

1994

Wilma R. Bugger v. Charles B. Bugger : Brief of Appellant

Utah Court of Appeals

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W. Kevin Jackson; Attorney for Appellee.

Gary L. Bell; Attorney for Appellant.

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UTAH COURT

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GARY L. BELL, UBN 6485
Attorney for Defendant/Appellant
124 South 400 East, Suite 320
Salt Lake City, Utah 84111
Telephone: (801) 532-0827

DOCKET NO.

940394

IN THE UTAH COURT OF APPEALS

WILMA R. BUGGER,

Plaintiff/Appellee,

vs.

CHARLES B. BUGGER,

Defendant/Appellant.

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Case No. 940394-CA

Priority Classification 15

BRIEF OF APPELLANT
CHARLES B. BUGGER

Appeal from the Third Judicial District Court
Salt Lake County, State of Utah
Honorable Tyrone Medley, District Judge, presiding

Gary L. Bell
124 South 400 East, Suite 320
Salt Lake City, Utah 84111
Attorney for Appellant
Charles B. Bugger

W. Kevin Jackson
311 South State Street
Suite 380
Salt Lake City, Utah 84111-2379
Attorney for Appellee
Wilma R. Bugger

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GARY L. BELL, UBN 6485
Attorney for Defendant/Appellant
124 South 400 East, Suite 320
Salt Lake City, Utah 84111
Telephone: (801) 532-0827

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Salt Lake City, Utah 84111
Attorney for Appellant
Charles B. Bugger

W. Kevin Jackson
311 South State Street
Suite 380
Salt Lake City, Utah 84111-2379
Attorney for Appellee
Wilma R. Bugger

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GARY L. BELL, UBN 6485
Attorney for Defendant/Appellant
124 South 400 East, Suite 320
Salt Lake City, Utah 84111
Telephone: (801) 532-0827

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CHARLES B. BUGGER,	:	
	:	
Defendant/Appellant.	:	

BRIEF OF APPELLANT
CHARLES B. BUGGER

STATEMENT OF JURISDICTION

Appellant brings this appeal from the decision of the Third Judicial District Court for Salt Lake County, State of Utah. This Court has jurisdiction pursuant to Utah Code Ann. §78-2a-3(2)(i) (1994).

STATEMENT OF ISSUES PRESENTED FOR REVIEW
AND STANDARD OF REVIEW

1. Did the lower court err, as a matter of Law, in entering the June 1994 Decree of Annulment, Findings of Fact and Conclusions of Law "Nunc Pro Tunc"? (R 133-36)

Determining whether the doctrine of Nunc Pro Tunc was properly applied is a question of law which is reviewed for correctness. Matter of Estate of Leone, 860 P.2d 973 (Utah App. 1993).

2. Did the lower court err, as a matter of Law, in setting aside Appellant's Amended Decree of Annulment, entered on or about July 22, 1993? (R 181-86)

Issues of Law are subject to de novo review by a appellate court, and the court gives no deference to the trial court's conclusions of law. Blue Cross Blue Shield v. State, 779 P.2d 634 (Utah 1989).

3. Did the lower court err, as a factual finding, in concluding there was "good cause" for a Decree of Annulment to be entered Nunc Pro Tunc in this matter? (R 133-36)

4. Did the lower court err, as a factual finding, in concluding the Respondent did not intentionally and willfully disregard Judge Conder's ruling in the 1983 proceedings? (R 239-42)

A finding of fact will be adjudged clearly erroneous if it violates appellate court standards, is inconsistent with the clear weight of the evidence, or, the reviewing court is "left with a definite and firm conviction that a mistake has been committed" even though there is evidence to support the finding. Cummings v. Cummings, 821 P.2d 472, 476 (Utah App. 1991) (citing State v. Walker, 743 P.2d 191, 193 (Utah 1987)). Issues of fact may be reversed on appeal if they are found to be clearly erroneous. Cornish Town v. Koller, 758 P.2d 919 (Utah 1988).

DETERMINATIVE STATUTORY PROVISIONS

The following statutory provision is controlling in this action:

Utah Code Ann. § 30-4a-1 (1983)

A court having jurisdiction may, upon its finding of good cause and giving of such notice as may be ordered, enter an order nunc pro tunc in a matter relating to marriage, divorce, legal separation or annulment of marriage.

STATEMENT OF THE CASE

(a) Nature of the case.

This appeal is from entry of a domestic relations ORDER PURSUANT TO DEFENDANT'S ORDER TO SHOW CAUSE AND RELATED RELIEF AND DISCHARGE OF LIEN CLAIM, and the corresponding DECREE OF ANNULMENT (ENTERED NUNC PRO TUNC), entered by the Honorable Tyrone E. Medley, Judge for Third Judicial District Court, in and for Salt Lake County, State of Utah.

(b) Course of the Proceedings and Disposition Below.

In January of 1946, Respondent, Wilma R. Bugger (hereinafter "Wilma"), was awarded a Decree of Divorce that was to become absolute and final in July of 1946. However, in June of 1946, Wilma married Appellant, Charles B. Bugger (hereinafter "Charles"), in Las Vegas, Nevada.

On or about the 13th day of May, 1982, Wilma was awarded a Decree of Divorce from Charles, by default, from the Third Judicial District Court. Charles subsequently filed a Motion to Set Aside the default Decree.

On the 19th day of April, 1983, following a hearing on Charles' motion and his proposed Counterclaim for Annulment, the previous Decree of Divorce was set aside and the parties were

awarded a Decree of Annulment, to become final upon entry by the Court. Although Wilma's counsel was obliged to draft the documents, the final Decree of Annulment and accompanying Findings of Fact and Conclusions of Law were never provided for entry by the court.

On or about April 13, 1993, the parties' final Decree of Annulment was ultimately entered, along with the Findings of Fact and Conclusions of Law, all of which had been prepared from the transcript of the April 19, 1983, hearing. On or about July 22, 1993, these documents were Amended to include a legal description of the real property involved in the matter but were otherwise unchanged from the April 1993 documents.

Subsequent to entry of the Amended Decree of Annulment in July of 1993, an Order to Show Cause action against was filed, which was followed by a counter-motion to set aside the Amended Decree of Annulment. On the 1st day of March, 1994, the matter was certified for a hearing in front of a District Court Judge.

On the 19th day of April, 1994, the 1993 Decree(s) of Annulment, the Findings of Fact, and the Conclusions of Law were set aside. Wilma's counsel was again ordered to prepare a new Decree of Annulment and the Findings of Fact and Conclusions of Law, which were to be based upon the transcript of the 1983 hearing and were to be entered Nunc Pro Tunc.

On or about the 3rd day of June, 1994, Wilma's version of the Decree of Annulment and the Findings of Fact and Conclusions of Law

were entered Nunc Pro Tunc, even though these documents did not conform to the transcript of the 1983 ruling. Charles timely filed his appeal on this matter on or about the 30th day of June, 1994.

(c) Statement of Material Facts.

On or about January 21, 1946, Wilma was granted a divorce from a prior husband, with the provision that this Decree of Divorce would not become absolute and final until the expiration of six (6) months from the date the Decree was entered, roughly July 21, 1946. Notwithstanding Wilma's knowledge of the continuing validity of her marriage to her former husband, on or about June 10, 1946, and without Charles' knowledge of the divorce provision, Wilma entered into a marriage relationship with Charles.

In or around October of 1981, Wilma filed a divorce action against Charles, which was granted in May of 1982 by way of the court's entry of Charles' default. It was during the course of these proceedings that Charles learned that Wilma's prior marriage had not been legally dissolved prior to her marriage to Charles and a Motion to Set Aside the Default and proposed counterclaim for annulment was filed.

