1993

Walters v. Walters : Brief of Appellant

Utah Court of Appeals

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IN THE COURT OF APPEALS

OF THE STATE OF UTAH

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

BRIEF OF APPELLANT

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

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IN THE COURT OF APPEALS

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BRIEF OF APPELLANT

JURISDICTION

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

STATEMENT OF ISSUES

I. Did the trial court err by determining that unique or exceptional circumstances existed which warranted a reallocation of 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 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 on the basis that it is clearly unjust and a clear abuse of discretion. Smith v. Smith, 751 P.2d 1149, 1151 (Utah App. 1988).

II. Did the trial court err by not applying appropriate 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 calls for a review of the trial court's Conclusions of Law. The appellate court should review the trial court's Conclusions of Law with no particular deference and should review such Conclusions of Law for correctness. Oats v. Chavez, 749 P.2d 658 (Utah 1988).

DETERMINATIVE STATUTES

Utah Code Ann. §48-1-15, §48-1-37, and §30-1-4.5 (1953 as amended) are the applicable statutes in this matter, copies of which are included in the Addendum.

STATEMENT OF THE CASE

This matter comes before the appellate court for the second time.[1] 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

[1]This matter has previously been appealed to the Utah Court of Appeals, Case No. 890671-CA; Walters v. Walters, 812 P.2d 64 (Utah App. 1991).

Ann. §30-1-4.5.[2] (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 could then 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 premarital property. (R. 231). The court found "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." (R. 232). On such basis, the trial court ruled that the Plaintiff was entitled to a reallocation of Defendant's premarital 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.[3]

Parcel 1 was acquired by the Defendant in 1980 at a cost of $11,500. (Tr. 57). The Defendant also paid $2,165 for hookups for electricity and sewer (Tr. 57), and $700 for the

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[2]The trial court applied U.C.A. §30-4-4.5 retroactively. Section 30-4.4.5 was not adopted until 1987.

[3]There is a fourth parcel of which the parties have stipulated that Defendant has no equitable interest in as he is listed as a legal owner only as an accommodation to his son to enable his son to acquire equitable interests in the property.

concrete pad. (Tr. 58). In addition, the Defendant hired a backhoe to put the water line and sewer line in. (Tr. 58). The Defendant participated with preparing and laying the concrete pad and the driveway. (Tr. 60). An addition to the driveway was paid for by the Defendant (Tr. 60), as was a retaining wall, two sheds, and a fence. (Tr. 61).

In 1980, the Defendant permitted the Plaintiff to move her trailer on the pad located at Parcel 1 and live there rent free. (Tr. 28, 45, 56). At that time, the Plaintiff was being evicted from another trailer park. (Tr. 44). In addition to paying $521.00 for cost of moving the Plaintiff's trailer, the Defendant further assisted the Plaintiff by paying a number of debts and obligations of the Plaintiff's which included IRS--$4,000.00; State Tax Commission--$2,700.00; payment on Plaintiff's trailer--$3,000.00; payment on car loan--$400.00; payment on television loan--$150.00; and bills from a Wyoming accident--$1000.00. [Transcript and exhibit from original trial (Tr. 86-88, 105-106) (Ex. 13)] All of these expenses were paid prior to the marriage in 1984. The Defendant also spent $5,000.00 for the remodeling of the Plaintiff's trailer of which he performed much of the labor himself. (Tr. 67). These improvements included tearing out the living room and remodeling it, reinsulating, rewiring, putting up sheetrock, putting in new lighting, replacing the kitchen floor, building new cabinets, building a closet, and purchasing new windows. (Tr. 67). The Defendant also provided money to the Plaintiff when she was unemployed. (Tr. 39).

In exchange for moving on Parcel 1 rent free, the Plaintiff agreed to coordinate all of the improvements needed, of which the Defendant would pay for. (Tr. 55, 56). With

regards to helping with improvements to Parcel 1, the Plaintiff helped coordinate the laying of concrete (Tr. 15, 21, 23, 26), laid sod, and planted flowers and trees. (Tr. 26). The Plaintiff helped assist with the numerous improvements to her trailer itself, both inside and outside. (Tr. 14, 15, 35). These improvements were paid for by the Defendant. (Tr. 67).

