

1993

Vicki L. Crompton v. Clifford Brent Crompton : Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS

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DOCKET NO. 930827-CA

IN THE COURT OF APPEALS
IN AND FOR THE STATE OF UTAH

VICKI L. CROMPTON,	:	APPELLEE'S BRIEF
	:	
Plaintiff/Appellee,	:	
	:	
v.	:	
	:	
CLIFFORD BRENT CROMPTON,	:	Case No. 930827-CA
	:	Priority 15
Defendant/Appellant.	:	
	:	

ON APPEAL FROM THE PROPERTY DISTRIBUTION
AND ALIMONY AWARD OF THE DECREE OF DIVORCE
OF THE SECOND JUDICIAL DISTRICT COURT
IN AND FOR WEBER COUNTY, STATE OF UTAH
THE HONORABLE MICHAEL D. LYON
DISTRICT COURT JUDGE PRESIDING

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FILED
Utah Court of Appeals

APR 5 1994

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IN AND FOR THE STATE OF UTAH

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Plaintiff/Appellee,	:	
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JURISDICTION

This Court has jurisdiction over this case pursuant to Utah Code Ann. § 78-2a-3 (1987) and Rule 3 of the Utah Rules of Appellate Procedure.

STATEMENT OF ISSUES

1. Whether the trial court's award of \$1,100.00 per month in alimony to Plaintiff constituted an abuse of discretion in light of the parties' twenty-five year marriage and the \$57,000.00 difference in their annual incomes. A trial court's ruling on alimony will not be disturbed on appellate review as long as the Court exercises its discretion within the bounds and under the standards set by appellate courts and has supported its decision with adequate findings and conclusions. Bell v. Bell, 810 P.2d 489 (Utah Ct. App. 1991).

2. Whether the trial court committed a clear abuse of discretion or caused manifest injustice by failing to award the Defendant a greater portion of funds from the sale of the parties' marital home. A trial court's distribution of property in a divorce action is endowed with a presumption of validity and appellate courts will not disturb it on appeal unless it is clearly unjust or constitutes a clear abuse of discretion. Rasband v. Rasband, 752 P.2d 1331 (Utah Ct. App. 1988).

STATEMENT OF THE CASE

A. Nature of the Case.

This is an appeal from an Order of the lower court (R. at 43), and from Findings of Fact and Conclusions of Law (R. at 57), by which the court granted the Plaintiff an

award of \$1,100.00 per month in permanent alimony and divided the proceeds from the sale of the parties' marital home equally.

B. Disposition of Case Below.

Plaintiff commenced this action by filing a Complaint for Divorce on December 3, 1992. The case was tried before the Honorable Michael D. Lyon on September 28, 1993. The court entered its decision on October 27, 1993 and the court entered its Findings of Fact and Conclusions of Law and the Decree of Divorce on November 29, 1993.

STATEMENT OF FACTS

Plaintiff and Defendant were married on December 8, 1967. They had been married 25 years when this divorce action was filed in December of 1992. Two children were born during the marriage, Kimberly, a minor daughter who shall turn 18 and graduate from high school in June of 1994 (T. at 6-7), and Tiffany, who has already attained majority status (T. at 57).

Pursuant to a stipulation between the parties, Mrs. Crompton has retained sole custody of Kimberly with Mr. Crompton paying child support to Mrs. Crompton in the amount of \$285.00 per month after receiving a \$46.00 credit for payment of Kimberly's health insurance premium. Tiffany is employed full-time and resides with Mr. Crompton and Mr. Crompton's female companion, who is also employed. (T. at 57).

Mr. Crompton is employed at Kimberly-Clark Corporation where he earns \$18.22 per hour for a monthly base pay of \$3,158.74. This base pay, however, accounts for only approximately 50 percent of Mr. Crompton's historical income. During the four years between 1989 and 1992, Mr. Crompton's average annual earnings at Kimberly-Clark totalled \$67,776.60. (Plaintiff's Exhibit 6). He appeared to be earning at a rate in excess of this average during 1993, having earned \$50,806.34 as of September 12, 1993. (Plaintiff's Exhibit 3). Extrapolating this amount according to the 365 days in a year, Mr. Crompton would earn of \$72,722.80 in 1993 if he continued to work at the same pace he had been working at the time of trial.

The substantial difference between Mr. Crompton's base pay and his annual earnings is accounted for through overtime and shift-differential pay. (Plaintiff's Exhibit 3; T at 73-74). The uncontested evidence at trial indicated that Mr. Crompton had consistently worked between 20 to 30 hours a week in overtime, for which he is compensated at a rate of one-and-a-half times his regular hourly rate. (Plaintiff's Exhibit 3). Mr. Crompton also receives double his base hourly wage if he works a Sunday shift, which he has frequently elected to do. Mr. Crompton testified that this shift-differential pay is not for overtime work. (T. at 74). All evidence at trial indicated that Mr. Crompton has consistently maintained this type of overtime or shift-differential regimen for at least 8 years prior to the parties' divorce. Mr. Crompton admitted that he has the discretion to work up to 20 hours a week in overtime if he desires. (T. at 73). Based on Mr. Crompton's work history, the trial court found that Mr. Crompton should reasonably be imputed an income of \$4,935.00 per month for purposes of determining alimony.

(R. at 47; 61). The court arrived at this figure simply by attributing 15 hours per week in overtime to Mr. Crompton. The trial court did not include any shift-differential income in its calculations regarding Mr. Crompton's income.

In contrast to Mr. Crompton, Mrs. Crompton is employed at Mervyn's as a retail sales clerk at a rate of \$7.75 per hour, or \$1,343 per month and \$16,116 annually. (Plaintiff's Exhibit 1). Her net income after taxes and deductions totals \$1,007.00 per month. (Plaintiff's Exhibit 1). The trial court found that Mrs. Crompton is 45 years old, was married at the age of 19, has worked primarily in retail sales, has worked a total of 16 years of the marriage, and is "probably employed at her highest and best employment." (R. at 48). Assuming Mrs. Crompton earned \$16,116 in 1993, she would have made approximately \$56,500 less than Mr. Crompton's \$72,722. Mrs. Crompton earned an average of only \$10,669 per year for the four year period between 1989 and 1992. (Plaintiff's Exhibit 6). This amount is approximately \$57,100 less per year than Mr. Crompton's annual earnings for the same period.

The parties enjoyed a comfortable standard of living during the marriage. (T. at 19). They lived in an expensive home with a house payment of approximately \$1,000 per month. (T. at 50-51). They purchased large items of furniture on a regular basis. They enjoyed such items as a Tahiti Boat, Mountain Bikes, Camcorders, and apparently purchased numerous items from Nordstrom's, ZCMI, and Mervyn's. (T. at 59-64). All evidence presented to the trial court indicated that Plaintiff and Defendant lived a lifestyle that was fully commensurate with their joint average incomes of nearly \$78,000 per year during the last 5

years of the marriage. Indeed, not only did they consume their entire incomes to support their lifestyle, their standard of living during the marriage was sufficiently high that they also maintained a significant amount of debt.

Mrs. Crompton now lives in circumstances that are considerably below the standard of living during the marriage, even if the \$1,100 alimony award is included in her income. She is currently relegated to a small two bedroom apartment where she lives with her minor daughter. (T. at 21-22). She drives a 10 year old Toyota vehicle with approximately 200,000 miles on it. (T. at 23). Although her minor daughter has some limited part-time employment, Mrs. Crompton is essentially the sole income producer in the household for purposes of contributing to household expenses. (T. at 19-20). Based on the testimony at trial, the trial court found her claimed necessary expenses of \$2,200 to be "very modest" and "maybe a little unrealistic". (R. at 47).

Mr. Crompton, in contrast, drives a 1992 Nissan Pathfinder motor vehicle. (Defendant's Exhibit 10). He also went on numerous trips during the first part of 1993. (T. at 71-72). He lives with a female companion and the parties' adult daughter Tiffany. Both the female companion and Tiffany are employed and share in Mr. Crompton's household expenses. (T. at 57).

At trial, Mr. Crompton claimed that his monthly expenses were \$3,177.00 but acknowledged under questioning by his attorney that his employed adult daughter and his female companion can contribute "a third or more" to those listed expenses. (T. at 57). He admitted

on cross-examination that his female companion contributes "about a thousand dollars" towards his monthly expenses. (T. at 68). He further acknowledged that his companion shared in paying for his claimed rent, groceries and utility expenses. (T. at 69). In addition, he admitted that he would no longer have his \$100 monthly expense for non-covered medical expenses once he paid off an outstanding \$500 medical bill. (T. at 70). In light of this testimony, the trial court reasonably deducted \$1,200 from his total amount of expenses and attributed necessary expenses to him in the amount of \$1,972.00 per month. The trial court based its decision on what was reasonable to be spent for only Mr. Crompton and "not the other people that are living with him." (R. at 47.)

With respect to the division of property and debts, the parties stipulated to the division of personal property and both parties submitted lists valuing the property. Very little testimony was given with respect to the values of the property. However, upon cross examination Mr. Crompton acknowledged that he did not want the property in Mrs. Crompton's possession if he was required to pay the value that he had placed upon it. (T. at 82). According to Mrs. Crompton's valuation of the personal property, she received property worth approximately \$1,200 more than the property distributed to Mr. Crompton. However, the testimony at trial indicated that Mr. Crompton had received certain tools which were quite expensive that had been omitted from Mrs. Crompton's list of property. (T. at 56). Mr. Crompton sought a greater portion of the cash proceeds from the sale of the parties' home to adjust for what he perceived to be the difference in value in the personal property. Mr.

Crompton also objected to the court's determination that he was responsible for paying the debt to Avco in the amount of \$1,682.00.

In its ruling, the trial court considered the fact that Mr. Crompton had received certain tools, which were omitted from the schedule of personal property. (R. at 51.) In light of the evidence presented by the parties with respect to the value of the personal property, the trial court simply accepted the division of the personal property stipulated to by the parties without requiring any adjustment in the home equity funds. (R. at 51). In addition to noting that Mr. Crompton received the tools that were not included on the schedule of property, the trial court noted that Mr. Crompton was in a much better position than Mrs. Crompton to replace the items of property that were distributed to the other party. (R. at 51). The court stated:

I suspect that he'll work more than the overtime I have identified, and when he does, he's making a good wage at time and a half and sometimes double time. I suspect that if she were to go out and get a second job to try and replace some of these things, it would not be much of an income, so just weighing everything, I'm just going to award those items of personal property that have been identified in the schedules.

(R. at 51). The trial court awarded the cash proceeds from the sale of the marital home that remained after the payment of the parties' marital debts to be divided equally between them.

Mr. Crompton then appealed the trial court's award of alimony to Mrs. Crompton in the amount of \$1,100.00 per month. He further appealed the trial court's refusal to award him a larger portion of the cash proceeds from the sale of the marital home.

SUMMARY OF ARGUMENT

The parties to this matter were married for a period of twenty-five (25) years. Both of the parties worked during the marriage, but earned vastly different incomes. All relevant evidence presented at trial indicated that the defendant earned an average of approximately \$57,000 more per year than the plaintiff. However, the defendant was able to obtain his high salary only through working substantial amounts of overtime and by working Sundays and holidays as part of his regular work shift which paid a double wage. Approximately 50 percent of the defendant's income resulted from overtime or shift-differential work. The uncontested evidence indicated that the defendant consistently worked 20 to 30 hours per week in overtime over the last five to eight years.