On April 19th of 1983, the Honorable Dean E. Conder, District Court Judge, presided over a hearing on the matter. At the close of this hearing, Judge Conder entered his oral findings for the record wherein he stated the Decree would be final upon his signature and entry by the court. In order to achieve an equitable property distribution in this complex situation, Judge Conder

basically took the position that he would do the best he could under the circumstances.

Wilma was awarded the marital residence, with the direction that upon Judge Conder's signing of the final Decree of Annulment, Wilma had six (6) months to pay Charles \$9,826.00, the balance of his equity in the property distribution scheme. Among the other provisions of Judge Conder's oral ruling was an award of a mobile home to Charles, which Judge Conder valued at \$7,000.00 for equity distribution purposes (Wilma herself had described the same mobile home as "very old" in financial declarations filed in both 1982 and 1983). Charles was also awarded a \$79.11 per month equity payment on a uniform real estate contract that had roughly nine more years to run.

Wilma's counsel failed to submit the final Decree of Annulment and Findings of Fact and Conclusions of Law for Charles' approval and entry by the Court upon Judge Conder's signature. However, pursuant to the 1983 ruling, Wilma made the monthly payments on the uniform real estate contract, until it ran out in roughly April of 1992, but Wilma never did pay Charles the \$9,826.00 she was ordered to pay for the balance of his equity interest in the marital property. Of course, Wilma's attorney never did submit the final Decree of Annulment for Judge Conder's signature so as to start the six month time frame from which Wilma's payment obligation would start to run, so it appeared there was no legal obligation for Wilma to make this payment.

In or around the summer of 1992, Charles learned that Wilma had sold the very mobile home that had been awarded to Charles in 1983. Wilma had neither the authority nor the consent to sell the mobile home, but she sold it nonetheless for approximately \$500.00. Upon learning of Wilma's unauthorized disposal of Charles' property, Charles sought the advice of an attorney who ultimately discovered that there had never been a Decree of Annulment entered by the court.

Following the attorney's direction, Charles tracked down the Court Reporter that worked with Judge Conder in 1983 and had Judge Conder's oral rulings transcribed. Charles then retained the services of Loreen Poff to assist in generating, from the transcript, the Decree of Annulment and the Findings of Fact and Conclusions of Law.

In April of 1993, without the assistance of counsel, Charles submitted the proposed Findings of Fact and Conclusions of Law and the final Decree of Annulment to Judge Medley, along with a photocopy of the transcripts upon which the documents were based. Judge Medley reviewed the transcript and determined the documents were consistent with Judge Conder's rulings and Judge Medley therefore signed the documents and they were entered by the court.

During this time period, Wilma was serving a mission for the L.D.S. church; she was not present in the State of Utah; and Wilma did not receive advance notice of Charles' Pro Se and ex-parte filings. Shortly after the court entered the Decree of Annulment,

in July of 1993 and still during Wilma's service for her church, Charles learned it was appropriate to include a legal description of real property in marriage dissolution documents so, still without the services of counsel and without notice to Wilma, Charles had the documents amended to include the legal description of the real property involved. Judge Medley again reviewed the documents and, determining that the legal description amendment did not change the substance of Judge Conder's 1983 ruling, Judge Medley signed and entered the Amended documents on July 22, 1993.

Following Wilma's return to the State of Utah, sometime around August of 1993, Charles filed a pro se Order to Show Cause against Wilma regarding her failure to pay Charles the equity he had been awarded in 1983 and Wilma's unauthorized and unilateral sale of his property, the mobile home. Charles prosecuted his Order to Show Cause pro se until Commissioner Atherton of the Third Judicial District Court entered her recommendation against Charles on or about the 1st day of March, 1994, and certified the matter for a hearing in front of Judge Medley. At that point in time, Charles again sought the assistance of counsel.

On the 19th day of April, 1994, the matter came back before Judge Medley on Charles' Order to Show Cause and on Wilma's Motion for Relief from the Orders of the Court. During this hearing, Judge Medley ruled (1) the final Decree of Annulment, Findings of Fact, and the Conclusions of Law were never entered by Judge Conder in 1983 or at any time thereafter; (2) that even though Judge

Medley personally reviewed the transcript and verified it was consistent with Charles' proposed documents, Judge Medley set aside the Amended Decree of Annulment for lack of "notice" to Wilma; (3) there was no willful disregard for Judge Conder's 1983 rulings; (4) each party was now precluded from remedy by reason of laches, inasmuch as the Decree was to be entered nunc pro tunc; (5) and Charles was ordered to remove his lien upon the residential property of Wilma in light of the no remedy ruling.

SUMMARY OF THE ARGUMENT

Under Utah law, it is entirely inappropriate for a trial court to enter an Order nunc pro tunc when the delay in rendering the final Decree or Judgment is based upon the negligence or failure of one of the parties to the action. Nunc pro tunc Orders are appropriate only when it is established that the delay was caused by circumstances and/or events entirely beyond the control of the parties to the action.

In the present case, the delay in entering the final Decree was directly caused by the failure of a party to follow through with their obligation - the final Decree was simply never submitted to the court. Therefore, a Decree of Annulment entered Nunc Pro Tunc in the present case was plain error and should be set aside.

Also, the lower court's determination that there was no willful disregard of Judge Conder's 1983 ruling was clearly erroneous when the record shows Wilma clearly knew she was obligated to pay Charles \$9,826.00 within six months of the

Annulment or put the marital residence up for sale. Charles did not receive the \$9,826.00 and the home was never placed on the market for sale. This is clear evidence of willful and knowing disregard for the orders of the court.

An additional err occurred when the lower court set aside the July 1993 Amended Decree of Annulment, based upon the court's conclusion that Wilma did not receive her constitutional or statutory right to "notice" before the Decree was entered. Inasmuch as the Amended Decree of Annulment entered in July of 1993 was prepared directly from the transcript of Judge Conder's oral rulings in 1983, Wilma had already received full, complete, and actual "notice" of the contents of the final Decree of Annulment when she voluntarily participated in the 1983 proceedings.

Finally, it is equally obvious that the 1994 documents entered by the lower court, nunc pro tunc, were not based upon the transcript of Judge Conder's ruling, as was ordered by Judge Medley in April of 1994. The 1994 Decree of Annulment and the Findings of Fact and Conclusions of Law are clearly taken from the documents that were alleged to have been generated by Wilma's counsel in 1983. The 1994 documents contain several findings and conclusions that appear nowhere within the transcript, not to mention wording that is inconsistent with the transcript but almost identical to the language found in the alleged 1983 documents. Judge Medley ordered that documents be prepared consistent with the transcript; Judge Medley did not recognize the validity of the alleged 1983

documentation; it is therefore plain error for the lower court to have accepted and entered documentation inconsistent with that which was ordered and the 1994 nunc pro tunc Decree and accompanying documentation should therefore be set aside.

ARGUMENT

I. THE TRIAL COURT MISUSED ITS NUNC PRO TUNC POWER WHEN IT APPLIED THIS PROCESS TO THE JUNE 1994 DECREE OF ANNULMENT.

Pursuant to Utah Code Ann. § 30-4a-1 (1994), the trial court may enter an Order nunc pro tunc in a matter relating to the annulment of marriage IF the court finds "good cause" for such an entry. The definition and/or meaning of "good cause" hinges upon the particular facts of a case and therefore "must be determined on a case by case basis . . ." Horne v. Horne, 737 P.2d 244, 248 (Utah App. 1987). Additionally, the legislative foundation of the nunc pro tunc power was to at least attempt to avoid "obvious injustices" that would result without such authority. Id. The facts involved in the present case are inconsistent with the position that there is "good cause" for use of the nunc pro tunc power or that "obvious injustices" would result if the power were not applied.

