

2005

Vernon Ray Rigby v. Loralie Kemp Rigby : Brief of Appellee

Utah Court of Appeals

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David J. Friel; Attorney for Appellant.

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VERNON RAY RIGBY,
Petitioner/Appellant,

V.

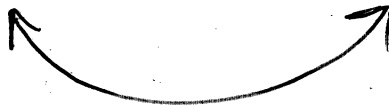
LORALIE KEMP RIGBY,
Respondent/Appellee.

Appellate Case No. 20050616

Appeal from Findings of Fact and Conclusions of Law and
Decree of Divorce entered June 13, 2005, by the Third District Trial Court
Judge Robert W. Adkins (All parties contained in caption)

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UTAH APPELLATE COURTS
APR 10 2006

IN THE UTAH COURT OF APPEALS

VERNON RAY RIGBY,
Petitioner/Appellant,

v.

LORALIE KEMP RIGBY,
Respondent/Appellee.

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APPELLEE BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
JURISDICTIONAL STATEMENT.....	4
STATEMENT OF ISSUES.....	4
STANDARD OF REVIEW.....	5
STATUTORY PROVISIONS.....	6-12
STATEMENT OF THE CASE.....	12
STATEMENT OF THE FACTS.....	12-14
SUMMARY OF THE ARGUMENT.....	14
ARGUMENT	
POINT I	
The trial court properly issued Findings of Fact, Conclusions of Law and the Decree of Divorce sufficient in analyzing the parties' income, expenses, needs, and equitable concerns, such as the length of the marriage and contemptuous actions by the Petitioner, to make an award of alimony which equalizes the parties' income.....	
	14-19
POINT II	
The trial court properly divided the equity in the parties' home by taking into consideration the award of attorney's fees granted to the Respondent, and the serious contempt issues adjudicated against the Petitioner; and the trial court did not abuse his discretion with respect to finding the Petitioner in contempt in several areas....	
	19-22
POINT III	
The Appellant did not properly marshal the evidence in this matter, and as such, the appeal should be denied.....	
	22-23
CONCLUSION.....	24
CERTIFICATE OF MAILING.....	25
ADDENDUM.....	26

TABLE OF AUTHORITIES

U.C.A. §30-3-5.....	6-12
U.R.A.P. Rule 3.....	4
<u>Doelle v. Bradley</u> , 784 P.2d 1176, 1178 (1986).....	4, 23
<u>Ashton v. Ashton</u> , 733 P.2d 147, 150 (Utah 1987).....	5
<u>State of Utah v. Pena</u> , 869 P.2d 932 (1994).....	5
<u>State v. Ramirez</u> , 817 P.2d 774, 781-82 (Utah 1991).....	5
<u>Rudman v. Rudman</u> , 812 P.2d 73, 79 (Ut. Ct App. 1991).....	5, 23
<u>Munns v. Munns</u> , P.2d 116, 121 (Utah Ct.App.1990).....	15
<u>Haumont v. Haumont</u> , 793 P.2d 421, 423 (Utah Ct.App.1990).....	17, 18
<u>In re Cannetella</u> , 2006 P.3d 89, (UT Ct. App. March, 2006).....	19

IN THE UTAH COURT OF APPEALS

VERNON RAY RIGBY,
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Respondent/Appellee.

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Appellate Case No. 20050616

APPELLEE BRIEF

JURISDICTIONAL STATEMENT

Jurisdiction is proper pursuant to Rule 3(a) of the Utah Rules of Appellate Procedure.

ISSUES FOR REVIEW

1. Are the Findings of Fact, Conclusions of Law and Decree of Divorce sufficient in analyzing the parties' income, expenses, needs, and equitable concerns, such as the length of the marriage and contemptuous actions by the Petitioner, to make an award of alimony which equalizes the parties' income?

2. Did the trial court abuse it's discretion in holding the Petitioner in contempt, and in dividing the equity in the marital property 15% to petitioner and 85% to the Respondent?

3. Has the Petitioner/Appellant properly marshaled the evidence pursuant to Doelle v. Bradley, 784 P.2d 1176, 1178 (Utah 1989)?

STANDARD OF REVIEW

The Utah Supreme Court has held that, “Trial courts are given primary responsibility for making determinations of fact. Findings of fact are reviewed by an appellate court under the clearly erroneous standard. For a reviewing court to find clear error, it must decide that the factual findings made by the trial court are not adequately supported by the record, resolving all disputes in the evidence in a light most favorable to the trial court's determination.” State of Utah v. Pena, 869 P.2d 932 (1994).

The appellate court's standard of review with regard to issues of law are, “that all applications of law to findings of fact that produce conclusions of law are reviewed under a nondeferential standard, i.e., for correctness.” State v. Ramirez, 817 P.2d 774, 781-82 (Utah 1991).

In reviewing marshaled evidence, the appellate court standard of review requires the appellate court to defer to the trial court's judgment and not to disturb it so long as the court finds that the trial court has exercised its discretion in accordance with the standards set by this state's appellate courts. Rudman v. Rudman, 812 P.2d 73, 79 (Ut. Ct App. 1991).

If the appellate court does not have marshaled evidence, “there is no reason to disturb the trial court's findings.” Ashton v. Ashton, 733 P.2d 147, 150 (Utah 1987).

STATUTORY PROVISIONS

§30-3-5- of the Utah Code Annotated

Disposition of property -- Maintenance and health care of parties and children -- Division of debts -- Court to have continuing jurisdiction -- Custody and parent-time -- Determination of alimony -- Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children;

(c) pursuant to Section **15-4-6.5**:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders; and

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Recovery Services.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide child care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.

(4) Child support, custody, visitation, and other matters related to children born to the mother and father after entry of the decree of divorce may be added to the decree by modification.

(5) (a) In determining parent-time rights of parents and visitation rights of grandparents and other members of the immediate family, the court shall consider the best interest of the child.

(b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include in an order establishing a parent-time or visitation schedule a provision, among other things, authorizing any peace officer to enforce a court-ordered parent-time or visitation schedule entered under this chapter.

(6) If a petition for modification of child custody or parent-time provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(7) If a petition alleges noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family where a visitation or parent-time right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation or parent-time.

(8) (a) The court shall consider at least the following factors in determining alimony:

(i) the financial condition and needs of the recipient spouse;

(ii) the recipient's earning capacity or ability to produce income;

(iii) the ability of the payor spouse to provide support;

(iv) the length of the marriage;

(v) whether the recipient spouse has custody of minor children requiring support;

(vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and

(vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse or allowing the payor spouse to attend school during the marriage.

(b) The court may consider the fault of the parties in determining alimony.

(c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (8)(a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short

duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

(d) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

(e) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

(f) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.

(g) (i) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

(ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

(iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this Subsection (8).

(A) The court may consider the subsequent spouse's financial ability to share living expenses.

