

2004

# Wesley O. Bayles v. Linda Caryl Bayles : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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WESLEY O. BAYLES,	)	Appeals Case No. 2000 <del>04</del> 1133
Petitioner/Appellant,	)	Second District Court No. 004702059
vs.	)	
LINDA CARYL BAYLES,	)	
Respondent/Appellee.	)	

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BRIEF OF APPELLEE

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Appeal from an Order (Post-Divorce) Entered by the  
Second Judicial District Court, State of Utah, Davis County,  
Honorable Thomas L. Kay, District Court Judge

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FILED  
UTAH APPELLATE COURT  
MAY 22 2006

IN THE UTAH COURT OF APPEALS

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	)	
Respondent/Appellee.	)	

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**STATEMENT OF JURISDICTION**

The jurisdiction of this case is vested with the Utah Court of Appeals pursuant to Utah Code Ann. §78-2a-3(2)(h), and pursuant to Rules 3(a) and 4(a) of the Utah Rules of Appellate Procedure.

**STATEMENT OF ISSUES**

Issue 1. Petitioner/Appellant has failed to marshal the evidence against the trial court's findings of fact.

Issue 2. The trial court did not abuse its discretion when it refused to order specific performance.

Issue 3. The trial court did not abuse its discretion when it did not allow Mr.

Bayles to deduct the same costs as if the properties had been sold to bona fide third party purchasers.

### **STANDARD OF APPELLATE REVIEW**

Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. Rule 52(a), Utah Rules of Civil Procedure; Sigg v. Sigg, 905 P.2d 908 (Utah App. 1995). In order to overturn the District Court's findings of fact, the appellant must "marshall the evidence in support of the findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be 'against the clear weight of the evidence,' thus making them 'clearly erroneous'." Hagan v. Hagan, 810 P.2d 478 (Utah App. 1991) (citations omitted).

The District Court's legal conclusions are reviewed for an abuse of discretion. Sigg v. Sigg, 905 P.2d 908, 912. "Trial courts may exercise broad discretion in adjusting the financial interests of parties to divorce and modification proceedings, so long as the decision is within the confines of legal precedence....Where a trial court may exercise broad discretion, we presume the correctness of the court's decision absent 'manifest injustice or inequity that indicates a clear abuse of ...discretion'." Crockett v. Crockett, 836 P.2d 818, 819 (Utah App. 1992), quoting Hansen v. Hansen, 736 P.2d 1055, 1056 (Utah App. 1987).

### **DETERMINATIVE LAW**

Utah Code Ann. §30-3-5(1) states: "When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and



parties.” Utah Code Ann. §30-3-5(3) states: “The court has **continuing jurisdiction** to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, **and for distribution of the property and obligations for debts as is reasonable and necessary.**” (Emphasis added.)

### **STATEMENT OF THE CASE**

This appeal follows an evidentiary hearing held on November 10, 2004, before the Honorable Thomas L. Kay, District Court Judge, following an Order to Show Cause. The Petitioner/Appellant objects to the provisions of the Court’s Order after Hearing concerning the amounts he was required to pay to the Respondent/Appellee to purchase her interest in two marital properties of the parties located in the State of California.

### **STATEMENT OF FACTS**

1. The parties were divorced following a trial on October 1-2, 2002. Findings of Fact and Conclusions of Law, and a Decree of Divorce, were entered on November 25, 2002. (Record on Appeal, pages 148 et seq. and pages 167 et seq.) (See copies in the Addendum).

2. The parties owned multiple parcels of property in Yuba County, California. The Court found in ¶24 of its Findings of Fact and Conclusions of Law: “In light of the parties’ past payment and debt history, the above-mentioned California properties should be sold as soon as possible.” (Record on Appeal, page 153).

3. The Court further found in ¶15 of its Decree of Divorce:

15. The petitioner is awarded a right of first refusal for the purchase of any and all of the California properties. Upon acceptance of any bona fide offer

to purchase a California property, the petitioner shall receive written notice of the acceptance of the offer and shall have thirty (30) days from the receipt of said notice to provide written notice of his election to purchase the property on the same terms as the bona fide offer. If petitioner exercises the right of first refusal, he shall pay the respondent the amount she would receive from the sale of that parcel, said payment to be made within 30 days of the time he exercises his right of first refusal.

4. Two of the California properties are at issue in this appeal: 10695 Forbestown Road, Yuba County, California, which Petitioner/Appellant refers to as the “personal residence”, and 10691 Forbestown Road, Yuba County, California, which Petitioner/Appellant refers to as the “lake property”.

5. Mrs. Bayles, the Respondent/Appellee, listed all five properties for sale through a California realtor. She received an offer through the realtor for the purchase of the “personal residence”. Mr. Bayles gave notice of his intention to exercise his right of first refusal to purchase this property, and tendered to Mrs. Bayles the sum of \$39,286.74, together with a copy of a document entitled “Seller’s Estimated Settlement Statement” dated 5/30/03, listing the total sales price as \$145,000.00, listing 10695 Forbestown Road as the sales property, and listing various expenses which he claimed as charges against the total sales price. (Record on Appeal page 283, included in Addendum). Mr. Bayles testified that he did not pay any real estate commissions, insurance, county transfer tax, escrow fees, FedEx or courier fees, hazard disclosure fees, termite or septic inspections, home warranty costs, and did not pay to have boundaries marked. He also did not pay all property taxes owed on the property at the time of sale. (Record on Appeal page 410, Transcript of November 10, 2004 hearing, page 127 line 20 through page 129, line 17; page 130 line 12

through page 131, line 6.) The trial court later found that Mr. Bayles did not actually incur all of these expenses, and found that his submission of that document to Mrs. Bayles was “tantamount to an affirmative representation that Petitioner had, in fact, incurred all those expenses in the amounts shown therein”(Order After Hearing ¶5, Record on Appeal pages 313-314).

6. When Mrs. Bayles received the funds tendered by Mr. Bayles for the “personal residence”, she responded in a letter indicating that she disputed his calculation of the amount she was owed for her interest in the “personal residence”, and indicating her belief that Mr. Bayles had deducted expenses he had not incurred and that she was therefore owed more money. (Record on Appeal page 263, included in Addendum.)

7. When Mr. Bayles purchased the “personal residence” from Mrs. Bayles, he did not pay off the existing financing to Mr. Helm, although Paragraph 17 of the Decree of Divorce provides that proceeds from the sale of any of the California properties should be applied to pay closing costs, real estate commissions and any existing mortgage obligations owing, including any tax or debt delinquencies. (Record on Appeal page 410, Transcript of November 10, 2004 hearing, page 124 line 5 through page 125 line 20.)

8. Mr. Bayles acknowledged that there was a dispute about whether he had paid Mrs. Bayles her entire share for the purchase of the “personal residence” in a letter he wrote to her indicating his refusal to record the deed sent to him by Mrs. Bayles for that property. After delaying for some time, Mr. Bayles ultimately recorded the deed. (Record on Appeal page 410, Transcript of November 10, 2004 hearing, page 126 line 5 through Page

127 line 4).

9. Shortly after Mr. Bayles tendered funds to Mrs. Bayles for the “personal residence”, he sent another check to Mrs. Bayles in the amount of \$15,044.26 (Record on Appeal page 261) which he apparently intended as a downpayment for his purchase of the “lake property”. Although he apparently based this on an offer for purchase received from a third party, Mrs. Bayles never accepted that third-party offer and therefore Mr. Bayles had no right of first refusal in the amount he proposed as the purchase price for the “lake property”. (Decree of Divorce ¶15, Record on Appeal page 170; Record on Appeal page 410, Transcript of hearing November 10, 2004, page 109 line 14 through page 110 line 2). Mr. Bayles’ testimony at the hearing of November 10, 2004 made clear that he was not making a separate offer to Mrs. Bayles, but was attempting to match an existing offer; in other words, he was attempting to exercise his right of first refusal. (Record on Appeal page 410, Transcript of November 10, 2004, page 118, lines 6-20 and page 135, lines 2-4.)

