

1994

# Chapman v. Chapman : Brief of Appellee

Utah Court of Appeals

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Pete Vlahos; Attorney for Appellee.

James M. Retallick; Attorney for Appellant.

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IN THE UTAH COURT OF APPEALS

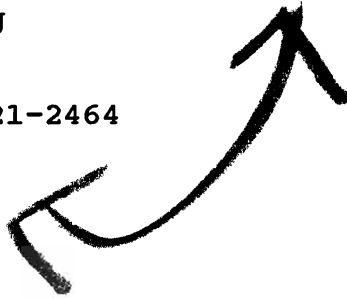
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BILLIE J. CHAPMAN, /  
Plaintiff/Appellee, / Case No. 940191-CA  
v. / District Court No.  
924701083  
HORACE A. CHAPMAN, /  
Defendant/Appellant. / Priority No. 15  
-----

BRIEF OF APPELLEE

-----  
APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT,  
DAVIS COUNTY, STATE OF UTAH  
The Honorable Judge W. Brent West, Presiding

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UTAH COURT OF APPEALS  
BRIEF

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Clerk of the Court

**LIST OF PARTIES**

**Billie J. Chapman - Plaintiff & Appellee**

**Horace J. Chapman - Plaintiff & Appellant**

IN THE UTAH COURT OF APPEALS

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BILLIE J. CHAPMAN,	/		
Plaintiff/Appellee,	/	Case No. 940191-CA	
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TABLE OF CONTENTS

LIST OF PARTIES . . . . . i

TABLE OF CONTENTS . . . . . ii

TABLE OF AUTHORITIES . . . . . iii, iv

STATEMENT OF JURISDICTION AND NATURE OF  
PROCEEDINGS . . . . . 1

STATEMENT OF THE ISSUES ON APPEAL . . . . . 1

STANDARD OF REVIEW ON APPEAL . . . . . 2

STATEMENT OF THE CASE . . . . . 3

STATEMENT OF FACTS . . . . . 3

SUMMARY OF ARGUMENTS . . . . . 5

    POINT 1.    THE TRIAL COURT DID NOT ERR IN  
                  AWARDING PLAINTIFF ALIMONY IN  
                  THE AMOUNT OF \$1,100.00 . . . . . 5

        A.    The Trial Court adequately  
              addressed the ability of the  
              receiving spouse to produce  
              income for herself . . . . . 6

        B.    The Trial Court adequately  
              considered Defendant's ability  
              to pay . . . . . 10

    POINT 2.    THE TRIAL COURT DID NOT ERR IN  
                  ITS ASSESSMENT OF VALUES AND  
                  DIVISION OF MARITAL ASSETS AND  
                  PROPERTY . . . . . 13

    POINT 3.    THE TRIAL COURT DID NOT ERR IN  
                  AWARDING WIFE PARTIAL ATTORNEY'S  
                  FEES . . . . . 17

CONCLUSION . . . . . 18

TABLE OF AUTHORITIES

CASE CITATIONS

<u>Acton v. Deliran</u> , 737 P.2d 996, 999 (Utah 1987) . . . . .	9
<u>Argyle v. Argyle</u> , 688 P.2d 468 (Utah 1984) . . . . .	14, 16
<u>Burnham v. Burnham</u> , 716 P.2d 781, 782 (Utah 1986) . . . . .	14
<u>Burt v. Burt</u> , 799 P.2d 1166, 1171 (Utah App. 1990) . . . . .	17
<u>Chambers v. Chambers</u> , 840 P.2d 811 (Utah App. 1992) . . . . .	2
<u>Crouse v. Crouse</u> , 817 P.2d 836, 840 (Utah App. 1991) . . . . .	17
<u>English v. English</u> , 565 P.2d 409, 410 (Utah 1977) . . . . .	12
<u>Gardner v. Gardner</u> , 748 P.2d 1076, 1078 (Utah 1988) . . . . .	9
<u>Howell v. Howell</u> , 806 P.2d 1209, 1212 (Utah App.), <u>cert denied</u> , 817 P.2d 327 (Utah 1991) . . . . .	6
<u>Johnson v. Johnson</u> , 855 P.2d 250 (Utah App. 1993) . . . . .	2, 12
<u>Rasband v. Rasband</u> , 752 P.2d 1331, 1333 (Utah App. 1988) . . . . .	12, 17
<u>Smith v. Smith</u> , 751 P.2d 1149, 1151 (Utah App. 1988) . . . . .	2
<u>Watson v. Watson</u> , 837 P.2d 1 (Utah App. 1992) . . . . .	6

STATUTES

Utah Code Annotated Section 78-2A-3(2)(i) .	1
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RULES

Rule 3 of the Utah Rules of Appellant Procedure . . . . .	1
Rule 24 of the Utah Rules of Appellant Procedure . . . . .	1

CONSTITUTIONAL PROVISIONS

None

IN THE UTAH COURT OF APPEALS

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HORACE A. CHAPMAN, /  
Defendant/Appellant. / Priority No. 15  
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BRIEF OF APPELLEE

-----  
STATEMENT OF JURISDICTION AND NATURE OF PROCEEDINGS

The Utah Court of Appeals has jurisdiction pursuant to Utah Code Annotated Section 78-2A-3(2)(i), which provides that the Court of Appeals has Appellant jurisdiction over appeals from the District Court involving domestic relations cases, including but not limited to divorce and property division. Rule 3 of the Utah Rules of Appellant Procedure also indicates a procedure for taking appeals from Judgments and Orders of Trial Courts. This Brief follows the structural requirements outlined in Rule 24 of the Utah Rules of Appellant Procedure. This is a Brief by Billie J. Chapman, Plaintiff, in support of a Judgment and Decree of Divorce entered below.