(B) The court may consider the income of a subsequent spouse if the court finds that the payor's improper conduct justifies that consideration.

(h) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

(9) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage or death of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the

action of annulment and his rights are determined.

(10) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.

STATEMENT OF THE CASE

The Court of Appeals should dismiss this appeal due to the Findings of Fact Conclusions of Law and Decree of Divorce supporting the trial record of analyzing the income, expenses, needs and equitable concerns, including the length of the marriage and Petitioner's contempt of court.

Secondly, the Appellate's lack of marshaling the evidence warrant this matter's summary dismissal pursuant to well-established case law.

PERTINENT STATEMENT OF FACTS

On April 27, 2005, this divorce case went to trial wherein the following matters were adjudicated: jurisdiction; personal property; the marital home; debts and obligations; the parties' income; the parties' expenses; alimony; retirement accounts; life and health insurance benefits; four issues of contempt; and attorney's fees. a proposed Decree of Divorce in this matter was served by Petitioner's counsel via mail to the Respondent's counsel. (See Addendum A-Memorandum Decision).

Although there is not a sub-paragraph denoted specifically toward the actual expenses of the parties, the district court judge calculated the

actual expenses and subtracted them from the parties' respective incomes, and formulated the alimony award as outlined in the sub-section entitled "Alimony". (See Addendum A).

Expenses were thoroughly discussed and was an integral part of formulating the alimony award as outlined in the trial record. Each parties' Financial Declaration was utilized and admitted into evidence. Mr. Rigby's Financial Declaration was discussed and entered on pages 164-169 of the Trial Transcript; and Ms. Rigby's was discussed and entered on pages 176-178 of the Trial Transcript.

Mr. Rigby admitted that what he filed was his Financial Declaration. (Trial Transcript- page 164, par.9).

Mr. Rigby admitted that his net income from his wages and pension amounted to \$1,974.33 per month. (Trial Transcript- page 164 paras. 18-25 and 165, par.4).

Mr. Rigby admitted that his expenses amounted to \$1,172.64 per month. (Trial Transcript- page 166, paras.11-22).

Evidence was taken showing that Mr. Rigby was supposed to pay \$763.00 per month for the mortgage, in which he was two months behind. (Trial Transcript- page 167, par. 23-25, and page 168 paras.1-5).

Ms. Rigby admits her income from wages to be net \$1,309.80 per month. (Trial Transcript- page 177, paras.5-9).

Ms. Rigby admits her expenses to be approximately \$1,335.00 per month. (Trial Transcript- page 177, paras.18-20).

Ms. Rigby admits that her expenses do not include rent which if she would leave her mother's home would amount to \$650.00 per month in further expense. (Trial Transcript- page 177, paras.21-23).

Ms. Rigby admits that the home is financed in her name alone, which prompted the Court to give him 60 days to refinance the home, or to put the home up for sale. (See Addendum B-Affidavit of Loralie Rigby; File Jan. 12, 2004) and (Addendum C-Law and Motion Minutes; Jan. 20, 2004).

Mr. Rigby admitted that he used marital money for his own purposes. (Trial Transcript- pages 170-175).

SUMMARY AND THE ARGUMENTS

I. Are the Findings of Fact, Conclusions of Law and Decree of Divorce sufficient in analyzing the parties' income, expenses, needs, and equitable concerns, such as the length of the marriage and contemptuous actions by the Petitioner, to make an award of alimony which equalizes the parties' income?

The Utah Court of Appeals has held that the purposes of an alimony award include enabling the receiving spouse to maintain, as nearly as possible, the standard of living enjoyed during the marriage, and

preventing the receiving spouse from becoming a public charge. Munns v. Munns, P.2d 116, 121 (Utah Ct.App.1990).

Recognizing that each divorce case is different, with many fairness issues to weigh, the legislature adopted §30-3-5 of the Utah Code Annotated, which grants the trial court wide discretion to the division of property, alimony, division of debts, and the custody and maintenance of children.

The Code states in pertinent part:

1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties.

(8)(a) The court shall consider at least the following factors in determining alimony:

- (i) the financial condition and needs of the recipient spouse;
- (ii) the recipient's earning capacity or ability to produce income;
- (iii) the ability of the payor spouse to provide support;
- (iv) the length of the marriage;
- (v) whether the recipient spouse has custody of minor children requiring support;
- (vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and
- (vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse or allowing the payor spouse to attend school during the marriage.

Even though the Appellee, Ms. Rigby, was staying with her mother, she was married to Mr. Rigby for thirty-three years at the time of the divorce trial. The Court heard evidence that Ms. Rigby did not earn enough

money to get her own apartment, while Mr. Rigby continued to live in the marital home. (Trial Transcript page 177, paras. 10-25). Fortunately, Ms. Rigby was able to temporarily live with her mother.

Careful testimony was given regarding the monthly income, earning capacity, and expenses of the parties. It was even hotly contested. In cross examination, Mr. Rigby tried to prove that Ms. Rigby's expenses were not what she expressed on her Financial Declaration because she did not write a check or give cash to her mother in the amount of \$200.00 for rent. Ms. Rigby explained that \$200.00 were her costs in providing services for her mother. (Trial Transcript pages 67-70). The trial court had all of this information to weigh, and even stated in open court, " I understand that, that she is saying she does not pay, has not paid \$200.00 a month rent. And that's - that does differ from what's in the financial disclosure statement." (Trial Transcript page 70, paras. 19-22).

Ms. Rigby clarified her "rental" expenses by stating that she expends gasoline, food, and the value of helping her mother get to her medical appointments due to her lupus; and that her rental amount was a "guesstimate" of the value of her services. (Trial Transcript page 68, paras. 1-25; and page 90, paras. 8-12).

The Utah Court of Appeals stated that in determining alimony, a trial court must consider three factors: (1) the financial condition and needs of the receiving spouse, (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. Haumont v. Haumont, 793 P.2d 421, 423 (Utah Ct.App.1990).

The Court held "in considering the above-listed factors, the trial court must make adequate factual findings on all material issues unless the facts in the record are "clear, uncontroverted, and capable of supporting only a finding in favor of the judgment." Id. at 434.

1. The trial court carefully considered the financial condition and needs of the receiving spouse. Ms. Rigby had no disposable income after her expenses were subtracted from her income, and certainly could not afford a place to live. Mr. Rigby had approximately \$300.00 more in disposable income after all of his expenses (including a house payment) than did Ms. Rigby, as outlined in the Findings of Fact and Conclusions of Law (See Addendum D-page 5 paras. 9-19).

Although the court did not outline the math calculations in the Memorandum Decision or the signed Findings of Fact and Conclusions of Law, the trial court record reflects that the court came to these figures by carefully considering the income and expenses of the parties and their disposable income.

2. The trial court was fully informed of the ability of the receiving spouse to produce sufficient income for herself. Evidence was presented at trial that Ms. Rigby had done the best she could in mitigating her expenses

by temporarily living with her mother.