10. Mrs. Bayles responded to both payments with a letter dated June 30 (Record on Appeal page 263, copy included in Addendum). In this letter she indicated her disagreement with the calculation of Mr. Bayles of the amount of her share for the “personal residence”, and her refusal to sell him the “lake property” at the price he set.

11. These issues ultimately came before Commissioner Dillon on an Order to Show Cause, and were certified for evidentiary hearing. This appeal followed the evidentiary hearing which was held on November 10, 2004.

## **SUMMARY OF ARGUMENT**

1. The Petitioner/Appellant has the burden to “marshall the evidence in support of the findings and then demonstrate that despite this evidence, the trial court’s findings are so lacking in support as to be ‘against the clear weight of the evidence,’ thus making them ‘clearly erroneous’.” Hagan v. Hagan, 810 P.2D 478 (Utah App. 1991). He has failed to meet this burden, and thus the Court must assume that the findings of fact of the trial court are supported by the record.

2. The trial court did not abuse its discretion when it failed to order specific performance. There was no meeting of minds sufficient to create an enforceable contract on the terms claimed by Petitioner/Appellant as to either parcel of property. The parties disagreed about the gross sales price for the “lake property”, and disagreed concerning the expenses which Mr. Bayles was entitled to charge to Mrs. Bayles for the “residence property.” Without an enforceable contract, specific performance is inappropriate for either parcel of property.

3. It was not an abuse of discretion when the trial court refused to permit Mr. Bayles to charge Mrs. Bayles for the same costs as if the properties had been sold to bona fide third party purchasers. The Court retains continuing jurisdiction to make subsequent changes or new orders for distribution of the property as is reasonable and necessary [Utah Code Ann. §30-3-5(3)]. This does not always constitute a modification of decree after a showing of change in circumstances, but also can include clarification, corrections, or adjustments necessary to carry out the intent of the court. Klein v. Klein, 544 P.2d 472

(Utah 1975). The trial court appropriately refused to give Mr. Bayles a windfall at the expense of Mrs. Bayles, refusing to allow him to charge her for expenses he did not incur. This order carried out the trial court's intention to equally divide between the parties the value of the marital properties.

## **ARGUMENT**

### **I. PETITIONER/APPELLANT HAS FAILED TO MARSHALL THE EVIDENCE AGAINST THE TRIAL COURT'S FINDINGS OF FACT.**

The Petitioner/Appellant fails to meet the standard of appellate review to overturn the trial court's decision. He has the burden to "marshall the evidence in support of the findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be 'against the clear weight of the evidence,' thus making them 'clearly erroneous'." Hagan v. Hagan, 810 P.2D 478 (Utah App. 1991).

Mr. Bayles has not, in "comprehensive and fastidious order, [marshaled] every scrap of competent evidence introduced at trial which supports the very findings [he] resists." Moon v. Moon, 973 P. 2d 431, 437 (Utah App. 1999) Instead of meeting his burden, Mr. Bayles simply states the facts as he wanted them to be. Some of his stated facts are contrary to his own testimony at the hearing on November 10, 2004. In cases such as this, the Court has stated that it will "...[assume] that the record supports the findings of the trial court and [this Court] proceeds to a review of the accuracy of the lower court's conclusions of law and the application of that law to the case." Shepherd v. Shepherd, 876 P.2d 429, 432 (Utah App. 1994). Even if Mr. Bayles had met the first prong of marshalling the evidence, he has

failed to met the second prong, which calls for an analysis to expose any “fatal flaw in the evidence” sufficient to overturn the trial court’s findings. Moon at 437.

Since Mr. Bayles has not met his burden, this court should find the trial court’s findings are supported by the record.

## **II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT REFUSED TO ORDER SPECIFIC PERFORMANCE.**

**A. Lake property (10691 Forbestown Road).** The trial court below made a specific finding concerning the purchase by the Mr. Bayles of the “lake property” that “there was no meeting of minds sufficient to establish a contract for sale at a price of \$72,000 between the parties”. Mr. Bayles has not shown that this finding clearly erroneous; therefore, it must stand. With no “meeting of minds sufficient to establish a contract”, there can be no specific performance; there is no contract for the court to enforce with regard to the lake property. Further, the testimony of Mr. Bayles was not that he was making a separate, independent offer for purchase of the property from Mrs. Bayles; rather, he was merely attempting to exercise his right of first refusal. Because Mrs. Bayles had not accepted the third-party offer of \$72,000 for the property, Mr. Bayles had no right of first refusal to purchase the property for \$72,000.

The case of Kier v. Condrack 478 P.2d 327, 25 Utah 2d 139 (Utah 1970) is distinguishable. In the Kier case, the sellers agreed to give buyers an option to purchase a specific parcel of property for the sum of \$23,500 if the option was exercised by a specific date, leaving the payment terms open for negotiation. Both parties agreed to this option;

however, when the buyers gave notice of their intention to exercise the option, proposing to pay by assuming the balance owing on two mortgages and paying the difference in cash, the sellers simply refused to sell at the price previously agreed. The trial court in the Kier case believed that the sellers were not acting in good faith, and were making excuses because they had decided not to sell; therefore, specific performance was ordered, and this was upheld on appeal. However, in the case at hand, there was never an agreement between Mr. Bayles and Mrs. Bayles as to the purchase price for the “lake property”. Mrs. Bayles was highly motivated to sell the property, but not for less than it was worth. Mr. Bayles could not exercise a right of first refusal to purchase for \$72,000, as Mrs. Bayles had never accepted an offer in that amount; and she never gave Mr. Bayles any indication that she was willing to sell to him for that price.

The case of R. J. Daum Construction Co. v. Child, 247 P.2d 817 (Utah 1952) is closer to the situation at hand. Child submitted a bid to Daum in connection with Daum’s bid as general contractor on a government construction job. In return, Daum sent a written contract to Child, which included terms with which Child did not agree and which had not been a part of Child’s original bid. Child refused to enter into a contract, and refused to perform. In finding that there was no binding contract which could be enforced, the Court in that case stated: “...there must be made manifest a definite intention to accept the offer and every part thereof and be presently bound thereby without material reservations or conditions.” (247 P.2d 817, 819). The Court further went on to state at page 820: “An acceptance must be clear, positive, and unambiguous.” That was not the case in Daum, and



it is not the case here. Mrs. Bayles made it very clear that she would not accept an offer of \$72,000, and her position never changed. Without a definite intention by Mrs. Bayles to accept the offer made by Mr. Bayles, without reservations or conditions, there was no binding contract for the “lake property” for \$72,000, and without a binding contract, there can be no specific performance. As stated in Pitcher v. Lauritzen, 423 P.2d 491, 18 Utah 2d 368 (Utah 1967), at page 493, “Specific performance cannot be required unless all terms of the agreement are clear. The Court cannot compel the performance of a contract which the parties did not mutually agree upon.”