STATEMENT OF THE ISSUES ON APPEAL

1. Whether the Trial Court abused its discretion in



making the award of alimony that it did.

2. Whether the Trial Court erred in its assessment of values and division of marital assets and property.

3. Whether the Trial Court erred in awarding wife partial attorney's fees.

#### STANDARD OF REVIEW ON APPEAL

**ALIMONY AND ATTORNEY'S FEES.** The standard of review on appeal with regard to an alimony issue is that the Trial Court is given considerable discretion and a Trial Court's decision will not be over turned on appeal unless there is a clear and prejudicial abuse of that discretion and so long as the Trial Court exercises its discretion within the appropriate legal standards. Chambers v. Chambers, 840 P.2d 811 (Utah App. 1992), Johnson v. Johnson, 855 P.2d 250 (Utah App. 1993).

**PROPERTY DIVISION.** The standard of review on appeal with regard to issues of division of property is that a Trial Court has considerable discretion in adjusting financial and property interests of the parties. The Court of Appeals will not disturb the Trial Court's decision unless it is clearly unjust or a clear abuse of discretion. Smith v. Smith, 751 P.2d 1149, 1151 (Utah App. 1988).

#### STATEMENT OF THE CASE

This is an appeal from a Judgment and Decree of Divorce entered by the Honorable W. Brent West, District

Court Judge on or about June 20, 1994 (R. at 226). At trial, Plaintiff appeared and was represented by Attorney Pete N. Vlahos. Defendant appeared and was represented by Attorney G. Scott Jensen. During the trial, numerous witnesses were called and testified with regard to evaluation of property. In addition, both Plaintiff and Defendant testified with regard to issues surrounding alimony.

Judge West issued a decision dated February 24, 1994 (R. at 165-173). Plaintiff's attorney prepared a Findings of Fact and Conclusions of Law and Decree of Divorce and forwarded same to Defendant's attorney, James M. Retallick on or about June 10, 1994 (R. at 234). Defendant's counsel filed a Notice to Appeal with the Clerk of the Court, Second Judicial District, Davis County on March 26, 1994. Said Notice was entered on March 28, 1994 (R. at 177). Defendant appeals the Trial Court's alimony award, valuation and division of certain property and attorney fees.

#### STATEMENT OF FACTS

The parties to this divorce were married March 18, 1960 (T. Vol. I, P. 93). During the marriage, husband worked for the Union Pacific Railroad and at the time of trial, had been so employed for a period of about thirty-five (35) years (T. Vol. II, P. 46). Plaintiff worked as a waitress for the first seventeen (17) years of marriage

and then did not work for a period of approximately ten (10) or twelve (12) years (T. Vol. II, P. 157). Plaintiff then worked on a seasonal basis as a waitress for the four (4) years immediately prior to the divorce (T. Vol. II, P. 157 & 158). Plaintiff did no other work besides waitressing and had no other special training or skills. At the time of the divorce, Plaintiff and Defendant had been married for a period of thirty-three and a half (33 1/2) years (T. Vol. II, P. 246). The parties had five (5) children together, all of whom were emancipated at the time of the divorce (T. Vol. I, P. 94).

Defendant worked as an engineer for Union Pacific Railroad, working primarily from Millford, Utah to Las Vegas, Nevada. Defendant historically worked approximately eighty (80) to one hundred (100) hours per week for the railroad (T. Vol. II, P. 93). The parties acquired a number of items of property, including a home in Bountiful, Utah, a home and service garage in Millford, Utah and a condominium in St. George, Utah. In addition, the Defendant collected and restored antique cars and other collectible items and various other items of personal property were acquired. Plaintiff filed for a divorce seeking alimony, a division of the marital assets, a division of husband's retirement and attorney's fees.

## SUMMARY OF ARGUMENTS

ARGUMENT 1 - There are adequate findings and a record made by the Trial Court to support the award of alimony. Plaintiff was awarded \$1,100.00 per month as permanent alimony, which amount was arrived at by considering the financial condition and need of the Plaintiff, the ability of the Plaintiff to provide sufficient income for herself and the ability of the Defendant to provide that support.

ARGUMENT 2 - A Trial Court has wide discretion in its assessment of values and a division of marital assets and property. The Trial Court spent considerable time and effort in arriving at values and in the division of property and did not abuse its discretion in making that property division.

ARGUMENT 3 - The Trial Court did not err in awarding the Plaintiff partial attorney's fees. Plaintiff's need for payment of attorney's fees was adequately demonstrated and the record supports Defendant had the financial ability to pay and contribute toward Plaintiff's attorney's fees.

POINT 1: THE TRIAL COURT DID NOT ERR IN AWARDING PLAINTIFF ALIMONY IN THE AMOUNT OF \$1,100.00.

Plaintiff accepts Defendant's position that the general purpose of alimony is to prevent the receiving spouse from becoming a public charge and to maintain the

standard of living enjoyed during the marriage to the extent possible. Howell v. Howell, 806 P.2d 1209, 1212 (Utah App.), cert denied, 817 P.2d 327 (Utah 1991). The factors in making a determination of alimony are well established in Utah law. The three (3) main factors for an alimony award are (1), the financial condition and need of the receiving spouse; (2), the ability of the receiving spouse to produce sufficient income for herself; and (3), the ability of the paying spouse to provide support. Watson v. Watson, 837 P.2d 1 (Utah App. 1992). Plaintiff believes that the Court adequately considered each of these factors when it made its award of alimony.