Parcel 2 was acquired in 1985 after the parties were married. The Defendant paid $10,500.00 for the property along with the associated hookup costs of $2,165.00. (Tr. 62). The Defendant's trailer was moved onto this property. At the time of the original trial, Parcel 2 had an encumbrance of approximately $5,000.00. (R. 238-239). The Defendant was held solely and individually liable for this debt. (R. 251). With regards to improvements to Parcel 2, all expenses were paid for by the Defendant. The Plaintiff helped coordinate the necessary cement work, and prepared the Defendant's trailer for rental. (Tr. 37).

In 1977, the Defendant purchased Parcel 3 for $8,000.00. (Tr. 53). He made a final payment for Parcel 3 in the amount of $1,682.15 on May 23, 1981. (R. 239). The Defendant paid for substantial improvements to Parcel 3, including the construction of a 24'x 40' metal building, a sump tank, footings and a foundation wall, and concrete work. (Tr. 53, 54). The Plaintiff helped coordinate certain of these improvements such as arranging for the construction of the building, digging and laying of water pipes, back filling and leveling, and the laying of PVC Pipe and concrete. (Tr. 39).

The trial court found that parcels 1 and 3 were the Defendant's premarital property, whereas each of the parties had a 50% interest in Parcel 2. (R. 239). The court then awarded

Parcel 1 to the Plaintiff and parcels 2 and 3 to the Defendant. (R. 250). The Defendant was further held solely and individually liable for the debt owing on Parcel 2. (R. 251).

On April 21, 1993, the Defendant filed his Notice of Appeal from the decision rendered by Judge Ray M. Harding. (R. 254).

SUMMARY OF ARGUMENT

There were not unique or exceptional circumstances which warranted the trial court to reallocate the Defendant's pre-marital property. The facts and circumstances of which the trial court listed, though great in number, are not unique in nature, either singularly or collectively. A majority of the circumstances in which the trial court relied on deal with the parties pre-marital relationship and the findings are akin to recognizing once again a common law marriage before the common law marriage statute was enacted.

The Plaintiff derived a great financial benefit from her pre-marital relationship with the Defendant. The Defendant paid off substantial debts for the Plaintiff and moved her trailer to his trailer pad where he permitted her to live rent free. With the financial and physical assistance from the Defendant, the Plaintiff obtained significant improvements to her trailer. Though the Plaintiff did help arrange for and make physical improvements to the Defendant's realty, such improvements were paid for by the Defendant. The efforts of the Plaintiff, on the other hand, were not a substantial contribution to the growth of the Defendant's realty. A close reading of the record shows those efforts consisted of mainly organizing her friends to do concrete work. This added no appreciable value to the property as shown by Plaintiff's appraisal.

The extensive costs expended on the Plaintiff's behalf prevented the Defendant from enhancing his properties. These properties were not accumulated or enhanced by the joint efforts of the parties as the trial court found. The trial court's findings are clearly erroneous, and its decision is clearly unjust and a clear abuse of discretion.

Rather than calling the parties pre-marital relationship a "marriage like relationship", the trial court found that from January 1980 until the time the parties were married, the nature of the parties' relationship, for all intents and purposes, was a partnership. The trial court, in its Memorandum Decision, determined that the Plaintiff's contributions of time and money to partnership endeavors entitled Plaintiff to a reallocation of Defendant's pre-marital property. (R. 232). The trial court's findings of fact, conclusions of law, and amended decree, do not reflect a partnership distribution, and are thus inconsistent with the court's written Memorandum Decision. Furthermore, the trial court did not apply partnership distribution rules as required by Utah Code Ann. §§48-1-15 and 48-1-37. The trial court's Conclusions of Law should be reviewed for their correctness.

ARGUMENT

POINT I

THERE WERE NOT UNIQUE OR EXCEPTIONAL CIRCUMSTANCES WHICH WARRANTED THE DISTRIBUTION OF THE DEFENDANT'S PREMARITAL 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). The court then relied on facts and circumstances set forth in paragraph 10(a-l) of the original findings and conclusions signed October 5, 1989, and found such to be "unique" in nature. (R. 232).[4] The Defendant submits that the facts and circumstances in paragraph 10(a-l) are not unique in nature, either singularly or collectively. Furthermore, by relying on such circumstances as "unique" in nature, is akin to once again recognizing a "marriage like relationship" prior in time to when Utah's common law marriage statute was enacted. Utah Code Ann. §30-1-4.5 (1987).