A. There Simply Is Not Enough Legal Or Factual Support In This Case To Establish "Good Cause" For Use Of The Lower Court's Nunc Pro Tunc Power.

Generally speaking, courts applying the nunc pro tunc power have been upheld on appeal under circumstances where one of the parties to the action has died after the matter was submitted to

the court for a decision, but prior to the court actually rendering its decision, or, when a decision has actually been rendered by the court but through no fault of the parties, the court itself has failed to properly record the decision. See, e.g., Bagshaw v. Bagshaw, 788 P.2d 1057, 1060 (Utah App. 1990).

Neither of the parties in the present case have died, which leaves the second category as the generally accepted grounds for use of the nunc pro tunc power. Quoting from Mitchell v. Overman, 103 U.S. 62, 26 L.Ed. 369 (1881), this Court stated as follows:

The second category is based upon the principle that "where the delay in rendering judgment or decree arises from the act of the court, that is, where the delay has been for its convenience, or has been caused by the multiplicity or press of business or the intricacy of the questions involved, or of any other cause not attributable to the laches of the parties, but within the control of the court; the judgment or the decree may be entered retrospectively."

Bagshaw, 788 P.2d at 1060-61. (Emphasis in original). In reviewing the facts of its case, the Bagshaw Court commented

These general principles of the common law of nunc pro tunc are relevant, if not controlling, in a determination of good cause under section 30-4a-1. In this case, the court did not make the clerical error, but taking the facts in the light most favorable to the Husband, Husband did. It is undisputed that the court never received the written stipulation mentioned in the minute entry. Thus, this alone could support a finding of lack of "good cause" under section 30-4a-1.

788 P.2d at 1061.

As in the Bagshaw case, the 1983 court in the present case did not make any clerical errors, but taking the facts in the light most favorable to Wilma, Wilma did. It was Wilma's responsibility, through counsel, to draft the Decree of Annulment, get it approved

as to form, signed by Judge Conder and ultimately entered by the court. It is undisputed that Judge Conder never signed the final Decree of Annulment because it was never submitted for his review. Just as was found in the Bagshaw case, this alone could support a finding of lack of "good cause" under section 30-4a-1. Whether viewed as a factual matter or an issue of law, there is no "good cause" support for the nunc pro tunc ruling and it should be set aside.

B. Even Assuming "Good Cause" Is Supportable In The Present Case, The June 1994 Decree And The Accompanying Documents Were Not Consistent With The Only Actual Record Of The 1983 Ruling And Therefore The 1994 Documentation Does Not Meet The Nunc Pro Tunc Requirements.

In Preece v. Preece, the Utah Supreme Court stated "the function of a nunc pro tunc order is not to make an order now for then, but to enter now for then an order previously made." 682 P.2d 298, 299 (Utah 1984). The Court further stated that "nunc pro tunc is used to make the record speak the truth; it may not be used to correct the court's failure to speak." Id.

In the present case, the only absolute record available which reveals what was actually ordered by Judge Conder in 1983 is the transcript, which is the best possible source of information available. Unfortunately, the Decree of Annulment entered nunc pro tunc in June of 1994, as well as the documents accompanying the Decree, reveals several serious inconsistencies when compared to the transcript; although the 1994 documents are extremely consistent with the documentation allegedly prepared in 1983 by

Wilma's prior legal representative.

In light of the fact that Wilma's counsel was ordered in 1994 to prepare a Decree, Findings, and Conclusions that were consistent with the transcript, and inasmuch as the final product was an obvious disregard for that order and clearly covers issues and matters found nowhere within the transcript, the 1994 Decree of Annulment, entered nunc pro tunc, was plain and clear error. A document that does not reflect the actual order previously entered does not satisfy the requirements for use of the nunc pro tunc power. By using the power inappropriately, as in the present case, the very injustice that the power was meant to avoid was in fact generated. The 1994 documentation simply has no support under the nunc pro tunc criteria and, as a matter of law, the nunc pro tunc ruling should be set aside.

C. "Good Cause" Determinations Must Include A Consideration Of Good Faith Dealings And Wilma Knowingly And Willfully Disregarded Judge Conder's 1983 Orders Regarding The Property Distribution And Equity Equalization.

In defining "good cause" for nunc pro tunc purposes, it is important for the court to consider all factors that relate to methods of avoiding "obvious injustices" that could result from the inappropriate use of the nunc pro tunc power. See, Horne, 737 P.2d at 248. In the present case, Wilma's willful, knowing, and intentional disregard for Judge Conder's 1983 order shows conduct that would create an "obvious injustice" if she is allowed to avoid court ordered liability because of a failure on the part of her own

legal representative. Under the circumstances of this case, leaving the nunc pro tunc order in place presents just such an injustice.

Wilma claims she received a copy of the Decree of Annulment from her attorney in 1983. The alleged Decree of Annulment clearly states Wilma was to pay Charles \$9,000.00 plus within 180 days or she was ordered to place the home on the real estate market for immediate sale. Wilma also states that she assumed the Decree of Annulment had been signed and entered by the court; thus Wilma was under the impression that the Decree was a valid and legal order of the court. Assuming this to be true, Wilma's failure to pay Charles the \$9,000.00 plus within six months of the 1983 hearing date, and her failure to place the house on the market for sale following that six month period, is clear and indisputable evidence of a willful and knowing disregard for Judge Conder's order.

It would be entirely inappropriate and creates an obvious injustice if Wilma is now entitled to escape liability under Judge Conder's orders based on her own legal representative's failure to carry out his obligations and the nunc pro tunc orders now in place; especially in light of Wilma's admissions that she has already knowingly, intentionally, and wrongfully sold property that she knew was awarded to Charles in 1983. All documents filed in June of 1994, and entered nunc pro tunc, should be set aside as an abuse of discretion by the lower court and clearly inappropriate under the circumstances and undisputable facts of this case.

II. WILMA'S PERSONAL AND FIRST-HAND KNOWLEDGE OF JUDGE CONDER'S RULING IN 1983 CONSTITUTES "ACTUAL" NOTICE, THEREBY PRECLUDING WILMA'S CLAIMS OF DUE PROCESS VIOLATIONS AND/OR PREJUDICE.

The 14th amendment of the U.S. Constitution, as well as Article I of the Utah Constitution, impose procedural due process restrictions on the power of government to proceed against individuals or their property. At the heart of the due process clause is the implicit guarantee that an individual has the right to have an opportunity to appear and defend against any action which may deprive the individual of property or liberty. In the case at hand, Wilma cannot make a valid Due Process argument.

In Graham v. Sawaya, the Utah Supreme Court stated that the due process clause requires "notice to a party before his or her rights are affected by a judgment." 632 P.2d 851, 853 (1981). "Timely and adequate notice and an opportunity to be heard in a meaningful way are the very heart of procedural fairness." Nelson v. Jacobsen, 669 P.2nd. 1207, 1211 (Utah 1983). The 1993 proceedings for which Wilma complains of a lack of notice, thereby violating her Due Process rights, is not a new proceeding for judgment, nor an appeal of a proceeding's judgment, but was the mere filing of the documentation based upon and consistent with the transcripts of the original proceeding, which Wilma took part in.

As a party to the original proceeding, Wilma received fair and sufficient notice, was given ample opportunity to be heard, and to prepare for the defense of her person, position and property. Wilma is therefore charged with "actual" notice of that

proceeding's judgment and there is no Due Process violation based upon the entry of that judgment without notice in 1993.