In fashioning a monthly alimony award to plaintiff in the amount of \$1,100, the trial court appropriately made factual findings concerning the plaintiff's needs, her ability to provide support for herself, and the defendant's ability to contribute to the plaintiff's needs. Each of the court's findings was substantially supported by credible evidence presented at trial.

The trial court's decision to base the alimony award on only one-half of the defendant's actual overtime income represented a reasonable approach to providing for the needs of the plaintiff without unduly penalizing the defendant for his extra efforts. This approach taken by the trial court is fully consistent with a substantial majority of cases that have considered the issue. Regular, consistent, predictable overtime received over a long time period is properly subject to inclusion in an alimony award.

Moreover, the trial court's failure to consider the defendant's shift-differential pay in its calculations relieves the defendant from working approximately 5 hours a week in overtime. The court's failure to calculate the alimony award based on pre-tax income will also result in a reduction of overtime of approximately 2 hours per week for the plaintiff to meet his needs and obligations. In short, the plaintiff actually need only work overtime of approximately 8 hours per week in order to meet his support obligations.

Finally, the trial court's refusal to grant the defendant a larger portion of the cash proceeds from the sale of the marital home did not constitute a clear abuse of discretion. In light of the dearth of evidence presented at trial regarding the valuation of personal property, the length of the parties' marriage and the differences in the parties' incomes, the trial court was fully within its discretion to refuse to give defendant a larger cash settlement than plaintiff. Accordingly, the trial court's Decree of Divorce granting plaintiff alimony in the amount of \$1,100 per month and equitably dividing the marital estate should be affirmed.

ARGUMENT

I.

THE TRIAL COURT'S AWARD OF \$1,100 PER MONTH IN ALIMONY TO MRS. CROMPTON WAS APPROPRIATE IN LIGHT OF THE PARTIES' 25 YEAR MARRIAGE AND THE \$57,000 DIFFERENCE IN THEIR ANNUAL INCOMES.

The purpose of alimony is to "enable the receiving spouse to maintain as nearly as possible the standard of living enjoyed during the marriage and to prevent the spouse from

becoming a public charge." Paffel v. Paffel, 732 P.2d 96, 100 (Utah 1986); Naranjo v. Naranjo, 751 P.2d 1144, 1146 (Utah Ct. App. 1988). "It should, so far as possible, equalize the parties' respective standard of living and maintain them at a level as close a possible to the standard of living enjoyed during the marriage." Naranjo, 751 P.2d at 1146-47 (Empahsis added). "The ultimate test of the propriety of an alimony award is whether, given all of these factors, the party receiving alimony will be able to support him- or herself" as nearly as possible at the standard of living ... enjoyed during the marriage'". Davis v. Davis, 749 P.2d 647 649 (Utah 1988) quoting English v. English 565 P.2d 409, 411 (Utah 1977).

The above pronouncements from Utah appellate courts have particular application to the present case because of the substantial length of the parties' marriage and the huge difference in the parties' incomes, both historically and at the time of trial. The Defendant, through this appeal, seeks to eviscerate existing Utah law pertaining to the equalization of parties' post-divorce standard of living. He attempts to accomplish this by claiming as his own all income that he obtains through overtime or shift-differential pay, even though he has received such overtime and shift-differential pay as part of his regular employment throughout the marriage. As set forth below, the trial court's award of alimony to the Defendant was appropriate and just and fully comports with case law from Utah and the majority of other jurisdictions.

A. The evidence supported the trial court's factual findings in support of the alimony award. In determining the amount of alimony, a trial court must consider three

factors: (1) the financial condition and needs of the party seeking alimony; (2) the ability of the receiving spouse to produce sufficient income for him- or herself; and (3) the ability of the responding spouse to provide support. Jones v. Jones, 700 P.2d 1072, 1075 (Utah 1985). In the present case, the trial court explicitly considered the three factors enunciated in Jones and made appropriate factual findings with respect to them. The trial court further followed the mandate set forth in Paffel and Davis by providing for the needs of the wife in a reasonable manner.

With respect to the first factor, Mrs. Crompton's needs, the trial court specifically found in Finding No. 14. that Mrs. Crompton's reasonable living expenses were \$2,200 per month, an amount the trial court considered "modest and perhaps unrealistically low." (R. at 60-61). This finding was supported both by Mrs. Crompton's testimony at trial regarding her needs (R. at 19-26) and the uncontested evidence that the parties enjoyed a standard of living during the marriage that involved totally spending their combined gross annual incomes of approximately \$78,000. It is unclear whether Mr. Crompton is appealing from this finding. He asserts that Plaintiff's Exhibit No. 2 claimed only necessary expenses in the amount of \$2,100.00. However, based on the evidence at trial, the trial court still considered the \$2,200 as "unrealistically low." (R. at 47).

Mr. Crompton also asserts that Mrs. Crompton was not entitled to claim \$100 per month for her gas and car maintenance if she also claimed \$200 for a car payment to purchase a new vehicle. This assertion is particularly offensive in light of Mr. Crompton's assertion in

Exhibit 10 that he needed \$357 for his lease payment on his nearly new 1992 Nissan Pathfinder, as well as an additional \$130 for oil, gas and repairs. Judge Lyon was fully within his discretion to accept Mrs. Crompton's anticipated expense of approximately \$200 per month to purchase a newer vehicle and her expense of over \$100 per month for automobile gas and maintenance. Accordingly, sufficient evidence supported the trial court's finding that Mrs. Crompton's needs were approximately \$2,200.00 per month.

In analyzing the second factor set forth in Jones, Mrs. Crompton's ability to provide for herself, the trial court found in Finding of Fact No. 10 that Mrs. Crompton was employed at Mervyns "and earns a gross monthly income of \$1,343.00, with a monthly net of \$1,003.00." (R. at 60). Mr. Crompton apparently appeals from this finding on the basis that the trial court failed to include in Mrs. Crompton's income "a dollar or so" per hour raise in the event she is ever promoted. Mrs. Crompton had indicated that this amount would be the most that she could ever hope to earn, given her limited education. (T. at 11). There was absolutely no evidence presented that she was capable of earning that amount at the time of trial. Plaintiff is unaware of any case law that requires the trial court to base the receiving spouse's income on such speculative income that may or may not occur in the distant future.

Mr. Crompton further claims that the trial court erred because it allowed Mrs. Crompton to take certain optional deductions from her pay which Mr. Crompton asserts should have been added back in. These deductions were for additional life insurance totalling less than \$2.50 per month, a United Way donation, also amounting to less than \$2.50 a month, health

insurance for Plaintiff in the amount of \$45.50 per month, and a pre-tax retirement deduction benefit in the amount of \$27.00 per month. If these amounts are deducted along with the Mrs. Crompton's tax deductions, the Plaintiff has a net income of approximately \$1,007.00 per month. The \$1,003.00 on Plaintiff's Exhibit No. 2 and carried over to Finding of Fact No. 10 (R. at 61) was likely a mathematical error, but would result in only a \$4.00 per month difference.¹

Incredibly, Mr. Crompton asserts that Mrs. Crompton should not be entitled to claim any of the optional deductions, including her health insurance. It should be emphasized that Mrs. Crompton did not include her health insurance expense in her list of necessary expenses. The \$50.00 included in the Plaintiff's Exhibit 2 for medical and dental were for uninsured medical expenses. (T. at 37-38). Whether the optional deductions were included as necessary expenses and subtracted from Mrs. Crompton's after-tax income or simply taken as a paycheck deduction matters little. The trial court was fully within its discretion to allow the optional deductions from Mrs. Crompton's pay check in determining her net income, particularly in light of the standard of living enjoyed by the parties during the marriage. Therefore, Finding No. 10 is fully supported by the applicable evidence and the second Jones criterion was satisfied. The trial court's findings that Mrs. Crompton needed approximately \$2,200 for her reasonable

¹ The computations were made by multiplying the deductions on Plaintiff's bi-weekly paycheck by 26 and dividing them by 12. See Plaintiff's Exhibit 1.

expenses yet could provide only approximately \$1,000 per month certainly justifies an alimony award of at least \$1,100 per month.

The final Jones factor, Mr. Crompton's ability to provide support to Mrs. Crompton, was also fully explained by the trial court and supported by the evidence presented at trial. This factor implicitly required the lower court to make findings regarding both Mr. Crompton's income and his needs in order to compute the amount that would be available for him to contribute to Mrs. Crompton's necessary expenses.

In Finding of Fact No. 16, the lower court found Mr. Crompton's reasonable expenses to be \$1,972.00 per month, which represented "the expenses of the Defendant alone, not calculating the expenses of others in his home." (R. at 61). The Defendant attacks this finding as lacking support in the record. However, the Defendant caused the difficulty in determining his monthly expenses because he presented no credible evidence that accurately portrayed the amount of his reasonable expenses.

All exhibits presented by him that related to his expenses included amounts for other adults living in his home that were also employed full time and contributing to the expenses. On direct examination, he indicated that "a third or more" of his necessary expenses were paid by his adult daughter or female companion. (T. at 57.) He admitted on cross-examination that his female companion contributes about \$1,000.00 to his necessary expenses. (T. at 68). He also indicated that he would no longer have \$100.00 per month in medical expenses when he paid off a \$500 medical bill. (T. at 70).

It is noteworthy that Defendant does not suggest to this Court how the trial court should have defined the amount of his monthly needs or otherwise specify how his expenses could have been determined from the evidence. Rather, he conveniently criticizes the trial judge for failing to adduce the amount of his needs.

Given the vague nature of the evidence presented by Defendant with respect to his living expenses and his testimony that a third or more of his list of necessary expenses could be contributed by those living with him, the trial court was fully within its discretion to subtract approximately \$1,200 from his listed expenses and conclude the Defendant's reasonable expenses were \$1,972.00.

Moreover, the expenses attributed to the Defendant are actually very generous when compared with the Plaintiff's expenses. The Defendant, though sharing his rent, household expenses, and utilities with two adults who are employed full time, has necessary expenses only \$228 dollars less than Plaintiff, who lives with her minor daughter still attending high school. In light of these differing living arrangements, and this Court's mandate in Naranjo that the parties standard of living should be equalized to the extent possible, the trial court's calculation of the Defendant's reasonable living expenses appears to be more than ample and did not constitute an abuse of discretion.

The trial court also made specific findings with respect to Mr. Crompton's earnings. In Finding of Fact No. 12, the trial court found that Mr. Crompton's historical income "had been in the \$60,000 to \$70,000 range per year." (R. at 60). Mr. Crompton admits

that his historical annual income for the four year period between 1989 and 1992 averaged \$67,776.00. (Appellant's brief at 6). Mr. Crompton further acknowledges that at the time of trial, Mr. Crompton was earning a substantial income, having earned \$50,806.34 through September 12, 1993. Id. At that rate, he would have earned in excess of \$72,700 by the end of 1993. Even assuming that Mr. Crompton was in a 35% tax bracket, he would still have a monthly net income of \$2,937.92 to apply to his necessary expenses after paying the Plaintiff alimony and child support. These calculations are illustrated as follows:

Defendant's annual income	\$72,700
Defendant's monthly income	6,058
Alimony to Plaintiff	<u>1,100</u>
Gross income subject to taxes	4,958
Taxes @ 35 percent rate	<u>1,735</u>
Net Income before child support	3,223
Child Support paid to Plaintiff	<u>285</u>
Net amount available to Defendant	\$2,938

According to the uncontested evidence presented at trial, the average difference in the parties' incomes in the five year period between 1989 and the date of trial in 1993 was approximately \$57,000 each year!