Looking closely at paragraph 10(a-l) of the findings and conclusions signed October 5, 1989 (R. 150-152), and paragraph 3(A-L) of the findings and conclusions signed March 23, 1993 (R. 235-237), the facts and circumstances are not "unique" in nature.

Each subparagraph is not unique in nature unless perhaps one is trying to establish that there was a "marriage like relationship". For instance, the first subparagraph states that "The parties met on the Defendant's birthday, 4 December, 1978". (R. 150, 235). This surely is not unique in nature.

The second subparagraph points out that the Plaintiff resided in her mobile home in Orem, Utah, and when the Defendant was not working out of state on temporary duty

[4]Paragraph 10(a-l) were reincorporated into the trial courts last Findings and Conclusions as Paragraph 3(A-L). (R. 235-237).

assignments, he would stay with the Plaintiff in her mobile home. (R. 150, 235). Again, this is not unique in nature.

Likewise, in all twelve subparagraphs of these findings, none are unique in nature, either singularly or collectively, which would warrant the distribution of the Defendant's pre-marital property. These subparagraphs only evidence that the parties had a pre-marital relationship and that the Plaintiff derived great benefit from such relationship at the financial sacrifice of the Defendant. Of these findings, only subparagraph "e/E" remotely represents circumstances that would permit the Plaintiff to have a share of the Defendant's pre-marital property. (This will be further addressed below concerning the Plaintiff's contribution toward the growth of the Defendant's separate assets.) In summary, by recognizing the aforementioned subparagraphs as "unique" in nature, would, in essence, be once again recognizing a "marriage like relationship" before Utah Code Ann. §30-1-4.5 was enacted in 1987. As this court has already ruled, §30-4-4.5 may not be applied retroactively. Walters v. Walters, 812 P.2d 64, 69 (Utah App. 1991).

As instructed by the Court of Appeals, the trial court points out that it considered the factors suggested in Burke v. Burke, 733 P.2d 133, 135 (Utah 1987) for determining unique circumstances. As Burke points out, the factors that are generally considered are:

> the amount and kind of property to be divided; whether the property was acquired before or during the marriage; the source of the property; the 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 the property division has with the amount of alimony and child support to be awarded. 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. (emphasis added).

Id. at 135; Walters, 812 P.2d at 67. After considering such factors, a trial court may reallocate premarital property if unique circumstances exist. Id.; Haumont, 793 P.2d at 424-25.

The trial court states that it gave special attention to the factor most emphasized in Burke: "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." At. 135. (R. 232). The trial court concluded that the Plaintiff made a substantial contribution to the growth of the Defendant's separate assets.

The Defendant asserts that the efforts of the Plaintiff were not a substantial contribution to the growth of the Defendant's realty. A close reading of the record indicates that those efforts primarily consisted of organizing her friends to do concrete work. (Tr. 15, 16, 17, 19, 23, 26, 33, 37, 38, 55, 56). She also planted some sod and flowers on parcel 1. (Tr. 26). This added no appreciable value to the property awarded to her as shown by the Plaintiff's appraiser. (R. 243, 244). The Plaintiff's appraisal valued Parcel's 1 and 2 at the same value, each at $20,000.00. The Plaintiff's appraisal does not reflect an appreciable value for the improvements on Parcel 1 of which the Plaintiff was involved.

All of the improvements which were made on the properties were paid for by the Defendant. (Tr. 49). In addition to paying off the payments on the Plaintiff's trailer home totaling $3,500.00 (Tr. 67), the Defendant spent over $5,000.00 for improvements to the Plaintiff's trailer (Tr. 67), all to the benefit of the Plaintiff. The Plaintiff derived further financial benefit from the Defendant as he moved her trailer, at a cost of $521, to his pad located on Parcel 1 where she was permitted to live rent free. The Defendant further assisted the Plaintiff by paying off her debts and obligations which included $4,000.00 to the IRS, $2,700.00 to the State Tax Commission, $400.00 for a car loan, $150.00 for a television loan, and bills from a Wyoming accident totaling $1,000.00. [transcript and exhibit from original trial (Tr. 86-88, 105-106) (Ex. 13)]. All of these expenses were paid prior to the parties marriage in 1984. The Defendant also paid substantial amounts of money to the Plaintiff for services rendered and to keep her going at home. (Tr. 67, 68).

