as a hod carrier in the brick work that was performed as well as sheetrocking, taping, sanding and painting the structures. The Plaintiff also cleaned and painted the trailer that is awarded to Defendant and leveled the ground where it is presently located. Plaintiff also supported Defendant by working in the parties' residence while they cohabited and performed domestic labors that benefitted Defendant as well. Plaintiff was willing to be engaged in employment outside of the home but didn't do so at the request of Defendant.

18. Defendant previously testified at the original trial on February 7, 1989, as to the purchase prices and costs of improvements dedicated to parcels, 1, 2, and 3 respectively and to his opinion of their respective total values as of the date of trial. The parties previously stipulated to this court's acceptance into evidence of written appraisals of the parcels offered by Plaintiff and conducted by Thomas C. Lamoreaux, a Certified Review Appraiser. This court considered Mr. Lamoreaux's assessment of the valuation of the parcels more credible than Defendant's own assessment for the following reasons:

A. Defendant's assessments are based almost exclusively

on a compilation of purchase price and costs of improvements to each parcel.

Mr. Lamoreaux's assessments are based on several factors including location, access to main arterial roads and shopping, existence or nonexistence of public improvements, adverse easements, and adequate drainage, room size and layout, insulation, adequacy of storage and closets, appeal and marketability, remaining economic life, availability for expansion, comparisons to recent sale of similar and proximate properties, income potential, highest and best use, and replacement cost.

B. Defendant testified to having no significant training or experience as an appraiser or builder of similar properties.

Mr. Lamoreaux's Qualifications Summary attached to his appraisal indicates that he has attended courses in real estate appraisal given by the American Institute of Appraisers, that he has appraised similar properties in the subject area from 1974 to the present, that he has experience as a supervisor and general contractor of residential construction from 1971 to 1974, that he is a designated appraiser for the Federal National Mortgage Association, a Certified Review Appraiser, and a licensed Realtor, and that he is a member of the National Association of Review Appraisers and the International Right of Way Association.

Upon the foregoing, this court accepts and adopts the valuations placed on the properties by Mr. Lamoreaux, to wit:

Parcel 1, with improvements & mobile home: \$20,000.00

Parcel 2, with improvements & mobile home: \$20,000.00

Parcel 3, with improvements: \$10,000.00

19. With the exception of the aforementioned encumbrance affecting the property at 640 South 50 West, Pleasant Grove, and the parties' separate debts incurred since the date of their separation on 10 November, 1987, there exist no marital debts for which either party is liable either jointly or individually.

20. Defendant now submits additional appraisals stating the values of Parcel 1 as \$24,675.00 and Parcel 2 as \$17,500.00.

21. The court finds that the appraisals by Mr. Lamoreaux have previously been adopted by the court and that the issue of valuation of the properties is not in dispute and was not reversed by the Court of Appeals. As such, the court will not consider the values set forth in the appraisals by Defendant's most recent appraiser, but will rather affirm the values as established by Mr. Lamoreaux.

22. Each party is entitled to one-half of the other parties' retirement that accrued from the commencement of the ceremonial marriage until entry of the Decree of Divorce. Each party shall cooperate and provide the appropriate information to the other party so that Qualified Domestic Relations Orders can be implemented to that affect.

23. Each party should be responsible for their own attorney's fees and court costs incurred in pursuing the issues remanded by the Court of Appeals.

24. The parties have stipulated and the judgment for

Plaintiff against Defendant for her equitable share of the parties savings in the sum of \$3,150 remains in full force and effect, plus any accruing interest. This judgment represents \$400 from Defendant's Deseret Bank account and \$2,750 from Defendant's America First Thrift account. Defendant should be awarded the remainder of each account.

25. Defendant should be held solely and individually liable for all debt encumbering, associated with or owing for the realty, improvements and mobile home situated at 640 South 50 West, Pleasant Grove, Utah, and Defendant should hold Plaintiff harmless therefrom.

CONCLUSIONS OF LAW

1. Plaintiff should be awarded as her equitable share of the parties' equity in the realty acquired by their joint efforts during their marital relationship, all right, title and interest in and to the realty and improvements--including the mobile home--situated at 625 South 50 West, Pleasant Grove, Utah. Defendant should be ordered to deed and deliver such realty to Plaintiff. Defendant should retain all right, title and interests in and to the parties' realty and improvements--including the mobile home--situated at 640 South 50 West, Pleasant Grove, Utah, and the realty and improvements situated at 6072 West 9600 North, Highland, Utah. Such division is equitable considering the exceptional circumstances which are considered during the time that the parties lived together prior to their marriage as well as owing to the time periods during which such equities were acquired in relation to the

