

2004

Wesley O. Bayles v. Linda Caryl Bayles : Brief of Appellant

Utah Court of Appeals

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WESLEY O. BAYLES,) Appeals Case No. 200041133
)
) Second District Court No. 004702059
Petitioner/Appellant,)
)
) BRIEF OF APPELLANT
vs.)
)
)
LINDA CARYL BAYLES,)
)
)
Respondent/Appellee.)

Appeals Case No. 200041133
Second District Court No. 004702059

BRIEF OF APPELLANT

LINDA CARYL BAYLES,)
)
Respondent/Appellee.)

Respondent/Appellee.

APPEAL FROM THE ORDER OF THE HONORABLE THOMAS L. KAY, SECOND JUDICIAL DISTRICT COURT JUDGE, FOR DAVIS COUNTY, STATE OF UTAH REFUSING TO ORDER SPECIFIC PERFORMANCE OR APPLY THE TERMS OF THE DECREE OF DIVORCE.

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STATEMENT OF JURISDICTION

Rules 3(a) and 4(a) of the Utah Rules of Appellate Procedure, and Utah Code Ann. §78-2a-3(2)(c), confer jurisdiction upon this court to hear this appeal.

STATEMENT OF ISSUES & STANDARD OF REVIEW

Issue No. 1: Petitioner/Appellant is entitled to specific performance, relative to the purchase of Respondent/Appellee's one-half interest in both the Personal Residence and the Lake Property.

Issue No. 2: It was judicial error, and/or an abuse of the discretion, for the trial court to not allow Petitioner/Appellant to deduct the same costs as if the properties had been sold to bona fide third party purchasers.

STATEMENT OF THE CASE

1. The issues attendant to the parties' divorce were tried by the Honorable Thomas L. Kay, Second Judicial District Court Judge on October 1 and 2, 2002. Petitioner/Appellant's then counsel prepared proposed Findings of Fact and Conclusions of Law and Respondent/Appellee filed an objection to the proposed documents. Subsequent to the objection, on or about November 15, 2002, Respondent/Appellee filed a "Withdrawal of Objection to Form of Findings and Decree" in which it was represented to the trial court that

...counsel for the parties have resolved the issues concerning the form of the documents and counsel for Respondent has approved as to form the acceptable Findings of Fact and Conclusions of Law, and the Decree of Divorce. Respondent prays that the documents which have been approved as to form be signed and entered by the Court as soon as received.

See, Withdrawal of Objection, page 138 of the Second District Court file provided as the Record on Appeal to this Court.

2. On or about November 25, 2005, the Findings of Fact and Conclusions of Law and Decree of Divorce were signed by the Honorable Thomas L. Kay, Second Judicial District Court

Judge and entered by the Second Judicial District Court Clerk. Within the Decree of Divorce, the Petitioner/Appellant was

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 respondent the amount she would receive from the sale of that parcel, said payment to be made within 30 days of the time he exercise his right of first refusal.

See, Decree of Divorce, page 4, paragraph 15, page 170 of the Second District Court file provided as the Record on Appeal to this Court.

3. Petitioner/Appellant was also ordered to pay Respondent/Appellee alimony in the sum of \$1,000.00 per month.

until terminated by the Court or upon the remarriage 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.

See, Decree of Divorce, page 6, paragraph 23, page 172 of the Second District Court file provided as the Record on Appeal to this Court.

4. The parties owned several parcels of real property, which were found to be joint marital property and the Decree of Divorce ordered to be sold, subject to Petitioner/Appellant's right of first refusal. Of those properties, only two are the subject of this Appeal and are described as follows:

a. land and associated improvements located at 10695 Forbestown Road, Yuba County, California, herein after referred to as the "Personal Residence; and"

b. land and associated improvements located at 10691 Forbestown Road, Yuba County, California, herein after referred to as the "Lake Property."

5. In June 2003, Petitioner/Appellant discovered, through a court pleading filed by Respondent/Appellee, that Respondent/Appellee had received and accepted a bona fide "Purchase Agreement" offer from a third party. Respondent/Appellee failed to provide Petitioner/Appellant notice that Respondent/Appellee had accepted a bona fide offer as required by the Decree of Divorce entered in this matter. See, Decree of Divorce, page 4, paragraph 15, Page 170 of the Record on Appeal as provided by the Second Judicial District Court.