Mr. Bayles sent Mrs. Bayles the sum of \$15,000.00 as a partial payment for his offer to purchase, with a promise to pay the balance within thirty (30) days. Mrs. Bayles responded that the offer was not acceptable, but she retained the funds as payment for funds already owed to her by Mr. Bayles. Mr. Bayles never tendered the balance of the purchase price under his offer, nor did he pay the funds into the court, place them in escrow, or make any effort to show that he stood ready, willing and able to complete the purchase on his proposed terms. Further, Mr. Bayles was given the benefit of the funds he paid to Mrs. Bayles which he claims she wrongly retained; \$13,000.00 of those funds were applied by the Court to a prior judgment against him for unpaid alimony, and the balance was applied to offset the additional amount awarded to Mrs. Bayles for the “residence” property. Mrs. Bayles has not received a windfall from the funds sent to her by Mr. Bayles, and her retention of these funds while making it clear that she did not agree with the purchase price proposed by Mr. Bayles did not create a binding contract.

**B. Residence property (10695 Forbestown Road).** Mr. Bayles' attempt to create a contract subject to specific performance for the sale of this property consisted of his providing Mrs. Bayles with a "Seller's Estimated Settlement Statement" claiming that he had expenses of \$66,426.52 (see page 283 of the record on appeal), and tendering payment based on that document. At trial, Mr. Bayles testified that he had not, in fact, incurred all the expenses listed on the "Seller's Estimated Settlement Statement". The Court found specifically that supplying that document was "tantamount to an affirmative representation that Petitioner had, in fact, incurred all those expenses in the amounts shown therein" (§5 of Order After Hearing, page 313 of the record on appeal). The Court further found that Mrs. Bayles was entitled to retain the funds tendered by Mr. Bayles, as she would be entitled receive at least that amount for her share of the residence property.

Mrs. Bayles made it clear that while she agreed with the total sale price for this property of \$145,000, she did not agree that Mr. Bayles was entitled to charge her for expenses he did not incur. This is also comparable to the situation in Daum, where a bid (the equivalent of Mrs. Bayles' agreement to sell for \$145,000) did not create an enforceable contract when countered by a proposed contract with additional terms (Mr. Bayles' submission of the "Seller's Estimated Settlement Statement" with expenses he proposed charging to Mrs. Bayles). Without an enforceable contract for sale at \$145,000 with all the expenses claimed by Mr. Bayles but not actually incurred, specific performance is not appropriate for the "personal residence" either.

Further, it would not be equitable to allow Mr. Bayles to claim specific

performance of a “contract” which was based upon a “Seller’s Estimated Settlement Statement” which represents that he had expenses of \$66,426.52, when in fact he did not incur those expenses. A party to a contract should not be permitted, by a Court doing equity, to specifically enforce a contract based upon a misrepresentation.

**III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION  
WHEN IT DID NOT ALLOW MR. BAYLES TO DEDUCT  
THE SAME COSTS AS IF THE PROPERTIES HAD BEEN SOLD  
TO BONA FIDE THIRD PARTY PURCHASERS.**

The trial court did not abuse its discretion in ordering that Mr. Bayles was not entitled to deduct the same costs as if the properties had been sold to bona fide third party purchasers. Stated another way, the trial court did not abuse its discretion when it refused to permit Mr. Bayles to charge Mrs. Bayles for expenses which he did not actually incur. The Court retains continuing jurisdiction to make subsequent changes or new orders for distribution of the property as is reasonable and necessary [Utah Code Ann. §30-3-5(3)]. As was stated in Klein v. Klein, 544 P.2d 472 (Utah 1975), “...we see no reason why the court in its effort to do equity between these parties could not make whatever corrections or adjustments in the decree it deemed necessary to carry out that purpose.” (544 P.2d 472, 475.) The Klein case involved changes made by the trial court without an initial finding that there had been a change of circumstances. In the case of Land v. Land, 605 P.2d 1248 (Utah 1980), the parties were engaged in a dispute over the meaning of the term “equity” in their stipulated divorce. When the trial court attempted to define the term and how it would apply to the case, the Utah Supreme Court stated: “We deem it appropriate for the trial court to

have placed a common usage meaning upon the term and that is precisely what it did. By interpreting the term “equity” as it did, the court made an effort, not to supplant the original agreement, but simply to construe it in the manner as contemplated by the parties at the time it was drafted.” (605 P.2d 1248, 1251). Certainly, if a trial court can interpret common usage terminology in a stipulation between parties, it has the authority in its discretion to interpret its own orders.

This case is distinguishable from many others involving disputes over property distributions following a divorce, in that the majority of those cases involved stipulations of the parties which were approved by the Court and then embodied in a final Decree of Divorce. For example, in Williams v. Shearwood, 688 P.2d 475, (Utah 1984), the trial court refused to modify a stipulated order granting an easement. Having first interpreted the language of the stipulation and order to grant an unconditional easement, and not an easement by necessity, (an interpretation not challenged by the Utah Supreme Court, and not considered a modification of the prior order), the trial court then found that the need for the easement still existed. That finding was affirmed on appeal. However, in this case there was no such stipulation, and the procedure for dividing the California property was established by the Court itself following trial. There is, therefore, no contract or agreement of the parties to be enforced, no “rights and privileges voluntarily contracted away” as in Lea v. Bowers 658 P.2d 1213, 1215 (Utah 1983) and the cases referenced therein.

This case is closer to Hagan v. Hagan, 810 P.2d 478 (Utah App. 1991), in which Mr. Hagan was given “fee title ownership” of the marital residence, and Mrs. Hagan

was given the right “to reside in said property for so long as she desires” in the original Decree of Divorce. In a subsequent trial, the trial court found that this right to reside in the marital home was a life estate for Mrs. Hagan, which included her right to rent out the marital residence and receive the rental proceeds without dividing them with Mr. Hagan. On appeal, these findings were upheld, and were not considered modifications of the original Decree but rather merely effects of the language of the original Decree of Divorce.

Likewise, in Busch v. Busch, 71 P.3d 177 (Ut. App. 2003), the trial court was ordered on remand to consider husband’s motion to clarify an earlier divorce decree to determine whether the prior order to pay the parties’ second mortgage was in the nature of alimony which could be terminated upon wife’s remarriage. This was also not considered a modification proceeding, and the trial court clearly was given the discretion to consider making a clarification of the decree.


It was not an abuse of discretion for the trial court in this case to order that Mr. Bayles was not entitled to deduct any expenses of sale which he did not actually incur, when calculating the amount Mr. Bayles owed Mrs. Bayles for her share of the “residence property” (10695 Forbestown Road). It was within the court’s discretion to do equity to avoid giving Mr. Bayles a windfall, by refusing to allow him to deduct as “expenses” amounts which he had not actually paid. It is worth noting that the trial court did not in fact “back out” all expenses which Mr. Bayles did not incur, but only the major expense of real estate commissions. The court has the discretion, and indeed the obligation, to do equity in allocating fairly (and in this case, attempting to allocate equally) the property of the parties

in a divorce proceeding; having done so, the ruling of the trial court should be affirmed.

### **CONCLUSION**

Mr. Bayles has not shown that the trial court abused its discretion when it refused to order specific performance concerning Mr. Bayles' purchase of the "residence property" and of the "lake property". In neither case was there an actual meeting of minds concerning all required terms of the transaction sufficient to create an enforceable contract. The trial court acted within its discretion in determining that Mrs. Bayles should only pay for expenses of sale which were actually incurred by Mr. Bayles, thereby avoiding a windfall to Mr. Bayles. This ruling was consistent with the intention of the trial court throughout this divorce proceeding that the parties would share equally in the proceeds of their assets.

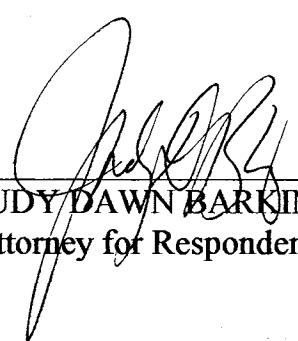
DATED this 22 day of May, 2006.