The trial court is mistaken by finding that the Plaintiff was a financial contributor to the relationship which allowed the Defendant the ability to pool his resources and use them for the purchase of his properties. (R. 240). It is quite evident that the Plaintiff's financial assistance did not enhance the Defendant. He could have and would have paid for the improvements and properties with or without her. (Tr. 64). He was of great assistance to her at his expense. Without the considerable payments on the Plaintiff's behalf, the Defendant would have better been able to dedicate his resources to accumulating and enhancing his properties.

It is evident that the trial court's findings are clearly erroneous. The record is clear that there are not unique circumstances which warrant the reallocation of the Defendant's pre-marital property. The trial court's decision is clearly unjust and a clear abuse of discretion.

POINT II

THE TRIAL COURT DID NOT APPLY APPROPRIATE 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.

It is evident that the trial court struggled with the prospect of not being able to treat the parties' pre-marital relationship as a "marriage like relationship". The court overcame this by determining that the relationship, for all intents and purposes, was a partnership, as stated in the court's Memorandum Decision. (R. 232). However, the court's determination that there was a partnership, was not incorporated in the court's findings of fact, conclusions of law, and amended decree, and thus they are inconsistent with the court's Memorandum Decision. By recognizing a partnership, the trial court should have applied the appropriate partnership dissolution rules when reallocating the Defendant's pre-marital property. These rules were not used, resulting in the pre-marital property being distributed in an inequitable manner.

The applicable partnership dissolution rules require that each partner should be repaid their respective contributions and that the liabilities should be paid proportionately. Utah Code Ann. §§48-1-15, 48-1-37 (1953 as amended). Section 48-1-15(1) states that "Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership

property . . . and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits." Id. Section 48-1-37(4) further states that "The partners shall contribute as provided by Subsection 48-1-15(1) the amount necessary to satisfy the liabilities . . .". Id.

To properly apply these rules, the trial court should have determined the respective contributions of the parties and then distributed the properties accordingly. The court's allocation of the properties were inequitably divided as the Defendant was not properly credited for his significant contributions. The Plaintiff, however, was credited for contributions which were insignificant in nature or that applied solely to the betterment of her own personal property.

Because the trial court failed to properly apply the partnership dissolution rules, a manifest injustice occurred, and the court's conclusions of Law should be reviewed for their correctness.

CONCLUSION

The trial court erred by determining that there were "unique" circumstances which warranted the allocation of Defendant's pre-marital property. The Plaintiff's contributions of time and money did not significantly enhance the pre-martial properties accumulated by the Defendant. The Defendant's contributions to the Plaintiff on the other hand were significant in nature, which inhibited the Defendant from accumulating and improving his properties. The trial court's findings are clearly erroneous and the court's decision is clearly unjust and a clear abuse of discretion.

The trial court concluded that the parties relationship was, for all intents and purposes, a partnership. The trial court's findings of fact, conclusions of law, and amended decree, however, do not reflect a partnership distribution, and are thus inconsistent with the court's written Memorandum Decision. To apply proper partnership dissolution rules, the trial court should have determined the respective contributions of the parties and then distributed the properties accordingly. It is important that the trial court's conclusions of Law should be reviewed for their correctness.

The Defendant asks that the Court of Appeals remand this case to the Fourth Judicial District Court to enable it to properly distribute the pre-marital property with instructions that there were not unique circumstances warranting the allocation of the Defendant's pre-marital property. If a redistribution is merited, the applicable partnership dissolution rules should be applied distributing the properties according to the respective contributions of the parties.

DATED this 19th day of August, 1993.

Robert L. Moody

ROBERT L. MOODY
TAYLOR, MOODY & THORNE
Attorneys for Defendant/Appellant

Robert L. Moody

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of August, 1993, I did mail two true and correct copies of the foregoing to Dana D. Burrows, Attorney for Plaintiff/Respondent, 387 West Center, Orem, Utah 84057; postage prepaid.