marital relationship that existed between the parties after solemnization of their marriage, owing to the respective contributions made to acquisition and improvement of the properties by each party, owing to the fact that such division preserves the long-established residence of Plaintiff and her minor daughter as well as the minor's school and religious associations, and owing to the fact that such division approximates a near equal division of the monetary values of the properties, owing to the fact that Plaintiff was a major contributor as to the labor performed and arranged which improved the properties, owing to the fact that Plaintiff was employed and provided other necessities for Defendant which freed up Defendant's income to make the actual payments on the properties prior to the parties' marriage, owing to the age of the parties and the duration of the marriage and the fact that Plaintiff gave up substantial earning capacity at the request of Defendant, owing to the fact that Defendant has no alimony or child support obligation to the Plaintiff and that the real property is the only remaining assets to be divided and owing to the fact that Plaintiff's contributions toward the growth of Defendant's separate property vastly enhanced the value of said properties.

2. Defendant should be held solely and individually liable for all debt encumbering, associated with, or owing for the realty, improvements, and mobile home situated at 640 South 50 West, Pleasant Grove, Utah. Defendant should hold Plaintiff harmless therefrom.

3. Each party is awarded a one-half interest in the other

party's retirement that accumulated from the date of the parties' ceremonial marriage until entry of the Decree of Divorce. Both parties shall cooperate and provide the necessary information to the other parties so that Qualified Domestic Relations Orders may be implemented.

4. Each party is responsible for their own attorney's fees and court costs incurred in pursuing the issues remanded by the Court of Appeals.

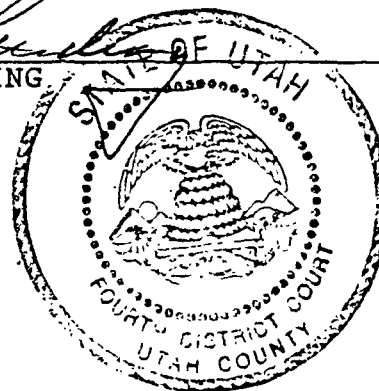
5. The parties have stipulated and the judgment for Plaintiff against Defendant for her equitable share of the parties savings in the sum of \$3,150 remains in full force and effect, plus any accruing interest. This judgment represents \$400 from Defendant's Deseret Bank account and \$2,750 from Defendant's America First Thrift account. Defendant should be awarded the remainder of each account.

APPROVAL AS TO FORM

ROBERT L. MOODY

DATED this 23 day of March, 1993.


JUDGE RAY M. HARDING



4-504 MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was mailed to the following, postage prepaid, this 5 day of March, 1993.

Robert L. Moody
2525 North Canyon Rd.
Provo, UT 84604



DANA D. BURROWS



DANA D. BURROWS - 5405
Attorney for Plaintiff
387 West Center
Orem, Utah 84057
Telephone: (801) 222-9700

11-2-92
JH

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

HELEN JAYNE WALTERS,	:	ORDER AMENDING DECREE OF
	:	DIVORCE
Plaintiff,	:	
vs.	:	
LEWIS MARK WALTERS,	:	Civil No. CV 87 2408
Defendant.	:	

This matter came on regularly for trial on the 23rd day of September, 1992, pursuant to those issues that were remanded by the Court of Appeals. The Appellate Court has remanded for this Court's further consideration the division of the parties' property. Plaintiff appeared personally and was represented by her attorney of record, Dana D. Burrows. Defendant also appeared personally and was represented by his attorney of record, Robert L. Moody. Both parties gave testimony, as did other witnesses. The parties each introduced several exhibits and stated their stipulations into the record. Being thereby and otherwise fully apprised of the stipulations, facts, law, and filings regarding this matter, this Court, having taken the matter under advisement and having issued its Memorandum Decision, and having entered its Findings of Fact and Conclusions of Law, now enters the following Order Amending the Decree of Divorce:

1. A Decree of Divorce in the above-entitled matter was entered on October 5, 1989.

2. The Defendant having appealed several of the issues to the Court of Appeals, and the Court of Appeals having rendered a ruling and having remanded to this Court for further consideration of the division of personal property:

A. Plaintiff shall be awarded as her equitable share of the parties' equity in the realty acquired by their joint efforts during their marital relationship, all right, title and interest in and to the realty and improvements--including the mobile home--situated at 625 South 50 West, Pleasant Grove, Utah. Defendant is ordered to deed and deliver such realty to Plaintiff.

B. Defendant shall retain all right, title and interests in and to the parties' realty and improvements--including the mobile home--situated at 640 South 50 West, Pleasant Grove, Utah, and the realty and improvements situated at 6072 West 9600 North, Highland, Utah.