If only the above evidence is considered, the Defendant obviously was earning sufficient income at the time of trial to pay alimony to Plaintiff in the amount of \$1,100 per month for her necessary expenses. The trial court's factual findings would be sufficiently specific and supported by the evidence to more than justify an award of \$1,100 per month in

alimony. However, because the Defendant asserted that approximately 50 percent of his current and historical earnings resulted from overtime and shift-differential pay, the trial court entered additional findings.

The trial court found in Finding No. 11 that Mr. Crompton is paid a base rate of \$1,458 (\$3,159 per month) at Kimberly-Clark and had historically worked 20-30 hours per week in overtime. The court further found that it was likely that the Defendant would continue to work overtime. (R. at 60). The court also found in Finding No. 12 that it would be unreasonable to expect him to work 20 to 30 hours a week overtime to support a failed marriage. (R. at 60). The court determined in Finding No. 14, however, that the Defendant could reasonably work 55 hours a week, and, in Finding No. 18, imputed an income to him of \$4,935.00 per month. (R. at 60-61). Mr. Crompton's double salary for shift-differential work was not included in the court's calculation of his imputed income.

The Defendant apparently does not contest the court's finding that he had historically worked 20 to 30 hours per week in overtime. He contests only, as a matter of law, the court's discretion to attribute an alimony award that contemplates he will continue working 15 hours per week in alimony. He apparently asserts that the court may not make an alimony award based on his overtime or shift-differential pay, and that the court is constrained to fashion an award of alimony in light of his regular salary. The only issue before this Court, then, is whether the trial court erred in considering Mr. Crompton's continuing history of overtime work in establishing an award of alimony. The overwhelming weight of authority has adopted the

viewpoint that the inclusion of such overtime is proper. Before examining those authorities, however, it is important to point out that Mr. Crompton need not work 15 hours a week in overtime in order to meet the income imputed to him by the lower court.

B. The Defendant will actually need to work far less than 15 hours per week overtime to meet his needs and the needs of Plaintiff because the trial court neglected to consider Defendant's shift-differential pay and also failed to consider the tax consequences of alimony. Mr. Crompton received one-and-a-half times his hourly rate for overtime, but he also received double his hourly rate for working on Sundays. Mr. Crompton made it very clear that his double time pay for Sunday work was not overtime but actually shift-differential pay for working on Sundays as part of his normal 40 hour week. (T. at 74). In 1993, Mr. Crompton's shift-differential pay for working on Sundays and holidays was approximately equal to the amount that he was paid in overtime, both totalling approximately \$11,100. (T. at 74; Plaintiff's Exhibit 3). The trial court apparently failed to calculate any shift-differential pay for the Defendant when imputing income to him.²

Even assuming the Plaintiff worked only one double-pay day per week (i.e., Sunday or a holiday) as part of his regular work week, the extra \$145.76 that the Defendant would earn would reduce his weekly overtime burden by 5.33 hours ($\$145.76 / \$27.34 = 5.33$).

² The trial court apparently multiplied the Defendant's hourly wage of \$18.22 times 1.5 to obtain an overtime rate of \$27.34. By adding the products of $\$18.22 \times 40 = \728.80 and $\$27.34 \times 15 = \410.03 , the court reached a weekly wage for Defendant of \$1,158.83. On a monthly basis this equals \$4,935.00.

In light of the very significant amount of the Defendant's double-pay shown in Plaintiff's Exhibit 3 and admitted to by the Defendant (T. at 74), a single day per week in shift-differential pay appears to be quite conservative. If this shift-differential work is not considered, the Plaintiff, in essence, receives a very substantial windfall during his 40 hour work week which is not accounted for in determining the amount of his necessary overtime.

In addition, the trial court apparently based its overtime calculations by assuming that the Defendant is in a 35 percent tax bracket and then deducting his alimony payment from his after-tax income. (R. 47-48). If the court had made its computations based on the fact that alimony is taxed to the recipient and not the payor, the Defendant would be required to work less overtime hours. This is illustrated as follows:

Defendant's monthly income	\$4,935
Alimony to Plaintiff	<u>1,100</u>
Gross income subject to taxes	3,835
Taxes @ 35 percent rate	<u>1,342</u>
Net Income before child support	2,493
Child Support paid to Plaintiff	<u>285</u>
Net amount available to Defendant	2,208
Amount of defendant's needs	<u>1,972</u>
Excess funds available to Defendant	\$ 236

By dividing the excess funds of \$236 available to the Defendant by his overtime rate of \$27.34, the Defendant can eliminate 8.63 overtime hours per month, or an additional two hours each week, and still meet his needs and obligations.

If the effect of the Defendant's double-pay for shift work and the tax consequences of alimony are both taken into consideration, the Defendant actually need only work 7.67 hours overtime per week to support himself and the Defendant. The trial court in reality imputed only a 47.67 hour work week to the Defendant for him to meet his alimony obligation to Plaintiff and his own reasonable expenses. In light of the Defendant's admitted historical overtime of 20 to 30 hours per week, the trial court's actual imputation of 7.67 hours in overtime to the Defendant was reasonable and conservative.

C. An award of alimony based on the Defendant's current and historical overtime earnings is appropriate, just and supported by the weight of authorities that have considered the issue. It appears that the issue of the inclusion of overtime in the payor spouse's income to determine alimony is an issue of first impression in Utah. This Court, however, has recently allowed the inclusion of the father's overtime in determining his gross income for purposes of child support. In Hurt v. Hurt, 793 P.2d 948, (Utah Ct. App. 1990), the father argued that the trial court should not have considered his history of rather large overtime wages in determining the amount of his child support obligation. The father claimed that the trial court should have foreseen that the amount of his overtime would decline in the future. The trial court, however, expressly decided to consider modifying the amount of child support only if in fact the father's overtime hours declined. This Court held that the trial court "did not err in taking this wait-and-see approach to the facts underlying its child support calculations." Id. at 950. The holding in Hurt implicitly recognizes that overtime income may appropriately be included in a father's

income for purposes of determining child support. If such income may be included in a father's income for purposes of determining child support, it similarly should be included in income for alimony determination purposes.

The Hurt decision is consistent with the approach taken by the vast majority of other jurisdictions that have looked at the issue of including overtime income in the context of alimony. The West Virginia Supreme Court recently considered this issue in Rexroad v. Rexroad, 414 S.E.2d 457 (W.Va. 1992). There, the husband claimed that he earned \$32,000 a year in base pay and \$42,000 per year with overtime. The husband testified that he regularly worked in excess of 40 hours a week. The wife earned approximately \$10,000 per year working as a sales clerk for Sears. In overruling the trial court's failure to include the husband's overtime earnings in calculating the alimony award to the wife, the court in Rexroad held that "in determining the amount of alimony or child support that may be obtained, consideration may be given not only to regular wages earned, but also to the amount of overtime pay ordinarily obtained." Id. at 460.

The Rexroad court specifically relied on the case of Jones v. Jones, 472 N.W.2d 782 (S.D. 1991) where the husband had worked an average of ten hours per week overtime for two years. The South Dakota Supreme Court upheld the trial court's inclusion of this overtime income in considering child support payments, and specifically noted the distinction "between consistent overtime pay and speculative overtime pay." Id. at 784.

Similarly, in In re Marriage of Vashler, 600 P.2d 208, 212 (Mont. 1979), the Montana Supreme Court held that it was not error for the trial court to consider the husband's overtime pay in alimony and child support orders. In Vashler, the trial court had found that the husband averaged about 4 hours per week in overtime for which he received increased compensation. The lower court included that increased amount in the husband's gross income for purposes of determining child support and spousal maintenance. In upholding the inclusion, the Montana Supreme Court noted:

there is uncontested evidence that the husband averaged five hours a week overtime for the full year of 1977 and that he averaged six to seven hours of overtime from January 1, 1978 through May, 1978. ... We cannot say that the District Court's disposition of this case was arbitrary, without employment of conscientious judgment, or exceeded the bounds of reason in view of all of the circumstances. Id. (citations omitted).

In In re Marriage of Elbert, 492 N.W.2d 733 (Iowa Ct. App. 1992), the Iowa Court of Appeals upheld the trial court's award of alimony based on the husband's overtime income. The Iowa court held that such income was appropriately considered because it had remained consistent over the past five years and nothing indicated that his overtime would decline in the future. Similarly, in Stuczynski v. Stuczynski, 471 N.W. 2d 122, the Nebraska Supreme Court held that it is "appropriate to consider overtime wages in setting child support and alimony payments if the overtime is a regular part of the employment and the employee can actually expect to earn a certain amount of income for working overtime." Id. at 126.

In short, all of the above cases have upheld the inclusion of overtime in support awards if the overtime is a regular, predictable occurrence. This approach is consistent with the decisions of nearly all jurisdictions relating to this issue. See Annotation, Consideration of Obligated Spouses Earnings From Overtime or "Second Job" Held in Addition to Regular Full-Time Employment in Fixing Alimony or Child Support Awards, 17 A.L.R. 5th 143, §§ 6-7, (1994) and cases cited therein.

The above criteria for awarding alimony fits closely with the facts in the present case. The Defendant's income has been regular, consistent and predictable for a period of approximately 8 years. Indeed, the Defendant was continuing to work significant overtime hours through the time of trial. The Defendant's overtime is related to his regular employment and he can reasonably expect to receive his past overtime on an ongoing basis. Therefore, applying the rationale of the above cases, the Defendant's current and historical overtime were appropriately included in his income for purposes of alimony determination.

Notably, even a case relied upon by Defendant, In re Marriage of Smith, 274 Cal. Rptr. 911 (Cal. Ct. App. 1 Dist. 1990), stands for the proposition that overtime should be appropriately included in determining spousal support. In footnote 15, the court in Smith states as follows:

We do not mean to suggest that income from overtime work, or from a second job should be disregarded in determining spousal support, either initially or upon modification. ... Upon the breakup of the marriage, the trial court, in its discretion,

may find it necessary to make an order which gives the supported spouse a smaller percentage of the supporting spouse's overtime or second job pay than is ordered from other base pay, in order to provide the supporting spouse with the incentive to continue to work more than the law would require. Id. at 925.

This is precisely the solution that the trial judge attempted to fashion in the present case. The trial judge allocated only a portion of the Defendant's traditional overtime income. If the Defendant continued to work at the rate he had worked during the last 8 years, the Defendant would receive a much greater benefit from the overtime hours than would Plaintiff. Accordingly, the trial court's award of alimony is appropriate even under the guidelines set forth in Smith.

Finally, the Defendant's reliance on the case of In re Simpson, 841 P.2d 931 (Cal. 1992), is misplaced. The facts of Simpson are substantially different from the case at bar in two respects. First, in Simpson, the husband was not working overtime, but, rather was working a second full time job. The husband literally had been working an average of 16 hours a day and the trial court's award of alimony was based on such earning capacity. Id. at 933. In the present case, conversely, the trial court presumed the Defendant's overtime to be only two to three hours a day. This presumption was approximately half of the Defendant's actual current and historical overtime hours.

