

1994

Joyce Knowlden v. Grant R. Knowlden : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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JOYCE KNOWLDEN, :
Plaintiff/Appellee, :
vs. : No. 940379CA
GRANT R. KNOWLDEN, : Civil No. 934390096
Defendant/Appellant. : Category 15

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BRIEF OF APPELLEE

AN APPEAL FROM A DECREE OF DIVORCE, FROM THE THIRD JUDICIAL
DISTRICT COURT, IN AND FOR THE COUNTY OF TOOELE, STATE OF UTAH

THE HONORABLE WILLIAM A. THORNE, JUDGE, PRESIDING

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**UTAH COURT OF APPEALS
BRIEF**

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Defendant/Appellant.	:	Category 15

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Comes now the Appellee to the above-captioned matter (hereinafter "Wife"), by and through counsel, and hereby submits the following as her brief of Appellee herein:

JURISDICTION AUTHORITY

Husband has appealed the Findings of Fact and Conclusions of Law and Decree of Divorce made and entered by the Third Judicial District Court for the County of Tooele, State of Utah, the Honorable William A. Thorne, Judge, presiding.

The Utah Court of Appeals has appellate jurisdiction over this matter pursuant to Utah Code Ann. §78-2a-3(2)(i) (1953, as amended).

NATURE OF THE PROCEEDING

The matter below is a divorce action and this appeal is from the final Decree of Divorce and certain provisions of that Decree of Divorce, heard by the Third Judicial District Court, in and for

Tooele County, State of Utah, and, in particular those provisions which awarded the Wife certain interests in real estate holdings and which awarded alimony to Wife, and, including, the level of alimony.

DETERMINATIVE PROVISIONS, CASES, STATUTES, AND RULES, ETC.

There is no case law authority, nor statutory authority believed by Wife to be wholly dispositive or wholly determinative of the issues raised on appeal.

STANDARD OF REVIEW

The standard of review on appeal in this case is an abuse of discretion standard. In divorce proceedings, the appellate court will "afford the trial court 'considerable latitude in adjusting financial and property interests, and its actions are entitled to a presumption of validity.'" Baker v. Baker, 866 P.2d 540, 542 (Utah Ct. App. 1993) (citing Watson v. Watson, 837 P.2d 1, 5 (Utah Ct. App. 1992) and Naranjo v. Naranjo, 751 P.2d 1144, 1146 (Utah Ct. App. 1988)). Therefore, "[t]he trial court's findings of fact are presumed to be correct". Baker, at 542. Accordingly, the Court of Appeals has stated that "we view 'the evidence and all the inferences that can reasonably be drawn therefrom in a light most supportive of the trial court's findings.'" Baker, at 543 (citing Gillmore v. Gillmore, 745 P.2d 461, 462 (Utah Ct. App. 1987) and Horton v. Horton, 695 P.2d 102, 106 (Utah 1984)). Further,

"[f]indings of fact . . . shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Watson v. Watson, 837 P.2d 1, 6 (Utah Ct. App. 1992).

Regarding the property division at issue, the appellate court "will alter the trial court's property division 'only if there was a misunderstanding or misapplication of the law resulting in a substantial and prejudicial error, the evidence clearly preponderated against the findings, or such a serious inequity has resulted as to manifest a clear abuse of discretion." Baker, at 543 (citing Watson, 837 P.2d at 5 and Naranjo, 751 P.2d at 1146). Accordingly, appellant must show that the findings of the trial court "are 'so lacking in support as to be against the clear weight of the evidence and, therefore, clearly erroneous.'" Baker, at 543 (citing Crouse v. Crouse, 817 P.2d 836, 838 (Utah Ct. App. 1991) (citations omitted); accord Watson, 837 P.2d at 6.

Finally, with regard to alimony, this Court has stated that it "will not overturn a trial court's alimony ruling as long as the court supports its ruling with adequate findings and exercises its discretion according to the standards we have set." Willey v. Willey, 866 P.2d 547, 550 (Utah Ct. App. 1993) (citing Bell v. Bell, 810 P.2d 489, 491 (Utah Ct. App. 1991)). Additionally, "the trial court has broad discretion, and its decisions will not be

overturned absent an abuse of discretion or manifest injustice." Watson v. Watson, 837 P.2d 1 (Utah Ct. App. 1992) (citing Schindler v. Schindler, 776 P.2d 84, 90 (Utah Ct. App. 1989)).

STATEMENT OF THE CASE

This divorce action was tried before the Third Judicial District Court in and for Tooele County, State of Utah, on January 20, 1994, The Honorable Judge William A. Thorne, presiding. The judge, among other things, entered orders regarding the disposition of the marital estate and award of alimony to Wife.

The Decree of Divorce and Findings of Fact and Conclusions of Law from which the Husband appeals, were signed and entered by the court on March 8, 1994. Said Findings of Fact and Conclusions of Law and Decree of Divorce are attached hereto, designated as Appendix "A" and Appendix "B," respectively.

Husband moved for a new trial, or, in the alternative, for an Amendment to the Decree of Divorce. Subsequent to hearing, the trial court denied this motion by an order entered May 17, 1994. S Said order is attached hereto, designated as Appendix "C."

Husband then moved for an extension of time within which to file a Notice of Appeal and filed his notice on June 28, 1994. Husband has appealed the trial court's award of alimony and division and distribution and characterization of the real property of the parties. Husband's brief was filed with the Court of

Appeals on November 23, 1994. Wife moved for an extension of time within which to file her brief, which was granted by the Court on December 22, 1994.

STATEMENT OF THE FACTS

The parties were married on September 10, 1978, in Elko, Nevada. (Findings of Fact and Conclusions of Law, ¶2, Index 253). The parties resided together continuously as husband and wife, but for a brief period of separation in May, 1991. (Tr., p.7, ll. 15-25, p.8, ll.1-17.) The parties were married for sixteen years.

Wife was born June 9, 1932, and was 61 years of age at the date of trial. (Tr., p.6, ll. 17-19.) Wife obtained a high school diploma in 1949 and later took a class at a junior college in San Antonio and some courses at Brigham Young University. (Tr., p.154, ll. 6-9.) While Wife had worked prior to her marriage, she did not work subsequent to the marriage. (Tr., p.155, ll. 1-7.) Subsequent to the parties' separation, however, Wife worked part-time for her sister-in-law making quilts with a quilting machine acquired by the parties during the marriage. (Tr., p.155, ll. 9-25.) Wife's average monthly income from the quilting business was approximately \$300.00. (Tr., p.157, ll. 5-9.)

Wife testified at trial that she believed that when she turned 62, she would be entitled to social security which she believed would be approximately \$348.00. (Tr., p.159, ll. 2-3.) Plaintiff's

monthly expenses were found to be \$879.00 per month, excluding any mortgage or rent payment (Findings of Fact and Conclusions of Law, ¶19, Index 245.)

Husband was employed by Kennecott Copper Corporation during the marriage and until his retirement in 1985, at which time he took an early retirement. (Tr., p.156, ll. 16-20). The Husband had a total net income, including social security and Kennecott retirement of \$1,200.00 per month, less the deduction for the survivor benefit which he paid each month for the benefit of Wife. (Findings of Fact and Conclusions of Law, ¶19, Index 246.) The survivor benefit paid each month was \$44.21. (Tr., p.216, ll. 2-12.) At the date of trial, husband was 65 years of age, having been born October 15, 1928. (Tr., p.222, ll. 24-25, p.223, l.1.) Husband had worked for Kennecott Copper Corporation for 25 (twenty-five) years and two (2) months, retiring on July 1, 1985. (Tr., p.223, ll.2-5.)

While the parties were married during a period of seven years in which retirement accrued, the court found that, based upon the award of alimony, Defendant Knowlden should be awarded all right, title and interest in his Kennecott retirement. (Findings of Fact and Conclusions of Law, ¶24, Index 244.)

At trial, Husband testified that the quilting machine, previously utilized by Wife during the period of separation to

supplement her income, was purchased with pre-marital funds in March of 1993. (Tr., p.242, ll. 17-21.) Husband testified he wanted the machine awarded to him. (Tr., p.243, ll. 1-3.) Further, the Husband testified that he purchased the quilting machine and two bolts of material for \$6,500.00 at that time and when asked if he intended to use the quilting machine stated "Well it looks like I'm going to have to have income from some source. I am too old to be employed by, who's going to hire a 65-year old man?" (Tr., p.244, ll. 7-11.) The quilting machine was awarded to Husband and the trial court found that Husband had an ability to earn an additional \$300.00 by virtue of the fact that he was being awarded the quilting machine, which he had requested. This finding was based upon the fact that Wife had testified that she could earn \$300.00 per month from the use of that machine and had been earning that sum during the pendency of the action. The court found that Wife would no longer have that money available to her, but Husband would have the money available to him to add to his monthly net income. (Findings of Fact and Conclusions of Law, ¶19, Index 246.) During trial, Wife testified that she was willing to give the quilting machine to Husband if he wanted to pay her alimony instead. (Tr., p.162, ll. 5-8.)

The court ultimately awarded Wife \$400.00 per month, as and for alimony. The court analyzed the parties' respective incomes

and found that Husband would have has \$1,200.00 net income per month from retirement and social security and \$300.00 per month from quilting income, for a total of \$1,500.00 per month. Wife was awarded a note receivable generating \$120.00 per month, and a rental property generating \$325.00 per month for a total of \$445.00 per month. (Findings of Fact and Conclusions of Law, ¶19, Index 245, 255.)

Prior to and during the course of the marriage, the parties acquired three parcels of real property. (Findings of Fact and Conclusions of Law, ¶15, Index 248.) The divorce trial was bifurcated, as Husband's sister, Grace Poloskey, was a co-defendant, and the trial court first addressed the issue of the Husband's transfer of a parcel of property referred to as the "Grantsville property," from Husband to his sister, Grace Poloskey, and whether that constituted a fraudulent transfer. (Tr., p.5, ll. 1-8.) The court found that the "Grantsville property," known as 6000 North Old Lincoln Highway, was acquired by the Husband prior to the marriage, that he paid \$2,500.00 for the land in, approximately, 1956, and that the land remained undeveloped until the parties commenced building upon the property. Further, the court found that the Husband and Wife commenced building a residence on that property in 1981, and, by their labor and "sweat equity," built the residence, which fair market value at the time

of trial was assessed at \$86,000.00. (Findings of Fact and Conclusions of Law, ¶6, Index 252-253.) The court also found that on May 13, 1991, Husband transferred that property to his sister, Grace Poloskey, for no money consideration and, based upon a number of considerations and findings, found that the property had been fraudulently conveyed by Husband to his sister and that, indeed, it was marital property for purposes of disposition at the date of trial. (Findings of Fact and Conclusions of Law, ¶¶6-11, Index 250-253.)