  
\_\_\_\_\_  
JUDY DAWN BARKING  
Attorney for the Respondent-Appellee  
Linda Caryl Bayles

**CERTIFICATE OF SERVICE**

I, Judy Dawn Barking, certify that on the 22 day of May, 2006, I served a copy of the attached Brief of the Respondent/Appellee upon Terry R. Spencer, the counsel for Petitioner/Appellant in this matter, by mailing to him by first class mail with sufficient postage prepaid to the following address:

Terry R. Spencer  
Attorney at Law  
140 West 9000 South #9  
Sandy, Utah 84070

  
\_\_\_\_\_  
JUDY DAWN BARKING  
Attorney for Respondent/Appellee

## **ADDENDUM**



FILED

NOV 25 2002

Layton District Court

E. NORDELL WEEKS (3412)  
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IN THE SECOND JUDICIAL DISTRICT COURT,  
IN AND FOR DAVIS COUNTY, STATE OF UTAH

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WESLEY O. BAYLES,  
  
Petitioner  
  
vs.  
  
LINDA CARYL BAYLES,  
  
Respondent

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Civil No. 004702059 DA  
Judge Thomas L. Kay

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The above-entitled matter was heard before the Honorable Thomas L. Kay, Judge of the above-entitled court, pursuant to a trial on this matter held on October 1 through October 2, 2002. The Court, having reviewed the documents and pleadings on file herein, having heard testimony and reviewed documentation and being fully advised as to both the evidence and law pertaining thereto, hereby makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. The petitioner is a resident of Davis County, State of Utah, and has been for at least three (3) months immediately prior to the filing of this action.

INDINGS OF FACT AND CONCLUSIONS OF LAW



VD10820261

2. The parties resided in the marital relationship in the State of Utah or the acts complained of by the petitioner were committed by the respondent in the State of Utah and therefore the above-captioned Court has jurisdiction over the respondent pursuant to Utah Code Annotated §78-27-24(6) (1953 as amended).

3. The petitioner and respondent were married in the City of Bountiful, State of Utah, on the 10<sup>th</sup> day of August, 1988, and separated on or about November 28, 2000.

#### Grounds for Divorce

4. During the course of this marriage, differences have arisen between the parties, which differences have now become irreconcilable, thereby making continuation of the marriage relationship impossible.

5. The petitioner should be granted a Decree of Divorce from the respondent on the grounds of irreconcilable differences effective October 2, 2002.

#### Children of the Parties

6. No Children have been born as issue of this marriage and none are expected.

7. The respondent currently has physical custody of two minor children, the petitioner's grand nephew Andrew Vincent Salazar and Andrew's sister BreAnna Rosa Flores Salazar, who are not the issue of this marriage. Custody is held pursuant to Salazar v. Salazar, case number 954904926 DA, filed in the Third District Court in and for Salt Lake County, State of Utah.

8. The Court finds that the issue of child support was not certified for trial and, even if it had been, there is no Utah

statute or case law that extends an obligation for petitioner to pay child support in this circumstance.

#### Health Insurance

9. Each party should maintain their own health, accident, hospitalization and dental insurance. The petitioner should provide any necessary cooperation in respondent's obtaining for her benefit continued health, accident, hospitalization and dental insurance coverage under the federal C.O.B.R.A. legislation, at the sole cost of the respondent.

10. On February 14, 2002, the Commissioner ordered the petitioner to pay the respondent \$1,100 per month commencing March 1, 2002. The Commissioner allowed the petitioner to deduct from said payments the amount of \$87.50 per month representing the respondent's share of monthly health insurance premiums paid by petitioner. He also ordered (in a separate paragraph) each party to be responsible for their own debts from the date of separation.

11. On August 30, 2002, the Commissioner ruled that his Order was to be applied prospectively and not retroactively. He found the petitioner wrongfully withheld \$1,312.50 representing one-half of the cost of health insurance premiums previously paid by petitioner for 15 months from the date of separation to the date of his Order (December 1, 2000, to February 14, 2002) and ordered the petitioner to reimburse the amount of \$1,312.50 to the respondent.

12. The petitioner has failed to reimburse to the respondent \$1,312.50, representing petitioner's withholding of 1/2

of the cost of health insurance premiums paid from December 1, 2000, through February 14, 2002 ( $\$87.50 \times 15 \text{ months} = \$1,312.50$ ).

#### Debts and Obligations

13. The parties have incurred certain debts and obligations. The parties are unable to afford the lifestyle they have been maintaining and have incurred extensive credit card debt.

14. The respondent should be required to pay and hold petitioner harmless on the debts owing on the Provident Card, the Citibank card, the Chase/Walmart Card, and the MBNA card.

15. The petitioner should be required to pay and hold the respondent harmless on the debts owing on the America First Credit Union Visa card, the line of credit at America First Credit Union, and the Firestone account.

16. Since the separation of the parties, the petitioner has paid approximately \$61,000 toward the marital debt obligations that existed at the time of separation. The petitioner shall not receive any credit or offset in the marital settlement for such payments. This Court finds that the majority of the debt was incurred by the petitioner and that petitioner had the financial ability to pay the debt and the respondent did not.

#### Real Property

17. The petitioner and the respondent have acquired a residence located at 1422 Vineyard Drive, Bountiful, Utah (the "Bountiful Residence"). The Bountiful Residence should be awarded to the petitioner subject to the debt thereon. The respondent should cooperate in executing a quitclaim deed in favor of the

petitioner or other documents necessary to relinquish her interest in the Bountiful Residence.

18. The petitioner should be permitted to sell the Bountiful Residence, with the respondent having no further claim or interest therein. The petitioner should be permitted to retain any profit or be responsible for any loss associated with any sale thereof. Respondent shall cooperate in executing any documents and taking any steps necessary to allow the petitioner to proceed with the sale and transfer of the Residence.

19. The respondent should not be responsible for payment of the first and second mortgage on the Bountiful Residence for the period she resided in the Residence from the date of separation through the time she moved to Oklahoma in August 2001.

20. The parties have acquired additional interests in certain other real property, including but not limited to (a) Parcel 1 of land and associated improvements located at 10692 Forbestown Road, Yuba County, California; (b) Parcel 13 of land and associated improvements located at 10747 Forbestown Road, Yuba County, California; (c) Parcel 15 of land and associated improvements located at 10695 Forbestown Road, Yuba County, California; (d) Parcel 16 of land and associated improvements located at 10691 Forbestown Road, Yuba County, California; and (e) Parcels 8 and 10 of land located in Yuba County, California, also known as the Beehive Mine.

21. Parcels 1, 13, 15, and 16 are found to be jointly held by the parties and should be considered joint marital property.

22. The Court finds that there is not clear and convincing evidence of duress associated with plaintiff's transfer of parcels 8 and 10 to the respondent as a joint tenant. Parcels 8 and 10 should be considered joint marital property.

23. The real property and improvements known as Parcel 2 (also known as parcels 22 and 23) located at approximately 10681 Forbestown Road, Yuba County, California shall be considered joint marital property. There is not sufficient evidence to conclusively track the funds used to purchase the property and to establish the lack of commingling that would be required to establish Parcel 2 (also referred to as Parcels 22 and 23) as the separate property of the petitioner.

24. In light of the parties' past payment and debt history, the above-mentioned California properties should be sold as soon as possible.

25. The petitioner shall hereinafter be entitled to retain the rental income from Parcels 1 and 15 and shall be obligated to maintain the monthly payments on the mortgages for said parcels through the date of sale of said properties.