Second, the Simpson decision was based upon the lower court's finding with respect to the husband's earning capacity, rather than his actual earnings, because he had quit his second job several months prior to trial. Id. at 932. In contrast, the present Defendant was actually earning substantial overtime through the time of trial. These factual differences emphasize the reasonableness of the trial court's approach in the present case. The Defendant's overtime was considered, but only at a fraction of its actual amount.

In conclusion, Judge Lyon's decision to award alimony based on a portion of the Defendant's actual overtime constitutes an appropriate method of including overtime in an alimony determination. It provides Mrs. Crompton with some benefit from Mr. Crompton's overtime earnings, but still affords Mr. Crompton sufficient opportunity to earn significant earnings for himself based upon his past overtime performance. The decision fully comports with the pronouncements of courts from the various jurisdictions that have examined the issue. Accordingly, the trial court's award of alimony to Mrs. Crompton in the amount of \$1,100 should be affirmed.

II.

THE TRIAL COURT DID NOT COMMIT A CLEAR ABUSE OF DISCRETION OR CAUSE MANIFEST INJUSTICE BY REFUSING TO AWARD TO THE DEFENDANT A GREATER PORTION OF FUNDS FROM THE SALE OF THE PARTIES' MARITAL HOME.

The trial court in a divorce action has considerable discretion in adjusting the financial and property interests of the parties, and such a distribution is presumed to be valid.

Accordingly, appellate courts will not disturb a trial court's distribution unless it is clearly unjust or a clear abuse of discretion. Rasband v. Rasband, 752 P.2d 1331 (Utah Ct. App. 1988). In the present case, the Defendant seeks to overturn the lower court's decision dividing property and debt and obtain a larger portion of the funds received from the sale of the parties' home.

As fully set forth above in Plaintiff's discussion of the facts, the trial court awarded Mrs. Crompton personal property with a value of approximately \$1,200.00 greater than Mr. Crompton's personal property, excluding his tools, which her testimony indicated were quite expensive. (T. at 32). Mr. Crompton sought a greater portion of the cash proceeds from the sale of the parties' home to adjust for what he perceived to be the difference in value in the personal property. The trial court pointed to the lack of evidence presented by the parties with respect to the value of the personal property and accepted the division of the personal property stipulated to by the parties without requiring any adjustment in the home equity funds. (R. at 51). In light of Mr. Crompton's testimony that he did not want the property in Mrs. Crompton's possession if he was required to pay the value that he had placed upon it, the trial court was completely justified in accepting her values. (T. at 82). Moreover, if the value of the tools in Mr. Crompton's possession was substantial, Mr. Crompton's perceived difference in the personal property may not have existed at all. Accordingly, the trial court was fully justified in equally dividing the funds from the sale of the marital home.

Similarly, the trial court was well within its discretion when it determined that Mr. Crompton likely would have a higher wage and could more easily replace the items of

personal property provided to the other party than Mrs. Crompton. Considering the \$57,000 difference in the parties' current and historical incomes, and the modest amount of alimony to Mrs. Crompton, it was not a clear abuse of discretion to award Mrs. Crompton a slightly higher value of personal property.

The same rationale applies to the court's judgment that Mr. Crompton pay for the Avco debt in the amount of \$1,682.00. Mrs. Crompton was required to pay the America First Credit Union, Mervyns, and Li'l Audreys debts. When her debts are considered, again in light of the difference in the parties' historical and present incomes, the trial court was well within its discretion to require the Defendant to pay the Avco debt. The trial court was completely within its discretion to allocate the division of assets and debts as it did and to refuse to grant to the Defendant a greater portion in the funds from the sale of the marital home.

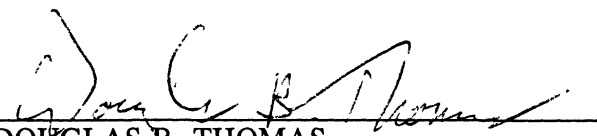
CONCLUSION

The trial court did not abuse its discretion in fashioning an award of alimony in favor of plaintiff in the amount of \$1,100 per month. The court considered all appropriate factors and followed the dictates of relevant case law. The court's determination to consider only about half of the defendant's actual overtime income for purposes of determining alimony represents a reasonable solution to the problems created by overtime work. Moreover, it would be manifestly unjust to deprive the wife of a 25 year marriage, who possesses limited earning

potential, from receiving the benefits of the income that her husband had historically earned during the marriage.

Similarly, the trial court's division of property constituted a fair and equitable division of the parties' debts and assets. The lower court did not commit a clear abuse of discretion or cause any manifest injustice to occur. Accordingly, plaintiff respectfully requests this Court to affirm the ruling of the trial court in all its respects.

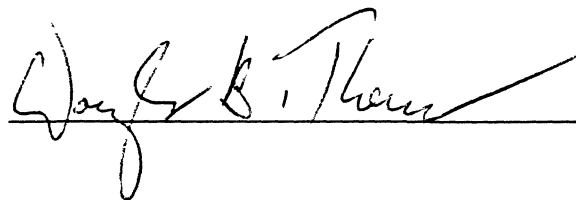
DATED this 4th day of April, 1994.


DOUGLAS B. THOMAS
Attorney for Plaintiff/Appellee

CERTIFICATE OF MAILING

I hereby certify that I mailed, a true and correct copy of the foregoing APPELLEE'S REPLY BRIEF, this 4th day of April, 1994, to the following:

Brian R. Florence, Esq.
FLORENCE AND HUTCHISON
818-26th Street
Ogden, Utah 84401



ADDENDUM

1. A copy of Trial Court's October 27, 1993 Bench Ruling.
2. A copy of Trial Court's Findings of Fact and Conclusions of Law.
3. A copy of Decree of Divorce.
4. A copy of Plaintiff's Exhibit 1 (Mrs. Crompton's pay check).
5. A copy of Plaintiff's Exhibit 3 (Mr. Crompton's income information).

1. A COPY OF TRIAL COURT'S OCTOBER 27, 1993 BENCH RULING.

810035

IN THE DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

VICKIE L. CROMPTON,

PLAINTIFF,

VS.

CLIFFORD B. CROMPTON,

DEFENDANT.

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RULING

NOV 02 1993

CASE NO. 924902496

BE IT REMEMBERED THAT THIS MATTER CAME ON REGULARLY FOR
HEARING BEFORE THE HONORABLE MICHAEL D. LYON, JUDGE, SITTING
AT OGDEN, UTAH ON THE 27TH DAY OF OCTOBER 1993.

WHEREUPON THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

APPEARANCES:

FOR THE PLAINTIFF: DAVID R. HAMILTON

FOR THE DEFENDANT: BRIAN R. FLORENCE

REPORTED BY DEAN OLSEN, CSR
847 E. 2800 N.
NORTH OGDEN, UTAH 84414
WK. 399-8405 HM. 782-3146

1 OGDEN, UTAH OCTOBER 27, 1993 10:15 A.M.

2 THE COURT: GOOD MORNING, GENTLEMEN. LET ME PUT YOU
3 ON THE SPEAKER PHONE PLEASE. CAN YOU BOTH HEAR OKAY?

4 MR. FLORENCE: YES.

5 THE COURT: ALL RIGHT. THIS IS THE TIME SET FOR
6 DECISION IN THE MATTER OF CROMPTON VERSUS CROMPTON. RECORD
7 SHOULD SHOW THAT I'M IN CHAMBERS WITH MY CLERK AND COURT
8 REPORTER AND THAT I HAVE ON THE TELEPHONE -- ON THE TELEPHONE
9 CONFERENCE DAVID HAMILTON REPRESENTING THE PLAINTIFF AND BRYAN
10 FLORENCE REPRESENTING THE DEFENDANT.

11 COURT MAKES THE FOLLOWING FINDINGS OF FACT AND RULINGS:
12 THE PLAINTIFF IS A BONA FIDE RESIDENT OF WEBER COUNTY AND WAS
13 SO FOR THREE MONTHS NEXT PRIOR TO THE FILING OF THIS DIVORCE
14 ACTION. THE PARTIES WERE MARRIED ON DECEMBER 8, 1990 -- 1967
15 IN SALT LAKE CITY. TWO CHILDREN WERE BORN AS ISSUE OF THIS
16 MARRIAGE, BUT ONLY ONE IS A MINOR. HER NAME IS KIMBERLY, AND
17 SHE IS 17. AND SHE WILL GRADUATE FROM HIGH SCHOOL AND REACH
18 HER MAJORITY IN JUNE OF 1994.

19 THE PARTIES HAVE STIPULATED THAT THE PLAINTIFF IS A FIT
20 AND PROPER PERSON TO BE AWARDED THE CUSTODY OF THE PARTIES'
21 MINOR CHILD, SUBJECT TO STANDARD VISITATION BY THE DEFENDANT.
22 AND THE COURT WILL ORDER THAT.

23 COURT FINDS THAT THERE ARE IRRECONCILABLE DIFFERENCES
24 RENDERING THE MARRIAGE IRREDEMIABLY BROKEN. THE PLAINTIFF IS
25 AWARDED A DECREE OF DIVORCE.

1 MR. FLORENCE, DID YOU -- HAS YOUR CLIENT FILED A
2 COUNTERCLAIM?

3 MR. FLORENCE: I DON'T BELIEVE SO, YOUR HONOR.

4 THE COURT: I DIDN'T RECALL THAT, BUT IT OCCURRED TO
5 ME THAT I DIDN'T CHECK THE FILE ON THAT.

6 MR. FLORENCE: I DON'T THINK WE'RE ASKING FOR A DIVORCE.

7 THE COURT: OKAY. THEN THE PLAINTIFF IS AWARDED A
8 DECREE OF DIVORCE ON THE GROUNDS OF IRRECONCILABLE
9 DIFFERENCES.

10 THE COURT HAS ACCEPTED THE STIPULATION BY THE PARTIES
11 RESPECTING MANY OF THE ISSUES EXCEPT THE ONES THAT WERE TRIED,
12 AND THE COURT APPROVES THAT STIPULATION, AND INCLUDING THE
13 AWARD OF CHILD SUPPORT AS AGREED UPON BY THE PARTIES.

14 MR. HAMILTON, YOU'LL NEED TO FILE A WORKSHEET FOR THE
15 FILE, HOWEVER.

16 MR. HAMILTON: OKAY.

17 THE COURT: COURT FINDS THAT THE PLAINTIFF IS EMPLOYED
18 AT MERVYN'S IN OGDEN AND EARNS MONTHLY INCOME OF \$1343 WITH A
19 NET INCOME OF APPROXIMATELY \$1003.

20 THE DEFENDANT IS EMPLOYED AS AN ELECTRICIAN AT KIMBERLY-
21 CLARK WHERE HE HAS BEEN EMPLOYED FOR EIGHT YEARS. HIS BASE
22 PAY IS APPROXIMATELY \$1458 EVERY TWO WEEKS. HE ALSO WORKS
23 SUBSTANTIAL OVERTIME EVERY WEEK, AND HAS EVEN IN TIMES PAST
24 WORKED ON HIS DAYS OFF TO HELP RETIRE FAMILY DEBT. ALTHOUGH
25 OVERTIME IS NOT GUARANTEED OR REQUIRED AS PART OF HIS

1 EMPLOYMENT, COURT FINDS THAT HISTORICALLY HE HAS WORKED 20 TO
2 30 HOURS A WEEK OVERTIME INCLUDING IN SOME INSTANCES DOUBLE
3 OVERTIME ON SUNDAYS.