As stated by the Court in Sundheim v. Reef Oil Corp., a "person is deemed to have 'constructive notice' when he is in possession of all the relevant facts and circumstances." 806 P.2d 503, 508 (Mont. 1991). Wilma was not only a party in the original proceeding and therefore had "all the relevant facts and circumstances," Wilma's counsel was given the responsibility for drafting and filing the final Decree of Annulment, the Findings of Fact, and the Conclusions of Law. Wilma's counsel may have failed to file the documents with the court, but Wilma still had full knowledge of the contents of Judge Conder's ruling. Thus, Wilma was not deprived of her Due Process rights in 1993 on the grounds of inadequate notice when Judge Medley entered the Decree of Annulment consistent with the transcript of Judge Conder's ruling in 1983. The Amended Decree of Annulment entered in July of 1993 should not have been set aside.

While Charles has the burden of establishing Wilma's knowledge by clear and convincing evidence, such evidence is a matter of record in the present case. Thus, actual notice precludes Wilma from complaining of prejudice for failure to receive statutory notice.

III. WITHOUT ESTABLISHING A DUE PROCESS VIOLATION, THE LOWER COURT ERRONEOUSLY SET ASIDE THE 1993 AMENDED DECREE OF ANNULMENT.

Under The Utah Rules of Civil Procedure, "Findings of fact,

whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous . . ." Rule 52, Utah Rules of Civil Procedure. Findings of fact are clearly erroneous if they are against the clear weight of evidence or if the court is convinced that a mistake has been made. Maughan v. Maughan, 770 P.2d 156, 159 (Utah App. 1989). In order to successfully challenge a trial court's findings, all the relevant evidence presented at the proceeding must be marshalled and a demonstration made as to why the findings are clearly erroneous. Cornish Town v. Koller, 798 P.2d 753, 756 (Utah 1990). Therefore, unless Wilma can show that the Findings of Fact based upon the documentary evidence, the transcript, are clearly erroneous, there is simply no legal basis for setting aside the Findings and Decree entered in 1993.

In addition, where the parties have been afforded a trial, the Court in Hall v. Blackman stated that a presumption arises that the judgment should not be disturbed unless the one attacking the judgment can meet the requirement of showing that the error is substantial and prejudicial. 417 P.2d 664 (Utah 1966). Under the Utah Rules of Civil Procedure, Rule 61 states that "The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." In Workman v. Nagle Const. Co., this Court held that although the prevailing party may fail to notify the opponents of entry of judgment, this failure does not make the judgment ineffective, but is rather harmless error. 802 P.2d 749, 750 - 751

(Utah App. 1990). Therefore, until Wilma can show that the original judgment or the Findings of Fact based on the transcript of the original proceeding has substantial and prejudicial error, the judgments should not be disturbed or ruled as void.

Absent the establishment of a Due Process claim, Charles should prevail on this appeal. Wilma, a party to the original judicial proceeding, is charged with knowledge of that proceeding and all ruling generated by that proceeding. Thus, since knowledge is held to be a form of actual notice, unless Wilma can provide a clear showing of substantial and prejudicial error, the Findings of Fact based on the original transcript of the judgment should not be set aside. Wilma simply cannot support her claim of prejudice for Charles' failure to provide notice in 1993. While Charles has the burden of establishing Wilma's knowledge by clear and convincing evidence, such evidence is a matter of record. Therefore, without a showing of harm, substantial and prejudicial error, or a due process violation, the lower court should not have set aside the 1993 Decree of Annulment for failure to provide notice.

CONCLUSION

The lower court's power to enter orders nunc pro tunc is strictly regulated and reviewed under appellate standards that preclude its use in circumstances where the negligence of one of the parties to the action causes the delay in entering the judgment or Decree. It was Wilma's failure if it was anyone's that caused the delay in the entry of Judge Conder's ruling and therefore a

nunc pro tunc order is inappropriate and should be set aside.

Also, nunc pro tunc orders are not appropriate when the judgment or Decree is not consistent with the actual orders of the previous court, nor is it appropriate when its application would cause the very injustices it was meant to avoid. In the present case, the nunc pro tunc orders discuss issues found not in the transcript but in the prior documents that were rejected by the court. Terminology used in the nunc pro tunc orders match the language used in the rejected documents, but are inconsistent with the transcript of the 1983 hearing. By allowing the nunc pro tunc order to stand, Wilma avoids any and all liability for failing to abide by the court's orders, which is an obvious injustice.

Finally, the 1993 Decree and Findings were based upon, and totally consistent with, Judge Conder's actual orders in 1983. In light of the fact these documents were based upon indisputable documentary evidence, which Wilma had complete and actual knowledge of, Wilma had actual "notice" of the 1993 Decree and Findings. The 1993 documents entered by Judge Medley should not have been set aside and in doing so, the lower court abused its discretion.

Based on the foregoing facts and arguments, Charles respectfully asks this Court to overturn the trial court and set aside the 1994 Decree of Annulment (Entered Nunc Pro Tunc) and reinstate the Amended Decree of Annulment entered by the trial court in July of 1993. Further, in the interests of justice and fairness, Charles respectfully requests that this Court not

institute the six (6) month time period in which Wilma must pay Charles the balance of his equity distribution interest until such time as this Court announces its decision, notwithstanding the entry of the Decree in July of 1993.

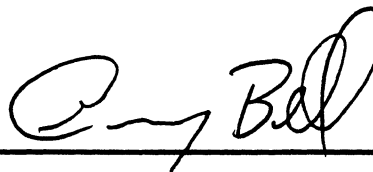
RESPECTFULLY SUBMITTED this 17th day of March, 1995.



GARY L. BELL
124 South 400 East, Suite 320
Salt Lake City, Utah 84111
Attorney for Appellant
Charles B. Bugger

CERTIFICATE OF DELIVERY

THIS IS TO CERTIFY that two true and correct copies of the foregoing BRIEF OF THE APPELLANT were hand-delivered or mailed, postage prepaid, to W. Kevin Jackson, Attorney for Respondent, at 311 South State Street, Suite 380, Salt Lake City, Utah 84111-2379, on this 17th day of March, 1995.



ADDENDUM:

TRANSCRIPT OF 1983 HEARING, JUDGE DEAN E. CONDER PRESIDING
(Transcription date March 21, 1992)

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW
(Entered July 22, 1993)

AMENDED DECREE OF ANNULMENT
(Entered July 22, 1993)

FINDINGS OF FACT AND CONCLUSIONS OF LAW (ENTERED NUNC PRO TUNC)
(Entered June 3, 1994)

DECREE OF ANNULMENT (ENTERED NUNC PRO TUNC)
(Entered June 3, 1994)

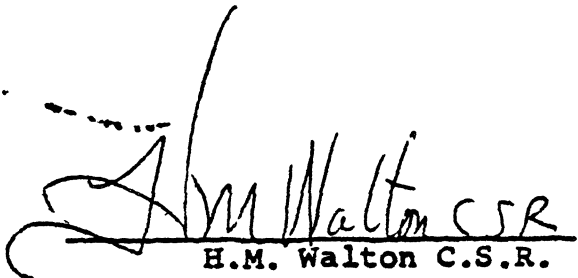
C E R T I F I C A T E

STATE OF UTAH

ss.

COUNTY OF SALT LAKE.)

I, Hal M. Walton, do hereby certify that I am
a Certified Shorthand Reporter of the State of Utah; that on
April 19, 1983 I appeared before the above-named Court and
reported in Stenotype the Order herein attached consisting
of ten pages. That the same is a true and correct rendition
of my shorthand notes as transcribed by me.


H.M. Walton C.S.R.

Dated: March 21st, 1992

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

WILMA R. BUGGER,
Plaintiff,

:

D-81-4371

:

v.

:

J U D G E ' S O R D E R

:

CHARLES B. BUGGER,
Defendant.