Kenneth Mood

Kenneth Mood

jm2 miscella\app-walters

ADDENDUM

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

HELEN JAYNE WALTERS,

Plaintiff,

vs.

LEWIS MARK WALTERS,

Defendants.

CASE NUMBER: 872408

MEMORANDUM DECISION

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-l) 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 Stated 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 realtv. 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 ont he 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

STATE OF UTAH
FOURTH DISTRICT COURT
UTAH COUNTY

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

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 25 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

****

HELLEN JAYNE WALTERS,

Plaintiff,

-vs-

LEWIS MARK WALTERS,

Defendant.

CASE NUMBER CV 87 2408

RAY M. HARDING, JUDGE

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.

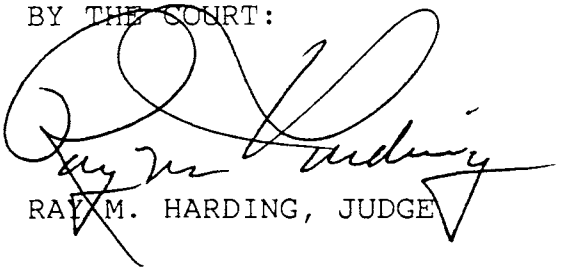
The Court has no evidence of values with which to divide the disputed personal property of the parties. The parties are therefore given the option of either agreeing on a division of property between themselves, or having one party prepare two lists of property and the other selecting a list. If the 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:



RAY M. HARDING, JUDGE

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

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 monitory 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 ~~August~~ Oct., 1989.

By the Court:

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

Approved as to form:

THOMAS H. MEANS, #2222
Attorney for Plaintiff
363 North University
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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,	)	**AMENDED 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 ~~August~~ 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

Robert L. Moody, No. 2302
TAYLOR, MOODY & THORNE
Attorneys for Defendant
2525 North Canyon Road
P. O. Box 1466
Provo, Utah 84603
(801) 373-2721

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

HELEN JAYNE WALTERS, Plaintiff,	:	EXPENSES PAID BY DEFENDANT TO ENABLE PLAINTIFF TO PRESERVE ASSETS
vs.	:	
LEWIS MARK WALTERS, Defendant.	:	Civil No. CV 87 2408 Judge Ray M. Harding

I.R.S.	$4,000.00
State Tax Commission	$2,700.00
Payment on Trailer	$3,000.00
Payment on Car Loan	$400.00
Payment on T.V. Loan	$150.00
Wyoming Accident Bills	$1,000.00
Costs to move Trailer from Orem to Pleasant Grove	$521.00
TOTAL:	$10,371.00

DATED this 6th day of February, 1989.

Robert L. Moody
ROBERT L. MOODY

DEFENDANT'S EXHIBIT NO. 13
PENCAD-Bayonne, N. J.

30-1-4.5. Validity of marriage not solemnized.

(1) A marriage which is not solemnized according to this chapter shall be legal and valid if a court or administrative order establishes that it arises out of a contract between two consenting parties who:

(a) are capable of giving consent;

(b) are legally capable of entering a solemnized marriage under the provisions of this chapter;

(c) have cohabited;

(d) mutually assume marital rights, duties, and obligations; and

(e) who hold themselves out as and have acquired a uniform and general reputation as husband and wife.

(2) The determination or establishment of a marriage under this section must occur during the relationship described in Subsection (1), or within one year following the termination of that relationship. Evidence of a marriage recognizable under this section may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

History: C. 1953, 30-1-4.5, enacted by L. 1987, ch. 246, § 2.

Severability Clauses. — Laws 1987, ch. 246, § 5 provided that if any provision of Chapter 246, or the application of any provision to any person or circumstance, is held invalid, the remainder of the chapter is to be given effect without the invalid provision or application.

30-1-5. Marriage solemnization — Before unauthorized person — Validity.

No marriage solemnized before any person professing to have authority therefor shall be invalid for want of such authority, if consummated in the belief of the parties or either of them that he had such authority and that they have been lawfully married.