At trial, the Wife testified that in June of 1979, the parties assisted in tearing down a 9,000 foot commissary building at Hill Air Force Base to get lumber to build their home with. They did that from June through October, working practically every day, including Sundays. Wife testified that she would drive a two-ton truck and haul materials and help gather materials daily. She testified regarding the fact that the parties went to several auctions and tore down several buildings to use for materials for the home. (Tr., p.11, ll. 1-11.) Wife testified that the foundation of the home was put in place in 1982 and that the parties continued to work every day on the home and jointly until 1985 when the home was complete enough to move into and when Husband had retired. (Tr., p.11, ll. 11-14.) Specifically, Wife testified that she had "worked right along beside him in everything

we did. And I might not have had the expertise or the strength to do as much as he did, but I was sure just as tired and dirty at the end of the day as he was." (Tr., p.11, ll. 15-18.)

Husband had testified that in addition to the original \$2,500.00 used to purchase the Grantsville lot, that he had used retirement monies from Kennecott and sick leave and vacation pay to assist in the building of the foundation and some of the other construction. (Tr., p.227-228, ll. 21-25, ll. 1-24.) However, Husband provided no evidence or testimony as to which portion of those funds were pre-marital and which portions had accrued during the parties' marriage.

The trial court specifically found that the funds of money that the Husband claimed as pre-marital and which were used to assist in the construction of the Grantsville residence, became co-mingled with marital funds and that any monies that may have been separate property had lost their separate identity because of the co-mingling. (Findings of Fact and Conclusions of Law, ¶6, Index 252.) Further, the court found, separately, that the residence was constructed with the individual efforts and "sweat equity" of Husband and Wife and, specifically, that the property had been enhanced and augmented by the acts of Wife and found that its entire value was a marital asset. (Findings of Fact and Conclusions of Law, ¶6, Index. 252.)

In addition to the "Grantsville property," the court found that the parties resided together during the marriage at a home at 4801 South 4900 West, Kearns, Utah (the "Kearns" property). It was acknowledged that the property was purchased by Husband prior to the marriage and in, approximately, 1973, but transferred into the names of both parties immediately subsequent to the marriage. The court found that the transfer of the property into both parties' names constituted a gift. As a separate finding and basis for including it as a marital asset, however, the court found that the parties resided in the residence, made payments of the mortgage, made improvements to the property and that there was such a co-mingling of the pre-marital asset with marital funds that it was no longer pre-marital. The value of that property, at the date of trial, was found to be \$42,000.00, based upon the appraisal and stipulation of the parties. (Findings of Fact and Conclusions of Law, ¶12, Index 250.)

Finally, the third property at 39 East Louise Avenue, Salt Lake City, Utah (hereinafter the "Louise" property), was found to have been acquired by the Husband in 1976 and titled in his name during the marriage. During the marriage, however, the mortgage obligation on that residence was paid. Further, the court found that there were substantial improvements to the property, including siding, new carpeting, thermal windows, and a new roof. Further,

the court found that Wife assisted in scraping and repainting the property, cleaning the property for the rentals, making curtains and managing the property for rentals. The court specifically found that it was a marital asset for purposes of assessing the marital estate and dividing the same, due to the acquisition of equity over the period of the marriage and the augmentation and enhancement of the property by Wife during the marriage and, on a separate basis, because of the co-mingling of the marital funds. That property was valued at \$30,000.00. (Findings of Fact and Conclusions of Law, ¶13, Index 249.)

SUMMARY OF THE ARGUMENT

The trial court's property division in the instant case is equitable and fair. There was no misunderstanding or misapplication of the law; neither was there a clear abuse of the court's discretion. Given the facts and circumstances of this case, including the contribution of Wife to the enhancement and augmentation of the properties in question and, given the age of Wife and prospects for future income or employment, the characterization of the marital estate and division thereof was just. Wife contributed extensively to the maintenance and improvements of the properties and their value was enhanced due to the efforts of both Husband and Wife. Further, there was

substantial co-mingling and any pre-marital monies were unidentifiable given the co-mingling.

The trial court's rulings and findings are adequate and the award of alimony is fair and equitable and not an abuse of discretion on the part of the trial court. Wife's sole sources of income are based on the trial court's property division and alimony award and are essential to maintain Wife's ability to provide for herself. The court's imputation of \$300.00 of income to Husband was appropriate and supported by the testimony of both Wife and Husband. The alimony award is equitable and should be upheld.

Wife should be awarded her attorney's fees and costs on appeal. Given the clear weight of the evidence preponderating in favor of Wife, and given the needs of Wife and abilities of Husband, it is fair and equitable that this Court award Wife her attorney's fees and costs on appeal.

ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN THE DISTRIBUTION AND CHARACTER OF THE MARITAL ESTATE.

The trial court valued the marital estate at approximately \$162,107.00 and outlined assets as follows:

<u>PROPERTY/ASSET</u>	<u>VALUE</u>
Grantsville property	\$86,000.00
Kearns property	\$42,000.00
Louise property	\$30,000.00
Chevrolet Celebrity	\$1,325.00
Ford truck	\$800.00

Ford mustang	\$200.00
Oldsmobile Firenza	\$975.00
Chevrolet Citation	\$100.00
Chevrolet Cavalier	\$100.00
Marcus Knowlden note receivable	\$7,576.00
Farm equipment	\$1,000.00
Liquid accounts at Key Bank Account, Zions, Garfield Credit Union, Utah Credit Union and the debt from Ms. Eyre	\$1,224.00
Power Tools and tools	\$3,500.00

(Findings of Fact and Conclusions of Law, ¶15, Index 248.)

Husband has challenged the inclusion of the Marcus Knowlden note receivable as a marital asset. However, the argument that the note should be excluded from the estate is wholly contrary to the evidence adduced at trial and by Husband. Husband testified that in 1978 he assigned a \$10,000.00 promissory note to Wife. (Tr., p.243, ll. 16-18.) The money from that note was paid during the marriage and continued to be paid, at the date of trial, at the rate of \$120.00 per month. (Findings of Fact and Conclusions of Law, ¶19, Index 246.) Further, Husband testified that Wife should keep that note. (Tr., pp. 247-248, l. 25 and ll. 1-7.) It was clearly transferred into the name of Wife, and appropriately included as a marital asset for ultimate distribution between both parties.

As part of the equalization of the division of the estate, the court ordered Husband to pay a substantial portion of the marital debt. The court found that, in addition to the mortgage debt on

the "Louise" property, the debts that existed were as contained on Wife's Exhibit 8 and were listed as follows:

Levitz	\$ 546.00
Bank One	437.00
Property taxes (Kearns)	297.00
Fire insurance (Kearns)	179.00
Utah State taxes	103.00
Debt to Shelly Eyre	113.00
Total	\$1,693.00

The sum was offset against the marital estate and in the equalization of the same. (Findings of Fact and Conclusions of Law, ¶16, Index 247.) In analyzing the distribution of the assets and debts, the court was specific and assigned specific values to each. In ¶¶15, 16 and 17 of the Findings of Fact and Conclusions of Law (Index 247), the properties and debts were distributed as follows:

<u>PROPERTY/ASSET/(DEBT)</u>	<u>HUSBAND</u>	<u>WIFE</u>
Grantsville property	\$86,000.00	
Kearns property		42,000.00
Louise property *		26,914.00
Chevrolet Celebrity	1,325.00	
Ford truck	800.00	
Ford mustang	200.00	
Oldsmobile Firenza		975.00
Chevrolet Citation		100.00
Chevrolet Cavalier		100.00
Marcus Knowlden note receivable		7,576.00
Farm equipment	1,000.00	
Liquid accounts at Key Bank Account, Zions, Garfield Credit Union, Utah Credit Union and the debt owed by Ms. Eyre		1,224.00
Power Tools and tools	3,500.00	
Levitz	(546.00)	

Bank One	(437.00)
Property taxes (Kearns)	(297.00)
Fire insurance (Kearns)	(179.00)
Utah State taxes	(103.00)
Debt to Shelly Eyre	(113.00)
Second mortgage (Louise)	(8,245.00)

TOTALS	\$ 82,905.00	\$ 78,889.00
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(one-half of estate equals \$81,000.00)

*Louise property, \$30,000.00, less first mortgage of \$3,086.00 equals net 26,914.00.

(Findings of Fact and Conclusions of Law, ¶¶15, 16 & 17, Index 247).

Therefore, while striving to equalize the marital estate, the Husband, in receiving the Grantsville property and other property assigned to him and paying the debts assigned, received more than one-half of the marital estate. As indicated above, the properties awarded to him, totaled \$82,887.00. Husband received over \$4,000.00 more of the marital estate than did Wife. His payment of the debts, including the debts associated with the Kearns property, which included taxes and insurance, was not inconsistent, particularly given the temporary nature of the Order on Order to Show Cause, which was entered by Judge Brian prior to the trial. The temporary order did not prohibit the court from adjusting the assets and debts to equalize the marital estate. Further, there is nothing in the record that indicates any objection or challenge on the part of Husband or his counsel at trial to wife's inclusion of

the insurance and property tax debts as marital debts. It was not until the motion for retrial that the issue was raised by Husband, through counsel. (Tr., p.308, ll. 5-13.) However, given the fact that those two debts total \$282.00 and Husband received \$4,000.00 more of the marital estate, it is certainly within the equitable discretionary powers of the court to make that distribution. See Dunn v. Dunn, 802 P.2d 1234 (Utah App. 1990), Burke v. Burke, 733 P.2d 133 (Utah 1987).

The Utah Supreme Court has held that "[i]n dividing the marital estate, the trial court may make such orders concerning property distribution and alimony as are equitable." Newmeyer v. Newmeyer, 745 P.2d 1276, 1277 (Utah 1987) (citing Utah Code Ann. §30-3-5(1) (1984 & Supp. 1987)) (holding that wife's inheritance being awarded as her sole property was proper).

Wife has no means of income other than the property awarded to her and the alimony awarded to her at the time of trial. Therefore, the order that Husband pay the minimal debts, and readjusting of the same subsequent to a temporary order, is appropriate.