:

:

BE IT REMEMBERED, that the above-captioned cause of
action came on regularly for hearing before the HONORABLE
DEAN E. CONDER, one of the Judges of the above-named Court on
April 19th, 1983.

A P P E A R A N C E S

For the Plaintiff:

MR. KENN M. HANSEN
Attorney At Law -
740 E. 3900 South
Salt Lake City, Utah

For the Defendant:

MR. HORACE J. KNOWLTON
Attorney At Law
214 Tenth Avenue
Salt Lake City, Utah

1 THE COURT: It's the Judgement of this Court that
2 the parties be granted a Decree of Annullment;and I think that
3 the law provides that whatever property has been acquired by
4 the parties during their marriage should be equally divided
5 between them. And it's my feeling that marriage is a partner
6 -ship;and as much as possible should share in the profits and
7 share in the losses.

8 I find that there is an equity in the home of thirty-
9 three-thousand-six hundred-thirty dollars. Going to award
10 the home to the Plaintiff herein.

11 I find that there is an equity in the Duchesne lot of
12 five-hundred-fifty dollars, because that's what you say you
13 took it in for;and I'll award that to you so that you can
14 find it and have whatever value there is for that----

15 MR. BUGGER: If you can find it.

16 THE COURT: --in the mobile trailer home, I find
17 that there is a present value equity of \$7000;and going to
18 award that to the Defendant. Furniture and fixtures I'll
19 award to the Plaintiff. The siding company, sir, whatever
20 there was there you say is yours;so you're obligated for
21 whatever obligations there are arising out of it and I'll
22 award to you whatever tools of the trade and equipment there
23 may be that were yours for use;and you're entitled to get
24 them;if the Plaintiff has any of them, order that she turn
25 them over to the Defendant, including the tool press, bench

1 saw, ladder and wheel barrow.

2 Since apparently neither side is certain that there
3 is a diamond ring, it's whereabouts, not going to make any
4 specific order on that unless it's determined where it is. I
5 don't know where it is. 1975 Cadillac going to award to the
6 Plaintiff, and as I figure it, that gives to the Plaintiff in
7 assets, \$38,630.

8 Since the Defendant has sold the truck, the Plymouth,
9 LeMans, I'll award him the proceeds of those sales; the thous-
10 -and dollars on the truck, the fifty dollars on the Plymouth,
11 fifty dollars on the LeMans; value of the tools at \$1,700, and
12 that comes to \$10,350, including the mobile home and the Duch-
13 -esne lot. I think that the obligation on the property of the
14 marriage certainly ought to be shared up until the time the
15 parties split up; and so I am going to order that the payment
16 to Sears of \$432 be split between the parties, Dr. Barnes is
17 to be split. Don't have a figure on that.

18 MR. HANSEN: Fifty dollars, Your Honor.

19 THE COURT: Fifty dollars? All right. The mobile
20 home, the \$1,500 paid by the Plaintiff on that, to be split
21 between the parties. The \$744 to be split between the parties.
22 And the IRS lien, because the only evidence I have before me
23 is apparently those were obligations incurred during the marr-
24 -iage when both of you are working; and I can't identify as
25 being the obligation of one person only. And so if I add

1 those figures together, that leaves one item that I
2 have not included here; I have some difficulty trying to figure
3 out what it is; and that's the equity in the uniform real
4 estate contract. It has nine years to go, for 12 months,
5 times \$79. which means that there is \$8,532 yet to be paid on
6 that. But that would have to be discounted to it's current
7 value; in nine years, the interest would equal the principal.
8 Going to set the figure on that of \$6000; just having to do it
9 arbitrarily. If I put \$6000 on that and award that to the
10 Defendant, the two parties then come out approximately equal.
11 Nineteen-thousand-three-hundred-fifteen dollars to the Plain-
12 -tiff; nineteen-thousand-eighteen dollars to the Defendant.
13 And I think that's as near as I can divide the assets.

14 MR. HANSEN: One point of clarification, Your
15 Honor. And now that I get your bottom figure here; I am assum-
16 -ing then that the award of the residence to the Plaintiff
17 would incorporate the underlying first and second mortgage
18 obligation thereunder.

19 THE COURT: I have taken, using \$33,630 and value
20 of the property and \$5000 for the Cadillac, makes a total of
21 thirty-eight-thousand-six-hundred-thirty dollars. I really
22 give no value to furniture and fixtures, because they're
23 valuable to the person that has them, but can't sell them for
24 fifty bucks, a hundred bucks, whatever.

25 MR. HANSEN: It would be, Your Honor, for my own

1 clarification then that the award of the real property,
2 that's the Kearns property to the Plaintiff is subject to her
3 assuming both underlying obligations.

4 THE COURT: Yes, that's right. Cadillac, furnit-
5 -ure and fixtures in the home would only be \$6000. \$19,315,
6 if I divide that by two, give him the Duchesne lot, mobile
7 home and the truck, and the Plymouth, LeMans, the tools, uni-
8 -form real estate contract and one half the debts that have
9 been paid by her; and that comes out to his share \$19,018. I
10 think that difference is too miniscule to bo ther with.

11 MR. BUGGER: How am I goin' to collect on the
12 tools when there ain't any? They sold 'em all.

13 THE COURT: Sorry, can't answer that question.
14 Didn't create this situation. Doing the best I can with what
15 I have got.

16 MR. KNOWLTON: Your Honor has awarded, as I under-
17 -stand, the home out at Kearns together with the furniture
18 there contained, to the Plaintiff; and that, as I heard Your
19 Honor, was approximately \$38,000

20 THE COURT: Uh-huh and the Cadillac.

21 MR. KNOWLTON: That would be \$43,000.

22 THE COURT: No, \$33,635 for the home, \$5000 for
23 the Cadillac makes \$38,630.

24 MR. KNOWLTON: My question is, you said \$19,000
25 to the one; \$19,000 to the other. How can we get \$38,000 out

1 of \$19,000 it seems to me that under Your Honor's rule.

2 THE COURT: Wait a minute, you're right. You're
3 right. You're right. Wait a minute; got to make another cal-
4 -culation here. You're right. I now come up with \$19,018
5 that he gets. And assets, she gets thirty-eight. So I've
6 got to subtract the difference between those two. Yes, he has
7 another \$4,311 in equity in the value of the home.

8 What I am doing is taking \$38,630 as the distribut-
9 -ion to Mrs. whatever--the distribution to the Defendant. I
10 come out with \$19,018.

11 MR. KNOWLTON: Yes, sir.

12 THE COURT: And that includes half of the bills
13 that were incurred after the separation, except for the mort-
14 -gage payments; I think that inures to her benefit because
15 she has lived in the home during that time; and so I add those
16 together and I come out with \$19,018; and for him. And \$38,630
17 if I subtract the \$19,000 from the \$38,630, that leaves me
18 eight-thousand-six-hundred-seventy -two dollars more that
19 she's getting than he. And if you divide that between them,
20 that would be \$4,311 to him to even out. So they come out
21 even. You follow me?

22 MR. KNOWLTON: I don't believe I do, Your Honor.
23 Thirty-eight-thousand would be the equity that she would be
24 receiving.

25 THE COURT: That's right.

1 MR. KNOWLTON: And the \$19,000 from \$38,000 is---

2 THE COURT: Maybe my figures are wrong. Didn't
3 use my calculator on that one. If I don't use my calculator
4 I am in trouble.

5 MR. KNOWLTON: Difference would be 17,000. Half
6 of 17,000.

7 THE COURT: 19,652, the difference, so I am in
8 error. \$19,652 difference. Divide that by two and that
9 means \$9,826 equity in the home that the Defendant should
10 have.