6. Petitioner/Appellant provided a written offer to Respondent/Appellee (Trial Transcript, page 27, lines 21-23) which included his offer to purchase Respondent/Appellee's interest in the property for \$39,286.74 and tendered payment in that amount. This amount was designated by Petitioner/Appellant as a "good faith" estimate of the actual amount Respondent/Appellee would receive from the sale of the property pursuant to the terms "Purchase Agreement" offer Respondent/Appellee had received and accepted. Petitioner/Appellant included a copy of his calculations in the form of an "Estimated Settlement Statement," as part of the written offer and tender of payment. Petitioner/Appellant also provided Respondent/Appellee with a quit claim deed for the subject property. Petitioner/Appellant's offer was not, and could not have been, an exercise of his "right of first refusal," as Respondent/Appellee had failed and refused to notify Petitioner/Appellant of her acceptance of a bona fide offer.

7. Petitioner/Appellant's tender of payment was his offer to purchase the property, with the sole condition being transfer of the title to the property upon negotiation of the funds tendered for payment of the real property. Petitioner/Appellant's offer to purchase the real property was not subject to the same terms as the offer Respondent/Appellee had received from a third party.

8. Respondent/Appellee negotiated that \$39,286.74 payment (Trial Transcript, page 102, lines 6 and 7), which consisted of two money orders and a cashier's check. However, Respondent/Appellee did not return the "quit claim deed" that was to be signed, notarized and returned to Petitioner/Appellant upon receipt of tender of the purchase price offered by Petitioner/Appellant. Instead, Respondent/Appellee informed Petitioner/Appellant that, despite receiving the "sales agreement" from Petitioner/Appellant and negotiating the payments, those monies were insufficient for her to return the signed and notarized quit claim deed for the Personal Residence.

9. Upon receipt of Respondent/Appellee's notice of alleged insufficiency in the monies she received, Petitioner/Appellant immediately notified Respondent/Appellee that he would not agree to any additional conditions on the "sale" of the Personal Residence. Petitioner/Appellant also requested that Respondent/Appellee immediately return the \$39,286.74 he had paid Respondent/Appellee for the sole purpose of payment of the "sales" price for the Personal Residence.

10. Respondent/Appellee refused to refund those monies or abide by the terms of the sale proposed by Petitioner/Appellant. Instead, Respondent/Appellee prepared a completely new quit claim deed, using what appeared to be an Oklahoma quit claim deed form, which she had signed and notarized. (Trial Transcript, page 32, lines 15-17.) Petitioner/Appellant filed the "quit claim deed" in the County of Yuma, State of California and ownership of the Personal Residence was transferred to Petitioner/Appellant.

11. Also, in June 2003, Petitioner/Appellant discovered, through Respondent/Appellee's Agent, that Respondent/Appellee had received, and intended to accept, a bona fide "Purchase Agreement" offer from a third party for the "Lake Property."

12. Petitioner/Appellant mailed Respondent/Appellee a \$15,044.26 payment, which was specifically designated as the first portion of Respondent/Appellee's one-half share of the estimated net sales proceeds of the Lake Property. Petitioner/Appellant also informed Respondent/Appellee that the balance would be paid within thirty (30) days, as set forth in paragraph 15 of the Decree of Divorce. Petitioner/Appellant did calculate the net proceeds that should be paid to Respondent/Appellee on the same terms as the bona fide "Purchase Agreement" offer Respondent/Appellee had received from a third party.