Further evidence was presented concerning her present employment and her trying to obtain better employment. Mr. Rigby questioned Ms. Rigby as to her sending out resume`s and job applications, and her present employment with Working RX. (Trial Transcript pages 75-79; and pages 97-99). Through Ms. Rigby's testimony, it seemed clear that she did her best to maintain and maximize her employment opportunities.

3. The trial court carefully weighed the ability of the responding spouse to provide support. In the Memorandum Decision and the Findings of Fact and Conclusions, the court calculated that after expenses, Mr. Rigby would have \$300.00 in disposable dollars. Because Ms. Rigby had a need that was greater than one-half of the \$300.00 in disposable income, the court properly did it's best to equalize the parties' financial situations by dividing the extra money almost in half, and awarding Ms. Rigby \$125.00 in alimony. The record of the trial transcript and the Financial Declarations clearly bear this out.

It is important to remember that the Court of Appeals has further stated that so long as these three factors are considered, we will disturb a trial court's decision concerning alimony only upon a showing "that such a serious inequity has resulted as to manifest a clear abuse of discretion." Haumont, at 424.

Even if the trial court did not show the calculations in it's Memorandum Decision, or in the Findings of Fact; clearly the record before the court bears out that there was not a clear abuse of discretion.

It is also clear that the trial court considered the equitable factors of this being a 33 year marriage, and Mr. Rigby being held in contempt on numerous charges relating to not providing pertinent economic information, when the court exercised it's discretion with respect to the alimony award.

II. Did the trial court abuse it's discretion in holding the Petitioner in contempt, and in dividing the equity in the marital property 15% to Petitioner and 85% to the Respondent.

Last month, the Utah Court of Appeals stated, "Under Utah law, "in order to prove **contempt** for failure to comply with a court order it must be shown that the person cited for **contempt** knew what was required, had the ability to comply, and intentionally failed or refused to do so.'" In re Cannetella, 2006 P.3d 89, (UT Ct. App. March, 2006). In each of the following contempt issues, Mr. Rigby clearly knew what was required, had the ability to comply, and intentionally failed to do so.

As stated in the Findings of fact and Conclusions of Law, of the six contempt issues certified for trial, the court heard testimony on four of them. They were:

a. Whether or not Mr. Rigby should be held in contempt for his failure to provide a detailed written accounting concerning his 401(k) at Discover,

what monies he took out of his account, when he took the monies, and what he used them for.

It was found that at trial (belatedly) Mr. Rigby produced a letter dated September, 16, 2004, regarding the value of the 401(k) account, but could not explain what he did with \$1000.00 of it nor what the value of it was at the time of trial seven months later. The court found that Mr. Rigby had the ability to comply with the previous discovery requests, intentionally failed to comply, and was deceptive in his responses.

b. Whether or not Mr. Rigby should be held in contempt for his failure to provide a detailed written accounting concerning the cash value of his Met Life Insurance Policy, how much it was, when he got the money, and what he spent it on.

The court found that Mr. Rigby never provided a written accounting as to the cash value of the Met Life policy. Mr. Rigby testified that he received \$16.00 from the policy, but did not provide proof of his statement that it had no cash value. (Trial Transcript page 173, paras. 12-21). The court found that Mr. Rigby had the ability to comply with that portion of an Order, and intentionally failed to comply.

c. Whether or not Mr. Rigby should be held in contempt for his failure to provide a detailed written accounting concerning the parties' personal property that he has disposed of since the parties' separation.

The court found that Mr. Rigby never provided the written accounting regarding the personal property. Mr. Rigby testified that he sold a marital

travel trailer but never provided the written accounting. He stated that he told his previous counsel about the sale, and that he only received an amount equaling what was owed on it. (Trial Transcript pages 174-175). Counsel for Ms. Rigby could not have verified these statements because the discovery was not provided before the trial, nor was documentation provided at trial. The court found that Mr. Rigby had the ability to comply with that portion of an Order, and intentionally failed to comply.

d. Whether or not Mr. Rigby should be held in contempt for his failure to restore Mrs. Rigby as a covered person on his health insurance, and to take steps necessary to make sure that she retained her right to survivor benefits associated with his employment with the federal government.

The court found that Mr. Rigby removed Ms. Rigby from his health insurance coverage in January, 2004, against a previous court order. Mr. Rigby claimed he couldn't afford it, while at the same time he removed \$2500.00 on his Wells Fargo credit line so "Ms. Rigby couldn't get it", and spent \$2000.00 on his grandchild. (Trial Transcript pages 158-161 and 169-172). Page 161, paras. 1-2 Mr. Rigby admits to not obeying the court order to reinstate Ms. Rigby on his insurance policy. The court found that Mr. Rigby had the ability to comply with that portion of an Order, and intentionally failed to comply.

Clearly, Mr. Rigby was in contempt of court, and the court had to weigh how to recompense Ms. Rigby for his contemptuous behavior. The court reasoned that because Mr. Rigby did not have liquid funds available

to pay her attorney's fees for his contempt, and that there was under \$20,000.00 in equity in the marital home after real estate fees are paid, that the better sanction was to award Ms. Rigby 85% of the home equity, and 15% to Mr. Rigby. There was testimony that Ms. Rigby had an attorney's lien for fees upon the marital home in the amount of approximately \$9,000.00 at the time of trial. (Trial Transcript page 149, par. 12).

Mr. Rigby testified that \$76,000.00 was owed on the home at the time of trial. (Trial Transcript page 129, paras. 15-25). After Realtor fees of 6% (\$6090.00) against the selling price of \$101,500.00, (Trial Transcript page 27, paras. 1-12), and other fees such as title insurance, doc prep fees, taxes, etc. (approx \$2000.00) the parties are maybe left with \$17,410.00. If this is divided in half as the court stated is normally done, Ms. Rigby would receive \$8,705.00. Minus the attorney fees of \$9000.00, and when further trial attorney's fees are subtracted, Ms. Rigby would owe a large sum of money. If Ms. Rigby obtains 85% of the equity, she would likely end up receiving a near equal amount with Mr. Rigby after all attorney's fees are paid.

III. Petitioner has failed to marshal the evidence.

On appeal, the burden is on the appellant to marshal all the evidence supporting the trial court's findings and then to show the evidence to be legally insufficient to support the findings, even when viewed in the light

most favorable to the trial court. Doelle v. Bradley, P.2d 1176, 1178 (Utah 1989).

The court in Doelle found that the Appellant “has not attempted to marshal the evidence in support of the trial court's findings and demonstrate that the evidence supporting the findings is legally insufficient. His brief presents the conflicting evidence in a light most favorable to his position and largely ignores the contrary evidence. Therefore, there is no reason for us to disturb the trial court's findings. Doelle at 1178-79.