**A. The Trial Court adequately addressed the ability of the receiving spouse to produce income for herself.**

Defendant argues that the Trial Court committed error in not finding the wife voluntarily under employed for purposes of calculating alimony. However, the Trial Court addresses this issue when it discusses the ability of the Plaintiff to produce sufficient income for herself. Relevant findings of fact on this issue include the following:

3. That this is a long term marriage, in that the parties have been married for thirty-four (34) years. During the marriage, both parties have worked, however not to the same degree. The Plaintiff has worked for portions of the marriage

as a waitress and her most recent employment is at Bountiful Golf Course, and the Defendant has worked thirty-five (35) years for the Union Pacific Railroad.

6. That the Plaintiff has a gross monthly income of \$838.00 when she is employed, and that the Defendant's gross monthly income is \$5,279.91.

7. That the Plaintiff's monthly expenses are \$1,837.00, and the Defendant's monthly expenses are \$3,941.43 and with few exceptions, the expenses appear to be both reasonable and necessary for both parties.

Finally, the Court enters the following findings of fact:

8. That the Court finds that despite the Plaintiff's ability to work, the Plaintiff is in need of support, and that the Defendant has the ability to provide such support. (emphasis added) (Findings of Fact and Conclusions of Law, R. P. 207-208)

The Trial Court treated Plaintiff as if she were working full time on a permanent basis. It did this by making a specific finding that Plaintiff had a gross income of \$838.58 per month. The Trial Court did not distinguish between times that the Plaintiff was working and not working because it made no finding as to her income when not working. Rather, alimony was based on a set figure of \$838.58 a month for all months. Alimony award was based on a figure treating the Plaintiff as if

she were working full time. It is therefore immaterial as to whether Plaintiff was capable of working full time because the alimony award was made as if treating the Plaintiff as a full time employee.

Further, the Court did not have to make a specific order with regard to the Plaintiff being voluntarily under employed for purposes of alimony. This is because the Court entered specific findings as to the wife's income. The Court specifically found that Plaintiff had income of \$838.58 per month and that her expenses were \$1,837.00 per month. This creates a deficit for the Plaintiff of \$998.42. The Court was also well aware of the fact that Plaintiff worked approximately six (6) months of the year and that she drew unemployment for the other six (6) months of the year because she liked her job at the golf course (T. Vol. I, P. 154 & 155). The Court was further aware that while drawing unemployment, the Plaintiff averaged \$432.00 per month during the six (6) months that she was unemployed and that Plaintiff averaged her income while working and unemployed to arrive at a monthly estimate of income (T. Vol. I, P. 161 & 162).

In addition, the parties discussed the Plaintiff's period of unemployment at trial. This exchange took place as follows:

MR. JENSEN: No; I am just asking -  
I don't see why I can't ask her why

she can't go look for another job.

THE COURT: You are asking -

MR. VLAHOS: You can ask her that, but you can't say, "you make more money," because you don't know. You are assuming something that is not.

THE COURT: You are. You are assuming that she could make more money without a basis for doing that. You have never asked her if she has looked or if there are other things she is qualified for, if she made more money as a waitress. I agree. You get to ask her why she doesn't leave the golf course and go to another job; but you made the assumption that she could make more money, and I don't have a basis for that now.

Q (BY MR. JENSEN): Have you looked for other jobs?

A: Not since I have been at the golf course. I like my job.

Q: So you haven't looked for other jobs?

A: No. (T. Vol. I, P. 223 & 224)

It is therefore, abundantly clear that the Court considered the Plaintiff's condition of employment. It is equally clear that if the facts in the record are "clear, uncontroverted, incapable of supporting a finding in favor of the Judgment, then the Court of Appeals will not disturb the Trial Court's decision." Gardner v. Gardner, 748 P.2d 1076, 1078 (Utah 1988), (quoting Acton v. Deliran, 737 P.2d 996, 999 (Utah 1987)).

In this case, it is clear from the record and the



testimony at the trial, that the Court did consider Plaintiff's employment situation, was well aware of the fact that she was not employed for six (6) months of the year and thus considered that in making its alimony award. Alimony was based on a set figure without distinguishing times of employment versus unemployment.

**B. The Trial Court adequately considered Defendant's ability to pay.**

The ability of a paying spouse to provide support is one (1) of three (3) main factors to consider in making an alimony award. In this case, the Trial Court made the following findings relevant to the Defendant's ability to pay.

6. That the Plaintiff has a gross monthly income of \$838.00 when she is employed and that the Defendant's gross monthly income is \$5,279.91.

7. That the Plaintiff's monthly expenses are \$1,837.00, and the Defendant's monthly expenses are \$3,941.43 and with few exceptions, the expenses appear to be both reasonable and necessary for both parties.

8. That the Court finds that despite the Plaintiff's ability to work, the Plaintiff is in need of support and that the Defendant has the ability to provide such support.

Defendant then argues, for the first time on appeal, that the Court failed to consider the withholdings for taxes and other benefits from the Defendant's earnings,

and that this leaves him with a deficit each month. Defendant then submits an addendum, not submitted as an exhibit at trial, in support of that argument.