Husband has argued that the court's award of the "Grantsville property" to him and the award of the "Louise" and "Kearns" properties to Wife is unfair and inequitable, and that he should

have been given pre-marital credit on two of the properties as follows:

Grantsville property	\$9,500.00
(down payment of \$2,500.00, increasing in value to 9,500.00 at the date of appraisal)	
Sick leave and vacation benefits	7,000.00
Kennecott retirement benefits	<u>12,000.00</u>
Subtotal	\$28,500.00
"Louise property"	
down payment	\$4,000.00
two years' mortgage payments	<u>3,000.00</u>
Subtotal	\$7,000.00
Total	\$35,500.00

It is appropriate to analyze each of those alleged pre-marital monies or assets separately, but subsequent to an analysis of the case law relating to pre-marital properties.

In the case of Newmeyer v. Newmeyer, 745 P.2d 1276 (Utah 1987), the Court stated that "[t]he appropriate treatment of property brought into a marriage by one party may vary from case to case." Id., at 1277. "In appropriate circumstances, one spouse may be awarded property which the other spouse brought in to the marriage. The rationale behind this exception to the general rule is that '[m]arital property 'encompasses all of the assets of every nature possessed by the parties, whenever obtained and from

whatever source derived.'" Watson v. Watson, 837 P.2d 1, 5-6 (Utah Ct. App. 1992) (citing Sorensen v. Sorensen, 769 P.2d 820, 824 (Utah Ct. App. 1989), quoting Gardner v. Gardner, 748 P.2d 1076, 1078 (Utah 1988)) (holding wife's award of husband's pre-marital property was equitable). "[T]he trial court may, in the exercise of its broad discretion, divide the property equitably regardless of its source or time of acquisition." Watson, at 6.

In the case at bar, the trial court exercised its discretion properly in awarding Wife the "Kearns" and "Louise" properties. Any funds or properties that were pre-marital, lost their identity as pre-marital property given the substantial evidence of the contribution made by Wife to each of the properties, which contributions enhanced and augmented their value. Regardless, the Utah Supreme Court has held that pre-marital property may be treated as marital property in appropriate circumstances. In Burke v. Burke, 733 P.2d 133 (Utah 1987) (which held that the trial court did not abuse its discretion in declining to award husband a portion of wife's inheritance), the Court stated:

"Premarital property, gifts, and inheritances may be viewed as separate property, and in appropriate circumstances, equity will require that each party retain the separate property brought to the marriage. However, the rule is not invariable. In fashioning an equitable property division, trial courts need consider all of the pertinent circumstances. The factors generally to be considered are the amount and kind of property to be divided; whether the property was acquired before or during the marriage; the source of the property; the

health of the parties; the parties' standard of living, respective financial conditions, needs, and earning capacity; the duration of the marriage; the children of the marriage, the parties' ages at time of marriage and of divorce; what the parties gave up by the marriage; and the necessary relationship the property division has with the amount of alimony and child support to be awarded. Of particular concern in a case such as this is whether one spouse has made any contribution toward the growth of the separate assets of the other spouse and whether the assets were accumulated or enhanced by the joint efforts of the parties."

Burke, at 135.

It is important to note that the bulk of the assets of the parties are made up of the three real properties, the substantial one of which was awarded to Husband. The most valuable property, the "Grantsville" property, which was unencumbered, was awarded to Husband free and clear. The two substantially lesser properties were those that were awarded to wife. Certainly, this permits Husband to continue enjoying the standard of living that the parties enjoyed during the marriage, as he was being awarded the marital residence. As the quilting machine, which was the sole source of Wife's earned income (Tr., p.157, ll. 1-9), was awarded to Husband, Wife's only source of income was the Marcus Knowlden note, paid at the rate of \$120.00 per month. The court found that with the award of the Louise property to Wife, she would receive another \$325.00 per month rental income, so that she would have a total net income of \$445.00 per month. (Findings of Fact and Conclusions of Law, ¶19, Index 246.) Once Wife received the

alimony award of \$400.00 ordered by the court, her total income was \$845.00. The alimony is taxable income as well as the rental income from the property. Husband's \$1,200.00 per month income from social security and his Kennecott retirement was net income. Therefore, while not subject to mathematical precision, it would appear that the parties would be in approximately equivalent circumstances, so long as Wife receives the rental income, and, as long as Wife was not required to make a mortgage payment of any substance. The court awarded Wife two properties, both of which are relatively humble properties, but one of which she can live in to avoid a substantial monthly mortgage payment. It is clear, that the award of the properties allowed for an equalization of the standard of livings of the parties.

It is important for this Court to note, as well, the ages of the parties. Both parties are in their sixties. The assets currently in their possession are likely to be the bulk of what they will have at their death. Neither would have a substantial prospect of future income or employment. As stated in Newmeyer, "[t]he overriding consideration is that the ultimate division be equitable - that property be fairly divided between the parties, given their contributions during the marriage and their circumstances at the time of the divorce." Newmeyer, at 1278 (citing Huck v. Huck, 734 P.2d 417, 420 (Utah 1986)).

In a case somewhat similar to the facts of this matter, the Utah Supreme Court held that the trial court's award of one-half of the value of a recreational cabin to the wife was equitable, even though the husband had used a substantial amount of proceeds from the sale of pre-marital property to finance the construction of the cabin. "The court found that the cabin was constructed during the marriage by the parties 'working as a family, and drawing on their earnings, the daily funds of all . . .'. Preston v. Preston, 646 P.2d 705, 706 (Utah 1982).

Premarital property is similar to the inherited or gifted property of one spouse. These different types of properties are often treated comparably in divorce actions and are therefore analogous. The trial court's broad discretion applies in these types of cases as well.

The Utah Supreme Court has stated that "[s]ignificantly, no case has been found where this Court has reversed a trial court's disposition of gifts or inherited property received by one party during the marriage. In almost every case, we have emphasized the wide discretion trial courts have in property division and have refrained from laying down any general rules for the disposition of gifts and inherited property." Mortensen v. Mortensen, 760 P.2d 304, 307 (Utah 1988) (holding that the trial court's division of property on a percentage basis was proper).

In Mortensen, the Court outlined Utah law regarding gifts and inheritances as follows:

"We conclude that in Utah, trial courts making 'equitable' property division pursuant to section 30-3-5 should, in accordance with the rule prevailing in most other jurisdictions and with the division made in many of our own cases, generally award property acquire by one spouse by gift and inheritance during the marriage (or property acquired in exchange thereof) to that spouse, together with any appreciation or enhancement of its value, unless (1) the other spouse has by his or her efforts or expense contributed to the enhancement, maintenance, or protection of that property, thereby acquiring an equitable interest in it, (referring to Dubois v. Dubois, 504 P.2d 1380 (Utah 1973) . . . or (2) the property has been consumed or its identity lost through commingling or exchanges or where the acquiring spouse has made a gift of an interest therein to the other spouse (referring to Jespersion v. Jespersen, 610 P.2d 326 (Utah 1980))."

Mortensen at 308.

As set forth in the facts of the case. Wife, in the case at bar, made substantial contributions to the preservation and acquisition of the real properties in question. Further, the monies that were pre-marital were not readily separable or distinguishable as pre-marital and they were commingled with that portion that was clearly marital.

In light of the foregoing, the Court must analyze the individual alleged pre-marital contributions for which Husband is asking on offset. The Grantsville property was purchased with a \$2,500.00 down-payment by Husband. (Findings of Fact and Conclusions of Law, ¶6, Index 253.) However, the land remained

completely undeveloped until the parties commenced building on the property. (Findings of Fact and Conclusions of Law, ¶6, Index 253.) An appraisal was performed on the property prior to trial in order to evaluate the marital estate. As part of the appraisal, Husband attempted to break out the separate valuation of the land in that appraisal, which, using the cost approach as argued by Husband's counsel, valued that land at \$9,500.00. However, the land is not separate from the home and out-buildings that have been constructed with the "sweat equity" of both Husband and Wife. The appraised value of the property of \$86,000.00 was the "market" valuation, which includes both the land and the structures on the land. (Tr., p.150, ll. 7-13.)

Further, the initial \$2,500.00 down payment in 1956 is certainly too remote and has been overwhelmingly consumed by the efforts of Wife in the preservation of the property. As outlined in the facts of the case, as to the Grantsville property, the Wife testified that in June of 1979, the parties assisted in tearing down a 9,000 foot commissary building at Hill Air Force Base to get lumber to build their home with. They did that from June through October, working practically every day, including Sundays. Wife testified that she would drive a two-ton truck and haul materials and help gather materials daily. She testified regarding the fact that the parties went to several auctions and tore down several

buildings to use for materials for the home. (Tr., p.11, ll. 1-11.) Wife testified that the foundation of the home was put in place in 1982 and that the parties continued to work every day on the home and jointly until 1985 when the home was complete enough to move into and when Husband had retired. (Tr., p.11, ll. 11-14.) In addition to the land value, Husband is alleging that he should be given credit for two payments received, during the marriage, from his employer, Kennecott. First, he testified that in 1981 he received a \$7,500.00 lump sum payment of his sick leave and vacation benefits. However, there is no documentation of that allegation, nor has Husband made any attempt to differentiate which portion of that was marital and which portion was pre-marital. He introduced no testimony from former personnel directors or any individuals responsible for the maintenance and distribution of those funds.

Likewise, Husband testified that prior to his retirement, he received a lump sum of approximately \$12,000.00 that was used for a variety of building materials; for which he provided no documentation or verification to trial the court tracing how it was spent or whether it was spent on other bills or expenses or maintenance of the family. (Tr., p.250, ll. 14-15, p. 251, ll. 1-25.) It is telling that when questioned by Wife's counsel as to whether Husband considered the retirement money to be his separate

property or separate funds that were being used for the "Grantsville property" construction, Husband stated "most of it was uh acquired pre-maritally. I don't think I even thought of it one way or the other whether it was singly, because Joyce and I were in a cooperative effort in building the home." (Tr., p.251, ll. 22-25.)

Certainly, the burden is on Husband to provide evidence and proof to the court as to which portion, if any, was actual pre-marital and to provide the court sufficient evidence to find that there was not commingling. However, even if the court found that the monies were not commingled, Wife's efforts and enhancement of the property outweighs Husband's assertions that some portion of those funds that were contributed retained their pre-marital nature.

As to the "Louise" property, Husband is requesting an offset or credit for a \$7,000.00 contribution to that property. However, that offset or credit was not requested at the time of trial. At the time of trial, Husband testified that he did pay a \$4,000.00 down payment in 1976, but did not testify regarding the amount of mortgage payments made up until the date of the parties' marriage. (Tr., p.232, ll. 13-25, p. 233, ll. 1-20.) It was the \$4,000.00 down payment, alone, that was raised at the time of trial. Husband's failure to raise the request for an additional \$3,000.00

offset at the time of trial should bar him from requesting that relief at this juncture.