There is nothing in the Appellate’s brief evidencing their marshaling the evidence. None of Appellant’s paragraphs point to the record on appeal, and nothing is stated to support the trial court’s findings.

In Rudman, “With an extensive record and thorough findings before us, we are reluctant to set aside the findings absent clear error.” Rudman v. Rudman, 812 P.2d 73, 79 (Ut. Ct App. 1991).

In the present case, the trial transcript is filled with clear facts and evidence supporting the findings. Without marshaling the evidence, the Appellant cannot support their arguments and point to areas where the trial court has abused it’s discretion, and as such, the Findings of Fact Conclusions of Law, and Decree of Divorce should stand, and this appeal should be denied.

CONCLUSION

Clearly the trial court had an abundant record to determine a proper alimony amount, to divide the marital home, and to award attorney's fees. The trial court also carefully weighed the evidence with respect to holding Mr. Rigby in contempt on four separate charges. Finally, because Appellate did not marshal the evidence, this appeal should be denied, and the on all points the trial court's ruling should be affirmed.

The Appellee also respectfully requests that she be granted her attorney's fees and costs in this matter given the arguments listed above.

RESPECTFULLY SUBMITTED this 10th day of April, 2006.

KESSLER LAW OFFICE

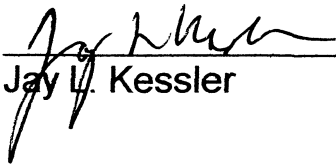


Jay L. Kessler, Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April, 2006, I sent via First Class United States Mail two copies of the foregoing Appellee Brief to the following:

David J. Friel, Esq.
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Salt Lake City, Utah 84119



Jay L. Kessler

ADDENDUM
CONTENTS OF ADDENDUM

- A. Trial Court's Memorandum Decision.
- B. Affidavit of Loralie Rigby; File January 12, 2004.
- C. Law and motion Minutes; File January 20, 2004.
- D. Findings of Fact and Conclusions of Law.

ADDENDUM A

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

VERNON RAY RIGBY,	:	MEMORANDUM DECISION
Petitioner,	:	CASE NO. 034903791
vs.	:	
LORALIE KEMP RIGBY,	:	
Respondent.	:	

This matter came before the Court for trial on April 27, 2005. The Court having taken the matter under advisement, now finds and rules as follows:

Grounds and Jurisdiction:

The Court finds that it has jurisdiction of this matter, and that both the petitioner and the respondent have established grounds for a divorce based on irreconcilable differences, and accordingly the Court will grant petitioner and respondent a divorce.

Personal Property:

The parties' personal property has been divided since their separation, and the Court awards to each the personal property now in their possession. Mrs. Rigby has possession of the Oldsmobile vehicle and Mr. Rigby has the Chevrolet truck; Mrs. Rigby to pay

the indebtedness on the Oldsmobile and Mr. Rigby to pay the indebtedness on the Chevrolet truck.

Real Property:

The parties own a home at 6993 Loch Ness Avenue in West Valley City, Utah, with a value of approximately \$100,000 to \$105,000 in its present condition. The home is ordered sold immediately. Each party is ordered to cooperate fully with the Court's Order to sell the real property. If Mr. Rigby refuses to sign the listing agreement and/or the sale documents, the clerk of the court is directed, pursuant to Rule 70 of the Utah Rules of Civil Procedure, to sign either or both documents. The signature of the clerk shall be deemed the signature of Mr. Rigby. The legal description of said real property is:

Lot 32 Glen Heather #1 Subdivision

There is a mortgage on the home with an outstanding balance of \$76,405.14 as of March, 2005. After the payment of realtor fees and other expenses owed against the home, there should be approximately \$18,000 to \$19,000 that the parties will receive from the sale. The Court awards 15 percent of those sale proceeds to Mr. Rigby and 85 percent of the sale proceeds to Mrs. Rigby. The basis for that percentage division of the sale proceeds is explained later in this decision.

Debts and Obligations:

Mr. Rigby shall pay the following obligations and hold Mrs. Rigby harmless therefrom:

All obligations owed to Cyprus Credit Union, Qwest, NCO Financial Services, Inc., Credit Collection Services, Coalville/Kamas Health Center, the line of credit with Wells Fargo, and any indebtedness he has incurred since the parties separated.

Mrs. Rigby shall pay the following obligations and hold Mr. Rigby harmless therefrom:

The Wells Fargo Visa account and any indebtedness she has incurred since the parties separated.

Joint Obligations:

Each party shall pay one-half of the R.C. Willey bill. The Court anticipates that the home will be sold immediately and from the sale proceeds the mortgage will be paid, and, therefore, makes no further Order regarding that indebtedness.

Income:

Mr. Rigby has the following income per month:

\$1,180 (gross) Granite School District

\$766 (net) federal pension

Mrs. Rigby has gross monthly income of \$1,670.

775

Alimony:

At the present time, Mr. Rigby has monthly income that is approximately \$300 a month more than Mrs. Rigby. Based upon these figures, the Court will award alimony to Mrs. Rigby in the amount of \$125 beginning May, 2005, and continuing until Mrs. Rigby remarries, or cohabits, or dies, or for a period of time equal to the length of the marriage, whichever first occurs.

Retirement Accounts:

Mr. Rigby has federal retirement of \$766 per month net. Mrs. Rigby should be awarded a monthly survivor annuity to commence upon Mr. Rigby's death to the maximum extent permitted by law. The Court understands that in the event Mr. Rigby remarries, that Mrs. Rigby and a future spouse of Mr. Rigby would share the survivor annuity as provided by federal law.

Mrs. Rigby has future retirement benefits from her employment with First Security Bank and Wells Fargo Bank. Mrs. Rigby's retirement accounts should belong exclusively to her, because Mr. Rigby cashed in his Discover 401(k) and did not adequately account for those funds, even though he had been ordered to do so.

Life Insurance:

Either party may designate the beneficiary of his or her life insurance policy.

226

Mr. Rigby's Health Insurance:

Mr. Rigby has health insurance through his federal retirement. Mrs. Rigby may be able to obtain health coverage as a former spouse. To the extent federal law permits, Mrs. Rigby is given the option of obtaining that health coverage, provided Mrs. Rigby pays for the costs of that coverage.

Contempt:

The Commissioner certified six issues for contempt against Mr. Rigby. The Court heard evidence on the following four issues:

1. Whether or not Mr. Rigby should be held in contempt for his failure to provide a detailed written accounting concerning his 401(k) at Discover, what monies he took out of it, when he took the monies, and what he used them for.

2. Whether or not Mr. Rigby should be held in contempt for his failure to provide a written accounting concerning the cash value of his Met Life policy, how much it was, when he got the money, and what he spent it on.

3. Whether or not Mr. Rigby should be held in contempt for his failure to provide a detailed written accounting concerning the parties' personal property that he has disposed of since the parties' separation.