C. Such division is equitable considering the exceptional circumstances which are considered during the time that the parties lived together prior to their marriage as well as owing to the time periods during which such equities were acquired in relation to the marital relationship that existed between the parties after solemnization of their marriage, owing to the respective contributions made to acquisition and improvement of the properties by each party, owing to the fact that such division preserves the long-established residence of Plaintiff and her minor

daughter as well as the minor's school and religious associations, and owing to the fact that such division approximates a near equal division of the monetary values of the properties, owing to the fact that Plaintiff was a major contributor as to the labor performed and arranged which improved the properties, owing to the fact that Plaintiff was employed and provided other necessities for Defendant which freed up Defendant's income to make the actual payments on the properties prior to the parties' marriage, owing to the age of the parties and the duration of the marriage and the fact that Plaintiff gave up substantial earning capacity at the request of Defendant, owing to the fact that Defendant has no alimony or child support obligation to the Plaintiff and that the real property is the only remaining assets to be divided and owing to the fact that Plaintiff's contributions toward the growth of Defendant's separate property vastly enhanced the value of said properties.

3. Defendant shall be held solely and individually liable for all debt encumbering, associated with, or owing for the realty, improvements, and mobile home situated at 640 South 50 West, Pleasant Grove, Utah. Defendant shall hold Plaintiff harmless therefrom.

4. Each party is awarded a one-half interest in the other party's retirement that accumulated from the date of the parties' ceremonial marriage until entry of the Decree of Divorce. Both parties shall cooperate and provide the necessary information to the other parties so that Qualified Domestic Relations Orders may

be implemented.

5. Each party is responsible for their own attorney's fees and court costs incurred in pursuing the issues remanded by the Court of Appeals.

6. The parties have stipulated and the judgment for Plaintiff against Defendant for her equitable share of the parties savings in the sum of \$3,150 remains in full force and effect. This judgment represents \$400 from Defendant's Deseret Bank account and \$2,750 from Defendant's America First Thrift account. Defendant should be awarded the remainder of each account.

APPROVAL AS TO FORM

ROBERT L. MOODY

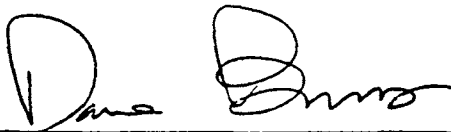
DATED this 23 day of March, 1993.


JUDGE RAY M. HARDING

4-504 MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was mailed to the following, postage prepaid, this 23 day of March, 1993.

Robert L. Moody
2525 North Canyon Rd.
Provo, UT 84604


DANA D. BURROWS

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF UTAH, IN AND FOR UTAH COUNTY

1989 FEB 16 PM 4:00
SP CH CC

HELLEN JAYNE WALTERS,

Plaintiff,

CASE NUMBER CV 87 2408

-vs-

RAY M. HARDING, JUDGE

LEWIS MARK WALTERS,

Defendant.

MEMORANDUM DECISION

The Court, having conducted the trial of this matter on February 7th, 1989 and having taken all issues under advisement, will rule at this time.

The Court finds that the parties in this action are residents of Utah County, and the Court has jurisdiction. Each of the parties is granted a divorce against the other on grounds of irreconcilable differences. The Court finds that such grounds exist. The Court will not award alimony to either party.

There was an issue raised at trial as to exactly when the marital relationship between the parties began. The Court finds, based on the evidence presented at trial, that the parties began to carry on a marriage like relationship on or about January 1, 1980, which was several years before the marriage was actually solemnized.

The Court considered a number of factors in determining that the marital relationship began in 1980. Among these is the fact that the defendant stayed in the plaintiff's trailer with her when he was not working out of state. The defendant had the plaintiff's trailer moved onto a lot which he was paying for, and did not charge rent. The plaintiff made improvements on the

property such as would be expected of a married couple. The defendant paid debts and obligations for the plaintiff including substantial debts to the I.R.S. and the State Tax Commission. The plaintiff's child with the defendant's consent was enrolled in school under the name Walters. While working out of state, the defendant sent the plaintiff money to live on. Based on the foregoing circumstances, the Court finds that the parties established a marital relationship beginning on or about January 1st, 1980. This is an approximate date because the Court does not have sufficient evidence to fix an exact date.

Because the Court considers the parties to have begun their marital relationship on January 1, 1980, plaintiff is entitled to a share of defendant's retirement benefits accrued during the existence of the marriage. The formula which is to be used to apportion the plaintiff's share of the retirement benefit is found in Marchant v. Marchant, 743 P.2d 199 (Utah App. 1987). The plaintiff will not receive any retirement benefits until the defendant retires. If for any reason the defendant does not qualify for the benefit, neither will the plaintiff. In order to become eligible to receive retirement benefits when they become available, plaintiff's counsel must prepare an order which is to be filed with the defendant's employer which will give the instructions for payment of retirement benefits to the plaintiff. The formula which should be used in the order is "one half of his total monthly payment times the fraction in which the numerator consists of the number of years or months they were married during which the defendant was employed by the federal government and the denominator is the total number of years or months defendant was in such employment." Marchant, at 206. The fraction cannot be determined until the defendant retires. If the parties wish to avoid the need to enter such an order, they may wish to consider a cash settlement of the retirement benefits.