26. The petitioner should be awarded a right of first refusal for the purchase of any and all of the California properties. Upon acceptance of any bona fide offer to purchase a California property, the petitioner shall receive written notice of the acceptance of the offer and shall have thirty (30) days

from the receipt of said notice to provide written notice of his election to purchase the property on the same terms as the bona fide offer. If petitioner exercises the right of first refusal, he shall pay the respondent the amount she would receive from the sale of that parcel, said payment to be made within 30 days of the time he exercises his right of first refusal.

27. The respondent is awarded a secondary right of first refusal. In the event that the petitioner fails to exercise his right of first refusal within thirty (30) days following his receipt of notice of acceptance of a bona fide offer, the respondent shall thereafter have thirty (30) days to provide written notice of her election to purchase the property on the same terms as the bona fide offer. If respondent exercises her right of first refusal, she shall pay the petitioner the amount he would receive from the sale of that parcel, said payment to be made within 30 days of the time she exercises her right of first refusal.

28. At the time of closing on the sale of each California property, proceeds from the sale shall first be applied to pay any and all closing costs, real estate commissions or fees, and any existing mortgage obligations owing, including any tax and/or debt delinquencies owed in relation to the property. After such costs have been paid, the petitioner shall be entitled to receive one-half of the total amount of payments he has made toward delinquent and current taxes on the property and, as applicable, one-half of the total amount he has paid toward the mortgage obligations in the property commencing with the month of

October 2002 through the date of sale. Any and all remaining proceeds from the sale of the property shall be split equally between the parties.

29. The Court finds that the real property and improvements located at (a) 1441 Michigan Avenue, Salt Lake City, Utah, and (b) Blanding, Utah, are the separate, inherited property of the petitioner.

30. The petitioner has made no claim in these proceedings as to any ownership interest in the home in which respondent is residing in the State of Oklahoma nor to the respondent's mother's home in Oklahoma.

#### Personal Property

31. The parties have acquired certain joint marital personal property, including household furniture, motor vehicles, and certain personal property and possessions.

32. The respondent should be awarded those personal heirlooms located at the California properties, namely plates, platters, clocks, and lamps. The court finds that the ski pole in the possession of the petitioner is a family heirloom of the respondent and respondent shall be awarded the ski pole. Petitioner shall be permitted to make a model of the ski pole and shall deliver possession of the ski pole to the respondent within 90 days of entry of this Order at her place of residence and at the expense of the petitioner.

33. The remainder of the personal property should be awarded to the parties as currently divided.



34. The petitioner has received approximately \$15,000 more in value of personal property than has the respondent.

35. The Court finds that the petitioner has paid \$15,000 to the respondent, which shall be considered an offset for the additional value of personal property received by the petitioner.

Alimony

36. The petitioner has made monthly payments to the respondent from the date of separation, including the total amount of \$8,337 in monthly payments during the period from February 14, 2002, through the month of October 2002. These payments shall be considered temporary alimony.

37. The respondent has the ability to earn \$8 per hour and to work 40 hours per week. The petitioner is not working like he used to work, but historically has had a greater ability to pay expenses than the respondent has ability to earn money.

38. Commencing with the month of November 2002, the petitioner should hereinafter be obligated to pay alimony to the respondent in the monthly amount of \$1,000, payable one-half on the 5<sup>th</sup> of the month and one-half on the 20<sup>th</sup> of each month, to continue until alimony is reviewed at the time of petitioner's retirement. Alimony shall terminate as determined by the Court or upon the marriage or cohabitation of the respondent, the death of either party, or upon the occurrence of any event, which, under Utah law, shall cause alimony to cease.

39. The alimony award shall be reviewed at the time of petitioner's retirement. Based upon the current circumstances of

the parties, petitioner's retirement shall be considered to be a sufficient basis to permit a review of alimony. At the time of review, the Court shall make determinations as to whether the monthly alimony payments will be modified or discontinued. Such review shall be made in conjunction with review of the issues related to payment of retirement and survivor benefits set forth in the following section.

#### Pensions and Retirement Benefits

40. The petitioner has acquired pension and retirement funds prior to and during the term of the marriage of the parties. The respondent should be entitled to receive one-half (1/2) of the petitioner's pension and retirement funds which were accrued during the term of the marriage pursuant to the Woodward formula and a Qualified Domestic Relations Order shall issue in association therewith.

41. The petitioner's retirement plan includes an option to elect either full or partial survivor benefits. The Court finds that election of a survivor benefit will decrease the total monthly benefit payment under petitioner's pension and retirement plan in an amount that cannot be calculated to an exact amount at this time. The Court reserves for future determination the issue of the amount of survivor benefits to be awarded to the respondent and the issue of which party shall pay the monthly cost. Such determination shall be made at the time of petitioner's retirement, subject to the provision of the following paragraph.

42. In order to avoid forfeiture of the ability to elect a full survivor benefit, the petitioner shall not elect a

reduced survivor benefit prior to the Court's determination pursuant to the provision in paragraph 41 above.

#### Life Insurance

43. The respondent should be listed as a one-half-interest beneficiary on the currently existing life insurance policy on petitioner's life. The court finds that such designation is equitable considering the length of the marriage of the parties.

#### Attorney's Fees

44. The Court finds three reasons for awarding attorney fees in this case. First, the respondent did not ask for the divorce and did not want the divorce so she had to hire an attorney. Secondly, the Court finds the respondent does not have the ability to pay. Thirdly, in light of the rulings previously, the respondent prevailed in more issues than the petitioner.

45. The petitioner shall pay \$1,500 toward respondent's attorney's fees by December 2, 2002, based upon petitioner's ability to pay a portion of the fees. The respondent should be ordered to assume and pay the remainder of her own costs and attorney's fees incurred herein. The petitioner should be ordered to assume and pay his own costs and attorney's fees incurred herein.

#### Miscellaneous Provisions

46. Each party should be ordered to execute and deliver to the other party any documents required to implement or support the provisions of the Decree of Divorce entered by the Court.

#### CONCLUSIONS OF LAW

1. The parties are subject to the jurisdiction of this Court as set forth above in the Court's Findings of Fact.

2. The petitioner should be granted a Decree of Divorce from the respondent on the grounds of irreconcilable differences effective October 2, 2002.

#### Children of the Parties

3. The petitioner shall not be obligated to pay child support to the respondent in regards to Andrew and BreAnna.

#### Health Insurance

4. Each party should maintain their own health, accident, hospitalization and dental insurance. The petitioner should provide any necessary cooperation in respondent's obtaining for her benefit continued health, accident, hospitalization and dental insurance coverage under the federal C.O.B.R.A. legislation, at the sole cost of the respondent.

5. On February 14, 2002, the Commissioner ordered the petitioner to pay the respondent \$1,100 per month commencing March 1, 2002. The Commissioner allowed the petitioner to deduct from said payments the amount of \$87.50 per month representing the respondent's share of monthly health insurance premiums paid by petitioner. He also ordered (in a separate paragraph) each party to be responsible for their own debts from the date of separation.

6. The respondent shall be entitled to receive the insurance check in the amount of \$1,636.03 in satisfaction of the \$1,312.50 owing pursuant to paragraph 6 above. The Court finds

that the check has already been delivered to the respondent as satisfaction of said obligation.

#### Debts and Obligations

7. The respondent should be required to pay and hold petitioner harmless on the debts owing on the Provident Card, the Citibank card, the Chase/Walmart Card, and the MBNA card.

8. The petitioner should be required to pay and hold the respondent harmless on the debts owing on the America First Credit Union Visa card, the line of credit at America First Credit Union, and the Firestone account.

9. Since the separation of the parties, the petitioner has paid approximately \$61,000 toward the marital debt obligations that existed at the time of separation. The petitioner shall not receive any credit or offset in the marital settlement for such payments.