Initially, it should be noted that the Court heard evidence, in detail, from the Defendant with regard to deductions from his income. This is noted as follows:

Q (BY MR. JENSEN): Now, we could go through that, that pay stub. I would like you to explain some of the items that are deducted from your check, if you could. (T. Vol. II, P. 41).

Defendant then goes through each of the deductions from his income and outlines those for the Court. This is followed by a discussion of the expenses incurred by the Defendant and each of those are outlined for the Court and submitted in the form of Exhibit No. 24 for the Court's review. Therefore, the Court was well aware of Defendant's claim as to his disposable income.

Second, it should be noted that the Court also did not take the highest figure that they could have on Defendant's income. Defendant testified that based upon the pay stub being showed to the Court at that time, that he made \$2,838.00 gross income for that pay period. If one were to take that figure, multiply it by 26 on the basis that there are twenty-six (26) pay periods in a year and then divide that by 12, Defendant's gross income becomes \$6,149.00 a month. That this is more than \$900.00 a month more than the Court found Defendant's

income to be. Therefore, any error committed by the Court is balanced by findings that are in the Defendant's favor.

Third, the Court did not consider Plaintiff's deductions from income either.

Finally, on review, an Appellant Court will not upset the Trial Court's award so long as the Trial Court exercised its discretion within the appropriate legal standards. The Trial Court in this case specifically addressed Defendant's ability to pay and is well aware of all deductions from income. The Trial Court, therefore, did not abuse its discretion in the award of alimony and the action is consistent with the purposes of an alimony award as articulated by this Court. See Johnson v. Johnson, 855 P.2d 250 (Utah App. 1993).

In addition, the described purpose of alimony is as follows: "The most important function of alimony is to provide support for the wife as nearly as possible to the standard of living she enjoyed during marriage and to prevent the wife from becoming a public charge." English v. English, 565 P.2d 409, 410 (Utah 1977). An alimony award should, to the extent possible, equalize the parties respective post divorce living standards and maintain them at a level as close as possible to that standard of living enjoyed during the marriage. Rasband v. Rasband, 752 P.2d 1331, 1333 (Utah App. 1988).

Based upon the findings of the Court, Plaintiff has a gross monthly income of \$838.00. When you add her alimony award to that, Plaintiff's income reaches \$1,938.00 a month. Plaintiff's monthly expenses are \$1,837.00, which leaves her with a disposable income of \$101.00 a month. The Defendant's income is \$5,279.91. When you subtract his monthly expenses and alimony from that figure, Defendant is left with discretionary income of \$238.48 per month. This also does not consider the fact that alimony is taxable income to Plaintiff and deductible to Defendant, and that of their combined income, Defendant makes 64.4% and Plaintiff makes 38.6%. This both puts the parties at roughly the same standard of living and approximately equalizes the parties respective post divorce living standards.

**POINT 2: THE TRIAL COURT DID NOT ERR IN ITS ASSESSMENT OF VALUES AND DIVISION OF MARITAL ASSETS AND PROPERTY.**

Defendant cites two (2) areas in which he maintains the Trial Court erred in assessing and dividing marital assets and property. The first of these is that the Trial Court erred in assessing value to the garage in Millford. The second is that the Trial Court erred in its valuation of certain other items of personal property.

It is a well established rule that a Trial Court in a divorce action is permitted considerable discretion in

adjusting financial and property interest of parties, and its actions are entitled to a presumption of validity. Burnham v. Burnham, 716 P.2d 781, 782 (Utah 1986). Further, the burden is on the Defendant to overcome that presumption of validity. This was outlined in Argyle v. Argyle, 688 P.2d 468 (Utah 1984), which notes as follows:

A party appealing from a property division has the burden to prove that there was a misunderstanding or misapplication of the law, resulting in substantial and prejudicial error; or the evidence clearly preponderated against the findings; or such a serious inequity has resulted as to manifest a clear abuse of discretion.

In the case at bar, the Trial Court made specific findings as to the garage in Millford. It noted as follows:

The parties also have a garage in Millford, Utah. This garage was purchased for \$18,000.00. The Plaintiff claims the garage is worth \$10,357.00. The Defendant claims the garage is worth \$13,000.00. However, the garage has been condemned by Millford City. The Defendant has been ordered to demolish the garage. He claims that the cost of demolition will be greater than its present value and therefore the garage has no value. The Court is satisfied that the garage has some value and will place that value at the lower figure of \$10,357.00.

Simply because the Defendant does not agree with the Court's decision does not mean that the decision is incorrect or an abuse of discretion. It is clear that

the Court had all the information in front of it and, having considered that evidence, fixed the garage's value at the lower figure offered by the Plaintiff. This is no different than any of the other property division set out by the Court. Many times, the Court would accept Defendant's valuation over the Plaintiff's and many times, the Court would find its own value based on the testimony of the parties. This is clearly within the Court's discretion to do so.

In its decision, the Court went through each piece of real estate and fixed its value. The Court then noted the total value of the real property assets was \$151,839.40. The Court then found that each party had a share of these assets of \$75,919.70. Assuming that the Court valued the garage in Millford at \$10,357.00, each party would be entitled to one-half (1/2) of this value or \$5,178.50. This sum is minimal when compared with the total value of all property in the divorce.