The real property which is at issue was partially acquired before the marriage, and partially after. Considering when the properties were obtained, and how they were paid for, the Court finds the following to be an equitable division of the real property. The plaintiff is to receive the property in Pleasant Grove where her mobile home is located free and clear. The defendant may keep the Highland property which he acquired before the marriage, and the other Pleasant Grove property subject to the \$5,000.00 encumbrance which is still owing on that property. The Court finds that this is a fair division of the property which was either acquired or paid for during the marriage.

The Court, having no evidence as to the amount of money in the Deseret Bank, or the America First accounts during or before the marriage, will award plaintiff half of each of those. Plaintiff is to receive \$400.00 from the Deseret Bank Account, and \$2750.00 of the America First account.

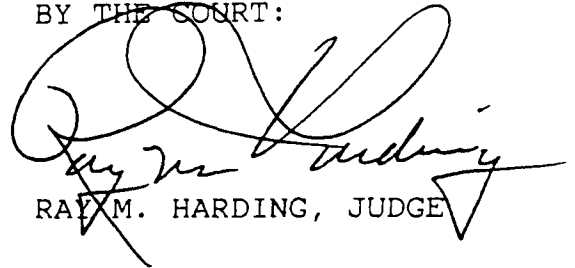
The Court has no evidence of values with which to divide the disputed personal property of the parties. The parties are therefore given the option of either agreeing on a division of property between themselves, or having one party prepare two lists of property and the other selecting a list. If the parties have not used one of these methods to divide the property within 10 days, the Court orders the property sold and the proceeds divided.

The Court will consider the issue of attorney's fees upon submission of affidavits by counsel.

Counsel for plaintiff to prepare findings of fact, conclusions of law, and a decree of divorce, and an order regarding retirement benefits, if necessary, and submit them to opposing counsel for approval as to form prior to filing with the Court for signature.

Dated this 15th day of February, 1989.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Ray M. Harding", is written over the printed name. The signature is fluid and stylized, with a large loop at the beginning and a sharp downward stroke at the end.

RAY M. HARDING, JUDGE

cc: Robert L. Moody, Esq.
Thomas H. Means, Esq.

FILED IN
4TH DISTRICT COURT
ST. GEORGE, UTAH

OCT 5 11:57 AM '89

RJ

THOMAS H. MEANS, #2222
Attorney for Plaintiff
363 North University Avenue
Suite 103
P.O. Box 2283
Provo, Utah, 84603
[801] 377-7980

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

HELEN JAYNE WALTERS,)	
)	
Plaintiff,)	FINDINGS OF FACT and
)	CONCLUSIONS OF LAW
v)	
)	
LEWIS MARK WALTERS,)	No. CV 87 2408
)	
Defendant.)	

This matter came on regularly for trial on the 7th day of February, 1989. Plaintiff appeared personally and was represented by her attorney of record, Thomas H. Means. Defendant also appeared personally and was represented by his attorney of record, Robert L. Moody. Both parties gave testimony, as did Plaintiff's daughter, Sabrina Gunderson. The parties each introduced several exhibits and stated their stipulations into the record. Being thereby and otherwise fully apprised of the stipulations, facts, law, and filings regarding this matter, this Court, having taken the matter

under advisement and having issued its MEMORANDUM DECISION, now hereby enters the following.....

FINDINGS OF FACT

1. Plaintiff was a resident of Utah County at the time of the filing of her Complaint and for at least three months prior thereto. Defendant was a resident of Utah County at the time of the filing of his Counterclaim and for at least three months prior thereto.

2. The parties' marriage was solemnized on 5 October, 1984, in Winnipeg, Manitoba, Canada.

3. No children have been born of this marriage and Plaintiff is not pregnant. Plaintiff has a minor daughter, Shirley Schantell Hunter (Walters) from a prior marriage, born 15 May, 1976, who resided with the parties during the entire period when the parties resided together. Plaintiff has another daughter, Sabrina Gunderson, now married, who resided with the parties for a short period when Plaintiff's mobile home was situated at 155 South 1200 West, Orem, Utah.

4. During the marriage, differences have developed between the parties, which differences the parties have unsuccessfully attempted to resolve. Such differences persist.