13. Once again, being fully informed of the purpose of those funds, Respondent/Appellee deposited those funds into her bank or otherwise negotiated the payment. Again, Respondent/Appellee failed and refused to return the quit claim deed for the "Lake Property." Instead, Respondent/Appellee informed Petitioner that she had not accepted the bona fide "Purchase Agreement" offer from the third party. Respondent/Appellee informed Petitioner/Appellant that she would neither return the monies Petitioner/Appellant had paid for the sole purpose of purchasing the Lake Property. Instead, Respondent/Appellee informed Petitioner that those monies would first be used to pay the additional \$1,500.00 Respondent/Appellee believed was still owed to her for her interest in the Personal Residence. In addition, Respondent/Appellee informed Petitioner/Appellant that she was keeping \$6,000.00 of those monies to pay future alimony payments. Respondent/Appellee informed Petitioner that remaining \$7,500.00 would either be returned to Petitioner/Appellant or that Respondent/Appellee would apply that only the remaining \$7,500.00 the amount Respondent/Appellee believed would be owed to her if Petitioner/Appellant chose to "purchase" the Lake Property. (Trial Transcript, page 49, lines 13 -25, and page 50, lines 1 -18.) Respondent/Appellee refused to allow Petitioner/Appellant to purchase the Lake Property under the

same terms as the bona fide offer she had previously received and expected Petitioner/Appellant to pay a higher price for the Lake Property.

14. Petitioner/Appellant rejected Respondent/Appellee's counteroffer for the Lake Property and, once again, demanded the return of the entire \$15,044.26 he had tendered to Respondent/Appellee for the sole purpose of purchasing the Lake Property. Respondent/Appellee refused to return the monies to Petitioner/Appellant.

15. There was no further communication between the parties regarding either of the real properties until Respondent/Appellee filed a Motion for an Order to Show Cause in the Second District Court, in and for Davis County, State of Utah in April of 2004. The trial court's decision after an evidentiary hearing on November 10, 2004, as set forth in the "Order After Hearing," signed and filed by the Court on November 25, 2004.

SUMMARY OF THE ARGUMENT

Issue No. 1. There is no dispute that Respondent/Appellee was provided a copy of Petitioner/Appellant's "sales" proposal for both the Personal Residence and the Lake Property. There is no dispute that Respondent/Appellee negotiated the payment she received, had the use and benefit of those monies to the detriment of Petitioner/Appellant and refused to return those monies when Petitioner/Appellant refused to accept her modified terms of "sale." There is no dispute that Respondent/Appellee did provide a signed and notarized quit claim deed for the Personal Residence rather than return the purchase price to Petitioner/Appellant. There is no dispute that Respondent/Appellee had the use and benefit of the payment for the Lake Property, to the detriment of Petitioner/Appellant and refused to return those monies when Petitioner/Appellant refused to accept her counteroffer for the Lake Property. The transactions between the parties, as to both

parcels of real property, meet the longstanding “offer, acceptance and tender” requirements of any contract transaction. Respondent/Appellee received the benefit of tender, to the detriment of Petitioner/Appellant and the court’s equitable powers do not allow the trial court to modify a transaction simply because one of the parties has come to regret the agreement. Petitioner/Appellant is entitled to specific performance as to both contracts for his purchase of Respondent/Appellee’s interest in both the Personal Residence and the Lake Property.

Issue No. 2. The Findings of Fact and Conclusions of Law and the Decree of Divorce are clear as to which costs will be paid from the sales proceeds of the parties’ California properties. The Findings of Fact and Conclusions of Law and Decree of Divorce are clear that if Petitioner/Appellant exercised his right of first refusal to “purchase” the property, Petitioner/Appellant would pay Respondent/Appellee the amount she would receive from the sale of the parcel based on the same terms of the bona fide offer pay if the property were sold to a third party. There was no request before the trial court by either party to modify paragraphs 15 and 17 of the Decree of Divorce. The ruling by the trial court, that sales commissions or other estimated closing costs, could not be deducted from the monies to be paid to Respondent/Appellee was a judicial error and/or an abuse of judicial discretion. Petitioner/Appellant should be entitled to deduct the costs that would have been incurred if the properties were sold to a bona fide third party purchaser prior to paying Respondent/Appellee her one-half interest in the subject real properties.

ARGUMENT

Issue No. 1: Petitioner/Appellant is entitled to specific performance relative to the purchase of Respondent/Appellee’s one-half interest in both the Personal Residence and the Lake Property.