11 Now, Mr. Hansen, have you followed my figures, I
12 hope?

13 MR. HANSEN: Well, Your Honor, I think so. If I
14 can recap concerning the Plaintiffs position I have got.
15 The Defendant's position we have taken \$550 equity on the
16 Duchesne lot.

17 THE COURT: Give them to you. Duchesne lot, \$550,
18 mobile home, \$7000, truck that was sold, \$1000, '48 Plymouth
19 fifty dollars, '65 LeMans, \$50. tools, \$1,700; balance on un-
20 -iform real estate contract, \$6000. Trying to take my best
21 guestimate of what that would be.

22 MR. HANSEN: 615350.

23 THE COURT: She has paid in obligations the IRS,
24 \$2650, \$423 to somebody--I don't remember who it is, \$1,500,
25 \$744, which comes out to \$5,367 and charge him with half of

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1 that is \$26,83.50. So I add to his the 2683.

2 MR. HANSEN: Ok. Come within a few dollars of
3 that that arrives at his equity figure then.

4 THE COURT: Ok.

5 MR. HANSEN: From the Plaintiff \$38,630, Your
6 Honor, that incorporates or encompasses the half of the bills
7 she has paid; I assumed, in other words the other 2683 that is
8 in there.

9 THE COURT: Taking the current balance on the
10 equity of the place. She has the advantage of living there
11 for whatever it is, I considered that comparable to the rent-
12 -ting of the place during the same period a time. All right.

13 Now, that means that on this kind of a division she
14 would still owe him \$9,620 as a lien on the home.

15 MR. KNOWLTON: To make it equitable, Your Honor,
16 so that Your Honor will understand our thinking, I think we
17 would be willing to offer her the switch and give her \$10,000
18 from the sale of the home, that is.

19 MR. HANSEN: I don't know that, that---

20 MR. KNOWLTON: Give her everything that they've
21 offered her and \$10,000 for the sale of the home.

22 THE COURT: Well, you can work that out any way
23 you want. But my calculations have gone as far as I can right
24 now. Now, I think that with the residence and the home that's
25 there, there ought to be a reasonable period to try to sell it

1 or pay the Defendant his equity. How much time do
2 you think that would be, Mr.Hansen?

3 MR. KNOWLTON: Thirty days.

4 THE COURT: Oh no. Spring. Mr. Hansen?

5 MR. HANSEN: Your Honor, if I can have just a
6 moment to digest a little bit of this and consult with my cli-
7 -ent, if I may?

8 THE COURT: Give you thirty seconds.

9 MR. HANSEN: Your Honor, we would ask the Court
10 that under the circumstances that we have;we're in April,now
11 that is the 4th month;that we have 180 days to come up with
12 the money to satisfy that lien.

13 THE COURT: Mr. Knowlton, what would you suggest?

14 MR. KNOWLTON: Your Honor, calling the attention
15 of the Court to the fact that this is April, we're about to go
16 into May. In our area the selling time is May and October.

17 We think, Your Honor, sixty days would be just right.
18 And we think Your Honor should give some thought to whether or
19 not there shouldn't be any---

20 THE COURT: Ok. Here is what I am going to do.
21 I am going to order that the Plaintiff have six months in
22 which to sell and pay to the Defendant the \$9,826. The reason
23 I am doing it that way is because I am giving the Defendant
24 the income off from the uniform real estate contract;and that
25 if it is not sold within six months or the Defendant is paid

1 out and I don't care whether you sell it or pay him the
2 \$9,826; that the amount will then accrue interest at the
3 legal rate, which is now 12 %. And the Court will order the
4 property listed for sale by multiple listing real estate
5 agency and sold for the best price. And that after that
6 date, six months from the date I sign the Order on this, it
7 would accrue interest at the rate of the legal rate of inter-
8 -est. Not going to award attorneys fees. Don't think they
9 are called for under the Annullment Statute. Ok. Good luck
10 to you. The Court will be in recess.

11 (WHEREUPON this hearing was concluded.)
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY

STATE OF UTAH

APR 22 1993

Deputy Clerk

WILMA R. BUGGER,

Plaintiff,

vs.

CHARLES B. BUGGER,

Defendant.

AMENDED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

CIVIL NO. D-81-4371

JUDGE DEAN E. CONDER

This matter having come on regularly for hearing on the 19th day of April, 1983, before the HONORABLE DEAN E. CONDER, one of the Judges of the above-entitled Court, sitting without a jury; and the Plaintiff appearing in person and with her attorney, Kenn M. Hansen, and the Defendant appearing in person and with his attorney, Horace J. Knowlton; and it having been shown to the Court that the Defendant was duly served with a copy of the Complaint and a copy of the Summons, and wherein the Defendant having answered same within the allotted time by statute, and the testimony of the parties having been heard in open Court, and the Court having been fully informed in the premises, hereby makes the following:

FINDINGS OF FACT

1. That the Plaintiff is now and for more than three (3) months last past has been an actual bona fide resident of the County of Salt Lake, State of Utah.

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW - 1

2. That Plaintiff and Defendant entered into a purported marriage contract on the 10th day of June, 1946, in Las Vegas, State of Nevada, and ever since said time have been and now are husband and wife.

3. That at the time Plaintiff and Defendant entered into the purported marriage contract, Plaintiff was married to another person. That the Plaintiff failed to advise the Defendant that she in fact was a married woman at the time of her marriage to the Defendant herein.

4. That the assets of the marriage should be divided as follows:

a. That the Plaintiff should be awarded the home and real property located at 4098 West 5500 South in Kearns, Utah, and described as follows, to-wit:

Lot 7 Blk 69 Hoffman Heights No. 11 in the
City of Kearns, County of Salt Lake, State of
Utah,

together with all household furniture, furnishings and effects, plus the 1975 Cadillac automobile.

b. That the Defendant should be awarded the real property located in Duchesne County, Utah; the mobile home; his siding company and tools; his truck; and the proceeds from the Uniform Real Estate contract.

c. That the Plaintiff should be ordered to pay to the Defendant the sum of \$9,862.00, same to be paid within six (6) months after the date of the signing of the Decree of Annulment. That after said six (6) months, in the event the

Plaintiff fails to pay to the Defendant the sum of \$9,862.00, then the Court shall sell the home and the Defendant be paid said \$9,862.00, plus interest to accrue at the legal rate of 12%.

d. Further that the Defendant should be awarded the proceeds from the sale of the Plymouth and the LeMans automobiles, which sums are now in Defendant's possession.

e. That the Plaintiff should be ordered to pay to the Defendant the sum of \$1,700.00, as and for the siding tools which she sold during said marriage.

CONCLUSIONS OF LAW

1. That the Plaintiff and Defendant be granted a Decree of Annulment, same to become final upon the signing and entry.

2. That the Plaintiff be awarded the following real and personal property as her sole and separate property and estate, to-wit: the home and real property located at 4098 West 5500 South in Kearns, Utah, and described as follows, to-wit:

Lot 7 Blk 69 Hoffman Heights No. 11 in the
City of Kearns, County of Salt Lake, State of
Utah, in Kearns, Utah,

together with all household furniture, furnishings and effects, plus the 1975 Cadillac automobile.

3. That the Defendant be awarded the following real and personal property as his sole and separate property and estate, to-wit: the real property located a Duchesne County, Utah; the mobile home; his siding company and tools; his truck; and the proceeds

from the Uniform Real Estate contract, and the proceeds from the sale of the Plymouth and the LeMans automobiles, which sums are now in Defendant's possession.