5. The parties have lived separate and apart from and since on or about 10 November, 1987.

6. Plaintiff and her daughter, Shirley Schantell Hunter (Walters) have both resided in their present residence situated at 625 South 50 West, Pleasant Grove, Utah, continuously since in or about May, 1980. Plaintiff's daughter has attended the elementary and secondary schools servicing that address for her entire education and has been and is a member of the local ward of the church also servicing that address. Prior to May, 1980, Plaintiff and her minor daughter resided in the same mobile home which was then located at 155 South 1200 West, Orem, Utah. This mobile home has been the minor's only home.

7. Defendant has been employed as a civilian employee of the federal government from and since 1967 through the time of trial.

8. During the parties' marriage Plaintiff has been an employee of United States Steel Corporation except for a period when her employer ceased operations at the Geneva plant which was the location where she was employed. At the time of trial, Plaintiff had been re-employed by Geneva Steel for a period of approximately one year.

9. Neither party appears to be presently in need of or entitled to the continuing financial support of the other, either in the form alimony or child support.

10. The parties established a marriage-like relationship several years before their marriage was actually solemnized. While it is not possible to determine from the evidence the precise date when the parties began to cohabit, Plaintiff has established by a preponderance of the evidence, and it is reasonable from the evidence to find that such relationship commenced on or about 1 January, 1980, and continued from and since that time through the time the marriage was solemnized and until the parties separated. From and since 1 January, 1980, the parties cohabited and commingled their efforts and their earnings in a manner such as would be expected of a married couple. The evidence which supports such finding is as follows:

a. The parties met on the Defendant's birthday, 4 December, 1978.

b. At the time they met Plaintiff resided in her mobile home which was situated on a rental space at 155 South 1200 West, Orem, Utah. Although Defendant's employment sometimes required temporary duty (TDY) assignments out of state at guided missile sights, beginning shortly after the parties first met, when not on TDY assignments, Defendant stayed with Plaintiff in her mobile home.

c. In May of 1980, Defendant purchased, in his own name, a trailer pad at 625 South 50 West, Pleasant Grove, Utah. At that

same time the parties moved Plaintiff's mobile home onto that pad where they continued to co-habit. Defendant paid for the costs of moving the mobile home to the Pleasant Grove location as well as the costs incurred for culinary water and sewer connections.

d. Defendant did not charge Plaintiff rent for the placement of her mobile home on the pad or for her use of the realty as her residence.

e. At various times when Defendant was on TDY assignments, Plaintiff helped arranged for and make physical improvements to the Defendant's realty on which her mobile home was placed and to another parcel that Defendant was purchasing and situated at 6072 West 9600 North, Highland, Utah. Such improvements included the laying of concrete pads at each location, leveling, laying water lines, planting of a lawn, and construction of out-buildings and a metal building.

f. While employed, Plaintiff contributed her earnings toward the purchase of food, utilities, and other regular living expenses. Defendant's earnings were used to make payments on the realty.

g. When Plaintiff was not employed, and while Defendant was on TDY assignments, Defendant sent monies home to maintain Plaintiff and her daughter.

h. Defendant made contributions toward Plaintiff's separate debts owed to the I.R.S., the Utah State Tax Commission, an encumbrance on her mobile home, and debts owed for the purchase of her car, a T.V., and medical expenses incurred in an automobile accident.

i. Although not adopted by Defendant, Plaintiff's minor daughter from a prior marriage, with Defendant's knowledge and permission, and prior to solemnization of the marriage, attended school under Defendant's family name of Walters.

j. Defendant listed his address on his federal and state income tax returns as 625 South 50 West, Pleasant Grove, Utah - the same as Plaintiff's residence - for each of the years 1979, 1980, 1981, 1982, and 1983.

k. Defendant listed Plaintiff's daughter "Schanny" in his federal income tax returns under the category of "dependent children who lived with you" for each of the years 1982, 1983, and 1984.

l. The evidence does not indicate that the parties' relationship changed after the solemnization of their marriage.

11. At the time of trial Defendant maintained an account at Deseret Bank with a balance in an amount of \$800.00 and an account at America First Thrift with a balance in the amount of \$5500.00. This Court is without evidence sufficient to establish whether

these balances were accumulated prior to or after the parties established their marital relationship. However, the balance of the America First Thrift account appears to have been accumulated after 10 November, 1987, the date on or about which Defendant was served with a Temporary Restraining Order which is the same date when Defendant withdrew \$3000.00 from the account.