1. The Utah Supreme Court, in Reed v. Alvey, 610 P.2d 1374 (Utah 1980), found that there is

no principle of equity that demands all the terms of the contract must be set forth in the written agreement. Rather, although an agreement is uncertain or incomplete in some respects, its specific enforcement may nevertheless be decreed where the uncertainty relates to matters which the law makes certain or complete by presumption, rule or custom and usage. Where there is no agreement concerning the terms of payment this Court will alleviate the uncertainty of this aspect of the contract by requiring full payment at the time of the tender of the conveyance.

2. The Utah Supreme Court has long recognized the validity of the rule that “to be enforceable a contract must be sufficiently definite in its terms that the parties know what is required of them.” Pitcher v. Lauritzen, 18 Utah 2d 368, 423 P.2d 491; and Cf. Ansorge v. Kane, 244 N.Y. 395, 155 N.E. 683. However, in Kierk v. Condrack, 25 Utah 2d 1139 (Utah 1970), the Utah Supreme Court quantified that position by finding that

But like all rules, which are necessarily stated in generality, it is only applicable in the proper circumstances, where the justice of the case requires: as a shield to protect a party from an injustice, and not as a weapon with which to perpetrate an injustice.

3. Under the evidence and the particular facts of this case, as well as in Kierk, there is no dispute that Petitioner/Appellant agreed to purchase Respondent/Appellee’s interest in the Personal Residence for the price of the \$39,286.74, Respondent/Appellee provide a quit claim to the property and Petitioner/Appellant should be entitled to specific performance as to the Personal Residence or the return of the \$39,286.74 he paid to Respondent/Appellee for the sole purpose of purchasing her one-half interest in the Personal Residence.

4. Kierk is also applicable as to specific performance of the purchase of Respondent/Appellee’s one-half interest in the Lake Property. Again, Petitioner/Appellant provided Respondent/Appellee a written offer, to include partial payment, with the remainder to be paid within

30 days Respondent/Appellee negotiated the payment and then presented a counteroffer to Petitioner. Again, the Utah Supreme Court found that if only the parties reserve only

the "terms" of payment, they should be obliged to act in good faith in keeping their promises. It would seem inequitable and unjust to permit a seller to simply refuse unreasonably to perform and seek specious excuses in an attempt to justify his refusal. But neither party should be permitted to use the reservation of "terms" to get more than they had promised: the plaintiff to get more land, or the defendants to get more money, nor either to renege on the bargain...

5. Respondent/Appellee's acceptance was "positive and unambiguous" as required by the Utah Supreme Court in R.J.Daum Constr. Co. v. Child, 122 Utah 194 (Utah 1952). Respondent/Appellee's actions in negotiating the payment, refusal to return the payment and signing the quit claim deed before a notary and then providing that quit claim deed did not change, add to, or qualify the terms of the offer by Petitioner/Appellant and the contract between the parties for the "sale" of the California properties is complete and "its binding force cannot be affected by subsequent communications unless they amount to a mutual agreement to rescind." Id.

6. In this instant dispute, all of Petitioner/Appellant's terms were set forth in the written proposal that was sent to Respondent/Appellee and Petitioner/Appellant tendered his "full payment" and requested "tender of the conveyance." Respondent/Appellee accepted those terms as evidenced by her negotiation of the tender representing Petitioner/Appellant's purchase price. Petitioner/Appellant believes that copies of the relevant documents (i.e., purchase agreement, checks and quit claim deed) were entered into the record and are contained in the sealed exhibit envelope in the Second District Court filed designated as the Record on Appeal. Petitioner/Appellant was informed that sealed envelope cannot be opened absent a court order and Petitioner/Appellant is unable to provide copies of those documents at this time.

7. In this instant dispute, all of Petitioner/Appellant's terms were set forth in the written proposal that was sent to Respondent/Appellee and Petitioner/Appellant tendered his "full payment" and requested "tender of the conveyance." Respondent/Appellee had the use and benefit of that tender, to the detriment of Petitioner/Appellant. Respondent/Appellee cannot hold the quit claim deed hostage to obtain more money and Petitioner/Appellant is entitled to specific performance as to the transfer of interest in the Personal Residence. Respondent/Appellee cannot hold the quit claim deed hostage to obtain more money and Petitioner/Appellant is entitled to specific performance as to the transfer of Respondent/Appellee's interest in the Personal Residence.