Further, as previously stated, there was substantial monetary contribution and "sweat equity" that Wife put into this property as well. During the marriage, the mortgage obligation on that residence was paid. Further, the court found that there were substantial improvements to the property, including siding, new carpeting, thermal windows, and a new roof. Further, the court found that Wife assisted in scraping and repainting the property, cleaning the property for the rentals, making curtains and managing the property for rentals. The court specifically found that it was a marital asset for purposes of assessing the marital estate and dividing the same, due to the acquisition of equity over the period of the marriage and the augmentation and enhancement of the property by Wife during the marriage and, on a separate basis, because of the co-mingling of the marital funds. That property was valued at \$30,000.00. (Findings of Fact and Conclusions of Law, ¶13, Index 249.)

The ultimate goal of property division in divorce matters is to make an equitable award. The trial court in this matter, in its sound discretion, accomplished that ultimate goal. Based upon the facts and circumstances of this case, the trial court's award should be affirmed.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN THE AWARD OF ALIMONY.

The trial court awarded alimony to Wife in the amount of \$400.00 per month. This amount was based on Husband's earnings of \$1,500.00 per month, which was based on \$1,200.00 actual net earnings from social security and retirement and \$300.00 per month imputed earnings from use of the quilting machine awarded to Husband. (Findings of Fact and Conclusions of Law, ¶19, Index 245 and 246.) The Utah Supreme Court has stated that "[a]limony is to be awarded after considering three factors: the receiving spouse's financial condition and needs; the receiving spouse's ability to earn an adequate income; and the providing spouse's ability to provide support." Newmeyer v. Newmeyer, 745 P.2d 1276 (Utah 1987) (citing Jones v. Jones, 700 P.2d 1072, 1075 Utah 1985)).

The trial court clearly considered each of these factors in awarding \$400.00 per month alimony to Wife. First, Wife's financial condition is dependent upon the trial court's alimony award and property division. Wife has no ability to earn an income and therefore cannot meet her monthly expenses without the alimony award. Wife's award of the "Kearns" property allows her to reside in a home without the responsibility of paying a mortgage (because the mortgage was paid in full during the parties marriage), and Wife's award of the Louise property allows her to earn a limited income from the rental. However, without the \$400.00 alimony award

Wife is unable to meet her expenses. Accordingly Wife's financial condition and needs demonstrate the propriety of the alimony award.

Further, as previously set forth in the statement of facts, Wife's employment ceased at the time of the marriage for the convenience of the marriage. At the time of trial, Wife was 61 years of age and had been unemployed for sixteen years. Accordingly, Wife is unable to provide an adequate income to herself without support and assistance from her spouse.

Husband has the ability to provide the support. Husband earns a net income of \$1,200 per month from social security and his Kennecott retirement. (Findings of Fact and Conclusions of Law, ¶19, Index 246.) Wife was not awarded any interest in Husband's retirement, despite the fact that the retirement is a divisible marital asset pursuant to Woodward v. Woodward, 656 P.2d 431 (Utah 1982.) It is undisputed that the parties resided together for a period of seven years during Husband's Kennecott employment.

Further, Husband demanded the award of the quilting machine in the property distribution. (Tr., p.p.243, ll. 1-3.) Despite Husband's knowledge that his demand for the award of the quilting machine would deny Wife's ability to provide an income for herself, Husband, nevertheless, persisted. Husband was awarded what he asked for. Accordingly, the trial court appropriately imputed the \$300.00 per month to Husband as money he could earn through the use of the machine.

"The most important function of alimony is to provide support for the [spouse] as nearly as possible at the standard of living she [or he] enjoyed during the marriage, and to prevent the [spouse] from becoming a public charge." Willey v. Willey, 866 P.2d 547 (Utah Ct. App. 1993) (citing Jones v. Jones, 700 P.2d at 1075 and English v. English, 565 P.2d 409, 411 (Utah 1977)).

In Newmeyer v. Newmeyer, 745 P.2d 1276 (Utah 1987) when awarding alimony to the wife, the court took specific notice of the fact that during the course of two decades of marriage, the wife was employed only episodically, for brief periods, at low-paying jobs. Further, the wife did not have an opportunity to build up a retirement fund and did not receive interest in the husband's pension. Additionally, the husband had better future income prospects than did the wife. This case is quite similar to Newmeyer. The parties were married sixteen years. Throughout that period of time Wife was unemployed. The only income that she had was after the separation and through the use of the quilting machine, which Husband summarily demanded in the property division. Further, Wife did not have an opportunity to build up a retirement fund, nor did she receive an interest in Husband's retirement fund.

Husband has argued that the imputation of \$300.00 per month from income to be earned from the use of the quilting machine was error. However, it was Husband's demands and individual statements that required that imputation. As set forth in the statement of

facts, when questioned, Husband indicated that he would be earning income from the use of the quilting machine. (Tr., p. 244, ll. 7-11.)

In Hill v. Hill, 869 P.2d 963 (Utah Ct. App. 1994) the trial court imputed income to the husband for purposes of determining child support and alimony. Husband appealed, citing insufficient findings of fact to support the imputation. The court held that because husband had "acquiesced to the imputation of income at the trial level" and his job history and current employment supported the imputation, the trial court did not abuse its discretion.

Similarly, Husband "acquiesced" to the imputation of the \$300.00 per month income from the quilting machine through his acts and testimony.

It is clear that the trial court did not err in imputing an additional \$300.00 per month to Husband's monthly income and determining the alimony award according to that increased amount. The trial court's award of \$400.00 per month in alimony and imputation of income to Husband should be affirmed.

III. APPELLEE SHOULD BE AWARDED ATTORNEY'S FEES AND COSTS ON APPEAL.

Utah Code Annotated §30-3-3(2) provides as follows:

"in any action to enforce an order of custody, visitation, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense . . ."
(emphasis added).

This Court has previously held that, pursuant to this statute, "either party to a divorce action may be ordered to pay the adverse party to prosecute or defend the action. This includes attorney fees incurred on appeal." Maughan v. Maughan, 770 P.2d 156, 162-163 (Utah App. 1989). See, also, Carter v. Carter, 584 P.2d 904 (Utah 1978). Wife is also entitled to costs pursuant to Rule 34 of the Utah Rules of Appellate Procedure.

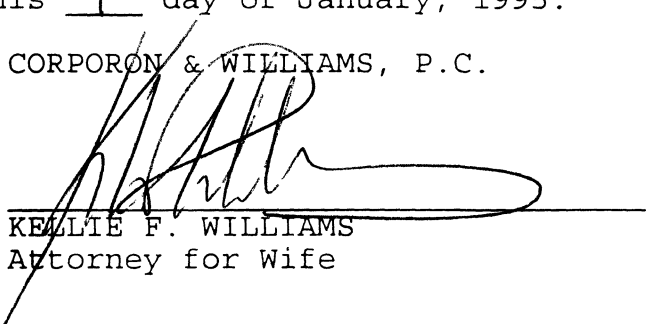
Inasmuch as Wife has been forced to defend the equitable alimony award and property division on appeal, Wife should be awarded attorney's fees and costs at the appellate level.

CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's determination regarding alimony and distribution of real property, including that alleged to be pre-marital. Further, it is reasonable that this Court award Wife her court costs and attorney's fees on appeal.

Respectfully submitted this 9th day of January, 1995.

CORPORON & WILLIAMS, P.C.



KELLIE F. WILLIAMS
Attorney for Wife

CERTIFICATE OF SERVICE

I hereby certify that two (2) true and correct copies of the foregoing BRIEF OF Wife were mailed, first class, postage prepaid, to:

MANNY GARCIA
Attorney for Husband
431 South 300 East, #101
Salt Lake City, Utah 84111

on this 9th day of January, 1995.


KELLIE F. WILLIAMS

APPENDIX "A"

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FILED BY p

KELLIE F. WILLIAMS #3493
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Telephone (801) 328-1162

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

JOYCE KNOWLDEN,

Plaintiff,

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

vs.

GRANT R. KNOWLDEN, and
GRACE POLOSKEY,

Civil No. 934300096

Defendants.

THE ABOVE-CAPTIONED MATTER having come on regularly for trial before the above-entitled court on January 20, 1994, at the hour of 9:00 a.m., the Honorable William A. Thorne, Third District Court Judge, presiding, and the Plaintiff appearing in person and being represented by counsel, Kellie F. Williams, and the Defendant, Grant R. Knowlden, being present in person and being represented by counsel, Jimi Mitsunaga, and the Defendant, Grace Poloskey, being present in person and being represented by counsel, J. Duke Edwards, and the parties having been sworn and having testified and having presented exhibits and evidence, and the court having

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reviewed the Plaintiff's memorandum and heard the arguments of counsel, and based thereon, the court now makes and enters the following:

FINDINGS OF FACT

1. The Plaintiff is now and has been for a period or more months immediately prior to the filing of the complaint in this action a resident of Tooele County, State of Utah.

2. That the parties Joyce Knowlden and Grant R. Knowlden are husband and wife, having been married on September 10, 1978, in Elko County, Nevada.

3. That the Defendant, Grace Poloskey is a resident of Tooele County, State of Utah, and the sister of the Defendant, Grant R. Knowlden.

4. That irreconcilable differences have arisen between the Plaintiff and the Defendant Knowlden which make continuation of the marriage impossible.

5. That Plaintiff and Defendant Knowlden have had no children born as issue of this marriage and none are expected.

6. Real property located at 6000 North Old Lincoln Highway, Grantsville, Utah, was acquired by Defendant Knowlden prior to the marriage. Defendant Knowlden paid \$2,500.00 for the land in, approximately, 1956, and the land remained undeveloped until the parties commenced building upon the property. Plaintiff and

Defendant Knowlden commenced building on the property and improving the property on or about 1981, and by their labor and "sweat equity," built the residence located at that property, which is valued at \$86,000.00, the current fair market value. The funds of money that Defendant Knowlden claims as premarital and which were used to assist in the construction of the Grantsville residence became co-mingled with marital funds and any monies that may have been separate property of Defendant Knowlden lost its separate identify because of that co-mingling. Further, the residence was constructed with the individual efforts and "sweat equity" of the Plaintiff and Defendant Knowlden. This Grantsville property was enhanced and augmented by the acts of the Plaintiff and its entire value became a marital asset.