12. As of the date of trial Defendant was the record owner of four parcels of realty, to wit:

a. Parcel 1-

625 South 50 West, Pleasant Grove, Utah, on which is located Plaintiff's aforementioned mobile home, a 1974 72 foot Concord.

b. Parcel 2-

640 South 50 West, Pleasant Grove, Utah, on which is located a 1975 70 foot Brighton mobile home.

c. Parcel 3-

6072 West 9600 North, Highland, Utah.

d. Parcel 4-

746 West 600 North, Orem, Utah

13. Parcel 1 was deeded to Defendant on 27 May, 1980. Parcel 2 was deeded to Defendant on 18 July, 1985. Parcel 3 was deeded to Defendant on 4 August, 1978. Defendant entered into a Uniform Real Estate Contract for the purchase of parcel 3 in July, 1977,

reciting a down-payment of \$2,200.00 with annual payments toward the balance of \$5,800.00 in amounts of \$1,000.00 each scheduled to commence in June, 1978. Defendant made a final payment for parcel 3 in the amount of \$1,682.15 on 23 May, 1981. The parties have stipulated that Defendant has no equitable interest in the Orem parcel and that he is listed as legal owner of parcel 4 only as an accommodation to his son to enable his son to acquire equitable interests in the property. Parcels 1 and 3 are not encumbered by any debt. Parcel 2 is encumbered by a purchase money debt with a balance as of the date of trial in the amount of approximately \$5,000.00.

14. Defendant testified as to the purchase prices and costs of improvements dedicated to parcels 1, 2, and 3 respectively and to his opinion of their respective total values as of the date of trial. The parties have stipulated to this Court's acceptance into evidence of written appraisals of the parcels offered by Plaintiff and conducted by Thomas C. Lamoreaux, a Certified Review Appraiser. This Court considers Mr. Lamoreaux's assessment of the valuations of the parcels more credible than Defendant's own assessment for the following reasons:

a. Defendant's assessments are based almost exclusively on a compilation of purchase price and costs of improvements to each parcel.

Mr. Lamoreaux's assessments are based on several factors including location, access to main arterial roads and shopping, existence or non-existence of public improvements, adverse easements, and adequate drainage, room size and layout, insulation, adequacy of storage and closets, appeal and marketability, remaining economic life, availability for expansion, comparisons to recent sales of similar and proximate properties, income potential, highest and best use, and replacement cost.

b. Defendant testified to having no significant training or experience as an appraiser or builder of similar properties.

Mr. Lamoreaux's Qualifications Summary attached to his appraisal indicates that he has attended courses in real estate appraisal given by the American Institute of Appraisers, that he has appraised similar properties in the subject area from 1974 to the present, that he has experience as a supervisor and general contractor of residential construction from 1971 to 1974, that he is a designated appraiser for the Federal National Mortgage Association, a Certified Review Appraiser, and a licensed Realtor, and that he is a member of the National Association of Review Appraisers and the International Right of Way Association.

Upon the foregoing, this Court accepts and adopts the valuations placed on the properties by Mr. Lamoreaux, to wit:

Parcel 1, with improvements & mobile home: \$20,000.00

Parcel 2, with improvements & mobile home:	\$20,000.00
Parcel 3, with improvements:	\$10,000.00

15. The Court finds that because of the marriage-like relationship that began on 1 January, 1980, Plaintiff is entitled to a share of Defendant's retirement benefits accrued during the existence of the marriage-like relationship. The formula which is to be used to apportion the Plaintiff's share of the retirement benefit is found in Marchant v Marchant, 743 P2nd 199, (Utah App 1987). The Plaintiff shall not receive any retirement benefits until the Defendant retires. If for any reason the Defendant does not qualify for the benefit neither will the Plaintiff. In order to become eligible to receive retirement benefits when they become available, the Court finds that the Plaintiff's counsel must prepare an order which is to be filed with the Defendant's employer which will give the instructions for payment of retirement benefits to the Plaintiff. The formula which should be used in the Order is "one-half of his total monthly payment times the fraction in which the numerator consists of the number of years or months they maintained the marriage-like relationship during which the Defendant was employed by the federal government and the denominator is the total number of years or months the Defendant was in such employment."

16. With the exception of the aforementioned encumbrance affecting the property at 640 South 50 West, Pleasant Grove, and the parties' separate debts incurred since the date of their separation on 10 November, 1987, there exist no marital debts for which either party is liable either jointly or individually.

17. The parties have stipulated that Plaintiff should be awarded as her sole and separate property the parties' 1980 Chrysler automobile.

18. The parties have stipulated that Defendant should be awarded as his sole and separate property the parties' 1979 Chevrolet pick-up truck.

19. The parties have submitted their respective written lists of the other personalty of their marriage and have testified as to their respective claims to and needs for such personalty. The parties have each claimed entitlement to and need for many of the same items of personalty. From the evidence this Court is not able to ascertain or assign values to the various items of personalty listed or claimed by the parties nor does this Court have evidence from which it is able to determine, by a preponderance of the evidence which, if any, of such personalty is separate property as opposed to property accumulated during the parties' marital relationship.