#### Real Property

10. The Bountiful Residence should be awarded to the petitioner subject to the debt thereon. The respondent should cooperate in executing a quitclaim deed in favor of the petitioner or other documents necessary to relinquish her interest in the Bountiful Residence.

11. The petitioner should be permitted to sell the Bountiful Residence, with the respondent having no further claim or interest therein. The petitioner should be permitted to retain any profit or be responsible for any loss associated with any sale thereof. Respondent shall cooperate in executing any documents

and taking any steps necessary to allow the petitioner to proceed with the sale and transfer of the Residence.

12. The respondent should not be responsible for payment of the first and second mortgage on the Bountiful Residence for the period she resided in the Residence from the date of separation through the time she moved to Oklahoma in August 2001.

13. The parties have acquired additional interests in certain other real property, including but not limited to (a) Parcel 1 of land and associated improvements located at 10692 Forbestown Road, Yuba County, California; (b) Parcel 13 of land and associated improvements located at 10747 Forbestown Road, Yuba County, California; (c) Parcel 15 of land and associated improvements located at 10695 Forbestown Road, Yuba County, California; (d) Parcel 16 of land and associated improvements located at 10691 Forbestown Road, Yuba County, California; (e) Parcels 8 and 10 of land located in Yuba County, California, also known as the Beehive Mine; and (f) Parcel 2 of land located in Yuba County, California, also known as Parcels 22 & 23.

14. The above-mentioned California properties should be sold as soon as possible.

15. The petitioner shall hereinafter be entitled to retain the rental income from Parcels 1 and 15 and shall be obligated to maintain the monthly payments on the mortgages for said parcels through the date of sale of said properties.

16. The petitioner is awarded a right of first refusal for the purchase of any and all of the California properties.

Upon acceptance of any bona fide offer to purchase a California property, the petitioner shall receive written notice of the acceptance of the offer and shall have thirty (30) days from the receipt of said notice to provide written notice of his election to purchase the property on the same terms as the bona fide offer. If petitioner exercises the right of first refusal, he shall pay the respondent the amount she would receive from the sale of that parcel, said payment to be made within 30 days of the time he exercises his right of first refusal.

17. The respondent is awarded a secondary right of first refusal. In the event that the petitioner fails to exercise his right of first refusal within thirty (30) days following his receipt of notice of acceptance of a bona fide offer, the respondent shall thereafter have thirty (30) days to provide written notice of her election to purchase the property on the same terms as the bona fide offer. If respondent exercises her right of first refusal, she shall pay the petitioner the amount he would receive from the sale of that parcel, said payment to be made within 30 days of the time she exercises her right of first refusal.

18. At the time of closing on the sale of each California property, proceeds from the sale shall first be applied to pay any and all closing costs, real estate commissions or fees, and any existing mortgage obligations owing, including any tax and/or debt delinquencies owed in relation to the property. After such costs have been paid, the petitioner shall be entitled to receive one-half of the total amount of payments he has made

toward delinquent and current taxes on the property and, as applicable, one-half of the total amount he has paid toward the mortgage obligations in the property commencing with the month of October 2002 through the date of sale. Any and all remaining proceeds from the sale of the property shall be split equally between the parties.

19. The real property and improvements located at (a) 1441 Michigan Avenue, Salt Lake City, Utah, and (b) Blanding, Utah, are the separate, inherited property of the petitioner.

Personal Property

20. The respondent should be awarded those personal heirlooms located at the California properties, namely plates, platters, clocks, and lamps. The court finds that the ski pole in the possession of the petitioner is a family heirloom of the respondent and respondent shall be awarded the ski pole.

Petitioner shall be permitted to make a model of the ski pole and shall deliver possession of the ski pole to the respondent within 90 days of entry of this Order at her place of residence and at the expense of the petitioner.

21. The remainder of the personal property should be awarded to the parties as currently divided.

22. The \$15,000 previously paid to the respondent shall be considered an offset for the additional value of personal property received by the petitioner.

Alimony

23. The petitioner has made monthly payments to the respondent from the date of separation, including the total amount



of \$8,337 in monthly payments during the period from February 14, 2002 through the month of October 2002. These payments shall be considered temporary alimony.

24. Commencing with the month of November 2002, the petitioner should hereinafter be obligated to pay alimony to the respondent in the monthly amount of \$1,000, payable one-half on the 5<sup>th</sup> of the month and one-half on the 20<sup>th</sup> of each month, to continue until alimony is reviewed at the time of petitioner's retirement. Alimony shall terminate as determined by the Court or upon the marriage or cohabitation of the respondent, the death of either party, or upon the occurrence of any event, which, under Utah law, shall cause alimony to cease.

25. The alimony award shall be reviewed at the time of petitioner's retirement. Based upon the current circumstances of the parties, petitioner's retirement shall be considered to be a sufficient basis to permit a review of alimony. At the time of review, the Court shall make determinations as to whether the monthly alimony payments will be modified or discontinued. Such review shall be made in conjunction with review of the issues related to payment of the retirement and survivor benefits set forth in the following section.

#### Pensions and Retirement Benefits

26. The petitioner has acquired pension and retirement funds prior to and during the term of the marriage of the parties. The respondent should be entitled to receive one-half (1/2) of the petitioner's pension and retirement funds which were accrued during the term of the marriage pursuant to the Woodward formula

and a Qualified Domestic Relations Order shall issue in association therewith.

27. The petitioner's retirement plan includes an option to elect either full or partial survivor benefits. The Court finds that election of a survivor benefit will decrease the total monthly benefit payment under petitioner's pension and retirement plan in an amount that cannot be calculated to an exact amount at this time. The Court reserves for future determination the issue of the amount of survivor benefits to be awarded to the respondent and the issue of which party shall pay the monthly cost. Such determination shall be made at the time of petitioner's retirement, subject to the provision of the following paragraph.

28. In order to avoid forfeiture of the ability to elect a full survivor benefit, the petitioner shall not elect a reduced survivor benefit prior to the Court's determination pursuant to the provision in paragraph 27, above.

#### Life Insurance

29. The respondent should be listed as a one-half-interest beneficiary on the currently existing life insurance policy on petitioner's life. The court finds that such designation is equitable considering the length of the marriage of the parties.

#### Attorney's Fees

30. The petitioner shall pay \$1,500 toward respondent's attorney's fees by December 2, 2002. The respondent should be ordered to assume and pay the remainder of her own costs and attorney's fees incurred herein. The petitioner should be ordered

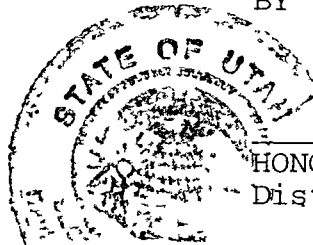
to assume and pay his own costs and attorney's fees incurred herein.

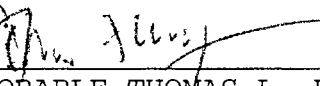
Miscellaneous Provisions

31. Each party should be ordered to execute and deliver to the other party any documents required to implement or support the provisions of the Decree of Divorce entered by the Court.

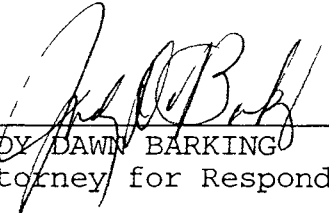
MADE AND ENTERED this 21<sup>st</sup> day of November, 2002.

BY THE COURT:



  
HONORABLE THOMAS L. KAY  
District Court Judge

APPROVED AS TO FORM:

  
JUDY DAWN BARKING  
Attorney for Respondent

FILED

NOV 25 2002

Layton District Court

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Divorce Decree



004702059

VC10820269

BAYLES, LINDA CAF<sup>CD</sup>

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

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WESLEY O. BAYLES,

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vs.