History: R.S. 1898 & C.L. 1907, § 1187; C.L. 1917, § 2970; R.S. 1933 & C. 1943, 40-1-5.

Cross-References. — Authorized person required to solemnize marriage, § 30-1-2.

NOTES TO DECISIONS

Foreign common-law marriages.

This section does not render valid a common-law marriage entered into in a foreign state where such marriages are recognized. In re Vetas' Estate, 110 Utah 187, 170 P.2d 183 (1946).

COLLATERAL REFERENCES

Am. Jur. 2d. — 52 Am. Jur. 2d Marriage §§ 39, 106.

C.J.S. — 55 C.J.S. Marriage § 29.

A.L.R. — Validity of marriage as affected by lack of legal authority of person solemnizing it, 13 A.L.R.4th 1323.

Key Numbers. — Marriage ⇐ 27.

48-1-15. Rules determining rights and duties of partners.

The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(1) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property, and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(2) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(3) A partner who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute shall be paid interest from the date of the payment or advance.

(4) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(5) All partners have equal rights in the management and conduct of the partnership business.

(6) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(7) No person can become a member of a partnership without the consent of all the partners.

(8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

History: L. 1921, ch. 89, § 18; R.S. 1933 & C. 1943, 69-1-15.

NOTES TO DECISIONS

ANALYSIS

Existence of partnership.

An organization of workers, formed for the purpose of performing and undertaking contracts for bricklaying jobs, did not have the essential elements of either a general or limited partnership, where all the equipment used by workers belonged to one individual who had sole authority to make contracts for himself and the organization, and where workers were not entitled to share in profits equally or on any fixed percentage basis, were not chargeable for losses, and were not permitted to determine the means or methods of operating. Johanson Bros. Bldrs. v. Board of Review, 118 Utah 384, 222 P.2d 563 (1950).

Gifts to members of family.

Where father intended at the time of dissolution of family partnership to make a gift to his son and wife of certain amounts of the capital contributions he had made to the partnership, and intended that such gift be accomplished by each partner's sharing according to respective partnership interests in the total assets of the partnership including the contributions made by the father, and the other partners relied on such gift, the agreement between the parties superseded Subsection (1) of this section. West v. West, 16 Utah 2d 411, 403 P.2d 22 (1965).

Remuneration to partner for services.

Where partners had made no agreement as

to the partners' wages or compensation, it was not error for the trial court to exclude evidence that one partner did more work than the other, for partners receive no compensation for action in the partnership business (other than splitting the profits) unless there is an agreement or provision for such remuneration. Keller v. Wixom, 123 Utah 103, 255 P.2d 118 (1953).

Generally, a partner is not entitled to any remuneration for his services in the absence of an agreement by the partners to that effect. Chambers v. Sims, 13 Utah 2d 371, 374 P.2d 841 (1962).

Where the partnership agreement or a specific practice, acquiesced in by the partners, contemplates the payment of salary to one or more partners, but no amounts are specified, it is presumed that payment of reasonable salaries is intended. Chambers v. Sims, 13 Utah 2d 371, 374 P.2d 841 (1962).

While generally a partner is not entitled to any remuneration for his services while acting in the partnership business in the absence of a partnership agreement providing for such remuneration, such an agreement for remuneration may be either expressed or implied. Knutson v. Lauer, 627 P.2d 66 (Utah 1981).

In the absence of an agreement providing for remuneration, partner was not entitled to remuneration for services rendered while acting in the partnership business. Nupetco Assocs. v. Jenkins, 669 P.2d 877 (Utah 1983).

Repayment of contributions.

Upon dissolution and distribution of partnership assets, this section does not authorize the deduction of depreciation from advances made for capital improvements in repayment of the partners' contributions, and trial court erred when it ordered such deduction for depreciation because the partnership agreement did not authorize such deduction and to allow the deduction would produce an unjust result. Knutson v. Lauer, 627 P.2d 66 (Utah 1981).

Sharing profits and losses.

Although obligation to share losses is not directly expressed in partnership agreement, generally agreement to share profits, nothing being said about losses, amounts prima facie to agreement to share losses also. Bentley v. Brossard, 33 Utah 396, 94 P. 736 (1908).