7. That on or about May 13, 1991, Defendant Grant R. Knowlden transferred the Grantsville property to his sister, Defendant Grace Poloskey, for no money consideration. Since that time, the Plaintiff and Defendant Knowlden have continued to reside in the property and treated the property as their own, though the property remained in the name of Defendant Knowlden's sister, Defendant Poloskey. Defendant Poloskey paid the taxes and insurance at various times subsequent to the transfer, but was reimbursed those sums by monthly payments made by Defendant

Knowlden and or Defendant Knowlden and Plaintiff, which Defendant Knowlden sometimes referred to as "rents."

8. That the Defendant Poloskey testified that she had not lost any money out-of-pocket as a result of the transfer of the property. Further, Defendant Poloskey testified that she had held the real property subsequent to its transfer to protect it for the Plaintiff and Defendant Knowlden. Defendant Poloskey's conduct is consistent with an agency theory, in that she held the property in trust for her brother, Defendant Grant R. Knowlden.

9. That at the time of the transfer of the Grantsville property from Defendant Knowlden to Defendant Poloskey, Defendant Knowlden had an actual intent to delay, hinder or defraud a creditor, in that he testified that he had transferred the property because of the threat of a lawsuit by a granddaughter. The fact that the Plaintiff's divorce action had not been filed does not prevent Plaintiff from claiming a fraudulent transfer pursuant to the Uniform Fraudulent Transfer Act. The fact that the transfer was made to avoid a lawsuit from a victim in a prior assault, rather than to avoid a divorce lawsuit on the part of the Plaintiff is irrelevant to the statute.

10. Under U.C.A. §25-6-5(a) and (b), the court finds that Defendant Grant R. Knowlden fraudulently conveyed the property

located at 6000 North Old Lincoln Highway, Grantsville, Utah, to his sister, Defendant Grace Poloskey.

11. For purposes of dividing the marital estate, the current value of the Grantsville property should be used rather than the value of the property at the date of its transfer on or about May 13, 1991, as prayed for by Defendant Knowlden.

12. The Plaintiff and Defendant Knowlden resided together subsequent to their marriage at a home located at 4801 South 4900 West, Kearns, Utah. That property was purchased by Defendant Knowlden prior to the marriage, and in, approximately 1973, but transferred into the names of Plaintiff and Defendant Knowlden subsequent to the parties' marriage. The transfer of said property into joint tenancy constituted a gift of the premarital property to Plaintiff and Defendant Knowlden. Further, during the marriage, Plaintiff and Defendant Knowlden resided at that residence, made payments on the mortgage and made improvements on the property, including repainting and carpeting. Co-mingling occurred of this premarital asset with marital funds. Further there was an enhancement of the property by the acts of the Plaintiff. The property is a marital asset. The value of that property, at the date of trial, is \$42,000.00, based upon the appraisal and stipulation of the parties.

13. Prior to the marriage and in 1976, Defendant Knowlden purchased a property located at 39 East Louise Avenue, Salt Lake City, Utah. That property remained in his name during the marriage. During the marriage, the mortgage was paid. Further, during the marriage, Plaintiff and Defendant Knowlden put siding and new carpeting on the property as well as thermal windows and a new roof. Further, the marriage, Plaintiff assisted in scraping and repainting the property, cleaning the property for the rentals, making curtains for the property and managing the property for rentals. The property is a marital asset for purposes of assessing the marital estate and dividing the same due to the acquisition of equity over the period of the marriage and the augmentation and enhancement of the property by Plaintiff and the co-mingling of the marital funds with the property. The property is valued at \$30,000.00, pursuant to the evidence presented at trial and the testimony of the Plaintiff.

14. The court finds that the power tools have a value of \$3,500.00. Plaintiff testified that the power tools and equipment were valued at \$7,385.00, but that testimony was based on an amount that was provided to her by another individual which sum she did not think was correct and to which she added some things in order to come up with that value. Defendant Knowlden valued the tools at

approximately \$3,500.00 and the court finds that value more convincing.

15. The Plaintiff and Defendant's marital assets, less debts, are valued at \$162,107.00, and as follows:

<u>PROPERTY/ASSET</u>	<u>VALUE</u>
Grantsville property	\$86,000.00
Kearns property	\$42,000.00
Louise property	\$30,000.00
Chevrolet Celebrity	\$1,325.00
Ford truck	\$800.00
Ford mustang	\$200.00
Oldsmobile Firenza	\$975.00
Chevrolet Citation	\$100.00
Chevrolet Cavalier	\$100.00
Marcus Knowlden note receivable	\$7,576.00
Farm equipment	\$1,000.00
Liquid accounts at Key Bank Account, Zions, Garfield Credit Union, Utah Credit Union and the debt from Ms. Eyre	\$1,224.00
Power Tools and tools	\$3,500.00

The above-referenced values are based upon the testimony of the parties, stipulation of the parties, appraisals or other evidence adduced at trial.

a. The Plaintiff should be awarded the Kearns property, the Firenza, the Cavalier, the Citation, the Marcus Knowlden note, the Key Bank Account, Zions, Garfield Credit Union, Utah Credit Union and the debt owed by Ms. Eyre. The total of the marital estate thus initially awarded to Plaintiff is valued at \$51,975.00.

16. Defendant Knowlden should be awarded the Grantsville property, the Celebrity, the Ford truck, the mustang, the power

equipment and tools and farm equipment. Further, Defendant Knowlden should pay the following debts: as set forth on Plaintiff's Exhibit 8, and as follows: Levitz \$546.00, Bank One \$437.00, property taxes (Kearns property \$297.00), fire insurance (Kearns property 179.00), Utah State taxes \$103, and the debt to Shellie Eyre \$113, which total \$1,693.00.

17. An equal division of the marital estate requires Plaintiff to receive, approximately, \$81,000.00. To equalize the estate, Plaintiff should be awarded the Louise property valued at \$30,000.00, less the first mortgage. The first mortgage owing to Lomas Mortgage should be paid by the Plaintiff and the second mortgage owing to Lomas Mortgage should be paid by Defendant Knowlden. That division is based upon the representations of Defendant Knowlden that the second mortgage is approximately \$8,245.00, with a monthly payment of \$249.72 and that the first mortgage is approximately \$3,086.00, with a monthly payment of \$97.00. The total award to Plaintiff of marital property is approximately \$79,000.00, which is approximately one-half of the estate and provides Defendant Knowlden some credit for the original down payment made on the Grantsville property.

18. It is reasonable that the building materials located at the Grantsville property be sold and that Defendant Knowlden insure that those be sold and that Defendant Knowlden obtain two estimates

from two different appraisers as to what they think the property can sell for and sell the building materials to the highest bidder. The money received should then be divided equally between the parties, one-half to each.

19. Defendant Grant R. Knowlden is retired and has total net income of \$1,200.00, which includes social security and his Kennecott Retirement income, less the deduction for the survivor benefit which he pays each month for the benefit of the Plaintiff. In addition, Defendant Knowlden has the ability to earn an additional \$300.00 by virtue of the fact that he is being awarded the quilting machine, which he requested and which should be awarded to him. Plaintiff testified that she could earn \$300.00 per month from the use of that machine and has been earning that sum during the pendency of this action. The Plaintiff will no longer have that money available to her, but Defendant Knowlden should have that money available to him to add to his monthly net income. The Plaintiff's monthly income is comprised of \$120.00 per month which she receives from Defendant Knowlden's son, Marcus Knowlden, which is a note receivable owed to her. Further, with the award of the Louise property to her, Plaintiff will receive the sum of approximately \$325.00 per month, for a total net income of \$445.00 per month. Based upon the respective incomes of the parties, it is reasonable that Defendant Knowlden pay Plaintiff

permanent alimony in the sum of \$400.00 per month. That sum does not equalize the parties' income. The court questions whether Defendant Knowlden will, in fact, make use of the quilting machine and it is anticipated that in the near future, Plaintiff will qualify for social security benefits. Four hundred dollars per month is reasonable based upon Defendant Knowlden's ability to pay and the Plaintiff's needs. The Plaintiff's monthly expenses are minimally \$879.00 per month, without a mortgage or rent payment. The Plaintiff will have \$448.00 net per month and the Kearns property which will provide her with a place to live, rent free. The \$400.00 is within Defendant Knowlden's ability to pay and, clearly, the Plaintiff needs that amount in order to survive.

20. Defendant Grace Poloskey testified that she is holding approximately \$7,000.00, representing fire insurance proceeds paid to her as the title holder to the Grantsville property. The court does not have authority to re-claim those assets as Defendant Poloskey had a contract with the insurance company and the court does not have authority to retrieve those sums.

21. That the personal property acquired by the parties should be divided according to Exhibit 10, attached hereto, designated as Exhibit A and incorporated herein by reference, except for the disputed items set forth on Exhibit 10b, which should be divided as follows:

TO THE PLAINTIFF: Small tables, candelabra and clock, washer and dryer to Plaintiff, the screw gun, refrigerator in the pantry, the dresser lamp, the large mixer, the sander, one-half of the knives and the Kirby vacuum.

TO DEFENDANT: Large tables, antique chair, the luggage, refrigerator in kitchen, the pattern cabinets, the stained glass grinder to the Defendant, one-half of the knives, and the other vacuum.

22. That Defendant Knowlden should insure that the second mortgage obligation on the Louise property be removed from that property.

23. Defendant Knowlden should be awarded the Metropolitan Life Insurance policy.

24. Based upon the award of alimony, Defendant Knowlden should be awarded all right, title and interest in his Kennecott retirement.

25. Each party should pay his or her own attorney's fees and costs, as, with the division of the property and the award of alimony, neither party is in a better position or better able to carry that financial burden.

26. Defendant Grant R. Knowlden should be enjoined and restrained from coming around the Plaintiff at her residence or from telephoning Plaintiff or having any contact with Plaintiff

whatsoever. Further, Defendant Knowlden should be enjoined from harassing, annoying or physically touching or abusing Plaintiff.

27. Plaintiff should remove herself from the Grantsville property no later than March 31, 1994. Until the Plaintiff removes herself from the Grantsville property, Defendant Knowlden will be permitted access to the property, but only for the limited purposes of the construction of the firewall pursuant to the earlier court Order on Plaintiff's Motion in Re: Contempt.

28. Defendant Knowlden should cooperate with Plaintiff in providing Plaintiff with any and all documents necessary to obtain information regarding the rental of the Kearns property, including lease documents.

29. Each party should be ordered to execute and deliver any necessary documents to transfer the title and ownership of the property of the parties pursuant to the decree entered in this action.