20. Plaintiff has incurred an obligation in excess of \$4000.00 for attorney's fees reasonable to the prosecution of her Complaint. The hours expended as well as the hourly rate charged were reasonable in light of the complexity of the matter, the results obtained, and the hourly rate commonly charged for similar actions in this area. Plaintiff is in need of an award from Defendant to compensate her for a portion of said attorney's fees.

CONCLUSIONS OF LAW

1. Plaintiff is entitled to a Decree of Divorce dissolving her marriage to Defendant.

2. Defendant is entitled to a Decree of Divorce dissolving his marriage to Plaintiff.

3. Neither party is entitled to an award of alimony or other order of lump sum or periodic financial support from the other.

4. This Court need make no orders regarding liability for family or marital debts except that debt affecting the realty situated at 640 South 50 West, Pleasant Grove, Utah, and except those separate debts incurred by the parties respectively after the date of their separation, as are addressed hereinbelow.

5. Each party should be held solely and individually liable for any and all debt incurred in his or her individual name after the date of their separation on 10 November, 1987.

6. Plaintiff should be awarded as her equitable share of the parties' savings accounts the sum of \$3150.00 representing \$400.00 from Defendant's Deseret Bank Account and \$2750.00 from Defendant's America First Thrift account. Defendant should be awarded the remainder of each account.

7. Plaintiff should be awarded as her equitable share of the parties' equity in the realty acquired by their joint efforts during their marital relationship, all right title and interest in and to the realty and improvements - including the mobile home - situated at 625 South 50 West, Pleasant Grove, Utah. Defendant should be ordered to deed and deliver such realty to Plaintiff. Defendant should retain all right, title, and interests in and to the parties' realty and improvements - including the mobile home - situated at 640 South 50 West, Pleasant Grove, Utah, and the realty and improvements situated at 6072 West 9600 North, Highland, Utah. Such division is equitable owing to the time periods during which such equities were acquired in relation to the marital relationship that existed between the parties both prior to and after solemnization of their marriage, owing to the respective contributions made to acquisition and improvement of the properties by each party, owing to the fact that such division preserves the long established residence of Plaintiff and her minor daughter as well as the minor's school and religious associations, and owing to the fact that such division approximates a near equal division of the monetary values of the properties.

8. Defendant should be held solely and individually liable for all debt encumbering, associated with, or owing for the realty, improvements, and mobile home situated at 640 South 50 West,

Pleasant Grove, Utah. Defendant should hold Plaintiff harmless therefrom.

9. Plaintiff should be awarded as her sole and separate property the parties' 1980 Chrysler automobile.

10. Defendant should be awarded as his sole and separate property the parties' 1979 Chevrolet pick-up truck.

11. It is proper that the parties' personalty as noted in their respective lists of personalty heretofore submitted to and accepted as evidence by this Court, excluding the aforementioned automobiles and mobile homes, be marshalled, sold, and the proceeds therefrom divided equally between them.

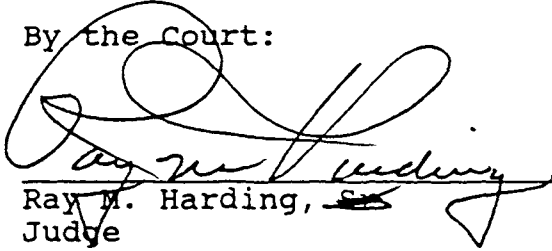
12. Plaintiff is entitled to a proportionate share of Defendant's civil service retirement benefits earned through his employment during the marital relationship. Such share should be determined according to the formula set forth in Marchant v Marchant, 743 P2nd 199 (Utah App. 1987). Accordingly, Plaintiff should not receive her share of such benefits until Defendant retires. If for any reason, Defendant does not qualify for such benefits, neither will Plaintiff. Plaintiff's proportionate share should be one half (50%) of the total amount of all of Defendant's monthly benefit payments multiplied by the fraction in which the numerator is the number of months comprising the period beginning on 1 January, 1980, and ending on the date of trial of this matter,

(109 months) and the denominator is the total number of months Defendant is employed by the federal government. The fraction cannot be determined until such time as Defendant shall retire. If Defendant separates from civil service in advance of retirement, and withdraws his contributions, Plaintiff should receive a portion of Defendant's refund based upon the above-noted fraction. Plaintiff is entitled to an award of such portion of Defendant's civil service retirement benefits as well as a Qualified Domestic Relations Order setting forth her rights in Defendant's civil service retirement benefits and authorizing and instructing the United States Office of Personnel Management to pay to her all sums to which she is entitled pursuant to the formula set forth hereinabove.

13. It is reasonable that Plaintiff be awarded as and for her reasonable attorney's fees the sum of \$1000.00.

Dated this 5 day of ^{Oct.}~~August~~, 1989.