4 COURT FINDS THAT IT'S LIKELY THAT HE WILL CONTINUE TO
5 WORK OVERTIME TO SATISFY THE LIFESTYLE THAT HE HAS DEVELOPED
6 OVER THE YEARS. COURT IN FIXING HIS INCOME FOR ALIMONY
7 PURPOSES HAS LOOKED AT HIS HISTORICAL INCOME WHICH RANGES
8 SOMEWHERE IN THE LOW SIXTIES TO THE LOW 70,000 RANGE EACH
9 YEAR. HOWEVER, THE COURT FINDS THAT IT'S NOT REASONABLE TO
10 EXPECT HIM TO WORK THESE KIND OF HOURS FOR A FAILED MARRIAGE.
11 IN OTHER WORDS, OFTEN A HUSBAND MAY SACRIFICE AND WORK WHAT
12 THE COURT WOULD DEEM UNREASONABLE HOURS TO TAKE CARE OF HIS
13 FAMILY AND MEET THE LIFESTYLE AND OBLIGATIONS THAT THE -- THAT
14 THE FAMILY MAY HAVE ACQUIRED. BUT THAT IN A DIVORCE, IT'S
15 UNREASONABLE TO EXPECT HIM TO CONTINUE TO DO THAT, AND
16 THEREFORE, THE COURT WILL NOT APPLY HISTORICAL INCOME FOR THE
17 PURPOSES OF COMPUTING ALIMONY. INSTEAD, THE COURT WILL IMPUTE
18 TO HIM WHAT MIGHT BE CALLED A REASONABLE OR INCOME FROM A
19 REASONABLE WORK ETHIC. I THINK MOST OF US WORK MORE THAN 40
20 HOURS A WEEK AND WHERE HE HAS HISTORICALLY WORKED MORE THAN 40
21 HOURS A WEEK THE COURT WILL APPLY A REASONABLE WORK ETHIC TO
22 HIM AND THE COURT HAS JUDGED THAT TO BE SOMEWHERE BETWEEN 50
23 TO 55 HOURS, AND IN THIS CASE, WILL USE SOMEWHERE AROUND 55
24 HOURS AS THE HOURS THAT HE WOULD REASONABLY BE EXPECTED TO
25 PROVIDE FOR HIS WIFE SO THAT SHE CAN ENJOY SOMEWHAT THE

1 STANDARD OF LIVING TO WHICH THE PARTIES HAVE BECOME
2 ACCUSTOMED.

3 COURT FINDS THAT THE WIFE'S REASONABLE MONTHLY EXPENSES,
4 INCLUDING THE DEBT TO AMERICA FIRST CREDIT UNION FOR HER
5 AUTOMOBILE, IS \$2200 A MONTH. AND THE COURT FINDS THAT THAT
6 IS VERY MODEST AND MAYBE SOMEWHAT A LITTLE UNREALISTIC, BUT
7 WILL ACCEPT THAT AS HER INCOME. SHE ALSO HAS SOME CONSUMER
8 DEBT THAT THE COURT WILL DISCUSS SHORTLY.

9 I FIND THAT HER NET INCOME IS APPROXIMATELY 1003. SHE
10 ALSO HAS CHILD SUPPORT, NET CHILD SUPPORT AFTER THE DEDUCTION
11 FOR INSURANCE OF \$285.

12 COURT FINDS THAT THE HUSBAND'S REASONABLE MONTHLY
13 EXPENSES ARE SOMEWHERE AROUND \$1972. HE DELINEATED OTHER
14 EXPENSES AND CERTAINLY HE COULD CLAIM THOSE, BUT THE COURT
15 TRIED TO FIX WHAT SEEMED TO BE REASONABLE FOR HIM AND JUST HIM
16 AND NOT THE OTHER PEOPLE THAT ARE LIVING WITH HIM. AND THE
17 COURT ALSO TRIED TO WEIGH THAT AGAINST WHAT HER INCOME WAS
18 SINCE AFTER ALL THESE YEARS THE PARTIES ARE ENTITLED TO
19 ESSENTIALLY THE SAME STANDARD OF LIVING.

20 COURT FINDS THAT HIS REASONABLE MONTHLY INCOME WILL BE
21 \$4935 A MONTH. AFTER TAKING OUT --

22 MR. FLORENCE: HOW MUCH WAS THAT, 49 WHAT?

23 THE COURT: 4935. AFTER TAKING OUT TOTAL TAXES,
24 ESTIMATED TO BE ABOUT 35 PERCENT, I FIND THAT HIS NET INCOME
25 WILL BE SOMEWHERE AROUND \$3208. IT'S THE JUDGMENT OF THE

1 COURT THAT A REASONABLE AMOUNT OF ALIMONY FOR THE PLAINTIFF
2 SHOULD BE \$1100 PER MONTH ON A PERMANENT BASIS, SUBJECT TO
3 MODIFICATION OR TERMINATION BY OPERATION OF LAW.

4 IN MAKING THIS AWARD, THE COURT IS COGNIZANT OF THE
5 FOLLOWING THINGS: IS COGNIZANT OF HER CLAIM FOR BETTER
6 TRANSPORTATION. I'M ALSO COGNIZANT THAT THE CHILD SUPPORT IS
7 GOING TO TERMINATE IN LESS THAN A YEAR. THERE IS SOME CASE
8 LAW THAT SUGGESTS THAT WHEN THAT TERMINATES THAT THE -- THAT A
9 WIFE CAN COME IN AND SEEK A PETITION FOR MODIFICATION TO OPEN
10 THE ALIMONY QUESTION. THE COURT WILL NOT PERMIT THAT IN JUNE
11 OF 1994. IN OTHER WORDS, IN LOOKING AT ALIMONY, I HAVE
12 ANTICIPATED THAT.

13 AND FINALLY, THE COURT IS ALSO COGNIZANT THAT SHE IS
14 ELIGIBLE, OR IN THE FUTURE, TO HAVE A MODEST INCREASE IN HER
15 WAGES. AND I'M TRYING TO SEE WHERE THAT WAS. APPARENTLY SHE
16 COULD BE AN AREA COORDINATOR WITHOUT A DEGREE OR ONE STEP
17 HIGHER AND RECEIVE A DOLLAR AN HOUR MORE.

18 THE COURT IN THAT REGARD WILL FURTHER FIND THAT SHE IS 45
19 YEARS OF AGE. THAT SHE WAS MARRIED WHEN SHE WAS 19. FIND
20 FURTHER THAT SHE HAS PRIMARILY WORKED IN RETAIL SALES AND ALSO
21 HAD A BRIEF STINT AS A DENTIST FOR TWO AND A HALF YEARS. THAT
22 SHE'S WORKED A TOTAL OF 16 YEARS OUT OF THE MARRIAGE. THERE
23 WAS A PERIOD OF ABOUT EIGHT YEARS AFTER THE SECOND CHILD WHEN
24 SHE DIDN'T WORK. FIND THAT SHE IS PROBABLY EMPLOYED AT HER
25 HIGHEST AND BEST EMPLOYMENT.

1 WITH RESPECT TO THE DEBTS, THE COURT FINDS THAT THERE
2 WILL BE APPROXIMATELY \$12,225 REMAINING AFTER PAYMENT OF
3 PLAINTIFF'S RENT FOR AUGUST AND SEPTEMBER. PARTIES ALSO HAVE
4 A RESERVE ACCOUNT OF APPROXIMATELY \$1170. THESE TWO SUMS ARE
5 TO BE COMBINED AND THE PARTIES ARE TO PAY OFF THE FOLLOWING
6 DEBTS WHICH THE COURT ADJUDGES TO BE MARITAL DEBTS, AND TO
7 FACILITATE YOUR NOTETAKING, YOU MAY WANT TO LOOK AT MR.
8 FLORENCE'S EXHIBIT "B", WHICH WAS EXHIBIT 11 IN THE TRIAL.
9 THESE ARE THE FOLLOWING MARITAL DEBTS: NORWEST, R.C. WILLEY,
10 ZION'S, FIRST SECURITY BANK, ZCMI, NORDSTROM, COLONIAL
11 NATIONAL BANK, AND THAT'S IT.

12 IF MY ARITHMETIC IS CORRECT -- AND I COULD HAVE MADE A
13 MISTAKE, BUT I THINK IT'S ROUGHLY ABOUT \$8740 THAT THE COURT
14 ADJUDGES TO BE MARITAL DEBT. THAT DEBT IS TO BE PAID OUT OF
15 THE BALANCE OF THE HOME EQUITY PROCEEDS INCLUDING THE RESERVE
16 ACCOUNT. AND THAT ANY LEFT-OVER EQUITY IS TO BE DIVIDED
17 EQUALLY.

18 THE COURT ORDERS THE PLAINTIFF TO ASSUME THE FOLLOWING
19 INDEBTEDNESS: MERVYN'S, AMERICA FIRST CREDIT UNION FOR THE
20 '84 TOYOTA, LITTLE AUDREY'S, AND EXPRESS CLOTHING, AND ANY
21 OTHER DEBTS THAT SHE HAS INCURRED SEPARATELY IN HER OWN NAME.

22 THE DEFENDANT IS TO ASSUME ALL OTHER INDEBTEDNESS THAT
23 HAS NOT BEEN EXPRESSLY DESIGNATED AS MARITAL DEBT INCLUDING
24 THE TAHITI BOAT AND THE DEBTS THAT HE'S INCURRED SEPARATELY IN
25 HIS NAME.

1 IN LOOKING AT THE PROPERTY, THE PARTIES HAVE STIPULATED--

2 MR. FLORENCE: ARE YOU LEAVING DEBTS, YOUR HONOR?

3 THE COURT: YES, I AM. IS THERE ANYTHING I
4 OVERLOOKED?

5 MR. FLORENCE: WELL, I DON'T KNOW IF YOU HAVE OR HAVEN'T.
6 ON THE TOP OF EXHIBIT "B" OR EXHIBIT 11, AVCO, YOU DID NOT
7 MENTION THAT AND I DIDN'T KNOW IF THAT WAS BY DESIGN OR
8 OMISSION.

9 THE COURT: THAT'S HIS. THANK YOU FOR CLARIFYING
10 THAT. I HAVE AN "H" BY IT AND THAT'S HIS DEBT.

11 MR. FLORENCE: OKAY.

12 THE COURT: AND I MEANT TO COVER THAT. THANK YOU.
13 ARE THERE ANY OTHER QUESTIONS ABOUT THE DEBT ALLOCATION?

14 MR. FLORENCE: NO.

15 MR. HAMILTON: JUST ONE THING THAT I WASN'T CLEAR ON, AND
16 THAT WAS RELEVANT TO THE BALANCE THAT WE WERE GOING TO USE,
17 THE 12,225, I CAN'T REMEMBER IF THAT WAS BEFORE OR AFTER HER
18 AUGUST AND SEPTEMBER RENT WERE INCLUDED. YOU MENTIONED THAT
19 BRIEFLY.