8. Similarly, Respondent/Appellee had the use and benefit, to the detriment of Petitioner/Appellant, of the monies paid by Petitioner/Appellant, purchase and transfer of Respondent/Appellee's interest in the Lake Property. Again, Petitioner/Appellant is entitled to specific performance as to the transfer of Respondent/Appellee's interest in the Lake Property.

Issue No. 2. It was judicial error and/or an abuse of the discretion for the trial court not to allow Petitioner/Appellant to deduct the same costs as if the properties had been sold to bona fide third party purchasers. The Decree of Divorce is clear as to which costs of sale will be deducted from the sales proceeds prior to the 50/50 division of the net proceeds between the parties.

It is not the province of the court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they have made for themselves, without regard to its wisdom or folly, as the court cannot supply material stipulations or read into the contract words which it does not contain. Jensen v. Kidman, 85 Utah 27 (Utah 1934)

In the interest of promoting stability in titles, modifications in a decree of divorce affecting the "disposition of real property are to be granted only upon a showing of compelling reasons arising from a substantial and material change in circumstances." Williams v. Shearwood, 688 P.2d 475, 476 (Utah 1984) (property divisions should be modified only with great reluctance and upon compelling reasons).

[E]quity should not be used as a lever to realign rights and privileges "voluntarily contracted away simply because one has come to regret the bargain made." Lea v. Bowers, 658 P.2d 1213, 1215 (Utah 1983) (quoting Land v. Land, 605 P.2d 1248, 1250-51 (Utah 1980)). Whitehouse v. Whitehouse, 790 P.2d 57 (1990)

9. The trial court does maintain continuing jurisdiction over divorce matters and has the authority to modify a decree of divorce. However, Rule 106 of the Utah Rules of Civil Procedure states that "... proceedings to modify a divorce decree shall be commenced by filing a petition to modify the divorce decree." [emphasis added.] Petitioner/Appellant had filed a petition to modify as to the issue of alimony, but Respondent/Appellee did not file a counter-petition requesting modification of paragraphs 15 and 17 of the Decree of Divorce. Respondent/Appellee filed her Motion for Order to Show Cause, on March 31, 2004 and, at that time, Rule 106 of the Utah Rules of Civil Procedure included a provision that "No request to modify a decree shall be raised by an order to show cause," which was not deleted until April 1, 2004."

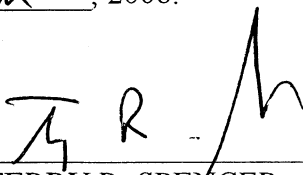
10. If this Court finds that Petitioner/Appellant is not entitled to specific performance as to his purchase of Respondent/Appellee's one-half interest in the subject real properties, Petitioner/Appellant must be allowed to deduct the costs of sale as set forth in the parties' Decree of Divorce. Respondent/Appellee has shown no substantial change of circumstances as to terms of sale set forth in the parties' Decree of Divorce. Respondent/Appellee is not entitled to additional monies simply because she now regrets the bargain she made.

CONCLUSION

It was judicial error and/or an abuse of judicial discretion for the trial court to refuse to order Respondent/Appellee to either return the monies Petitioner/Appellant paid to Respondent/Appellee for the subject real properties or order Respondent/Appellee to transfer her interest in the subject properties to Petitioner/Appellant. In the alternative, the trial court should have enforced the terms

of sale as set forth in the parties' Decree of Divorce and allowed Petitioner/Appellant to pay Respondent/Appellee only the amount she would have received if the real properties had been sold to a bona fide third party purchaser. The ruling of trial court should be reversed and Respondent/Appellee should be ordered to either return all monies she was paid for the real property to Petitioner/Appellant or provide the quit claim deeds to the properties absent any additional conditions.

DATED this 22 day of March, 2006.