4. Whether or not Mr. Rigby should be held in contempt for his failure to restore Mrs. Rigby as a covered person on his health

insurance with the federal government, and to take the steps necessary to make sure that she retained her right to survivor benefits associated with his employment with the federal government.

The Court addresses each contempt issues in the above order:

1. Mr. Rigby belatedly provided a letter, dated September 16, 2004, in which he claimed he was "not even sure how much it [401(k)] was now," but claimed the value had dropped significantly. At trial, Mr. Rigby testified that he received \$5,200 from the 401(k). Mr. Rigby could provide no explanation, as to what he had done with approximately \$1,000 of the \$5,200. The Court finds that Mr. Rigby had the ability to comply with that portion of the Order, has been deceptive in his responses, and intentionally failed to comply.

2. Mr. Rigby never provided a written accounting as to the cash value of the Met Life policy. In Court, Mr. Rigby testified that he received \$16 from Met Life, but provided no documentation. The Court finds that Mr. Rigby had the ability to comply with that portion of the Order, but intentionally failed to comply.

3. Mr. Rigby never provided a written accounting regarding the personal property. Mr. Rigby testified at trial that he sold a trailer, but provided no documentation of the sale price or who purchased it. The Court finds that Mr. Rigby had the ability to

comply with that portion of the Order, but intentionally failed to comply.

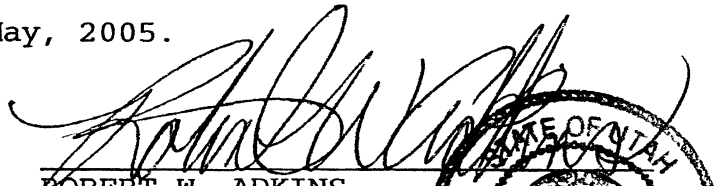
4. Mr. Rigby removed Mrs. Rigby from his federal health insurance coverage in approximately January, 2004. Mr. Rigby claims that he did so because of his financial condition, and by doing so it saved him approximately \$125 per month. The Court notes that the defendant took \$2,200 on his credit line with Wells Fargo, "so Mrs. Rigby couldn't get it." Mr. Rigby spent approximately \$2,000 for the benefit of a grandchild during the pendency of this proceeding. The Court finds that Mr. Rigby had the ability to comply with that portion of the Order, but intentionally refused to comply.

The Court finds Mr. Rigby in contempt for failing to comply with all four portions of the Order. Mr. Rigby's recalcitrance caused Mrs. Rigby to incur additional attorney's fees. As a sanction for contempt, the Court would ordinarily impose an award of attorney's fees against Mr. Rigby. However, the Court believes, that because of the financial condition of the parties, that a better sanction is to award Mrs. Rigby a greater portion of the sale proceeds from the home. But for Mr. Rigby's contempt, the Court would have awarded the proceeds equally to the parties. For the foregoing reasons, the Court awards Mrs. Rigby 85 percent and

Mr. Rigby 15 percent of the proceeds from the sale of the home. Accordingly, no attorney's fees are awarded.

Counsel for respondent, Mrs. Rigby, to prepare the Findings, Conclusions, and Decree of Divorce. The divorce to be final when signed by the Court and entered by the clerk.

Dated this 2 day of May, 2005.


ROBERT W. ADKINS
DISTRICT COURT JUDGE



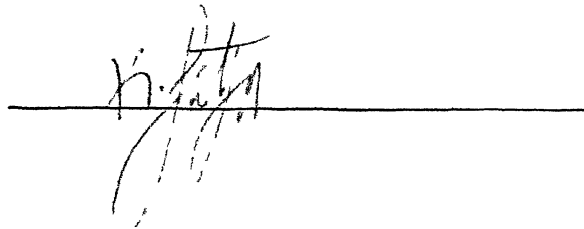
230

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 14 day of May, 2005:

Vernon Ray Rigby
6993 Loch Ness Avenue
West Valley City, Utah 84128

David A. McPhie
Attorney for Respondent
2105 E. Murray-Holladay Road
Salt Lake City, Utah 84117



ADDENDUM B

DAVID A. McPHIE (2216)
Attorney at Law
2105 E. Murray-Holladay Rd.
Holladay, Utah 84117
(801) 278-3700

Attorney for Respondent

FILED DISTRICT COURT
Third Judicial District

JAN 12 2004

SALT LAKE COUNTY
By Caroleyn Weber Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

VERNON RAY RIGBY,

Petitioner,

vs.

LORALIE KEMP RIGBY,

Respondent.

---oo0oo---

:
: AFFIDAVIT OF
: LORALIE RIGBY

:
: Civil No. 034903791 DA

:
: Judge Noel
: Comm: Evans

---oo0oo---

STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

- 1 COMES NOW Loralie Rigby, and being first duly sworn and upon oath, deposes and
2 states that:
- 3 1. I am the Loralie Rigby who is the Respondent in this action.
- 4 2. I am an adult, over the age of twenty one, and competent to testify, and I have
5 personal knowledge of the fact contained herein.
- 6 3. I proffer that if called to testify, I would state the following.

35

1 4. My husband and I attended one session of mediation with Bill Downes on
2 August 1st, 2003. We had high hopes that we would resolve our disputes there. We reached a
3 tentative agreement on some issues, but since then, we have both backed away from that
4 agreement. I believe that some portions of the mediated agreement are salvageable. My husband
5 however, has utterly refused to do some important things ever since the mediation, and I need the
6 Court to intervene at this point.

7 5. My husband and I have been separated since August 2nd, 2003. I live with my
8 mother, he lives in the home and real estate located at 6993 Loch Ness Avenue, West Valley
9 City, Utah, which we were in together for 31 years. I am informed by the mortgage company
10 (they send me copies of notices because it is financed in my name) that Mr. Rigby is behind in
11 the mortgage payment. According to the last notice, he has not paid the payments owing on the
12 mortgage for July, August and September 2003. He now says he caught it up by cashing in his
13 Discover Card 401(k), a marital asset.

14 6. I believe that the home is worth approximately \$114,000.00. We owe about
15 \$80,000.00 against it. This means we have about \$34,000.00 in equity. We have been in that
16 home since 1972. I need the Court to order Mr. Rigby to make the payment so as to protect our
17 joint equity. He wanted to stay in the home, and wanted me to leave. He has sole possession of
18 the house, and should be making the payment.

19 7. For obvious reasons, I also need Mr. Rigby ordered to pay the ongoing obligation
20 on the home each month until there is a final resolution of this divorce case.

21 8. The way our mortgage is set up, the payment includes principal, interest and taxes

1 only. Therefore, the insurance on the house needs to be paid separately. The insurance
2 obligation each year is approximately \$315.00. I need Mr. Rigby ordered to pay this obligation
3 as it becomes due, and to pay any arrearages immediately.