Between real property, personal property and household goods, the parties have had an estate of \$266,574.90. This figure is arrived at by taking the Court's valuation of real property, personal property and household goods as set forth in its decision. Each party is to receive one-half (1/2) of that value or \$133,287.45. Therefore, even if this Court accepts Defendant's argument that the Court abused its

discretion, the value in that garage in Millford is less than 3/10ths of 1% of the total value of assets awarded to the Defendant.

Defendant then further alleges the Trial Court erred in its valuation of certain items of marital property. In support of this, he notes what he believes to be discrepancies in valuation of a 1986 Harley Davidson motorcycle with a side car, the valuation of three (3) Cushman scooters and the valuation of two (2) slot machines. Again, a Trial Court is permitted considerable discretion in adjusting the financial and property interests of the parties and its actions are entitled to a presumption of validity as set forth above in the Argyle case.

Simply because the Trial Court accepts Plaintiff's valuation over Defendant's valuation does not rebut that presumption of validity. Many other factors play into the division of property, including the creditability of the parties, their disposition and actions at trial and the Court's own experience. Even assuming that Defendant is completely correct in his valuation, there is a total difference of \$4,007.50 between the amount the Court set as values for these items of property and the amount that Defendant claimed their value to be. Again, this amount is so minuscule in comparison with the over all property division, that it cannot be said there is an abuse of

discretion.

**POINT 3: THE TRIAL COURT DID NOT ERR IN AWARDING WIFE PARTIAL ATTORNEY'S FEES.**

There are generally three (3) factors in determining an award of attorney's fee. These factors include financial need of the parties, the reasonableness of the fees and which party prevails on disputed issues. See Rasband v. Rasband, 752 P.2d 1331, 1336 (Utah App. 1988) and Burt v. Burt, 799 P.2d 1166, 1171 (Utah App. 1990).

Both a decision to award attorney's fees and the amount of such fees are within the sound discretion of the Court. Crouse v. Crouse, 817 P.2d 836, 840 (Utah App. 1991). In the case at bar, the Defendant does not contest the reasonableness of the fee. Therefore, the remaining issue is Plaintiff's need and which party prevailed.

From the outset, it is believed that neither Plaintiff or Defendant entirely prevailed in the action. This is further supported by the Trial Court's actual findings where it notes as follows:

In this case, the Plaintiff has incurred approximately \$4,000.00 in attorney's fees and \$350.00 in Court costs. The Defendant has incurred similar amounts. The Plaintiff is in need of financial assistance in paying her attorney's fees. The Defendant has the financial ability to assist the Plaintiff. The Plaintiff has not, however, prevailed on all the contested issues. As a result, the Defendant



is ordered to contribute \$2,000.00 toward the payment of Plaintiff's attorney's fees. Each party is to bear their own costs.

Therefore, the Trial Court did not award Plaintiff the entire amount of attorney's fees incurred on the basis that she did not entirely prevail on contested issues. It is presumed, therefore, that the award of \$2,000.00 toward payment of attorney's fees was based on Plaintiff's need.

The findings of fact and conclusions of law have clearly shown that Plaintiff lacks the ability to pay the fees. Plaintiff was only making, pursuant to the findings, \$838.00 per month. Defendant, on the other hand, had a gross monthly income of \$5,279.91 per month.

At the time of trial, therefore, Defendant was in a much better position for the payment of attorney's fees. Plaintiff adequately demonstrated need for payment of those attorney's fees, considering the disparate financial position that she was in at the time of trial. The Court did not abuse its discretion or misapply the law with regard to its award of attorney's fees and therefore the attorney's fees should stand as awarded.

#### CONCLUSION

The Court of Appeals will not upset a Trial Court's award so long as the Court has exercised its discretion within the appropriate legal standards. Appropriate legal standards are considered when the Court properly

views the financial condition and need of the receiving spouse, the ability of the receiving spouse to produce income and the ability of a paying spouse to provide support. Each of these factors were adequately considered, both in the findings of fact and conclusions of law and within the record itself. The Court fixed the Plaintiff's income at \$838.00 per month, even though she does not always make that amount. The Defendant's argument that the Court treated her as under employed is without merit. Defendant has the ability to provide support. Defendant's income substantially exceeds that of the Plaintiffs. This is a thirty-four (34) year marriage. The Court viewed and accepted Defendant's explanation of both his income, deductions and expenses. Plaintiff's expenses clearly exceed her income. She has therefore demonstrated a financial need for alimony.

The disparities in the property division which Defendant complains of are so minuscule when compared to the over all division of the parties' property, that the Court cannot be said to have abused its discretion. Even then, this Court must rely on the Trial Court's discretion with regard to that division. The Trial Court earnestly attempted to make an equal division of property. The fact that it did not accept the Defendant's estimates as to value on certain items of property does not mean that its property division is

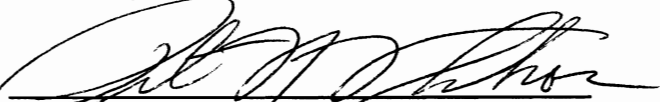
inequitable.

The Plaintiff demonstrated a need for payment of attorney's fees. There is no issue that the attorney's fees were reasonable. The Court reduced the amount of fees awarded to the Plaintiff on the basis that she did not prevail on all contested issues. As a result, all factors were properly considered and the Court did not abuse its discretion with regard to making the award of attorney's fees that it did.

Based upon the above and foregoing, Defendant's appeal should be dismissed, the Trial Court's decision affirmed and Plaintiff should be awarded the costs and attorney's fees on appeal.

DATED this 2 day of February, 1995.