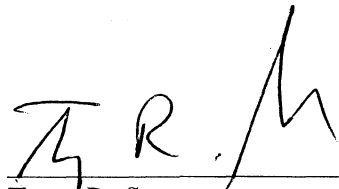
TERRY R. SPENCER
Attorney for Petitioner/Appellant

CERTIFICATE OF DELIVERY

I hereby certify that on the 23rd day of March, 2006, I caused two true and correct copies of the foregoing Brief to be served by first class mail, postage prepaid to:

JUDY DAWN BARKING, #0211
Patterson, Barking & Larkin
427 27th Street
Ogden, Utah 84401

Dated this 23rd day of March, 2006.



Terry R. Spencer
Attorney for Plaintiff/Appellant

ADDENDUM

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SECOND DISTRICT COURT
2002 NOV 15 A 11:46

IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH

DAVIS COUNTY, FARMINGTON DEPARTMENT

| | | |
|---------------------|---|--------------------------------|
| WESLEY O. BAYLES, | : | WITHDRAWAL OF OBJECTION |
| Petitioner, | : | TO FORM OF FINDINGS AND DECREE |
| vs. | : | Civil No. 004702059DA |
| LINDA CARYL BAYLES, | : | Judge: Thomas L. Kay |
| Respondent. | : | Commissioner: David L. Dillon |

COMES NOW Respondent, LINDA CARYL BAYLES, by and through her attorney of record, and withdraws her Objection to Form previously filed herein, on the basis that counsel for the parties have resolved the issues concerning the form of the documents and counsel for Respondent has approved as to form the acceptable Findings of Fact and Conclusions of Law, and the Decree of Divorce. Respondent prays that the documents which have been approved as to form be signed and entered by the Court as soon as received.

Dated this 14 day of November, 2002.



JUDY DAWN BARKING
Attorney for Respondent

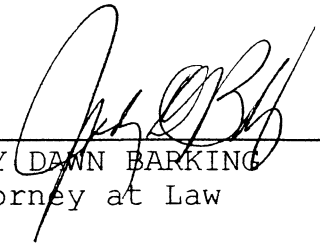
Withdrawal of Objection to Form of Findings



004702059 VD10807816
BAYLES, LINDA CAR cD

CERTIFICATE OF MAILING

I hereby certify that on the 19 day of November, 2002, I mailed a true and correct copy of the foregoing Withdrawal of Objection to Eric N. Weeks, Attorney for Petitioner, at 1050 Walker Terrace, 19 East 200 South, Salt Lake City, Utah 84111, postage prepaid.



JUDY DAWN BARKING
Attorney at Law

✓

FILED

NOV 25 2002

Layton District Court

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IN THE SECOND JUDICIAL DISTRICT COURT,

IN AND FOR DAVIS COUNTY, STATE OF UTAH

WESLEY O. BAYLES,

Petitioner

vs.

LINDA CARYL BAYLES,

Respondent

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Civil No. 004702059 DA

Judge Thomas L. Kay

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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW



004702059

VD10820261

cd

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 10th 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 5th of the month and one-half on the 20th 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 Providian 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 5th of the month and one-half on the 20th 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

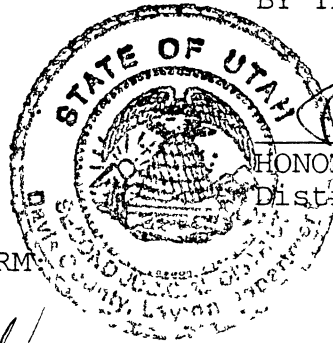
to assume and pay his own costs and attorney's fees incurred herein.

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 28th day of November, 2002.

BY THE COURT:



Thomas L. Kay
HONORABLE THOMAS L. KAY
District Court Judge

APPROVED AS TO FORM

Judy Dawn Barking
JUDY DAWN BARKING
Attorney for Respondent

FILED

NOV 25 2002

Layton District Court

E. NORDELL WEEKS (3412)
ERIC N. WEEKS (7340)
WEEKS LAW FIRM
Attorneys for Petitioner
1050 Walker Terrace
19 East 200 South
Salt Lake City, Utah 84111
Telephone: 322-2800

Divorce Decree



004702059 VD10820269
BAYLES, LINDA CAF^{CD}

IN THE SECOND JUDICIAL DISTRICT COURT,

IN AND FOR DAVIS COUNTY, STATE OF UTAH

WESLEY O. BAYLES,

Petitioner,

vs.