4 9. During the course of our separation, I have asked Mr. Rigby for certain items of
5 property which he agreed to give me at mediation. He said in his deposition taken December
6 17th, 2003, that he had not sold or transferred any of the property, therefore I expect he has it all.

7 10. At the time of our mediation, Mr. Rigby agreed to give me some items of personal
8 property out of the house, as soon as he discovered that I wanted a few issues resolved differently
9 than we had discussed tentatively in mediation, he began to ask for changes in the mediated
10 agreement as well. The upshot of all is that he has made it very difficult to retrieve my
11 possessions by changing the rules of how to get them. I request that the Court order Mr. Rigby to
12 immediately give me possession of the following:

13 Warrantee stuff in computer room
14 Clothes under stairs and craft items
15 Paper in computer room
16 Half of Holiday decorations
17 Half of kitchen appliances
18 Stool in kitchen
19 Timers in kitchen
20 Acme chopper
21 Slow cooker
22 Sauce pans, etc.
23 Recipe cards from the recipe box
24 Desk pads
25 Lid holder
26 Melmac plates in trailer
27 Afghan in Janell's room (red colors)
28 Books in Storage Shed
29 Carpet Sweeper

1 Vacuum in hall closet

2 11. Mr. Rigby and I previously agreed as he left for California with our trailer, that he
3 could have the use of it, and that I would make the payment to register the trailer. I paid \$152.12
4 which he agreed that he would reimburse me for. He has not reimbursed me for it, and I would
5 like judgment for that amount.

6 12. During the course of our marriage, we acquired Met Life Insurance policies, and I
7 was the beneficiary of the policies insuring his life. I am now informed that he has either cashed
8 those policies in, or may have let them lapse. I need Mr. Rigby ordered to provide an accounting
9 to me as to what, if anything, he has done with those policies, and if he got any money from them
10 by cashing them out, when and how much he received. I should receive one half of those
11 proceeds.

12 13. Mr. Rigby was a Federal Employee during his working life. He has Federal
13 Employees Government Life Insurance (FEGLI). I have requested that the Court order Mr.
14 Rigby to cooperate with me to make sure that I am covered under his Federal Health Insurance,
15 and that I remain the beneficiary under the Federal Life Insurance until the divorce is final or the
16 policy is reassigned to Janell and Doug (our children). He admitted in the deposition it is still in
17 force, but threatened to reduce it or cancel it.

18 14. I am working and earn \$9.00 an hour working 40 hours a week. I am working at a
19 job that I have had for two months. In the recent past, I have had periods of unemployment. I
20 also worked for Wells Fargo for eight years full-time as a secretary and unfortunately, lost that
21 job on April 28th, 2003. They had a reduction in force, and laid off fifty people in the Salt Lake

1 City office.

2 15. For purposes of alimony, my income is the \$9.00 per hour full-time, or \$1,280.00
3 per month gross. My monthly expenses are outlined on my Financial Declaration attached hereto
4 as Exhibit A. Mr. Rigby's income, on the other hand, is in two forms. He has a Federal Pension
5 of \$766.22 per month, which I believe is his net pay. He also works part-time for Granite School
6 District as a teacher's aid making \$950.00 per month net. Mr. Rigby has a total net income of
7 \$1,716.22 per month. I believe he has a surplus of funds each month which should be used to
8 help me so that I don't have to live with my mother.

9 16. Mr. Rigby's expenses, to the best of my knowledge, are \$1,250.00 per month. I
10 have a need for alimony, especially if I move out of my mother's house and rent an apartment,
11 and I believe that he has some ability to assist me.

12 17. Mr. Rigby identified at his deposition that he is systematically borrowing against,
13 or liquidating the assets we have accumulated over 30 years to pay his debts. I need him
14 enjoined from doing so, and to provide an accounting concerning the assets he has already
15 depleted.

16 18. This is the end of my affidavit.

17 DATED this 12 day of January, 2004.

18
19

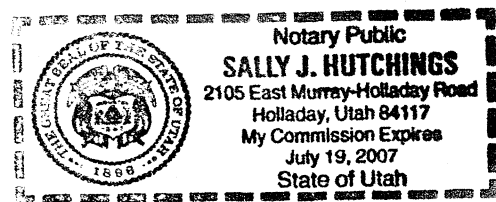

LORALIE RIGBY

1 STATE OF UTAH)
2 :Ss.
3 COUNTY OF SALT LAKE)

4 SUBSCRIBED AND SWORN to before me this 12th Day of January, 2004.

5 My Commission Expires:
6 July 19, 2007
7

Sally J. Hutchings
NOTARY PUBLIC, in and for
Salt Lake County, Utah



8 **CERTIFICATE OF HAND DELIVERY**

9 I hereby certify that I caused to be hand delivered a true and correct copy of the foregoing
10 Affidavit of Loralie Rigby to the following, this 12th Day of January,
11 2004:

12 Cory Wall
13 WALL & WALL
14 4460 South Highland Drive, Suite 200
15 Salt Lake City, Utah 84124

16 Sally Hutchings
17 Sally Hutchings

18 CAWP6\CLIENTS\RIGBY\LORALIE.AFF

ADDENDUM C

3RD DISTRICT COURT SALT LAKE COURT
SALT LAKE COUNTY, STATE OF UTAH

VERNON RAY RIGBY,	:	MINUTES
Petitioner,	:	LAW AND MOTION
	:	
	:	
vs.	:	Case No: 034903791 DA
	:	
LORALIE KEMP RIGBY,	:	
	:	Commissioner: MICHAEL S. EVANS
Respondent.	:	Date: January 20, 2004

Clerk: carolynw

PRESENT

Petitioner's Attorney: CORY R WALL
Petitioner(s): VERNON RAY RIGBY
Attorney for the Respondent: DAVID A. MCPHIE
Respondent(s): LORALIE KEMP RIGBY
Video
Tape Number: 100827 Tape Count: 104057

HEARING

Comm. receives and approves the agreement with regard to the personal property items being returned to respondent with the involvement of counsel.

In Dispute Recommendations:

1. With regard to the medical insurance issue: Mr. Rigby is to forthwith reinstate respondent on the medical insurance policy.
2. The parties are mutually restrained from in any way reducing the value or disposing of any assets including retirement benefits or property.
3. With regard to the debts: each party is to use their best efforts to pay the debts they have been historically paying
4. Mr. Rigby use his best efforts to commence the application for a refinance and Ms. Rigby cooperate to refinance the home.
5. Mr. Rigby given 60 days from today to accomplish the refinance and if he is not successful the home be listed for sale with a mutually agreeable realtor and with a mutually agreeable price.

Case No: 034903791

Date: Jan 20, 2004

6. Mr. Rigby is to verify if the refinance is accepted or rejected and identify a closing date if it is accepted. The court will not order an appraisal at this time.

7. With regard to the request for an accounting: counsel are to comply with Rule 26 regarding disclosures and a scheduling meeting and they are to set up the scheduling meeting within 10 days.