By the Court:


Ray M. Harding, ~~Esq.~~
Judge
Fourth Judicial District
Utah County

Approved as to form:

FILED IN
4th JUDICIAL DISTRICT COURT
OCT 26 1989

OCT 26 1989

DA

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Provo, Utah, 84603
[801] 377-7980

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

HELEN JAYNE WALTERS,)	
)	AMENDED
Plaintiff,)	DECREE OF DIVORCE
)	
v)	
)	
LEWIS MARK WALTERS,)	No. CV 87 2408
)	
Defendant.)	

This matter, having come on regularly for trial on the 7th day of February, 1989, and this Court, having taken the matter under advisement and having issued its MEMORANDUM DECISION, and having entered its written FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

1. Plaintiff is hereby granted a Decree of Divorce dissolving her marriage to Defendant.

2. Defendant is hereby granted a Decree of Divorce dissolving his marriage to Plaintiff.

3. Each party is hereby held solely and individually liable for any and all debt incurred in his or her individual name after

the date of their separation on 10 November, 1987. Each party shall hold the other harmless for any and all such debts incurred in his/her individual name after 10 November, 1987.

4. Plaintiff is hereby awarded as her equitable share of the parties' savings accounts the sum of \$3150.00 representing a \$400.00 share of Defendant's Deseret Bank Account and a \$2750.00 share of Defendant's America First Thrift account. Defendant is hereby awarded the remainder of each account.

5. Plaintiff is hereby awarded as her equitable share of the parties' equity in the realty acquired by their joint efforts during their marital relationship, all right title and interest in and to the realty and improvements - including the mobile home - situated at 625 South 50 West, Pleasant Grove, Utah. More particularly described as:

Lot 9, Plat D, Pleasant Grove Mobile Home Estates
Defendant is hereby ordered to deed and deliver such realty to Plaintiff.

6. It is hereby ordered that Defendant retain all right, title, and interests in and to the parties' realty and improvements - including the mobile home - situated at 640 South 50 West, Pleasant Grove, Utah, and the realty and improvements situated at 6072 West 9600 North, Highland, Utah.

7. Defendant shall be and is hereby held solely and individually liable for all debt encumbering, associated with, or owing for the realty, improvements, and mobile home situated at 640 South 50 West, Pleasant Grove, Utah. Defendant shall hold Plaintiff harmless therefrom.

8. Plaintiff is hereby awarded as her sole and separate property the parties' 1980 Chrysler automobile.

9. Defendant is hereby awarded as his sole and separate property, the parties' 1979 Chevrolet pick-up truck.

10. It is hereby ordered that the parties' personalty as noted in their respective lists of personalty heretofore submitted to and accepted as evidence by this Court - but excepting the aforementioned automobiles and mobile homes - be marshalled, sold, and the proceeds therefrom divided equally between the parties.

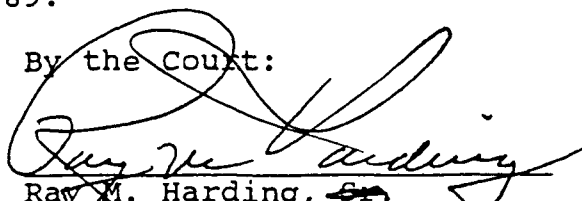
11. Plaintiff is hereby awarded a proportionate share of Defendant's civil service retirement benefits earned through his employment with the federal government during the marital relationship, which is and shall consist of one half (50%) of the total amount of all of Defendant's monthly benefit payments multiplied by the fraction in which the numerator is 109 and the denominator is the total number of months Defendant is employed by the federal government. The fraction shall be determined at such time as Defendant shall retire. Plaintiff shall not receive her

share of such benefits until Defendant retires. If Defendant separates from civil service in advance of retirement and withdraws his contributions, Plaintiff shall receive a portion of such refund based on the above-noted fraction. If for any reason, Defendant does not qualify for such benefits, neither will Plaintiff. Plaintiff is hereby granted and awarded such proportionate share of Defendant's civil service retirement benefits as well as a Qualified Domestic Relations Order setting forth her rights in Defendant's retirement benefits and authorizing and instructing the United States Office of Personnel Management to pay to her all sums to which she is entitled pursuant to the formula set forth hereinabove and hereby granted and awarded to her.


12. Plaintiff is hereby granted and Defendant is hereby ordered to pay as and for Plaintiff's reasonable attorney's fees the sum of \$1000.00.

Dated this 30 day of Oct, 1989.

By the Court:


Ray M. Harding, Sr.
Judge
Fourth Judicial District
Utah County

Approved as to form:


Robert L. Moody
Attorney for Defendant