LINDA CARYL BAYLES,

Respondent.

DECREE OF DIVORCE

Civil No. 004702059 DA

Judge Thomas L. Kay

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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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.

Debts and Obligations

6. The respondent is required to pay and hold petitioner harmless on the debts owing on the Providian Card, the Citibank card, the Chase/Walmart Card, and the MBNA card.

7. The petitioner is 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.

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.

11. The respondent is not 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.

12. The parties jointly hold certain other real property, namely (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.

13. The above-mentioned California properties shall be sold as soon as possible.

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

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.

16. 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.

17. 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.

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.

Personal Property

19. The respondent is awarded those personal heirlooms located at the California properties, namely plates, platters, clocks, and lamps. The ski pole in the possession of the petitioner is a family heirloom of the respondent and respondent is awarded the ski pole. Petitioner is 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 Decree at her place of residence and at the expense of the petitioner.

20. The remainder of the personal property is awarded to the parties as currently divided.

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

22. 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.

23. Commencing with the month of November 2002, the petitioner is hereinafter obligated to pay alimony to the respondent in the monthly amount of \$1,000, payable one-half on the 5th of the month and one-half on the 20th 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.

24. 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

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

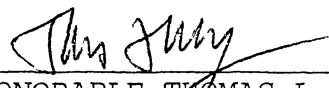
29. The petitioner shall pay \$1,500 toward respondent's attorney's fees by December 2, 2002. The respondent is ordered to assume and pay the remainder of her own costs and attorney's fees incurred herein. The petitioner is ordered to assume and pay his own costs and attorney's fees incurred herein.

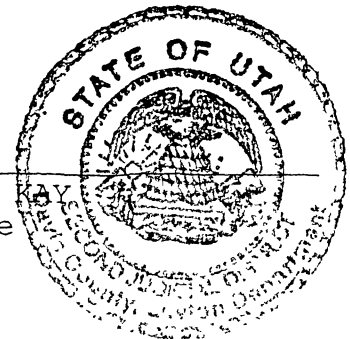
Miscellaneous Provisions

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.

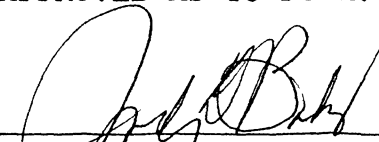
MADE AND ENTERED this 25th day of November, 2002.

BY THE COURT:


HONORABLE THOMAS L. BAY
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

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

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



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

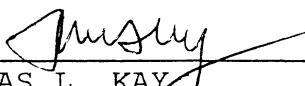
Court will not concern itself with the numerous small charges on the statement, but will award Respondent one-half of the real estate commissions which were not paid by Petitioner, in the amount of \$4,350.00. The Court offsets against this amount the balance of \$2,044.26 previously paid to Respondent 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.

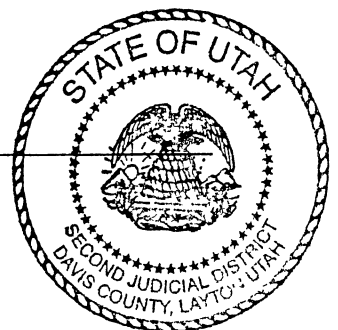
6. Personal property. The Court will not find Respondent in contempt in connection with this issue. The Court finds that the lawn tractor was intended to be awarded to Petitioner, and awards him the sum of \$2,700.00 for the lawn tractor, which is the value he claimed for the lawn tractor for purposes 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 3d day of Dec, 2004.

BY THE COURT:

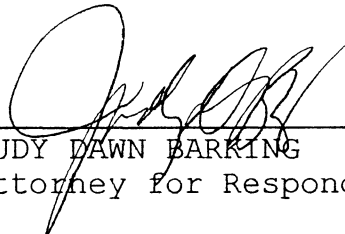

THOMAS L. KAY
DISTRICT COURT JUDGE



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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