8. The issue of temp. alimony is subject to review after the 60 days once the home is either listed for sale or it is refinanced. The request is denied without prejudice.

9. Mr. Rigby is to maintain all debts including the mortgage payment.

Mr. McPhie prepare the order

ADDENDUM D

DAVID A. McPHIE (2216)
Attorney at Law
2105 E. Murray-Holladay Rd.
Holladay, Utah 84117
(801) 278-3700

Attorney for Respondent

FILED DISTRICT COURT
Third District

JUN 3 2005

SALT LAKE COUNTY

By [Signature]
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

---oo0oo---

VERNON RAY RIGBY,	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW
Petitioner,	:	
	:	
vs.	:	
	:	
LORALIE KEMP RIGBY,	:	Civil No. 034903791 DA
	:	
Respondent.	:	Judge Robert W. Adkins
	:	Comm: Michael S. Evans

---oo0oo---

- 1 THIS DIVORCE MATTER came on for trial before the Honorable Judge Robert W.
2 Adkins in his courtroom located at 450 South State Street, Salt Lake City, Utah, on Wednesday,
3 the 27th day of April, 2005 at the hour of 1:30 o'clock p.m.
- 4 The Petitioner Vernon Ray Rigby appeared in person pro se without counsel, the Court
5 having been notified earlier in a Pretrial Conference that Mr. Rigby had discharged his attorney
6 and desired and intended to represent himself. The Respondent also appeared in person and by
7 and through her attorney of record, David A. McPhie.
- 8 The Court heard opening statements. Witnesses were called, examined and cross-

1 examined by both Petitioner and Respondent. Items of physical evidence were marked, offered,
2 and admitted in evidence.

3 The Court took the matter under advisement at the end of trial which concluded at
4 approximately 6:00 o'clock p.m. that day. The Court later published its decision in this matter
5 via a Memorandum Decision which is 9 pages in length including mailing certificate. A copy of
6 that Memorandum Decision is attached to these Findings as Exhibit A.

7 The Court, having considered the matter fully, including the testimony of the parties, the
8 physical evidence admitted at trial, and the file, and having published its Memorandum Decision,
9 now publishes the following:

10 FINDINGS OF FACT

11 1. The Court has jurisdiction in this matter over both the parties and the subject
12 matter.

13 2. The testimony of the parties establishes that both parties have grounds for divorce
14 based on irreconcilable differences, therefore, both should be awarded a Decree of Divorce from
15 the other based on said irreconcilable differences.

16 3. The parties divided their personal property between them at the time of separation
17 and prior to trial in a manner that they believe is fair and equitable. The Court should award to
18 each of them the items of personal property currently in their possession as their sole and
19 separate property.

1 4. Specifically, Mrs. Rigby has possession of the Oldsmobile vehicle and Mr. Rigby
2 has possession of the Chevrolet truck. Each should be awarded the vehicle in their possession as
3 their sole and separate property, free and clear of any claim of the other, with the requirement
4 that they assume and pay the debt thereon, if any. The parties should sign the documents
5 necessary to clear title on these vehicles.

6 5. During the course of the marriage, the parties acquired an interest in a home and
7 real estate located at 6993 Loch Ness Avenue, West Valley City, Utah. The testimony at the time
8 of trial was that the offers the parties were receiving for said home which was listed for sale,
9 were in the \$100,000 to \$105,000 range in its present condition. The Court finds that the home
10 should be sold immediately.

11 6. The parties should be ordered to cooperate fully with the broker with whom the
12 home is currently listed to sell the real estate property.

13 7. The Court finds that if Mr. Rigby refuses to sign the Listing Agreement, if a new
14 Listing Agreement is necessary, and/or sale documents with Judy Pearce, the agent with whom
15 the home has been listed, the Clerk of the Court should, pursuant to Rule 70 of the Utah Rules of
16 Civil Procedure, sign said documents for him and in his place. The Court finds that the signature
17 of the Clerk of the Court should be deemed the signature of Mr. Rigby.

18 8. The legal description of the real estate is:
19 Lot 32 Glen Heather #1 Subdivision, as recorded in the office of the Salt Lake
20 County Recorder.

21 9. The Court finds that with regard to said home and real estate on Loch Ness

1 Avenue, there is an outstanding balance of \$76,405.14 as of March 2005. This balance is higher
2 than it would otherwise be if Mr. Rigby had kept the payments on said home and real estate
3 current as he was ordered to do in the temporary order.

4 10. The Court further finds that after the payment of realtor fees and other expenses
5 owed against the home, there should be approximately \$18,000 to \$19,000 of equity that the
6 parties will receive from the sale, assuming that it sells for the range of figures referred to above.

7 The Court finds that Mr. Rigby should be awarded fifteen percent (15%) of the sale
8 proceeds, and that eighty-five percent (85%) of the sale proceeds should be awarded to Mrs.
9 Rigby. The Court explains its basis for that percentage division of the sale proceeds later in these
10 Findings.

11 11. The Court finds that Mr. Rigby should pay the following debts and obligations as
12 his sole and separate obligations, holding Mrs. Rigby harmless from any liability thereon:

- 13 A. The debts and obligations owed to Cyprus Credit Union;
- 14 B. Qwest;
- 15 C. NCO Financial Services, Inc.;
- 16 D. Credit Collection Services;
- 17 E. Coalville/Kamas Health Center;
- 18 F. The Line of Credit with Wells Fargo; and,
- 19 G. Any indebtedness he has incurred since the date of the parties' separation.

20 12. The Court finds that Mrs. Rigby should pay the following debts and obligations as
21 her sole and separate obligations, holding Mr. Rigby harmless from any liability thereon:

1 A. The Wells Fargo Visa Account; and.

2 B. Any and all indebtedness that she has incurred since the date of the parties'

3 separation.

4 13. The Court further finds that each of the parties should pay one half of the R.C.

5 Willey bill.

6 14. The Court finds and anticipates that the home will be sold immediately, and the

7 mortgage thereon will be extinguished from the proceeds of said sale. Therefore, the Court

8 makes no Finding concerning payment of the debt on the home and real estate.

9 15. With regard to the income of the parties, the Court finds that Mr. Rigby has the

10 following income per month:

11 A. \$1,180.00 gross from Granite School District; and

12 B. \$766.00 net from a Federal Pension.

13 16. The Court finds that Mrs. Rigby has gross monthly income of \$1,670.00 per

14 month.

15 17. The Court finds that at the present time, Mr. Rigby has monthly income that is

16 approximately \$300.00 a month more than Mrs. Rigby. Based on these figures and the

17 demonstrated need of Mrs. Rigby, and in an attempt to equalize the parties' economic positions,

18 the Court should award to Mrs. Rigby alimony in the amount of \$125.00 per month beginning

19 May of 2005, and continuing thereafter until the occurrence of the first of the following events:

20 A. Mrs. Rigby remarries;

21 B. Mrs. Rigby cohabitates as defined in Utah Law;

- 1 C. Mrs. Rigby dies;
- 2 D. Mr. Rigby dies;
- 3 E. A period of time not to exceed the length of the marriage; or
- 4 F. Further order of the Court.