4. Further that the Plaintiff should be ordered to pay to the Defendant the sum of \$9,862.00, same to be paid within six (6) months after the date of the signing of the Decree of Annulment. That after said six (6) months, in the event the Plaintiff fails to pay to the Defendant the sum of \$9,862.00, then the Court shall sell the home and the Defendant be paid said \$9,862.00, plus interest to accrue at the legal rate of 12%, plus the sum of \$1,700.00, as and for the siding tools which she sold during said marriage.

DATED this 19th day of April, 1983.

Tyron E. Medley 7-22-93

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DATE 7/22/93
ORIGINAL DOCUMENT FILED
COURT OF COVINGTON, LAKE COUNTY, LA

DEPUTY COURT CLERK

IN AND FOR SALT LAKE COUNTY

Plaintiff,

CHARLES B. BUGGER,

Defendant.

CIVIL NO. D-81-4371

JUDGE DEAN E. CONDER

AMENDED DECREE OF ANNULMENT - 1

O R D E R

1. That the Plaintiff and Defendant are hereby granted to a Decree of Annulment, same to become final upon the signing and entry.

2. That the Plaintiff is hereby awarded the following real and personal property as her sole and separate property and estate, to-wit: the home and real property located at 4098 West 5500 South in Kearns, Utah, described as follows, to-wit:

Lot 7 Blk 69 Hoffman Heights No. 11 in the
City of Kearns, County of Salt Lake, State of
Utah,

together with all household furniture, furnishings and effects, plus the 1975 Cadillac automobile.

3. That the Defendant is hereby awarded the following real and personal property as his sole and separate property and estate, to-wit: the real property located a Duchesne County, Utah; the mobile home; his siding company and tools; his truck; the proceeds from the Uniform Real Estate contract; and the proceeds from the sale of the Plymouth and the LeMans automobiles, which sums are now in Defendant's possession.

4. Further that the Plaintiff is hereby ordered to pay to the Defendant the sum of \$9,862.00, same to be paid within six (6) months after the date of the signing of this Decree of Annulment. That after said six (6) months, in the event the Plaintiff fails to pay to the Defendant the sum of \$9,862.00, then the Court shall sell the home in Kearns, Utah, described as follows, to-wit:

O R D E R

1. That the Plaintiff and Defendant are hereby granted to a Decree of Annulment, same to become final upon the signing and entry.

2. That the Plaintiff is hereby awarded the following real and personal property as her sole and separate property and estate, to-wit: the home and real property located in Kearns, Utah, together with all household furniture, furnishings and effects, plus the 1975 Cadillac automobile.

3. That the Defendant is hereby awarded the following real and personal property as his sole and separate property and estate, to-wit: the real property located in Duchesne County, Utah; the mobile home; his siding company and tools; his truck; the proceeds from the Uniform Real Estate contract; and the proceeds from the sale of the Plymouth and the LeMans automobiles, which sums are now in Defendant's possession.

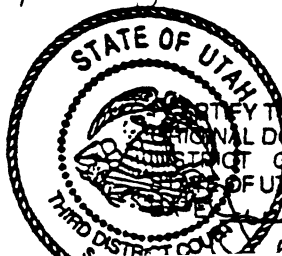
4. That the Plaintiff is hereby ordered to pay to the Defendant the sum of \$9,862.00, same to be paid within six (6) months after the date of the signing of the Decree of Annulment, plus interest to accrue at the legal rate of 12%, and the sum of \$1,700.00, as and for the siding tools which she sold during said marriage.

DATED this 19th day of April, 1983.

Thorne E. Medley for J. Conder
DISTRICT COURT JUDGE

4/13/93

DECREE OF ANNULMENT - 2



W. KEVIN JACKSON (1640)
JENSEN, DUFFIN, DIBB & JACKSON
311 South State Street, Suite 380
Salt Lake City, UT 84111-2379
Telephone: (801) 531-6600
Fax: (801) 521-3731

FILED DISTRICT COURT
Third Judicial District

JUN 3 1994

SALT LAKE COUNTY
By S. Hensley
Deputy Clerk

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

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	:	
WILMA R. BUGGER,	:	FINDINGS OF FACT
	:	and
	:	CONCLUSIONS OF LAW
	:	(ENTERED NUNC PRO TUNC)
Plaintiff,	:	
vs.	:	Case No. D-81-4371
	:	
CHARLES B. BUGGER,	:	Judge Tyrone Medley
	:	
Defendant.	:	Commissioner Atherton/Peuler
	:	
	ooo0ooo	

A trial on this matter came on for hearing and resolution on the 19th day of April, 1983, before the Honorable Dean Conder, District Court Judge presiding. The Plaintiff appeared personally and through her attorney, Kenn M. Hanson; the Defendant appeared personally and through his attorney, Horace J. Knowlton. The Court heard and considered the parties' testimony as proffered by their respective attorneys of record and further considered the evidence to be presented, and being fully advised in the premises and good cause appearing thereon, the Court now makes and enters the following:

FINDINGS OF FACT

1. Both the Plaintiff and Defendant are now and for at least three (3) months immediately before the filing of this action have been residents of Salt Lake County, Utah.

2. The parties were purportedly married on June 10, 1946, in Las Vegas, Nevada. However, at that time of said marriage the Plaintiff's interlocutory period from a prior divorce had not yet expired thereby rendering the marriage ceremony to the named Defendant in their action as void.

3. During the course of the parties' relationship, seven (7) children were born as issue of the alleged marriage all of whom have attained the age of majority and none are in need of any financial support.

4. During the course of their relationship the parties have acquired certain real property presently situated at 4098 West 5500 South, Kearns, Utah, consisting of a house and lot. Said real property is titled solely in the name of the Plaintiff. The fair market value of said real property is determined to be \$47,000.00.

5. There exists an underlying 1st mortgage on said real property in the amount of \$5,633.31; there also exists an underlying 2nd mortgage on said real property in the amount of \$8,236.10.

6. Based thereon, the total present equity in the real property is in the sum of \$33,630.77.

7. During the course of the parties's relationship, the parties acquired a cabin lot located in Duchesne County, Utah. The fair market value of said real property is determined to be \$550.00.

8. During the course of the parties' relationship, the parties acquired a 12' x 60' mobile home. The fair market value of said mobile home is determined to be \$7,000.00.

9. During their relationship the parties acquired certain motor vehicles described as follows with corresponding values determined by the Court:

	<u>Description</u>	<u>Value</u>
a.	1975 Cadillac automobile	\$5,000.00
b.	Mercury automobile	100.00
c.	Panel truck	1,000.00
d.	1948 Plymouth	50.00
e.	1965 Pontiac	50.00

10. During the course of the relationship, the parties acquired the proceeds of a Uniform Real Estate Contract on a principal sum of \$7,800.00 at 9% interest per annum for 15 years paying \$79.11 per month. Said contract has 9 years on its terms and the present value of said note is \$6,000.00

11. During the course of the relationship, the Defendant has acquired various tools of his trade which have a present fair market value of \$1,700.00.

12. During the course of the relationship, the parties incurred various obligations set forth below with corresponding approximate balances which have been paid by Plaintiff and for which she is entitled to a contribution towards:

	<u>Creditor</u>	<u>Balance</u>
a.	Sears	\$ 423.00
b.	Dr. Regal	50.00
c.	Mobile Home	1,500.00
d.	Credit Union	744.00

e. IRS lien 2,650.00

13. During the course of the relationship, the Defendant incurred certain debts in the name of his business, B&B Siding, some of which are as follows:

- a. Century Finance Company;
- b. Valley Bank & Trust;
- c. VISA; and
- d. Texaco.

14. It is fair and reasonable that the real property located at 4098 West 5500 South, Kearns, Utah, be awarded to the Plaintiff subject to Plaintiff assuming and paying the underlying 1st and 2nd mortgages thereon, and, further, subject to an equitable lien in favor of Defendant in the amount of \$9,796.00.