20 THE COURT? NO, THAT IS TO BE PAID AND THEN WHATEVER
21 IS LEFT OVER IS TO BE THEN APPLIED TOWARD THE DEBT.

22 NOW, WITH RESPECT TOT HE PROPERTY, AS I UNDERSTAND MY
23 RESPONSIBILITY, YOU HAVE STIPULATED THE ALLOCATION, BUT THERE
24 WAS SOME DISPUTE OVER VALUES, AND YET I REALLY DIDN'T RECEIVE
25 A LOT OF DIRECTION FROM EITHER OF YOU IN TERMS OF WHAT YOU

1 WANTED ME TO DO TO REMEDY WHAT EVEN BY BOTH SCHEDULES APPEARS
2 TO BE SOMEWHAT OF A DISPARITY. OF COURSE MR. HAMILTON'S
3 SCHEDULE IS MUCH CLOSER IN VALUES THAN YOURS, MR. FLORENCE,
4 AND I'M NOT SURE THAT BASED ON THE AMOUNT OF TESTIMONY THAT I
5 HEARD THAT I CAN DO ANYTHING OTHER THAN JUST AWARD EACH PARTY
6 THE PROPERTY THAT HAS BEEN DESIGNATED IN THESE SCHEDULES, AND
7 AWARD TO HIM ALSO THE TOOLS THAT APPARENTLY WERE OMITTED ON
8 ONE SCHEDULE. ALTHOUGH THERE, EVEN BY BOTH SCHEDULES, THERE
9 IS A SLIGHT DISPARITY IN VALUES, IT'S THE JUDGMENT OF THE
10 COURT THAT HE'S IN A MUCH BETTER POSITION TO REPLACE THOSE
11 THAN SHE IS. I SUSPECT THAT HE'LL WORK MORE THAN THE OVERTIME
12 I HAVE IDENTIFIED, AND WHEN HE DOES, HE'S MAKING A GOOD WAGE,
13 AT TIME AND A HALF AND SOMETIMES DOUBLE TIME. I SUSPECT IF
14 SHE WERE TO GO OUT AND GET A SECOND JOB TO TRY TO REPLACE SOME
15 OF THESE THINGS, IT WOULD NOT BE MUCH OF AN INCOME, SO JUST
16 WEIGHING EVERYTHING, I'M JUST GOING TO AWARD EACH PARTY THOSE
17 ITEMS OF PERSONALTY THAT HAVE BEEN IDENTIFIED IN THE
18 SCHEDULES.

19 HOWEVER, THERE WERE SOME RESTRICTIONS THAT MR. FLORENCE
20 INDICATED IN HIS SCHEDULE AND I DON'T HAVE THAT RIGHT IN FRONT
21 OF ME, BUT LET ME RECALL AS BEST I CAN. HE IDENTIFIED WITH AN
22 ASTERISK SOME PROPERTY THAT HE WANTED IN THE EVENT SHE EVER
23 DECIDED TO SELL THEM. AND I WILL GRANT THAT REQUEST SO THAT
24 HE, IF SHE DECIDES TO SELL THEM, SHE'S TO GIVE HIM A RIGHT OF
25 FIRST REFUSAL.

1 THAT SHE MAY HAVE SINCE OUR LAST HEARING OR ORDER -- OR SINCE
2 THE SEPARATION THAT THAT IS A MARITAL DEBT?

3 THE COURT: HOW MUCH WAS USED, MR. FLORENCE?

4 MR. FLORENCE: THAT'S WHAT I DON'T REMEMBER. I'M NOT
5 SURE THAT IT WAS SPECIFIC OTHER THAN SHE, AS I RECALL, SAID
6 THAT SHE HAD MADE SOME CHARGES THERE WHILE THIS MATTER WAS
7 PENDING.

8 THE COURT: LET ME SEE IF I CAN FIND ANYTHING --

9 MR. HAMILTON: TOTAL BILL WAS ABOUT 250 BUCKS LOOKS LIKE.

10 MR. FLORENCE: THAT'S WHAT IT WAS WHEN I THINK THEY
11 SEPARATED OR HE STARTED MAKING PAYMENTS, BUT I'M NOT -- THAT
12 EXHIBIT --

13 MR. HAMILTON: THAT'S WHAT MY EXHIBIT SHOWS THAT IT HAD A
14 BALANCE OF ABOUT 250.

15 THE COURT: I DON'T SEE ANYTHING IN MY NOTES RELATIVE
16 TO THAT, AND I TOOK SOME NOTES ON EACH OF THOSE THINGS AS --
17 ON THE COURTESY COPY YOU PROVIDED TO ME. FOR SOME REASON, MR.
18 FLORENCE, THERE'S JUST NOTHING BY THAT. AND DO YOU RECALL
19 ANYTHING, MR. HAMILTON?

20 MR. HAMILTON: I DON'T. AND IT MAY BE SOMETHING THAT
21 CAME OUT -- CAME BEFOREHAND. ALL I CAN SAY IS THAT I KNOW
22 THAT THERE'S -- THAT ON THE EXHIBIT THAT I PROVIDED IT WAS
23 ABOUT 250 BUCKS.

24 MR. FLORENCE: WELL, IF THAT'S WHAT IT IS, I DON'T HAVE A
25 PROBLEM WITH IT. WHAT I WORRY ABOUT, AND I MAY BE WAY OFF,

1 BUT WHAT I WORRY ABOUT IS THAT WHEN HE GETS DOWN TO STARTING
2 TO PAY THE BILL OFF, ALL OF THE SUDDEN RATHER THAN 250, WE
3 FIND THAT IT'S A THOUSAND OR TWO THOUSAND AND THAT THERE HAVE
4 BEEN CHARGES MADE IN THE LAST MONTH OR SO.

5 THE COURT: OKAY. WELL, LET ME JUST DO THIS TO ALLAY
6 THOSE CONCERNS? I WILL MAKE A FINDING THAT THE BILL TO
7 NORDSTROM'S IS APPROXIMATELY \$250. AND THAT IF THERE HAS BEEN
8 ANYTHING INCREASED OVER THAT SUM BY THE PLAINTIFF, IT IS HER
9 INDEBTEDNESS.

10 MR. HAMILTON: OKAY.

11 THE COURT: IS THERE ANYTHING ELSE?

12 MR. FLORENCE: LET ME MAKE SURE I UNDERSTAND ABOUT THESE
13 AUGUST AND SEPTEMBER RENTAL PAYMENTS THAT SHE TOOK OUT OF THAT
14 MONEY. YOU'RE INTENDING TO GIVE HER THAT OFF THE TOP, IS THAT
15 WHAT YOU SAID?

16 THE COURT: YES. NOW, IT WAS MY UNDERSTANDING THAT HE
17 WAS ORDERED, WAS HE NOT, TO PAY HER RENT?

18 MR. FLORENCE: HE WAS ORDERED TO PAY THE HOUSE PAYMENT
19 AND ALL OF THE BILLS ON A TEMPORARY BASIS, YES.

20 THE COURT: YEAH, DID THAT OCCUR DURING THAT TIME?

21 MR. FLORENCE: YES.

22 THE COURT: OKAY. THEN IT'S -- THEN AS I RECALL, SHE
23 IS -- SHE TOOK SOME MONEY OUT OF THAT AND PAID THAT, IS THAT
24 RIGHT?

25 MR. FLORENCE: CORRECT. AND THAT WAS WHAT -- THAT WAS

1 PURSUANT TO MY AGREEMENT THAT WE WOULD RESERVE THAT AS AN
2 ISSUE FOR YOU TO DECIDE. I JUST WANT TO MAKE SURE WHAT YOUR
3 DECISION WAS, SO --

4 THE COURT: OKAY.

5 MR. HAMILTON: AND THEN RELATIVE TO THE OCTOBER, I JUST
6 ASSUME THAT'S COMING OFF OF HER SHARE OF WHAT'S LEFT AFTER THE
7 PAYMENT OF THE DEBTS.

8 THE COURT: THAT'S CORRECT.

9 MR. HAMILTON: RIGHT.

10 MR. FLORENCE: OKAY.

11 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

12 MR. FLORENCE: DAVID, DO YOU MIND SPLIT -- SHARING THE
13 COST OF HAVING A COPY OF THE TRANSCRIPT PREPARED BY DEAN AND
14 ILL PAY HALF AND YOU PAY HALF?

15 . MR. HAMILTON: THAT'S AS FAR AS THE ORDER FOR TODAY?

16 MR. FLORENCE: YES.

17 MR. HAMILTON: YEAH, THAT'S FINE.

18 MR. FLORENCE: IS THAT ALL RIGHT WITH THE COURT REPORTER?

19 THE COURT: HE'S SMILING YES.

20 MR. FLORENCE: OKAY.

21 THE COURT: ALL RIGHT. THANK YOU.

22 MR. FLORENCE: BYE.

23 MR. HAMILTON: BYE.

24 *****

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CERTIFICATE

STATE OF UTAH)
) ss
COUNTY OF WEBER)

THIS IS TO CERTIFY THAT THE FOREGOING 13 PAGES OF
TRANSCRIPT CONSTITUTE A TRUE AND ACCURATE RECORD OF THE
PROCEEDINGS TO THE BEST OF MY KNOWLEDGE AND ABILITY AS A
CERTIFIED SHORTHAND REPORTER IN AND FOR THE STATE OF UTAH.

DATED AT OGDEN, UTAH THIS 1ST DAY OF NOVEMBER 1993.

Dean Olsen

DEAN OLSEN, CSR

2. A COPY OF TRIAL COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

DAVID R. HAMILTON (1318) of
GRIDLEY, WARD, HAVAS, HAMILTON & SHAW
Attorney for Plaintiff
635 25th Street
Ogden, Utah 84401
Telephone: (801) 621-3317

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

VICKIE L. CROMPTON,

Plaintiff,

vs.

CLIFFORD BRENT CROMPTON,

Defendant.

*
*
*
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*
*
*
*
*

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

CIVIL NO. 924902496
JUDGE: LYON

NOV 29 1993

This matter came on regularly for trial before the Honorable Michael D. Lyon, one of the Judges of the above-entitled Court, on September 28, 1993, and the Plaintiff appeared in person and with counsel, David R. Hamilton, and the Defendant appeared in person and with counsel, Brian R. Florence, and the parties having testified in their own behalf and counsel having argued the case, and the Court being fully advised, now makes the following:

FINDINGS OF FACT

1. The Plaintiff is an actual and bona fide resident of Weber County, State of Utah, and has been for more than three (3) months immediately prior to the commencement of the action.

2. Plaintiff and Defendant are husband and wife, having married on or about December 8, 1967 in Salt Lake City, Utah.

3. Two (2) children have been born as issue of the marriage, one of whom is a minor, to-wit: Kimberly, age 17. Kimberly will graduate from high school in June, 1994.

4. Plaintiff is a fit and proper person to be awarded the care, custody and control of the parties' minor child.

5. Defendant is entitled to reasonable rights of visitation.

6. There are irreconcilable differences between the parties which will not permit the marital relationship to continue.

7. The Plaintiff should be awarded a Decree of Divorce, the same to become final upon signature and entry thereof.

8. The parties stipulated to the following items:

A. That the Plaintiff be awarded the care, custody and control of the parties' minor child, Kimberly, subject to Defendant's rights of reasonable visitation.