BASED UPON the foregoing Findings of Fact, the court now makes the following:

CONCLUSIONS OF LAW

1. The court has jurisdiction over the parties of this action and the subject matter of this action.

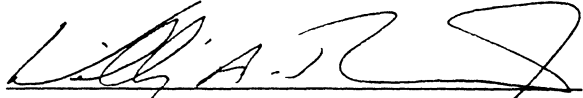
2. That a Decree of Divorce should be awarded to the Plaintiff on the basis of irreconcilable differences, the same to

become final immediately upon being signed by the Court and entered by the Clerk.

3. That said Decree of Divorce should be in conformance with the foregoing Findings of Fact.

DATED this 8 day of March, 1994.

BY THE COURT


WILLIAM A. THORNE
District Court Judge

APPROVED AS TO FORM:

JIMI MITSUNAGA
Attorney for Defendant Knowlden
DATED: _____


J. D. E.

J. DUKE EDWARDS
Counsel for Defendant
Dated: _____

CERTIFICATE OF HAND DELIVERY AND MAILING

I HEREBY CERTIFY that I am employed in the offices of Corporon & Williams, attorneys for the Plaintiff herein, and that I caused the attached FINDINGS OF FACT to be served upon Defendants by causing a true and correct copy of the same to be hand-delivered to:

Jimi Mitsunaga
Attorney for Defendant Knowlden
731 East South Temple
Salt Lake City, Utah 84111

and

by placing a true and correct copy of the same in an envelope addressed to:

J. Duke Edwards
Attorney for Defendant Poloskey
4685 South Highland Drive, Suite 202
Salt Lake City, Utah 84177

and depositing the same, sealed, with first-class postage pre-paid thereon, in the United States mail at Salt Lake City, Utah on the 9th day of February, 1994.


Secretary

1 Jan 1980

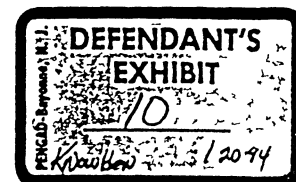
F

SEWING ROOM

- ~~Add Cabinets, Fabric, Laces, and Notions~~ *4/2*
- ~~Cotton Batting - Two batts~~
- ~~Book Cases and Shelves~~
- ~~Quilting Machine~~
- ~~Bernina Sewing Machine~~
- ~~Bernette Serger~~
- ~~Bernina Industrial Sewing Machine~~
- ~~Pattern Cabinets and Patterns~~ *one each cabinet;*
- ~~Books and Magazines~~
- ~~Quilt Patterns etc.~~ *comes with machines*
- ~~Small Paper Cutter~~
- ~~Roller Ironer~~
- ~~3M Overhead Projector~~
- ~~Homestead Hand Quilting Frame~~
- 2 50 Gal Aquariums *P/M*
- 2 Pfaff 100 Sewing Machines *one each*
- Chairs to old Dining Room Set
- ~~Large Paper Cutter~~

Great Room

- ~~TV and VCR~~
- ~~2 Pc Couch Set~~
- ~~2 Turquoise Recliners~~ *(1) one each*
- ~~2 Wood Coffee Tables~~
- ~~Round Glass Top Coffee Table~~
- ~~1 large Oval Table Formica Top~~ *each one receive one JUDGE*
- ~~2 Small Round Tables with Formica Tops~~ *one each JUDGE*
- ~~2 Antique Chairs recently recovered~~
- ~~Yellow Lamp~~
- ~~Dining Room Table & Chairs with Matching Buffet~~ *P/M*
- ~~Oriental Rug~~
- ~~Excess items in Buffet~~
- ~~Silver-plated items in Buffet~~
- ~~Vases & Whatnots and etc. in Buffet~~ *cobalt vase*
- ~~Piano~~
- ~~Green Occasional Chair~~ *Beige chair*
- ~~Small VCR Cabinet~~
- ~~Chair at Piano~~
- ~~2 Green/white Flower Arrangement~~ *each one*
- ~~Large Flower Arrangement~~
- ~~Large Wall Flower Arrangement~~
- ~~6ft Candelabra & Clock~~
- ~~Christus Statue~~
- ~~Owl Umbrella Stand~~
- ~~Large 2 Way Bookcase~~
- ~~Couch Table with Flower Arrangement~~
- ~~Kirby Vacuum Cleaner~~ *portable JUDGE*
- ~~Round Trampoline Jogger~~
- ~~Curtains and Drapes~~

recorded VCR tapes already divided

1 Jan 1980

F.

MASTER BEDROOM

- ✓ Satellite system - attach to party - controls
- ✓ Loveseat
- ✓ Blond Bedroom Set - queen size
- ✓ Oriental Rug white
- ✓ Cedar Chest
- ✓ 2 Lamps without shades
- ✓ Antique Stereo
- ✓ 2 Curio Cabinets with Antique items
- ✓ Dresser Lamp
- ✓ RCA TV and another TV one each - master bedroom - leaving both
- ✓ Purple Chair and Table
- ✓ Jewelry Boxes - one each + contents belonging to H?
- ✓ 5 Pillows
- ✓ Curtains and Drapes custom for made for house
- ✓ Master Bath Clothes Hamper
- ✓ Kitchen 3 Basin Sink Kohler
- ✓ Wood burning Stove
- ✓ Brass towel racks and tissue dispenser - attached to house
- ✓ Hand crafted by me: opal necklace on silver chain (missing)
- ✓ Pearl & Diamond ring (missing)
- ✓ 2 silver rope chain necklaces (missing)
- ✓ Handcrafted opal necklaces for Jack (missing)

BLACK BEDROOM

- ✓ Bedroom Set - Regular double bed
- ✓ 2 Green Lamps
- ✓ Stereo Cabinet
- ✓ Extra Dresser
- ✓ Brass Bed (in garage)
- ✓ Mattress & Box Springs (in garage)
- ✓ 2 Night Stands (in Garage)
- ✓ Water Bed Frame (in Garage)
- ✓ Pillows (4)
- ✓ TV & VCR
- ✓ 2 Brown Sleeping Bags
- ✓ Quilt (from Bambi)
- ✓ 2 Sleeping Bags (1 green, 1 feather)
- ✓ White blanket
- ✓ Clock and Radio
- ✓ VCR Recorded Tapes
- ✓ Curtains, Drapes and matching Bedspread
- ✓ Yellow & Gold Lamp without Shade
- ✓ Squirrel Ceramic Candy Container
- ✓ 1 Small Brass round box with lid
- ✓ Antique Flower vase
- ✓ Ceramic Basket of Flowers
- ✓ 2 Brass Wall Sconces
- ✓ Camcorder, recording tapes, and Battery Packs (Disappeared)

GREEN BEDROOM

Cherrywood Bed frame

000239

Notes for Mary Joyce HALLS-1

1 Jan 1980

P

- =====
- Box Springs and Mattress P/M
 - Bedroom Set (Grants) P/M
 - Picture
 - Typewriter
 - ✓ Stained Glass Grinder June
 - ✓ Blue Bonnet Painting
 - ✓ Hanging Lamp
 - 5" TV
 - Pink, Green & Yellow Bedspread
 - Gray Blue Bedspread
 - ✓ Peacock Tapestry
 - ✓ VCR Tape Covers
 - ✓ Old Video Cassette Recorder (needs Battery Pack) + covers
 - ✓ School Desk
 - Box of Grants Suits
 - 2 Pillows
 - Curtains and Drapes
 - ✓ Unfinished red/black/green Quilt
 - ✓ Unfinished Spinning Spools Quilt
 - Lone Star Quilt
 - ✓ Fuchsia & Black Quilt
 - ✓ Blue & Red Sleeping Bag
 - Gray Blue Quilt
 - White Blanket
 - Red Electric Blanket
 - Black Sleeping bag

SMALL BATHROOM

- Pink Hamper
- ✓ Red TV
- ✓ Shell Soap Dish
- ✓ Bath Articles
- ✓ Medicines
- " Gold Waste Paper Basket

linens already divided

linen divided
on assumption it would
become regular double bed:

UTILITY ROOM (current kitchen)

- ✓ Micro Wave
- Large Toaster
- ✓ Small Toaster
- ✓ Can Opener (installed below cabinet)
- ✓ Washer & Dryer; another washer in basement garage
- ✓ Stove
- ✓ Drafting Table
- ✓ Toaster Oven (Xmas present)
- ✓ Large Mixer
- ✓ Black & Decker Food Processor
- ✓ Pots & Pans 1/2 each
- Pots & Pans (in garage) 1/2 each
- ✓ Orange Stoneware Dishes
- ✓ Noritake 12 Place Setting Dishes
- ✓ Glasses (1/2 each)
- ✓ Silverware (rose-pattern)
- Other Silverware

REFRIGERATOR

000238

1 Jan 1980

F

=====

/Gold Silverware (missing)
 /Knives & Cooking Utensils $\frac{1}{2}$ Judge
 /Waffle Iron
 /Slow Cooker *one each*
 /Canning Kettles (1 each) ✓
 /Wheat Grinder
 /Juicer
 /Serving Bowls Refrigerator
 /Solar Heating Unit

NEW KITCHEN

/Booth Table
 /5 White Wicker Chairs
 /4 White Wicker Chairs
 /Refrigerator - *W. may receive refrigerator in utility room*
 /Freezer *H. may receive freezer in basement*
 /2 Plastic Water Containers *1 each*
 /2 Back Packs in pantry *1 1 ✓*
 /Glasses in pantry *$\frac{1}{2}$*
 /Portable 5" TV & Radio
 /Large 2 side Bookcase
 /Corner Divider for Bookcase
 /Black Greeting Card Cabinet

OLD SEWING ROOM

/Computer & Printer
 /2 Antique green Lamps without shades
 /Desk - *another desk available for W. in basement*
 /Tools & Building Materials
 /Records (Betty's)
 /Other Records + 8 Taped tapes + plays
 /Books *(to check)*
 /2 Half Circle Tables - *one to H.*
 /Manual Wheat Grinder
 /Typewriter *Brother*
 /Filing Cabinet (Metal)
 /Dresser
 /Epiphone Guitar
 /Guitar (gift)
 /Small Revolving Fan (has since disappeared) *(Has been found.)*
 /5 Gal Heavy Aluminum Pot
 /Canning Juicer
 /Metal Film Box
 /3 Sanders ✓
 /Pneumatic Air Wrench
 /Camera Equipment (Grants)
 /Skill Saw
 /Rickle Processor *belong to mother uyle.*
 /Battery Charger
 /Box full of Old Elec. Boxes
 /Box of Misc Tools
 /Electric Welder
 /1000 Measuring Tape