5 18. The Court finds that Mr. Rigby has federal retirement of \$766.00 per month net.

6 Mrs. Rigby should be awarded a monthly survivor annuity to commence upon Mr. Rigby's death,

7 to the maximum extent permitted by law. Mr. Rigby should be ordered to take the steps

8 necessary to establish or reestablish Mrs. Rigby as the beneficiary of the survivor annuity, and

9 provide evidence that said action has been taken and is in place. In the event that Mr. Rigby

10 remarries, the Court finds that a subsequent spouse may share the survivor annuity as provided

11 for by federal law.

12 19. The Court further finds that Mrs. Rigby accumulated retirement benefits from her

13 employment with First Security Bank and Wells Fargo Bank. These retirement benefits should

14 be awarded exclusively to her because Mr. Rigby cashed in his Discovery 401(k) and did not

15 adequately account to the Court for those funds, even though he had been ordered to do so.

16 20. With regard to life insurance policies, each of the parties should be allowed to

17 designate as the beneficiary of his or her own life insurance policy, any person that they may

18 choose. Each of the parties should be awarded the ownership of their own life insurance policies.

19 21. The Court finds that Mr. Rigby has health insurance for himself and for his wife

20 or a former spouse through his federal retirement. Mrs. Rigby may be able to obtain health

21 coverage as a former spouse. To the extent that federal law permits Mrs. Rigby to receive health

1 insurance, she is given the option of obtaining that health coverage and Mr. Rigby is ordered to
2 cooperate to accomplish the same with the condition that Mrs. Rigby pay for the cost of that
3 coverage.

4 22. At the time of trial, several issues of contempt, i.e. six, were certified for hearing
5 against Mr. Rigby. The Court heard evidence on four of those issues. Those issues were:

6 A. Whether or not Mr. Rigby should be held in contempt for his failure to
7 provide a detailed written accounting concerning his 401(k) at Discover,
8 what monies he took out of the account, when he took the monies, and
9 what he used them for.

10 B. Whether or not Mr. Rigby should be held in contempt for his failure to
11 provide a written accounting concerning the cash value of his Met Life
12 Insurance policy, how much it was, when he got the money, and what he
13 spent it on.

14 C. Whether or not Mr. Rigby should be held in contempt for his failure to
15 provide a detailed written accounting concerning the parties' personal
16 property that he has disposed of since the parties' separation.

17 D. Whether or not Mr. Rigby should be held in contempt for his failure to
18 restore Mrs. Rigby as a covered person on his health insurance with the
19 federal government, and to take steps necessary to make sure that she
20 retained her right to survivor benefits associated with his employment with
21 the federal government.

1 23. With regard to said contempt issues, the Court finds that:

2 A. With regard to the Discover 401(k), Mr. Rigby belatedly provided a letter
3 dated September 16th, 2004 in which he claimed he was “not even sure
4 how much it [401(k)] was now”, but claimed that the value had dropped
5 significantly. At trial, Mr. Rigby testified that he received \$5,200.00 from
6 the 401(k). Mr. Rigby could provide no explanation as to what he had
7 done with approximately \$1,000.00 of the \$5,200.00. The Court finds that
8 Mr. Rigby had the ability to comply with that portion of the order, has
9 been deceptive in his responses, and intentionally failed to comply.

10 B. With regard to the Met Life Insurance policy, the Court finds that Mr.
11 Rigby never provided a written accounting as to the cash value of the Met
12 Life policy. In Court, Mr. Rigby testified that he received \$16.00 from
13 Met Life, but provided no documentation. The Court finds that Mr. Rigby
14 had the ability to comply with that portion of the Order, but intentionally
15 failed to comply.

16 C. With regard to personal property of the parties, the Court finds that Mr.
17 Rigby never provided a written accounting concerning the personal
18 property. He testified at trial that he sold a trailer, but provided no
19 documentation of the sale price or who purchased it. The Court finds that
20 Mr. Rigby had the ability to comply with that portion of the Order, but
21 intentionally failed to comply.

1 D. The Court finds that Mr. Rigby removed Mrs. Rigby from his federal
2 health insurance coverage in approximately January of 2004. Mr. Rigby
3 claims that he did so because of his financial condition, and by doing so, it
4 saved him approximately \$125.00 per month. The Court notes that the
5 Respondent took \$2,200.00 on the credit line with Wells Fargo “so Mrs.
6 Rigby couldn’t get it”. Mr. Rigby spent approximately \$2,000.00 for the
7 benefit of his grandchild during the pendency of this proceeding. The
8 Court finds that Mr. Rigby had the ability to comply with that portion of
9 the Order, but intentionally refused to comply.

10 24. The Court finds Mr. Rigby in contempt for failure to comply with all four portions
11 of the Order. Mr. Rigby’s recalcitrance caused Mrs. Rigby to incur additional attorney’s fees.

12 25. The Court would ordinarily impose an award of attorney’s fees against Mr. Rigby
13 for his contempt. However, the Court finds that because of the financial condition of the parties,
14 that a better sanction is to award Mrs. Rigby a greater portion of the sale proceeds from the
15 home.

16 26. The Court finds that but for Mr. Rigby’s contempt, the Court would have awarded
17 the proceeds equally to the parties. For these reasons, the Court awards Mrs. Rigby eighty-five
18 percent (85%) of the sale proceeds and Mr. Rigby fifteen percent (15%) of the sale proceeds of
19 the home as is stated above. The Court finds that Mrs. Rigby should be awarded no separate
20 award of attorney’s fees.

Based on the above Findings of Fact, the Court makes the following:


CONCLUSIONS OF LAW

1. The parties and each of them should be awarded a Decree of Divorce from the other dissolving the bonds of matrimony heretofore existing between them, the same to become final upon the signing and entry thereof.

2. The Decree of Divorce should be consistent with and congruent with the Findings of Fact outlined immediately above.

DATED this 13 day of June, 2005.

BY THE COURT:


Honorable Judge Robert W. Adkins
per FINCHAM

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MAILING CERTIFICATE

2

I hereby certify that I mailed a true and correct copy of the foregoing Findings of Fact and
Conclusions of Law to the following, postage prepaid this 24th Day of

3

May, 2005:

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5

Vernon R. Rigby

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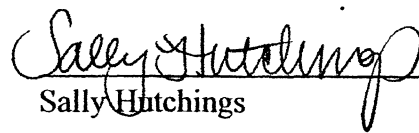
6993 Loch Ness Avenue

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West Valley City, Utah 84128

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Sally Hutchings

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