B. That the Defendant pay to Plaintiff the sum of \$333.90 per month, as and for child support, one-half (1/2) on or before the 5th and the remaining one-half (1/2) on or before the 20th day of each month. All payments are to be made directly to Plaintiff unless otherwise directed by Plaintiff in writing. The support award is calculated utilizing Plaintiff's gross monthly income of \$1,343.00 and the Defendant's gross monthly income on a 40 hour per week basis of \$3,158.00 per month. The Defendant is given a \$46.00 credit towards the health insurance premium that he pays to insure the minor child, resulting in a net monthly support payment of \$285.00. The payments shall be made until the minor child's 18th birthday or graduation from high school with her normal

graduating class, whichever occurs later.

C. Each party shall assume and pay any debts that they have individually incurred since the separation.

D. The Defendant is to be awarded the following items of personal property, subject to the debts and encumbrances owing thereon, which he is to assume and pay and hold Plaintiff harmless thereon:

- a. 1992 Nissan Pathfinder (lease).
- b. Tahiti Ski Boat, trailer and paraphernalia.
- c. Snow blower.
- d. Video camera.
- e. Computer.
- f. Stereo equipment.
- g. Wheelbarrow.
- h. 14-foot ladder.
- i. Defendant's mountain bike.
- j. Defendant's snow ski equipment.
- k. Defendant's ski diving equipment.
- l. Camping equipment, with exception of those items of Plaintiff.

E. The Plaintiff is to be awarded the balance of the marital personal property.

F. That each party have a Woodward interest in the other's retirement/pension benefits.

G. That each party conform with the requirements of the Standard Medical Provisions.

H. The Defendant shall maintain his present life insurance program, naming the parties' children as primary beneficiaries thereof, but he may add

other biological children as pro rata beneficiaries.

9. Those stipulated items are reasonable and accepted by the Court and should be made a part of the Decree of Divorce.

10. The Plaintiff is employed by Mervyn's and earns a gross monthly income of \$1,343.00, with a monthly net of \$1,003.00.

11. The Defendant is employed as an electrician at Kimberly Clark and has been for eight (8) years. The Defendant's base income of \$1,458.00 every two weeks. The Defendant has worked a substantial number of overtime hours on a weekly basis, including days off, to help with the family debts. Defendant's overtime is not guaranteed; however, historically, the overtime has run at least 20 to 30 hours per pay period, including double-time on Sundays. It is likely that the Defendant will continue to work overtime.

12. Defendant's historical income has been in the \$60,000.00 to \$70,000.00 range per year.

13. It is not reasonable that the Defendant will continue to work the same number of hours to support a failed marriage; occasionally, parties will work an excess number of hours to support a family, and in the current circumstances, the Court will not impute anticipated annual income.

14. The Court anticipates that a reasonable work period for the Defendant would be 55 hours per week. The same would be necessary to assist Plaintiff to enjoy a standard of living which is somewhat representative of the standard to which she has become accustomed during the marriage. The Plaintiff's reasonable living expenses, including payment on her automobile are

approximately \$2,200.00. This amount is modest and perhaps unrealistically low.

15. In addition to the Plaintiff's net income of \$1,003.00 per month, she will have monthly child support of \$285.00, for a total of \$1,288.00 in available monies.

16. The Defendant's reasonable expenses are set at approximately \$1,972.00. This represents expenses for the Defendant alone, not calculating the expenses of others in his home.

17. The Plaintiff is 45 years of age, having been married to the Defendant at age 19. The Plaintiff has worked historically in retail sales, except for approximately two and one-half (2-1/2) years work in a dental office. Plaintiff has, in fact, worked during approximately 16 years of the marriage. The Plaintiff's current employment is the "highest and best" employment available to Plaintiff.

18. The parties are entitled to an approximately equal standard of living. The Plaintiff's reasonable monthly gross income will be approximately \$4,935.00, with taxes reducing the amount by 35%, resulting in a monthly net of \$3,208.00.

19. The Plaintiff is in need and unable to satisfy her needs through her monthly income and the Defendant does have an ability to pay alimony. The Plaintiff should be awarded and the Defendant Ordered to pay permanent alimony in the sum of \$1,100.00 per month. The alimony should be paid until Plaintiff's death, cohabitation and/or remarriage.

20. In making a determination of the alimony award, the Court is aware of the following specific circumstances:

A. The Plaintiff has a claim for better transportation, in view of the age and condition of her automobile.

B. The Defendant's obligation for child support will terminate in less than a year. The Plaintiff specifically will not be entitled to seek a modification of the Order at the time the minor child graduates from high school, as the Court has considered that fact in arriving at a calculation for the alimony.

C. The Plaintiff is eligible for only modest increases in her wage, in view of her experience and the availability for advancement at her company.

21. There remains approximately \$12,225.00 in proceeds available from the sale of the parties' house, after payment of Plaintiff's rent of \$500.00 each for August, September, October and November, 1993. In addition, there is \$1,170.00 in a reserve account, for a total of \$13,395.00.

22. The parties have incurred debts and obligations during the marriage.

23. The \$13,395.00 should be utilized to pay the following marital debts of the parties:

- A. Norwest, with a current balance of \$204.55.
- B. R.C. Willey's, with a current balance of \$124.31.
- C. Zions Bank, with a current balance of \$951.35.
- D. First Security Bank, with a current balance of \$2,124.16.
- E. ZCMI, with a current balance of \$341.24.
- F. Nordstrom, with a current balance of \$253.12.
- G. Colonial National, with a current balance of \$3,791.70.

24. After satisfaction of the aforementioned debts, any remaining balance should be divided equally between the parties, noting that the \$500.00 paid to Plaintiff's landlord for

October and November shall be credited against Plaintiff's share.

25. There are remaining debts which should be paid as follows:

A. Plaintiff should pay Mervyn's, America First Credit Union on her 1984 Toyota, Li'l Audrey's, Discover Card and Express Clothing, together with any separate indebtedness she may have incurred, holding Defendant harmless thereon.

B. Defendant should pay America First Credit Union on the Tahiti boat, Avco, and any separate indebtedness he may have incurred, holding Plaintiff harmless thereon.

26. The parties stipulated to the division of personal property and although there is a slight disparity with Plaintiff receiving more dollar value, the Defendant is better positioned to replace items than is the Plaintiff. The Defendant is specifically given a first right of refusal to purchase the following items, should Plaintiff decide to sell them: Brass tableware and Noritaki China. Further, the parties should cooperate to copy all family photos, video and Super 8 films and divide the cost equally.

27. The Plaintiff has incurred substantial attorney's fees and is in need of assistance to satisfy the same. Plaintiff's income is modest and her income is necessary to simply satisfy her basic expenses.

28. There is a relative parity between the parties in their incomes, in view of the alimony award and the Defendant is not in a position to pay anything towards Plaintiff's fees and, thus, each party should be Ordered to pay their own attorney's fees and costs.

BASED UPON the foregoing Findings of Fact, the Court hereby makes the following:

CONCLUSIONS OF LAW

1. The Plaintiff is entitled to a Decree of Divorce against the Defendant.
2. The Plaintiff should be awarded the care, custody and control of the parties' minor child, subject to reasonable visitation, which is set forth in the Standard Order of Visitation which is in operative effect in the district.
3. The Plaintiff should receive and Defendant Ordered to pay, as and for child support, the net sum of \$285.00 per month, to begin immediately and remain payable until the child turns 18 or graduates from high school with her normal graduating class. Said support shall be paid one-half on or before the 5th and one-half on or before the 20th day of each month. Further, the Defendant shall maintain the medical, dental and health insurance for the benefit of the children, with each party paying one-half of any non-covered medical or dental expenses incurred on behalf of the children, pursuant to the Standard Medical Provisions currently in effect in the district.
4. The Plaintiff should receive and the Defendant Ordered to pay alimony in the sum of \$1,100.00 per month, until Plaintiff's death, cohabitation or remarriage, beginning immediately. Said alimony payments shall be made on or before the 20th day of each month.
5. The Plaintiff is awarded, pursuant to the Woodward decision, one-half of Defendant's retirement proceeds. The Plaintiff's counsel shall prepare a Qualified Domestic Relations Order to accomplish the same.
6. From the proceeds available from the home in reserve account, the following

debts should be paid: Norwest, R.C. Willey's, Zions, First Security Bank, ZCMI, Nordstrom and Colonial National Bank, with any remaining proceeds to be divided equally between the parties.

7. The \$1,000.00 was paid towards the Plaintiff's October and November rent should be calculated against her interest in the remaining proceeds.

8. The Plaintiff should pay the obligations to Mervyn's, America First Credit Union on the 1984 Toyota, Li'l Audrey's, Discover Card and Express Clothing, together with her own separate debts and obligations.

9. The Defendant should pay the obligations to America First Credit Union on the Tahiti boat and Avco, together with any separate debts and obligations he has incurred.

10. The Defendant is to be awarded the following items of personal property, subject to the debts and encumbrances owing thereon, which he is to assume and pay and hold Plaintiff harmless thereon:

- - a. 1992 Nissan Pathfinder (lease).
 - b. Tahiti Ski Boat, trailer and paraphernalia
 - c. Snow blower.
 - d. Video camera.
 - e. Computer.
 - f. Stereo equipment.
 - g. Wheelbarrow.
 - h. 14-foot ladder.
 - i. Defendant's mountain bike.
 - j. Defendant's snow ski equipment.
 - k. Defendant's sky diving equipment.
 - l. Camping equipment, with exception of those items of Plaintiff.

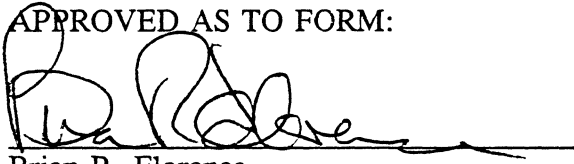
11. The Plaintiff is to be awarded the balance of the marital personal property.

12. Each party should be responsible to pay their own respective attorney's fees and costs.

DATED this 29 day of November, 1993.


MICHAEL D. LYON
DISTRICT COURT JUDGE

APPROVED AS TO FORM:


Brian R. Florence
Attorney for Defendant

3. A COPY OF DECREE OF DIVORCE.

DAVID R. HAMILTON (1318) of
GRIDLEY, WARD, HAVAS, HAMILTON & SHAW 11 2 13
 Attorney for Plaintiff
 635 25th Street
 Ogden, Utah 84401
 Telephone: (801) 621-3317

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY
STATE OF UTAH

VICKIE L. CROMPTON,	*	
	*	DECREE OF DIVORCE
Plaintiff,	*	
	*	
vs.	*	
	*	
CLIFFORD BRENT CROMPTON,	*	CIVIL NO. 924902496
	*	JUDGE: LYON
Defendant.	*	

NOV 29 1993

This matter came on regularly for trial before the Honorable Michael D. Lyon, one of the Judges of the above-entitled Court, on September 28, 1993, and the Plaintiff appeared in person and with counsel, David R. Hamilton, and the Defendant appeared in person and with counsel, Brian R. Florence, and the parties having testified in their own behalf and counsel having argued the case, and the Court being fully advised, and having previously made its Findings of Fact and Conclusions of Law, now enters the following:

DECREE OF DIVORCE

1. The Plaintiff is hereby awarded a Decree of Divorce against the Defendant.
2. The Plaintiff is awarded the care, custody and control of the parties' minor child, subject to reasonable visitation, which is set forth in the Standard Order of Visitation which is in operative effect in the district.