000237

Notes for Mary Joyce HALLS-1

1 Jan 1980

Pa

=====

Hand Hack Saw
Electric Drill
Box of Elec Drill Bits
Electric Staple Gun
Pipe Wrench
1/4 of 50# box 16 p nails (galv.)
Black & White Painting
Child School Desk
Famasonic Audio Player
Tin Snips
Set of Handy Man Set Encyclopedias
Sheet Rock Tape Gun
Box of 8 Track Tapes
Old Cassette & Recorder Player
Hand Plane
Large Hand Plane
1 Square
✓ UHF/VHF Converter Model UVC
✓ Gibraltar Amplifier
✓ Freez-D-Tector
Yellow Handle Hand Saw
5 Gal Flat finish Sealer
1 Gal Latex Satin Enamel (5 gal. bucket)
GE Solid State Stereo (Doesnt work)
✓ 1 Qt Liquid Sevin
✓ 1 Stained Glass Lamp Shade
✓ Pencil Sharpener

approved by
A

STORAGE SHED

Boat P/M
Outboard Motor P/M
Elevator Motor
Thermal Heat collector (Water Heater & Heat Exchg in kitchen)
Tires
2' Lumber (mostly 2x12)
Car Engines
Car Transmission
Boxes of nails
Metal Locker filled with electrical paraphanel
Chain Block *copy*
doors
Old Fire Hoses
✓ Metal Ornamental Railings from Old Elevators
✓ Ceramic Molds + *magazines*
Solid Oak Railings from Oak Bannisters
Numerous other items buried too deep to see
✓ wind shield protection

approved by
H

STORGE SPACE UNDER BEDROOM WING

Wood Locker with Coin Collection
(one dimes, buffalo nickels & wheat pennies)
✓ 9- 5 gal containers food storage wheat 1/2 *ALL*
Tropical Fish Food
Boxes of Black Plastic Plumbing Pipe
Metal drain pipe

000230

Notes for Mary Joyce HALLS-1

1 Jan 1980

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- ✓ 3 Toilets
- ✓ 2 Saddles
- ✓ Upright Tool Chests (full of various tools)
- ✓ Drake Satellite Receiver
- ✓ Tires
- ✓ Copper Tubing
- ✓ Aluminum Frames
- ✓ Fohler Lavatories
- ✓ 15 Boxes of 6 First Aid Cabinets (approx.)
- ✓ Rugs
- ✓ Old tires
- ✓ Water Softening Appliance *attached to house?*
- Numerous other items buried too deep to see

SHACK

- ✓ Box Springs
- ✓ Boxes of Fruit & Preserves
- ✓ Garbage cans full of Oak Railings
- ✓ Pull Out Bed
- ✓ Cabinet with Misc. items (charcoal, chemicals etc.)
- ✓ 2 Saddles *One P.M. Saddle*
- ✓ Wood Burning Stove

BASEMENT

- ✓ Freezer
- ✓ Table Saw Pipe Bender (Greenlee)
- ✓ Heat Vents
- ✓ Plastic Plumbing Pipes
- ✓ Box of Intercom Wire
- ✓ 5 Audio Speakers
- ✓ Seed Spreader
- ✓ Porta Potty
- ✓ Weed & Branch Shredder
- ✓ 14 Cans 1/2 pint Varnish
- ✓ Metal Lockers filled with chemicals, flower & plant powders, lawn sprinklers, books etc.
- ✓ Wood Shelves
- ✓ Metal Shelves & Uprights
- ✓ 5 Gal Containers
- ✓ Outside TV Antennas
- ✓ Wood Mouldings
- ✓ Rainbird Sprinkler (pop up etc.)s
- ✓ Drafting Table
- ✓ Solid Oak Bannister (Paid \$300)
- ✓ Electric Wires
- ✓ Windows
- ✓ Shelves
- ✓ Clutches
- ✓ Sears Table Saw
- ✓ Boxes & Boxes of Misc Auction Paraphernalia
- ✓ Wood Kitchen Cabinets
- ✓ Chairs to be reupholstered
- ✓ rugs
- ✓ Old Stereos

000235

Notes for Mary Joyce HALLS-1

1 Jan 1980

P

=====

- Doors & Door Molding
- Shelves full of Building Materials
- ~~15" Drawer Metal Chest full of nuts, bolts, screws, elec. fittings,~~
- ~~tools, keys etc.~~
- ✓ Washing Machine
- ✓ Old Pro Sat Satellite Receiver
- ~~Compressor~~
- ✓ Propane Bar B que
- ✓ Box Full of Welding Rods
- ✓ Ceramic kiln
- ✓ Numerous Heating & air conditioning units taken out of Old Motel
- Metal Awnings
- Garden Hoses
- ✓ Cabinet full of Garden Chemicals 1/2,
- Boxes of Metal Pipe fittings
- Sheets of Imitation Marble
- Boxes of misc. building materials
- Old Micro Wave
- Sacks of Cement
- ✓ Aluminum Chaise Lounge
- ✓ Box of set of canisters in Greenware
- ✓ Mantle Clock with domed glass cover (present from Linda & Pat) *missing*
- Furnace (outside of basement door)

VEHICLES - JUDGE RULED

- 1986 Chevrolet Celebrity
- ✓ 1985 Oldsmobile Firenza
- ✓ 1984 Citation
- Mustang
- Ford Truck
- Blue Station Wagon
- Yellow Truck - *also belong to H's son*

FARM EQUIPMENT

- Red Tractor (From Farley) (*500.00 Balance Due*)
- 2 John Deere Tractors
- Attachments for tractors
- Flow, Leveler, etc.

TOOLS IN OLD SEWING ROOM

- Hack Saw
- 2 Gal Bucket 1 1/1" finish nails
- 1/2 of 2 lb coffee can screw gun screws
- 1 gal bucket of finish nails
- 1/2 gal wallpaper sizing
- Kodak signet 35 mm Camera in field case
- Kodak Rotary Flash Holder w/ misc. supplies
- Nop bucket w/ squeeze rollers
- Sears Craftsman 3" Belt Sander and 7 Belts
- ✓ 11 3" Plane Heavy Duty 100
- 10 Locks (in box)
- 1" Brass Screws
- 1 1/2 Finish nails

000234

Jan 1980

Page

roofing Nails
 Mart 1/4 Drill Dbl insulated
 range 100' elec. extension cord
 vinyl case w/23 8 track tapes
 Sears Craftsman 1/2 " Sabre Saw
 Black & Decker 78 Drill 1/3 HP
 7 sheets fine sandpaper
 1/2 of 5 lb. bag Iron Chelate 138FE
 Track Player with Speaker
 RG58 RF Cable (Coaxial cable WPL259 Connectors)
 Paint Roller with roller
 " Roof Jacket
 Isco Pdb-26-270- 2 Power dist Block (350 amp. 600 Volts) 3 pole block.
 5 sheets fine sandpaper (H280)
 Indoor Light control
 3-3 U Joints
 100 Watt Ebo Jaeger Aquarium Heater
 Disc/ Aquarium Supplies
 Cover Vacuum Clnr Bags Type C
 Expandable dryer vent hose
 Old Bathroom Fixtures
 (shower, towel, towel brackets, w drawer pulls)
 Radio Shack Telephone
 Sears Craftsman Orbital Dual Motion Sander (Model 315N690) 40 amps.
 Black & Decker Finishing Sander 17404
 Oslich Elec Staple Gun (Model T-5-8)
 Dayton Elec. Welder (Med. 250CTD)
 Overs Cu Pipe Grip (small)
 1/8 Craftsman Scroller Saw (Mod. 315-10721)
 Black & Decker Jig Saw (7504--type 5)
 Milwaukee Elec 7 1/4 Circular Saw
 (Heavy duty, worm drive (cat. #6377)
 Hammer
 Studsenser
 Spatula
 Cross Shears
 Large Tin Snips
 1/4" Pipe Master Pipe Wrench
 3" Long Plane (m) (Defunct)
 Drill Index
 Large Allen Wrench
 3" wide half circle spatula
 Fuller 9/16 Crescent Wrench
 Triangle Allen Wrench
 1 Square with Bubble level
 Sm. Tin Shears
 Stanley 7 Way Level
 England Witherby Plane
 1 spatula
 10 R vice Grip
 Sheet Rock Saw
 100' Round meas. tape (starts at 8)
 Hack Saw
 Irwin Speedbo set of 6 "88"elec drill wood bits
 Wire Cutter size 10-22
 Small 1 1/2 spatula

000233

Notes for Mary Joyce HALLS -1

1 Jan 1980

F

~~Stanley Carpet Knife~~

Wood Roller Wallpaper Tool

Hole Punch

25' Meas. Tape

10' Meas. Tape

Tire Pressure Gauge

2 Spools Soldering

Dutch Boy Rosin Core Wire Solder

Craftsman Set Punch

2 Wood Chisel

2 Allen Wrenches

Flat screw drivers- 4 large, 1 stubby, 4 small

Hole Punch

2 Glass Cutters

2 Utility Knives

2 Wire Cutters

Flat head Pliers

1 Plier

1 Large wire cutter & Pliers

7 20 amp. for fuse boxes

4 Phillip Screw Drivers

Long Tongs

Large Square

2 Sheet Rock T Square

TOOLS ALREADY GIVEN TO GRANT

Protractor

Red Wormwood Sw

Plumbing Snake

Black & Decker Scrol Saw

Small Nail Puller

Long Trowel

Roller & cover

Pipe Wrench

Large Pipe Wrench

Pliers

Screw Drivers - 4 blade. 2 Phillips

Vice Grips

Hack Saw

Spatulas - large & small

25' Measuring Tape

Carpet Knife

Glass Cutter

Wire Cutters

Hand Plane

Wire Cutters large

000232

APPENDIX "B"

3RD DISTRICT COURT-TOOELE

94 MAR -8 PM 3:48

FILED BY

R

KELLIE F. WILLIAMS #3493
Attorney for Plaintiff
CORPORON & WILLIAMS, P.C.
310 South Main Street
Suite 1400
Salt Lake City, Utah 84101
Telephone (801) 328-1162

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

JOYCE KNOWLDEN,

DECREE OF DIVORCE

Plaintiff,

vs.

GRANT R. KNOWLDEN, and
GRACE POLOSKEY,

Civil No. 934300096

Defendants.