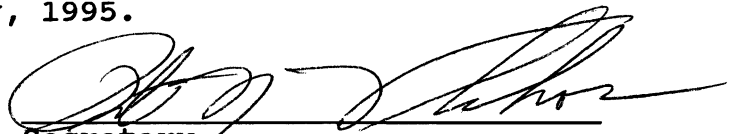
VLAHOS, SHARP & BRADLEY



PETE N. VLAHOS,  
Attorney for Plaintiff/Appellee

**CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the above and foregoing Brief of Appellee was posted in the United States mail, postage prepaid and addressed to Attorney James M. Retallick, attorney for Defendant/Appellant, at Key Bank Building, Suite 200, 2491 Washington Boulevard, Ogden, Utah 84401 on this 2 day of February, 1995.

  
Secretary

ADDENDUM

Decision . . . . . 1-10

## **ADDENDUM**

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

<p>BILLIE JEAN CHAPMAN,    Plaintiff(s),</p> <p>vs.</p> <p>HORACE ALBERT CHAPMAN,   Defendant(s).</p>	<p><b>DECISION</b></p> <p>Case No. 924701083</p>
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There are four issues that the court took under advisement. These include alimony, distribution of retirement, distribution of real and personal property and attorney's fees. The court will address each issue separately.

**ALIMONY**

This is a long term marriage. The parties have been married for 34 years. During the marriage, both parties have worked, however, not to the same degree. The plaintiff has worked, for portions of the marriage, as a waitress. Her most recent employment is at the Bountiful Golf Course. The defendant has worked 35 years with the Union Pacific Railroad.

The plaintiff's gross monthly income is \$838.58. The defendant's gross monthly income is \$5,279.91.

The plaintiff's monthly expenses are \$1,837.00. The defendant's monthly expenses are \$3,941.43. With few exceptions, the expenses appear to be both reasonable and necessary.

Despite her ability to work, the plaintiff is in need of support. The defendant has the ability to provide such support. An award of alimony is appropriate. The alimony award should be

permanent. It should be modified only on death, remarriage or other material change in circumstances. Based on the parties financial conditions, the court awards the plaintiff \$1,100.00 a month in alimony.

#### RETIREMENT

The plaintiff is awarded her proportionate share of the defendant's railroad retirement, pursuant to the Woodward formula. This would apply to any retirement benefits that the defendant has accrued under Tier II of the railroad retirement. However, the defendant has approximately 9 more years before he will be eligible for Tier II benefits.

#### PROPERTY DIVISION

This is the most difficult area to address. The primary issue is value. For clarity, the court will divide its analysis into two parts, real property and personal property.

Real Property: There are 6 pieces of real property, These include the parties home in Bountiful, Utah; a home in Milford, Utah; a condominium in St. George, Utah; a garage in St. George, Utah; a garage in Milford, Utah; and a storage shed in Bountiful, Utah. The values that the parties have placed on these properties are extremely divergent. Once again, the court will address each piece of property individually.

The parties purchased their home in Bountiful, Utah for \$70,000.00. The plaintiff claims the home has a value of \$80,000.00. The defendant claims the home is worth \$95,000.00. The court is satisfied with defendant's appraisal and values the home at \$95,000.00.

The parties purchased their home in Milford, Utah for



\$12,000.00. The plaintiff claims the home is worth \$10,725.00. The defendant claims the home is worth only \$7,000.00. Although property values have gone down in Milford, the court is satisfied that the home is worth \$10,725.00.

The parties purchased a condominium in St. George, Utah for \$79,000.00. The balance due and owing on the mortgage is \$67,492.60. The plaintiff claims the condominium is worth \$85,000.00. The defendant claims it is worth \$79,000.00. The court finds the value to be \$85,000.00.

In addition to the condominium in St. George, Utah, the parties also have a garage there. The plaintiff claims the garage is worth \$5,000.00. The defendant claims the garage is worth \$3,500.00. The court finds the value to be \$4,250.00.

The parties also have a garage in Milford, Utah. This garage was purchased for \$18,000.00. The plaintiff claims the garage is worth \$10,357.00. The defendant claims the garage is worth \$13,000.00. However, the garage has been condemned by Milford City. The defendant has been ordered to demolish the garage. He claims that the cost of demolition will be greater than its present value and therefore the garage has no value. The court is satisfied that the garage has some value and will place that value at the lower figure of \$10,357.00.

The last real estate item for consideration is the storage shed in Bountiful, Utah. This item is complicated by the fact that the shed is located on property belonging to the defendant's mother. The plaintiff claims the shed is worth \$15,000.00. The defendant claims it cost \$14,000.00 to build the shed. The court is satisfied with the \$14,000.00 figure.

The plaintiff is awarded the home in Bountiful, Utah. The defendant is awarded the house in Milford, Utah; the garage in Milford, Utah; the condominium in St. George, Utah; the garage

in St. George, Utah; and any interest in the storage shed in Bountiful, Utah.

The total value of these assets is \$151,839,40. Since this is a long term marriage and all the properties were obtained with marital assets, the only equitable way to divide these assets is equally. Each parties share of these assets is \$75,919.70. Since the plaintiff has been awarded the home in Bountiful, Utah and it has a value of \$95,000.00, the defendant is awarded a lien against the home in the amount of \$19,080.30. The lien is payable in 9 years or when the defendant retires or when the Bountiful home is sold, whichever event occurs first. This will equalize the parties interest in these properties.