LINDA CARYL BAYLES,

Respondent.

DECREE OF DIVORCE

Civil No. 004702059 DA

Judge Thomas L. Kay

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The above-entitled matter was heard before the Honorable Thomas L. Kay, Judge of the above-entitled court, pursuant to a trial held on October 1 and October 2, 2002. The Court, having reviewed the documents and pleadings on file herein, having heard argument and testimony, and being fully advised as to both the evidence and law pertaining thereto, and having previously entered its Findings of Fact and Conclusions of Law, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

1. The parties are subject to the jurisdiction of this Court as set forth above in the Court's Findings of Fact.

2. The petitioner should be granted a Decree of Divorce from the respondent on the grounds of irreconcilable differences effective October 2, 2002.

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12:25 PM.

### Children of the Parties

3. The petitioner is not obligated to pay child support to the respondent in regards to Andrew Vincent Salazar and BreAnna Rosa Flores Salazar.

### Health Insurance

4. Each party shall maintain their own health, accident, hospitalization and dental insurance. The petitioner shall provide any necessary cooperation in respondent's obtaining for her benefit continued health, accident, hospitalization and dental insurance coverage under the federal C.O.B.R.A. legislation, at the sole cost of the respondent.

5. The respondent shall be entitled to receive the insurance check in the amount of \$1,636.03 in satisfaction of the \$1,312.50 owing pursuant to the Commissioner's earlier recommendation. The check has already been delivered to the respondent as satisfaction of said obligation.

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8. Since the separation of the parties, the petitioner has paid approximately \$61,000 toward the marital debt obligations that existed at the time of separation. The petitioner shall not

receive any credit or offset in the marital settlement for such payments.

Real Property

9. The Bountiful Residence is awarded to the petitioner subject to the debt thereon. The respondent shall execute a quitclaim deed in favor of the petitioner or other documents necessary to relinquish her interest in the Bountiful Residence.

10. The petitioner is permitted to sell the Bountiful Residence, with the respondent having no further claim or interest therein. The petitioner shall be permitted to retain any profit or be responsible for any loss associated with any sale thereof. Respondent shall cooperate in executing any documents and taking any steps necessary to allow the petitioner to proceed with the sale and transfer of the Residence.

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18. The real property and improvements located at (a) 1441 Michigan Avenue, Salt Lake City, Utah, and (b) Blanding, Utah, are the separate, inherited property of the petitioner.

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the respondent within 90 days of entry of this Decree at her place of residence and at the expense of the petitioner.

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21. The \$15,000 previously paid to the respondent shall be considered an offset for the additional value of personal property received by the petitioner.

#### Alimony

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monthly alimony payments will be modified or discontinued. Such review shall be made in conjunction with review of the issues related to payment of the retirement and survivor benefits set forth in the following section.

Pensions and Retirement Benefits

25. The petitioner has acquired pension and retirement funds prior to and during the term of the marriage of the parties. The respondent is entitled to receive one-half (1/2) of the petitioner's pension and retirement funds which were accrued during the term of the marriage pursuant to the Woodward formula and a Qualified Domestic Relations Order shall issue in association therewith.

26. The petitioner's retirement plan includes an option to elect either full or partial survivor benefits. The Court finds that election of a survivor benefit will decrease the total monthly benefit payment under petitioner's pension and retirement plan in an amount that cannot be calculated to an exact amount at this time. The Court reserves for future determination the issue of the amount of survivor benefits to be awarded to the respondent and the issue of which party shall pay the monthly cost. Such determination shall be made at the time of petitioner's retirement, subject to the provision of the following paragraph.

27. In order to avoid forfeiture of the ability to elect a full survivor benefit, the petitioner shall not elect a reduced survivor benefit prior to the Court's determination pursuant to the provision in paragraph 26, above.

Life Insurance

28. The respondent shall be listed as a one-half-interest beneficiary on the currently existing life insurance policy on petitioner's life.

Attorney's Fees

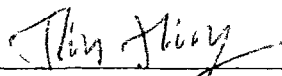
29. The petitioner shall pay \$1,500 toward respondent's attorney's fees by December 2, 2002. The respondent is ordered to assume and pay the remainder of her own costs and attorney's fees incurred herein. The petitioner is ordered to assume and pay his own costs and attorney's fees incurred herein.

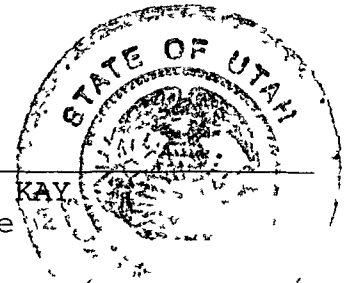
Miscellaneous Provisions

30. Each party is ordered to execute and deliver to the other party any documents required to implement or support the provisions of this Decree.


MADE AND ENTERED this 28th day of November, 2002.

BY THE COURT:

  
HONORABLE THOMAS L. KAY  
District Court Judge



APPROVED AS TO FORM:

  
JUDY DAWN BARKING  
Attorney for Respondent

a 38-BaylesW div decree

JUDY DAWN BARKING, #0211 of  
PATTERSON, BARKING & LARKIN  
Attorney for Respondent  
427 27th Street  
Ogden, UT 84401  
Telephone: (801) 394-7704

**FILED**  
DEC 8 . 2004  
Layton District Court

IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH  
DAVIS COUNTY, FARMINGTON DEPARTMENT

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WESLEY O. BAYLES,	:	ORDER AFTER HEARING
Petitioner,	:	
vs.	:	Civil No. 004702059DA
LINDA CARYL BAYLES,	:	Judge: Thomas L. Kay
Respondent.	:	Commissioner: David L. Dillon

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The above-entitled matter came on for hearing on November 10, 2004, before the Honorable Thomas L. Kay, District Court Judge, presiding, for evidentiary and objection hearing from Orders to Show Cause filed by both parties. Petitioner was present, and was represented by his counsel, Michael D. Murphy; Respondent was present, and was represented by her counsel, Judy Dawn Barking. The Court having heard the evidence of the parties, and being fully advised in the premises, hereby enters the following:

ORDER

1. Beehive Mine property (APN 8, 10, Yuba County, California). Petitioner has indicated his intention to exercise his right of first refusal for this property. Therefore, he shall have thirty (30) days from the date of hearing to pay Respondent

Order after hearing



V018207871

her share of the purchase price for the property, which shall be \$55,000.00 less Petitioner's actual incurred expenses, divided by two.

2. Lake property (10691 Forbestown Road, Yuba County, California). There is no current offer for the purchase of this property. There was no meeting of minds sufficient to establish a contract for sale at a price of \$72,000 between the parties. The most recent offer by a third party to purchase the property for \$85,000.00 has been withdrawn. The Court will not require Petitioner to purchase the property for that price when there is not an outstanding offer. The property should be placed back on the market; if Respondent accepts a new bona fide offer for sale of the property, Respondent or her counsel will notify Petitioner and his counsel in writing of the offer and Petitioner's thirty-day right of first refusal will begin to run at that time; if he exercises his right of first refusal, he will have thirty (30) days after exercising the right of first refusal to pay Petitioner her share of the sale price (which shall be the purchase price less expenses actually incurred by Petitioner, divided by two). If Petitioner fails to exercise his right of first refusal to purchase the property after receipt of such an offer, and fails to cooperate in closing the sale of the property, he may be held in contempt of the Court.

3. 10747 Forbestown Road, Yuba County, California(five acres). Based on the agreement of the parties, the property located at 10747 Forbestown Road, Yuba County, California, should be sold as soon as possible by closing on the offer which is currently outstanding.