THE ABOVE-CAPTIONED MATTER having come on regularly for trial before the above-entitled court on January 20, 1994, at the hour of 9:00 a.m., the Honorable William A. Thorne, Third District Court Judge, presiding, and the Plaintiff appearing in person and being represented by counsel, Kellie F. Williams, and the Defendant, Grant R. Knowlden, being present in person and being represented by counsel, Jimi Mitsunaga, and the Defendant, Grace Poloskey, being present in person and being represented by counsel, J. Duke Edwards, and the parties having been sworn and having testified and having presented exhibits and evidence, and the court having reviewed the Plaintiff's memorandum and heard the arguments of counsel, and the court having previously entered its Findings of

Fact and Conclusions of Law and based thereon and good cause appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Plaintiff is hereby awarded a Decree of Divorce from Defendant, Grant R. Knowlden, the same to become final immediately.

2. Based upon the court's finding that under U.C.A. §25-6-5(a) and (b), that Defendant Grant R. Knowlden fraudulently conveyed the Plaintiff's and Defendant Knowlden's marital residence at 6000 North Old Lincoln Highway, Grantsville, Utah, to his sister, Defendant Grace Poloskey, the court includes that property in the marital estate for purposes of valuing the estate and that asset. Defendant Knowlden is hereby awarded the Plaintiff's and Defendant's Knowlden's home and real property located at 6000 North Old Lincoln Highway, Grantsville, Utah. Plaintiff is hereby awarded Plaintiff's and Defendant Knowlden's home and real property located at 4801 South 4900 West, Kearns, Utah, and the Plaintiff's and Defendant Knowlden's residence and real property located at 39 East Louise Avenue, Salt Lake City, Utah. Each party is ordered to execute and deliver any necessary documents to transfer the title and ownership of the real property of the Plaintiff and Defendant Knowlden as set forth above. Defendant Knowlden is ordered to pay the Lomas Mortgage Company, representing the current second mortgage on the Louise property. Further, Defendant Knowlden is ordered to transfer that mortgage from the Louise property so that property is no longer encumbered by that second mortgage.

Plaintiff is ordered to pay the first mortgage owing to Lomas Mortgage Company, which is currently an encumbrance on the Louise property.

3. Plaintiff is hereby awarded the Firenza, the Cavalier, and the Citation automobiles. Defendant Knowlden is hereby awarded the Celebrity automobile, the Ford truck and the Ford mustang.

4. The Plaintiff is hereby awarded her accounts at Key Bank, Zions, Garfield Credit Union, Utah Central Credit Union, the Marcus Knowlden note receivable and the debt owed by Ms. Eyre. The Defendant Knowlden is awarded the money accounts in his name.

5. Defendant Knowlden is hereby awarded power equipment and tools and farm equipment.

6. Defendant Knowlden is hereby ordered to pay the debts owing to Levitz, Bank One, property taxes for the Plaintiff's and Defendant's properties, fire insurance owing on the Plaintiff's and Defendant's properties, Utah State taxes owing by the Plaintiff and Defendant and the debt to Shellie Eyre, which debts are in the approximate total of \$1,693.00.

7. The Plaintiff and Defendant are ordered to sell the building materials located at the Grantsville property. Defendant Knowlden is ordered obtain two estimates from two separate as to the value of the property and arrange for the sale of those building materials to the highest bidder. Plaintiff and Defendant Knowlden are each awarded one-half of the proceeds.

8. Defendant Knowlden is hereby ordered to pay Plaintiff permanent alimony in the sum of \$400.00 per month.

9. The personal property of the Plaintiff and Defendant Knowlden shall be divided as set forth on Defendant Knowlden's Exhibit 10, except for the disputed items which are to be awarded as follows:

TO THE PLAINTIFF: Small tables, candelabra and clock, washer and dryer to Plaintiff, the screw gun, refrigerator in the pantry, the dresser lamp, the large mixer, the sander, one-half of the knives and the Kirby vacuum.

TO THE DEFENDANT: Large tables, antique chair, the luggage, refrigerator in kitchen, the pattern cabinets, the stained glass grinder, one-half of the knives, and the vacuum.

10. Defendant Knowlden is hereby awarded the Metropolitan Life Insurance policy.

11. Defendant Knowlden is hereby awarded all right, title and interest in his Kennecott retirement.

12. Each party is ordered to pay his or her own attorney's fees and costs incurred.

13. Defendant Grant R. Knowlden is hereby permanently enjoined and restrained from coming around the Plaintiff at her residence, from telephoning Plaintiff, or having any contact with Plaintiff whatsoever. Further, Defendant Grant R. Knowlden is hereby permanently enjoined from harassing, annoying or physically touching or abusing Plaintiff.

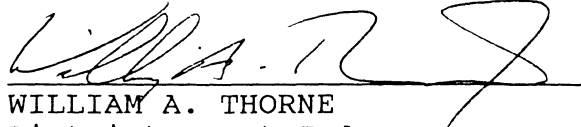
14. Plaintiff is ordered to remove herself from the Grantsville property no later than March 31, 1994. Until the Plaintiff removes herself from the Grantsville property, Defendant Knowlden shall be permitted access to the property for the limited purposes of the construction of the firewall pursuant to the earlier court Order on Plaintiff's Motion in Re: Contempt.

15. Defendant Knowlden is ordered to cooperate with Plaintiff in providing Plaintiff with any and all documents necessary to obtain information regarding the rental of the Kearns property, including lease documents.

16. Each party is ordered to execute and deliver all necessary documents to transfer the title and ownership of the property of the parties pursuant to the decree entered in this action.

DATED this 8 day of March, 1994.

BY THE COURT


WILLIAM A. THORNE
District Court Judge

APPROVED AS TO FORM:

JIMI MITSUNAGA
Attorney for Defendant Knowlden
DATED: _____

J. DUKE EDWARDS
Counsel for Defendant
Dated: _____

*No of H6 V6, Vornel
WAT*

CERTIFICATE OF HAND DELIVERY AND MAILING

I HEREBY CERTIFY that I am employed in the offices of Corporon & Williams, attorneys for the Plaintiff herein, and that I caused the attached DECREE OF DIVORCE to be served upon Defendants by causing a true and correct copy of the same to be hand-delivered to:

Jimi Mitsunaga
Attorney for Defendant Knowlden
731 East South Temple
Salt Lake City, Utah 84111

and

by placing a true and correct copy of the same in an envelope addressed to:

J. Duke Edwards
Attorney for Defendant Poloskey
4685 South Highland Drive, Suite 202
Salt Lake City, Utah 84177

and depositing the same, sealed, with first-class postage pre-paid thereon, in the United States mail at Salt Lake City, Utah on the

9th day of February, 1994.



Secretary

APPENDIX "C"

370 DISTRICT COURT-TOOELE
94 MAY 17th AM 10:46
FILED BY E

KELLIE F. WILLIAMS #3493
Attorney for Plaintiff
CORPORON & WILLIAMS, P.C.
310 South Main Street
Suite 1400
Salt Lake City, Utah 84101
Telephone (801) 328-1162

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

JOYCE KNOWLDEN,
Plaintiff,

ORDER ON DEFENDANT'S MOTION
FOR NEW TRIAL AND PLAINTIFF'S
MOTION FOR RELIEF

vs.

GRANT R. KNOWLDEN, and
GRACE POLOSKEY,

Civil No. 934300096

Defendants.

Judge William Thorne

THE ABOVE CAPTIONED MATTER, having come on regularly for hearing before the above entitled court on May 3, 1994, at the hour of 10:30 a.m., the Honorable William Thorne, Third District Court Judge presiding, on Defendant's Motion for New Trial and Plaintiff's Response and Motion for Relief, and the Plaintiff being present in person and being represented by counsel, Kellie F. Williams, and the Defendant, Grant R. Knowlden, being present and being represented by counsel, Jimi Mitsunaga, and the court having heard the arguments of counsel and having reviewed the files and

000310

memorandum contained therein, based thereon and for good cause appearing, therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Defendant's Motion for New Trial is denied.

2. Defendant is ordered to execute two quit claim deeds, quit claiming the Louise Avenue and Kearns properties to Plaintiff. Defendant refused to do so in open court and the court, therefore, grants the Clerk of the Court, in and for Tooele County, State of Utah, the authority to execute both quit claim deeds on behalf of and in the stead of Grant R. Knowlden, and directs that the clerk so execute those deeds, which are described as follows:

- a. Lot 17 & 18, Block 1, JOHNSON STATE STREET SUBDIVISION, according to the official plat thereof, recorded in the records of Salt Lake County, Utah,

commonly known as 39 East Louise Avenue, Salt Lake City, Utah, and;

- b. Lot 208 HOFFMAN HEIGHTS #6 SUBDIVISION, according to the official plat thereof, recorded in the records of Salt Lake County, Utah,

commonly known as 4801 South 4900 West, Kearns, Utah.

3. That should the Defendant not transfer the second mortgage on the Louise property within two weeks, that issue may be brought back before the court.

4. That the issue raised by Plaintiff relating to the building materials is reserved.

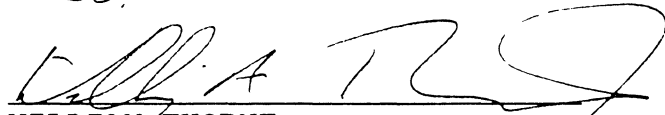
5. That Plaintiff's counsel is to direct letters to the tenants in the two properties and provide to them a copy of the Decree, instructing them to make payments henceforth directly to Plaintiff.

6. Plaintiff is hereby awarded the Arabian Gelding acquired by the parties during their marriage and the associated debt owing to James Faris.

7. Each party is to pay his or her own attorney's fees.

DATED this 17 day of May, 1994.

no co, 4-7-94


WILLIAM THORNE
District Court Judge

CERTIFICATE OF MAILING

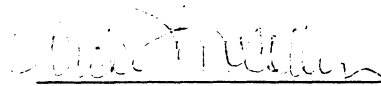
I HEREBY CERTIFY that I am employed in the offices of Corporon & Williams, attorneys for the Plaintiff herein, and that I caused the attached ORDER ON DEFENDANT'S MOTION to be served upon Defendants by placing a true and correct copy of the same in an envelope addressed to:

Jimi Mitsunaga
Attorney for Defendant
731 East South Temple
Salt Lake City, Utah 84111

and

J. Duke Edwards
Attorney at Law
4685 South Highland Drive, #202
Salt Lake City, Utah 84177

and depositing the same, sealed, with first-class postage pre-paid thereon, in the United States mail at Salt Lake City, Utah on the 5 day of July, 1994.


Secretary