Personal Property: This is, without a doubt, the most difficult area to resolve. It is complicated by the large number of items, the various age of the items, the fact that many of the items are in various stages of restoration and the divergent values placed on the items by the parties. In starting this analysis, the court will once again state that each party should be awarded an equal share of the total value. The court has itemized the various items below. In its chart, the court has listed the item, plaintiff's estimated of value, defendant's estimated of value, and the court's final determination of value.

<u>Item</u>	<u>P's value</u>	<u>D's value</u>	<u>Court's value</u>
1955 Ford	\$ 5,900.00	\$ 900.00	\$ 3,400.00
1931 Town Sedan	\$15,400.00	\$ 4,200.00	\$10,500.00 *
1926 Model T	\$14,000.00	\$ 5,600.00	\$10,000.00 *
1911 Model T	\$20,000.00	\$ 8,000.00	\$14,000.00 *
1921 Fort Hotrod	\$15,500.00	\$ 8,000.00	\$14,000.00 *
1973 Harley Davidson			

	\$ 3,500.00	\$ 2,495.00	\$ 2,495.00 1
1986 Harley Davidson			
	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00
1986 Harley Davidson flt and sidecar			
	\$ 9,000.00	\$ 8,607.50	\$ 8,607.50
Cushman scooters	\$ 2,600.00	\$ 2,600.00	\$ 2,600.00
1926 Roadster	\$ 1,500.00	\$ 100.00	\$ 100.00 2
1979 Lincoln	\$ 1,000.00	\$ 2,450.00	\$ 1,000.00 3
1982 Cadillac	\$ 1,300.00	\$ 200.00	\$ 750.00
1992 Mustang	\$ 1,000.00	\$ 0.00	\$ 0.00 4
Gas Pumps (3)	\$ 3,500.00	\$ 50.00	\$ 50.00 5
Motor cycle trailer	\$ 1,150.00	\$ 500.00	\$ 825.00
Flat-bed cycle	\$ 350.00	\$ 200.00	\$ 275.00
Car hauling trailer	\$ 3,000.00	\$ 800.00	\$ 1,900.00
16' flat bed trailer	\$ 1,200.00	\$ 500.00	\$ 850.00
Model T trailer	\$ 500.00	\$ 500.00	\$ 500.00
Model T wheels	\$ 400.00	\$ 400.00	\$ 400.00
Wood Spokes	\$ 400.00	\$ 0.00	\$ 400.00 6
Chain Hoist	\$ 500.00	\$ 0.00	\$ 0.00 7
<b>Total</b>	<b>\$108,700.00</b>	<b>\$52,710.00</b>	<b>\$79,652.50</b>

\* These values were determined by the testimony of the experts, as well as the parties.

1 The experts testimony was closer to defendant's value.

2 The court is satisfied that this roadster has been reduced to parts.

3 The court accepts the plaintiff's testimony as being more credible, since she has possession of the automobile.

4 The court is satisfied that the amount due on the loan exceeds the

cars value.

5 The court is satisfied that the gas pumps only have salvage value.

6 The defendant never contested this value.

7 The court is satisfied the hoist is broken.

As previously indicated, these assets should be divided equally. Therefore, each party is awarded property having a value of \$39,826.25. How the parties want to divide the property is up to them. The court would suggest that they either take turns picking from the list or that one party draw up two lists of property and the other party have first choice of lists. Any discrepancy in value can be made up in cash.

In addition to the personal property listed above, the parties also dispute the values of their household goods. The court has addressed those items below.

	<u>P's Value</u>	<u>D's Value</u>	<u>Court's Value</u>
<u>Milford Home</u>			
Bedroom	\$ 150.00	\$ 200.00	\$ 175.00
Living room	\$ 200.00	\$ 300.00	\$ 250.00
Kitchen	\$ 25.00	\$ 50.00	\$ 37.50
T.V./VCR	\$ 250.00	\$ 0.00	\$ 250.00 1
Refrigerator	\$ 10.00	\$ 0.00	\$ 10.00 1
Answering machine	\$ 150.00	\$ 0.00	\$ 150.00 1
 <u>St. George Home</u>			
Master Bedroom	\$1,300.00	\$2,000.00	\$1,650.00
Bedroom	\$1,000.00	\$1,000.00	\$1,000.00
Blinds	\$2,500.00	\$ 0.00	\$2,500.00 1
Couches	\$1,275.00	\$1,000.00	\$1,137.50
Music Center	\$2,500.00	\$2,000.00	\$2,250.00

Tables	\$ 500.00	\$1,500.00	\$1,000.00
Refrigerator	\$ 600.00	\$ 500.00	\$ 550.00
Dining room set	\$ 200.00	\$ 200.00	\$ 200.00
Telephone	\$ 0.00	\$ 100.00	\$ 100.00 2
Washer & Dryer	\$ 600.00	\$ 500.00	\$ 550.00
Patio	\$ 600.00	\$ 500.00	\$ 550.00
Stereo	\$ 100.00	\$ 0.00	\$ 100.00 1

Bedspread	\$ 150.00	\$ 0.00	\$ 150.00 1
Plants	\$ 150.00	\$ 0.00	\$ 150.00 1
Yard ornaments	\$ 90.00	\$ 0.00	\$ 90.00 1
13' T.V.	\$ 200.00	\$ 0.00	\$ 200.00 1
13' T.V.	\$ 175.00	\$ 0.00	\$ 175.00 1
29' T.V.	\$ 600.00	\$ 0.00	\$ 600.00 1
Entertainment center	\$ 100.00	\$ 0.00	\$ 100.00 1
VCR	\$ 300.00	\$ 0.00	\$ 300.00 1
Vacuum	\$ 50.00	\$ 0.00	\$ 50.00 1