4. Unpaid Alimony. The Court will not find Petitioner in contempt at this time for his failure to pay alimony. A judgment has already been entered against him for unpaid alimony for the period from June 2003 through June 2004; the Court applies \$13,000.00 of the funds (in the amount of \$15,044.26) previously paid to Respondent to satisfy this judgment.

5. Respondent's claim for additional compensation for sale of 10695 Forbestown Road. Respondent was entitled to accept the funds tendered to her by Petitioner for purchase of this property, as she was entitled to at least this amount. In essence, by providing Respondent with a "Seller's Estimated Settlement Statement" (Exhibit 3) reflecting that he had expenses of \$66,426.52, Petitioner failed to disclose that he had not actually incurred all the expenses listed in that document. That document is tantamount to an affirmative representation that Petitioner had, in fact, incurred all those expenses in the amounts shown therein. The Court finds that Petitioner is not entitled to deduct any expenses not actually incurred. In the case of this property, the

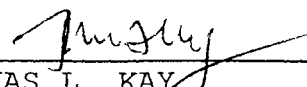
Court will not concern itself with the numerous small charges on the statement, but will award Respondent one-half of the real estate commissions which were not paid by Petitioner, in the amount of \$4,350.00. The Court offsets against this amount the balance of \$2,044.26 previously paid to Respondent by Petitioner, and awards Respondent the sum of \$2,305.74 as remaining compensation for the sale of Respondent's interest in this property to Petitioner.

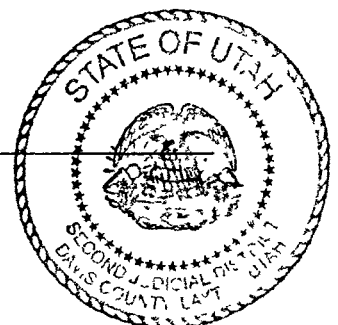
6. Personal property. The Court will not find Respondent in contempt in connection with this issue. The Court finds that the lawn tractor was intended to be awarded to Petitioner, and awards him the sum of \$2,700.00 for the lawn tractor, which is the value he claimed for the lawn tractor for purposes of dividing the personal property at the time of trial. This amount may be used to offset the amount awarded to Respondent in paragraph 5, above, leaving a balance of \$394.26 owing to Petitioner from Respondent for the lawn tractor.

7. Attorney's fees and travel expenses. The Court reserves the issues of attorney's fees and travel expenses for future hearing.

DATED this 3rd day of Dec, 2004.

BY THE COURT:

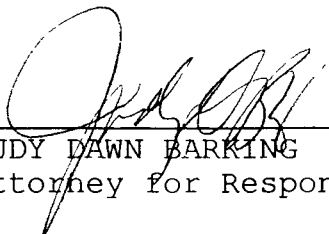
  
THOMAS L. KAY  
DISTRICT COURT JUDGE



Order after Hearing  
Bayles v. Bayles  
Civil No. 004702059DA  
Page 5

**CERTIFICATE OF SERVICE IN ACCORDANCE WITH URCP 7(f)**

COMES NOW JUDY DAWN BARKING, and certifies to the above-entitled Court, in accordance with 7(f) of the Utah Rules of Civil Procedure, that she did serve a true and correct copy of the foregoing ORDER AFTER HEARING upon Wesley O. Bayles, Petitioner, with the understanding that the Respondent herein is to have five (5) days to object to or to request amendments or changes in said ORDER AFTER HEARING, and that if the requests are not made within the five (5) day period, that the ORDER AFTER HEARING shall be submitted to the Court for its approval and signature. Said ORDER ON ORDER TO SHOW CAUSE was delivered to Michael D. Murphy, Attorney for Wesley O. Bayles, Petitioner, by mailing a copy postage prepaid to his mailing address of P.O. Box 15, Kaysville, Utah 84037, this 24 day of November, 2004.

  
\_\_\_\_\_  
JUDY DAWN BARKING  
Attorney for Respondent



Printer:                     

Date: 5/30/03  
Escrow#                     

seller(s):  
WESLEY O. BAYLES AND CARYL BAYLES

Sales Property: 10695 FORBESTOWN RD AND APN # S 50-060 015  
FORBESTOWN, CALIFORNIA 95941

Item	Charges	Credits
S Price		145,000
Existing Loan:		
Payoff Principal Balance <i>Richard A Helm</i>		
Interest Added on Statement <i>8/17/02 to 5/17/03</i>	<i>{ See Attached }</i>	<i>47,231.32</i>
Additional Interest		<i>3,188.16</i>
Total Existing Loan Charges & Credits	<i>50,419.48</i>	
Escrow Agent Commission <i>(6%)</i>	<i>8,700.00</i>	
Owners Policy (50/50)	<i>424.00</i>	
City Transfer Tax	<i>165.00</i>	
County Transfer Taxes	<i>27.50</i>	
Recording Fees	<i>30.00</i>	
Notary Fee (50/50)	<i>268.75</i>	
Additional Escrow Work Charges	<i>50.00</i>	
Conveyance Fee	<i>130.00</i>	
EX/Courier	<i>60.00</i>	
Survey Fee	<i>20.00</i>	
Proration: 2ND INSTALLMENT		
Payments to be Paid 1st Install & Penalty, 2nd Install & Penalty <u>2002 2003</u> <i>(See Attached)</i>	<i>1,250.10</i>	
Sale SALE NO. <u>793</u> (Est.) <i>(2001-2002, See Attached)</i>	<i>2,998.19</i>	
Hard Disclosure DISCLOSURE SAVE	<i>29.50</i>	
Home Inspection	<i>125.00</i>	
TIC INSPECTION	<i>1,069.00</i>	
Home Warranty	<i>260.00</i>	
HOES	<i>200.00</i>	
	<i>200.00</i>	
* SubTotals ****	<i>66,426.52</i>	<i>145,000.00</i>
To Seller	<i>78,523.48</i>	<i>—</i>
also	<i>145,000.00</i>	<i>145,000.00</i>
Seller's Interest = 1/2 of Total "Due To Seller"		
if sold to 3rd Party = $78,523.48 \times 50\% =$	<i>\$ 39,286.74</i>	
	<i>Enclosed</i>	

Monday, June 30,

Wesley,

Enclosed is the signed title for the jeep. Unfortunately, I can't sign the deed yet. I haven't received verification that the taxes have been paid nor anything from Mr. Helms stating the payments are current on the property or that it has been paid off. I am deducting the nonexistent expenses from the check you sent. I will forward the title as soon as the requested documentation has been received. Also, it would appear that I owe 1/2 of the payment to Mr. Helm after the rent was applied. If we received \$600 a mo. in rent on the property and the payment were 854.78 it would seem that I would owe 1/2 of the remaining 254.78. If indeed you have paid him.

I am not prepared to sell you the 23 acres at the price you suggest. It is on the market and is to stay on the market at \$89,000.00. I am willing to sell it to you for \$81,100.00 which is the asking price less the real estate commission. I am not willing to allow for any expenses not actually incurred. You have no right to take the property off the market, without my agreement.

I am deducting the \$1529.37 that will complete the sales amount on the house, assuming you have paid the taxes and have Mr. Helm's current on his payments.

I am also withholding my alimony for the rest of the year. If you can be 6 months late, for the first half of the year, you can be early for the second half of the year. It works for me and assures that I will not have to go to court again and get a garnishment against your retirement. A win win for everyone.

If you do want to buy the lake property, you will need to do so completely within 60 days from today. I will hold the balance of \$5,514.63 as a down payment. During this time, the property is to stay on the market to see if we get another offer, if we do you can match that offer if it is acceptable to both of us. If you decide not to purchase the property after all, I will return the down payment.

Caryl