3. The Defendant is Ordered to pay to Plaintiff, as and for child support, the net sum of \$285.00 per month, to begin immediately and remain payable until the child turns 18 or graduates from high school with her normal graduating class. Said support shall be paid one-half on or before the 5th and one-half on or before the 20th day of each month. Further, the Defendant shall maintain the medical, dental and health insurance for the benefit of the children, with each party paying one-half of any non-covered medical or dental expenses incurred on behalf of the children, pursuant to the Standard Medical Provisions currently in effect in the district.

4. The Defendant is Ordered to pay to Plaintiff, as and for alimony, the sum of \$1,100.00 per month, until Plaintiff's death, cohabitation or remarriage, beginning immediately. Said alimony payments shall be made on or before the 20th day of each month.

5. The Plaintiff is awarded, pursuant to the Woodward decision, one-half of Defendant's retirement proceeds. The Plaintiff's counsel shall prepare a Qualified Domestic Relations Order to accomplish the same.

6. From the proceeds available from the home in reserve account, the following debts are to be paid: Norwest, R.C. Willey's, Zions, First Security Bank, ZCMI, Nordstrom and Colonial National Bank, with any remaining proceeds to be divided equally between the parties.

7. The \$1,000.00 that was paid towards the Plaintiff's October and November rent should be calculated against her interest in the remaining proceeds.

8. The Plaintiff is to pay the obligations to Mervyn's, America First Credit Union on the 1984 Toyota, Li'l Audrey's, Discover Card and Express Clothing, together with her own separate debts and obligations.

9. The Defendant is to pay the obligations to America First Credit Union on the Tahiti boat and Avco, together with any separate debts and obligations he has incurred.

10. The Defendant is awarded the following items of personal property, subject to the debts and encumbrances owing thereon, which he is to assume and pay and hold Plaintiff harmless thereon:

- a. 1992 Nissan Pathfinder (lease).
- b. Tahiti Ski Boat, trailer and paraphernalia
- c. Snow blower.
- d. Video camera.
- e. Computer.
- f. Stereo equipment.
- g. Wheelbarrow.
- h. 14-foot ladder.
- i. Defendant's mountain bike.
- j. Defendant's snow ski equipment.
- k. Defendant's sky diving equipment.
- l. Camping equipment, with exception of those items of Plaintiff.


11. The Plaintiff is awarded the balance of the marital personal property.

12. Each party is to pay their own respective attorney's fees and costs.

DATED this 29 day of November, 1993.


MICHAEL D. LYON
DISTRICT COURT JUDGE

APPROVED AS TO FORM:


Brian R. Florence
Attorney for Defendant

4. A COPY OF PLAINTIFF'S EXHIBIT 1 (MRS. CROMPTON'S PAY CHECK).

MERVYN'S
22327 FOOTHILL BLVD.
HAYWARD

CROMPTON, VICKIE L
0145
CA 94541 5287247364

Description	Rate	Hours	Earnings	Year-to-Date
REGULAR EARNING	77500	3200	24800	994102
VACATONPAY	77500	4000	31000	62000
HOLIDAYNOT-WKD	77500	800	6200	30529

	Taxes/Ded	Year-to-Date
FEDERAL TAX	5222	100486
SOCIAL SEC TAX	3714	71090
MEDICARE TAX	869	16626
UTAH	2165	41702
ADD/L LIFE	95	1710
SRSP-PRE-TAX	1240	23561
SRSP-AFT-TAX	1860	35339
UNITED WAY	100	1800
PRE-TAX TRAV.	2100	21000
CHECK DEPOSIT	44635	807652

"YOU ARE A KEY COMPONENT TOWARD OUR COMPANY'S SUCCESS"

Earnings	Taxes	Deductions	Net Pay	Pay Period	Deposit #	Deposit Amount
Current 62000	11970	5395	44635	Begin 08-30-93	420409	44635
Year-to-Date 1180005	229904	97810	852291	End 09-12-93		

MERVYN'S

22327 Foothill Blvd.
Hayward, CA 94541-8515

Bank Name	Description	Account Number	Amount
AMERICA FIRST CR UN	CHECK DEPOSIT	20049359	446.35

01 45 AAAA 0082 0010 5287247364

VICKIE L CROMPTON
1456 E. 2525 N.
OGDEN

UT 84414

09-22-93
420409

No.

PLAINTIFF'S EXHIBIT
EXHIBIT NO. 924102496
CASE NO. 924102496
DATE REC'D 9/28/93
IN EVIDENCE
CLERK UMA

NOT NEGOTIABLE

5. A COPY OF PLAINTIFF'S EXHIBIT 3 (MR. CROMPTON'S INCOME INFORMATION).



September 24, 1993

Second Judicial District Court Weber County
State of Utah

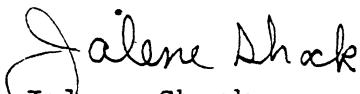
TO: Whom it May Concern

Brent Cropmton's base wage for a two week period is \$1,457.88.

I have enclosed the following information that you have requested.

- Earnings year to date and hours for 1993 as of 9-12-93.
- Earnings year to date and hours for 1992 and 1991.
- W2's for 1992 and 1991.
- A list of the earnings codes and their description.

Brent Cropmton pays \$46.44 a month for medical and dental coverage.


Jalene Shock
Payroll

jap/93-037

PLAINTIFF'S EXHIBIT
EXHIBIT NO. 3
CASE NO. 92490248
DATE REC'D 9/25/93
IN EVIDENCE
CLERK MGM

EARN TYPE	YTD EARN DCL AMT	KEY FIELD	YTD EARN HOURS
--------------	---------------------	--------------	-------------------

03794-2 CROPTON, C. BRENT SALARIED NONEXEMPT W2 TOTAL = 69,138.23

DT	12,692.53	359.50
HL	966.13	56.00
PH	202.97	12.00
PS	650.00	.00
P4	376.00	10.50
P8	15,463.11	587.50
P9	17.51	.50
RT	29,565.13	1,671.00
TH	4,836.60	180.00
TO	4,304.98	128.00

TOTAL 69,073.65 2,997.00

SV 64.58 .00

TOTAL 64.58 .00

JOYEE TOTAL 69,138.23 2,997.00

```
*****
REF-ID: A63777      PRINTER-ID: GGD14      TRX COPY
*****              TERMINAL-ID: LU080622    SESSION-ID: IM
*****              TRX COPY                  *****
```

EARNINGS INFORMATION

UNIT 0162

WATON, C. BRENT
ID: 00637942

RES. STATE: 043
WORK STATE: 043

FD THRU: 09/12/95

PAGE 01 OF 02

[illegible][illegible]

11/4/91
11/4/91



KIMBERLY-CLARK CORPORATION
ANNUAL EARNINGS AND HOURS BY TYPE

PAGE 01

AS OF QUARTER ENDING DECEMBER 31, 1991

UNIT 0188

	EARN TYPE	YTD EARN DOL AMT	KEY FIELD	YTD EARN HOURS	
-63794-2	CROMPTON, C. BRENT				SALARIED NONEXEMPT H2 TOTAL = 71,749.46
	DT	13,303.95		387.25	
	HL	933.46		56.00	
	MO	111.48		6.50	
	PH	464.45		28.00	
	PS	650.00		.00	
	P4	227.08		6.74	
	P8	17,543.80		688.50	
	P9	106.11		3.00	
	RT	29,065.40		1,693.50	
	TH	4,768.58		181.75	
	TO	4,575.15		136.00	
	TOTAL	71,749.46		3,187.24	
OYEE TOTAL		71,749.46		3,187.24	

1 Control number 1-1		OMB No. 1545-0008		Copy D For Employer UT-W-2	
2 Employer's name, address, and ZIP code KIMBERLY-CLARK CORPORATION TAX DEPARTMENT B200/1 1400 HOLCOMB BRIDGE ROAD ROSWELL GA 30076			6 Statutory employee <input type="checkbox"/>	Deceased <input type="checkbox"/>	Pension plan <input checked="" type="checkbox"/>
			Legal rep. <input type="checkbox"/>	942 emp. <input type="checkbox"/>	Subtotal <input type="checkbox"/>
			Deferred compensation <input type="checkbox"/>	Void <input type="checkbox"/>	
			7 Allocated tips		8 Advance EIC payment
			9 Federal income tax withheld 3,736.86		10 Wages, tips, other compensation 69,138.23
3 Employer's identification number 39-0394230	4 Employer's state I.D. number 444941		11 Social security tax withheld 3,382.65		12 Social security wages 54,558.87
5 Employee's social security number 529-68-9637		13 Social security tips		14 Medicare wages and tips 69,138.23	
19 Employee's name, address, and ZIP code G. BRENT CROMPTON 1456 E 2525 N NORTH OGDEN UT 84414 0188			15 Medicare tax withheld 1,002.50		16 Nonqualified plans
			17 See Instrs. for Form W-2		18 Other
20 			21 		22 Dependent care benefits
					23 Benefits included in Box 10
24 State income tax 2,132.67	25 State wages, tips, etc. 69,138.23	26 Name of state UT	27 Local income tax	28 Local wages, tips, etc.	29 Name of locality

Form **W-2 Wage and Tax Statement 1992**

IRS APP.

Dept. of the Treasury—Internal Revenue Service

For Paperwork Reduction Act Notice and instructions for completing this form, see separate instructions.

1 Control number 1-1		OMB No 1545-0008		Copy of Employer's UT-W-2	
2 Employer's name, address, and ZIP code KIMBERLY-CLARK CORPORATION TAX DEPARTMENT 0200/1 1400 HOI COMB BRIDGE ROAD ROSWELL GA 30076				6 Statutory employee <input type="checkbox"/>	Deceased <input type="checkbox"/>
				Pension plan <input checked="" type="checkbox"/>	Legal rep <input type="checkbox"/>
				942 emp <input type="checkbox"/>	Subtotal <input type="checkbox"/>
				Deferred compensation <input type="checkbox"/>	Void <input type="checkbox"/>
				7 Allocated tips	8 Advance EIC payment
				9 Federal income tax withheld 4,147.04	10 Wages, tips, other compensation 71,749.46
3 Employer's identification number 59-0394230	4 Employer's state ID number 144941	11 Social security tax withheld 3,310.80		12 Social security wages 53,400.00	
5 Employee's social security number 529-68-9637		13 Social security tips		14 Medicare wages and tips 71,749.46	
19 Employee's name, address, and ZIP code C. BRENT CROMPTON 1456 E 2525 N NORTH OGDEN UT 84404 0188		15 Medicare tax withheld 1,040.37		16 Nonqualified plans	
		17 See Instrs. for Form W-2		18 Other	
20		21		22 Dependent care benefits	
				23 Benefits included in Box 10	
24 State income tax 2,075.72	25 State wages, tips, etc. 71,749.46	26 Name of state UT	27 Local income tax	28 Local wages, tips, etc.	29 Name of locality

Form **W-2 Wage and Tax Statement 1991**

IRS APP.

Dept. of the Treasury—Internal Revenue Service