In absence of agreement or proof of agreement to contrary, partners will divide profits and losses equally. Kimball v. McCornick, 70 Utah 189, 259 P. 313 (1927).

COLLATERAL REFERENCES

Am. Jur. 2d. — 59A Am. Jur. 2d Partnership §§ 409 to 418, 469 to 475.

C.J.S. — 68 C.J.S. Partnership § 76.

A.L.R. — Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner, 4 A.L.R.4th 1122.

Key Numbers. — Partnership ⇦ 70.

48-1-16. Partnership books.

The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

History: L. 1921, ch. 89, § 19; R.S. 1933 & C. 1943, 69-1-16.

COLLATERAL REFERENCES

Am. Jur. 2d. — 59A Am. Jur. 2d Partnership §§ 962 to 967.

C.J.S. — 68 C.J.S. Partnership § 91.

Key Numbers. — Partnership ⇦ 80.

TITLE 48

PARTNERSHIP

Chapter
1. General Partnership.
2a. Utah Revised Uniform Limited Partnership Act.
2b. Utah Limited Liability Company Act.

CHAPTER 1

GENERAL PARTNERSHIP

Section
48-1-37. Rules for distribution.

48-1-37. Rules for distribution.

In settling accounts between the partners after dissolution the following rules shall be observed, subject to any agreement to the contrary:

(1) The assets of the partnership are:

(a) The partnership property.

(b) The contributions of the partners necessary for the payment of all the liabilities specified in Subsection (2).

(2) The liabilities of the partnership shall rank in order of payment, as follows:

(a) Those owing to creditors other than partners.

(b) Those owing to partners other than for capital and profits.

(c) Those owing to partners in respect of capital.

(d) Those owing to partners in respect of profits.

(3) The assets shall be applied in the order of their declaration in Subsection (1) to the satisfaction of the liabilities.

(4) The partners shall contribute as provided by Subsection 48-1-15(1) the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and in the relative proportions in which they share the profits the additional amount necessary to pay the liabilities.

(5) An assignee for the benefit of creditors, or any person appointed by the court, shall have the right to enforce the contributions specified in Subsection (4).

(6) Any partner or his legal representative shall have the right to enforce the contributions specified in Subsection (4) to the extent of the amount which he has paid in excess of his share of the liability.

(7) The individual property of a deceased partner shall be liable for the contributions specified in Subsection (4).

(8) When partnership property and the individual properties of the partners are in the possession of a court for distribution, partnership creditors shall have priority on partnership property and separate credi-

tors on individual property, saving the rights of lien or secured creditors as heretofore.

(9) Where a partner has become bankrupt or his estate is insolvent, the claims against his separate property shall rank in the following order:

(a) Those owing to separate creditors.

(b) Those owing to partnership creditors.

(c) Those owing to partners by way of contribution.

History: L. 1921, ch. 89, § 40; R.S. 1933 & C. 1943, 69-1-37; L. 1992, ch. 30, § 89.

Amendment Notes. — The 1992 amendment, effective April 27, 1992, made stylistic changes throughout the section.

CHAPTER 2a

UTAH REVISED UNIFORM LIMITED PARTNERSHIP ACT

Article I

General Provisions

Article II

Certificates of Limited Partnership

ARTICLE I

GENERAL PROVISIONS

48-2a-102. Name.

(1) The name of each limited partnership as set forth in its certificate of limited partnership:

(a) shall contain the words "limited partnership," "limited," "L.P.," or "Ltd.";

(b) may not contain the name of a limited partner unless:

(i) it is also the name of a general partner or the corporate name of a corporate general partner; or

(ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(c) may not contain the words "association," "corporation," or "incorporated," or any abbreviation thereof, or any words or any abbreviation thereof which are of like import in any other language; and

(d) may not, without the written consent of the United States Olympic Committee, contain the words "Olympic," "Olympiad," or "Citius Altius Fortius."

(2) No person or entity other than a limited partnership formed or registered under this title may use any of the terms "limited," "limited partnership," "Ltd.," or "L.P." in its name in this state except that any foreign corporation whose actual name includes the word "limited" or "Ltd." may use its actual name in this state if "corporation," "incorporated," or any abbreviation of them is also used. Notwithstanding any of the preceding provisions of Sub-