Bountiful Home

Washer & Dryer	\$ 160.00	\$ 500.00	\$ 330.00
Piano	\$2,000.00	\$5,000.00	\$3,500.00
Telephone	\$ 0.00	\$ 500.00	\$ 500.00 2
Pool Table	\$1,000.00	\$3,500.00	\$2,250.00
Slot machine	\$1,200.00	\$1,200.00	\$1,200.00
Cash register	\$ 0.00	\$ 500.00	\$ 500.00 2
Rocker	\$ 0.00	\$ 300.00	\$ 300.00 2
Couch	\$ 300.00	\$ 200.00	\$ 250.00
Sewing machine	\$ 0.00	\$2,000.00	\$ 50.00 3
T.V & Stand	\$ 0.00	\$ 200.00	\$ 200.00 2
Grandfather clock	\$ 300.00	\$2,500.00	\$1,400.00
Stereo	\$ 25.00	\$ 500.00	\$ 262.50

Couch	\$ 0.00	\$ 300.00	\$ 300.00 2
Rocker	\$ 0.00	\$ 300.00	\$ 300.00 2
Display case	\$ 0.00	\$ 500.00	\$ 500.00 2
Lamps	\$ 30.00	\$ 500.00	\$ 265.00
Serving table	\$ 0.00	\$ 800.00	\$ 800.00 2
Rocking chairs	\$ 0.00	\$1,000.00	\$1,000.00 2
Wall mirror	\$ 0.00	\$ 250.00	\$ 250.00 2
Dining table/chairs	\$ 100.00	\$1,000.00	\$ 550.00
Refrigerator	\$ 0.00	\$ 900.00	\$ 900.00 2
Telephone	\$ 0.00	\$ 100.00	\$ 100.00 2
Hutch	\$ 100.00	\$ 900.00	\$ 500.00
Master bedroom	\$ 100.00	\$1,000.00	\$ 550.00
Bedroom	\$ 0.00	\$1,000.00	\$1,000.00 2
Bedroom	\$ 0.00	\$1,000.00	\$1,000.00 2
Patio	\$ 0.00	\$1,500.00	\$1,500.00 2
Misc. knickknacks	\$ 250.00	\$ 0.00	\$ 250.00 1
VCR	\$ 300.00	\$ 0.00	\$ 300.00 1
<b>TOTAL</b>	<b>\$19,640.00</b>	<b>\$37,800.00</b>	<b>\$35,083.00</b>

- 1 The defendant either claimed no value for the item or didn't even list the item.
- 2 The plaintiff either claimed no value for the item or didn't even list the item.
- 3 The court found neither parties' estimate of value to be credible.

The court intends to treat this personal property like all the rest. It should be divided equally between the parties. Each party should receive property having a value of \$17,541.50. The defendant is awarded all the above listed personal property in the Milford home and the St. George condominium, except the \$150.00 bedspread which was a gift to plaintiff. The

bedspread is awarded to the plaintiff. The plaintiff is awarded all the above listed personal property in the Bountiful home, except the piano and the pool table. The piano and pool table are awarded to the defendant. In addition, each party is awarded any and all gifts they have received from their children. The value of the personal property awarded to defendant totals \$19,875.00. The value of the personal property awarded to the plaintiff totals \$15,208.00. This is a difference of \$2,333.50 from an equal distribution. The defendant is ordered to pay the difference in cash to the plaintiff.

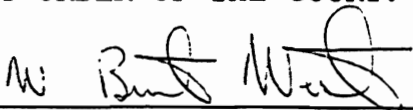
**Attorney's Fees**

The last issue is attorney's fees. In assessing attorney's fees, the court looks at the financial needs of the parties, as well as the financial ability of the parties to pay attorney's fees. The court also looks at which party may have prevailed on any or all contested issues. In this case, the plaintiff has incurred approximately \$4,000.00 in attorney's fees and \$350.00 in court costs. The defendant has incurred similar amounts. The plaintiff is in need of financial assistance in paying her attorney's fees. The defendant has the financial ability to assist the plaintiff. The plaintiff has not, however, prevailed on all of the contested issues. As a result, the defendant is ordered to contribute \$2,000.00 towards the payment of the plaintiff's attorney's fees. Each party is to bear their own costs.

Plaintiff's counsel will please prepare Findings of Facts, Conclusions of Law and a Divorce Decree consistent with this ruling.

DATED this 24th day of February, 1994.

BY ORDER OF THE COURT:

  
\_\_\_\_\_  
W. Brent West  
District Court Judge

Case No: 924701083 DA

Certificate of Mailing

I certify that on the 24th day of February, 1994,  
I sent by first class mail a true and correct copy of the  
attached document to the following:

BILLIE JEAN CHAPMAN  
Plaintiff

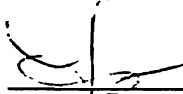
HORACE ALBERT CHAPMAN  
Defendant

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BOUNTIFUL UT 84010

G. SCOTT JENSEN  
Atty for Defendant  
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BAMBERGER SQUARE BLDG  
OGDEN UT 84401

District Court Clerk

By:  \_\_\_\_\_  
Deputy Clerk