15. It is fair and reasonable that the Plaintiff pay to Defendant the amount of an equitable lien as follows:

- a. Plaintiff shall have 180 days from entry of the Decree to pay to Defendant the amount of \$9,796.00.
- b. In the event Plaintiff has not paid Defendant \$9,796.00 upon the expiration of 180 days from the entry of the Decree, said amount of Defendant's lien shall accrue interest on the principal amount at the rate of 12% per annum until paid.
- c. Further, upon the expiration of 180 days from the entry of the Decree and in the event Plaintiff has not paid Defendant the amount of Defendant's lien, the above-referenced real property shall be listed for sale through a multiple listing agency and sold for the best price.

16. It is fair and reasonable that Defendant be awarded as his sole and separate property the cabin lot located in Duchesne County, Utah, subject to any and all underlying obligations thereon.

17. It is fair and reasonable that the Defendant be awarded as his sole and separate property the 12' x 60' mobile home subject to any and all underlying obligations thereon.

18. It is fair and reasonable that the Defendant be awarded as his sole and separate property the proceeds of a Uniform Real Estate contract amounting to \$79.11 per month until said payments terminate according to the terms and provisions of said contract.

19. It is fair and reasonable that Plaintiff be awarded as her sole and separate property the fixtures, furniture and personal property located within the real property at 4098 West 5500 South, Kearns, Utah.

20. It is fair and reasonable that the Defendant be ordered to assume and pay, holding the Plaintiff harmless from any liability thereon, the debts and obligations arising from the Defendant's company known as B&B Siding Co., some of which are listed as follows:

- a. Century Finance
- b. Valley Bank & Trust
- c. VISA
- d. Texaco

21. It is fair and reasonable that the Defendant be awarded as his sole and separate property the proceeds from the sale of the following automobiles:

- a. The B&B Siding panel truck
- b. 1948 Plymouth automobile
- c. 1965 LeMan's Pontiac automobile
- d. the Mercury automobile.

22. It is fair and reasonable that the Plaintiff be awarded as her sole and separate property the 1975 Cadillac automobile.

23. It is fair and reasonable that the Defendant be awarded as his sole and separate property the tools of his trade that remain in Plaintiff's possession.

24. It is fair and reasonable that the Defendant be ordered to pay and assume one-half of the bills owing to:

- a. Sears
- b. Dr. Regal
- c. payments on the mobile home
- d. personal loan
- e. IRS lien

25. It is fair and reasonable that each party be ordered to assume and pay their respective attorney's fees and costs in maintaining this action.

WHEREFORE, the Court, having made and entered the foregoing Findings of Fact, now makes and enters the following:

CONCLUSIONS OF LAW

1. This Court has personal jurisdiction over the parties to this case and the Court has subject matter jurisdiction over this type of action.

2. There exists grounds legally sufficient to grant a Decree of Annulment declaring said marriage between the parties to be void ab initio.

3. There exists legally insufficient grounds to award any attorney's fees to either party and each should bear their own costs and expenses in this matter.

4. The Decree of Annulment should be in conformance with the foregoing Findings of Fact.

5. Pursuant to the trial held on April 19, 1994, the findings of fact and conclusions of law of the Court are entered NUNC PRO TUNC.

DATED this 3 day of June, 1994.

BY THE COURT:


JUDGE TYRONE MEDLEY



Approved as to Form:

David Brown

1. HOME:

Fair Market Value	\$47,500.00
1st mortgage: \$5,633.13	
2nd mortgage: \$8,236.00	<u>-13,869.23</u>
 TOTAL EQUITY:	 <u>\$33,630.77</u>

2. PLAINTIFF'S EQUITY:

a. Real Property	\$33,630.00
b. Cadillac	<u>5,000.00</u>
 Plaintiff's GROSS equity:	 38,630.00
LESS Defendant's lien:	<u>9,796.00</u>
 PLAINTIFF'S NET EQUITY:	 <u>\$28,834.00</u>

3. DEFENDANT'S EQUITY:

a. Duchesne property	\$ 550.00
b. UREC	6,000.00
c. Trailer	7,000.00
d. 1/2 of debts	2,688.00
e. Defendant's tools	1,700.00
g. Car proceeds	<u>1,100.00</u>
 Defendant's GROSS equity:	 \$19,038.00
PLUS Defendant's lien:	<u>9,796.00</u>
 DEFENDANT'S TOTAL EQUITY	 <u>\$28,834.00</u>

4. COMPUTATION OF DEFENDANT'S LIEN:

Plaintiff's GROSS equity:	\$38,630.00
Less Defendant's GROSS equity:	<u>-19,038.00</u>
 Difference	 <u>\$19,592.00</u>

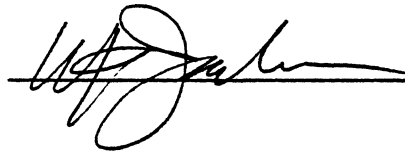
\$19,592.00 divided by 2 = \$9,796.00 (Defendant's lien)

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing document to the following:

David Brown, Esq.
#9 Exchange Place #1120
Salt Lake City, Utah 84111

by placing the same in the United States Mail, postage prepaid, this 10th day of May, 1994.

A handwritten signature in black ink, appearing to read 'David Brown', written over a horizontal line.

BUGG-CON.LAW

W. KEVIN JACKSON (1640)
JENSEN, DUFFIN, DIBB & JACKSON
311 South State Street, Suite 380
Salt Lake City, UT 84111-2379
Telephone: (801) 531-6600
Fax: (801) 521-3731

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

	ooo0ooo	
WILMA R. BUGGER,	:	DECREE OF ANNULMENT
	:	(ENTERED NUNC PRO TUNC)
	:	
Plaintiff,	:	
vs.	:	Case No. D-81-4371
	:	
CHARLES B. BUGGER,	:	Judge Tyrone Medley
	:	
Defendant.	:	Commissioner Atherton/Peuler
	:	
	ooo0ooo	

A trial on this matter came on for hearing and resolution on the 19th day of April, 1983, before the Honorable Dean Conder, District Court Judge. Plaintiff appeared personally and through her attorney, Kenn M. Hanson; the Defendant appeared personally and through his attorney, Horace J. Knowlton. The Court heard and considered the parties' testimony as proffered by their respective attorneys and further considered the evidence to be presented, and being fully advised in the premise sand good cause appearing thereon, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Defendant is hereby granted a Decree of Annulment declaring the parties marriage void ab initio and of no legal force or effect.

2. The real property located at 4098 West 5500 South, Kearns, Utah, is hereby awarded to Plaintiff subject to Plaintiff assuming and paying the underlying 1st and 2nd mortgages thereon,

and, further, subject to an equitable lien in favor of Defendant in the amount of \$9,796.00 and which shall be extinguished by the Court's ruling on the Defendant's Order to Show Cause and the trial on the same held on April 19, 1994.

3. The Plaintiff shall pay to Defendant the amount of the equitable lien as follows:

a. The Plaintiff shall have 180 days from entry of the Decree of Annulment to pay to Defendant the amount of \$9,796.00.

b. In the event Plaintiff has not paid Defendant \$9,796.00 upon the expiration of 180 days from the entry of the Decree, said amount of Defendant's lien shall accrue interest on the principal amount at the rate of 12% per annum until paid.

c. Further, upon the expiration of 180 days from the entry of the Decree and in the event Plaintiff has not paid Defendant the amount of Defendant's lien, the above-referenced real property shall be listed for sale through a multiple listing agency and sold for the best price.

4. The Defendant is hereby awarded as his sole and separate property the cabin lot located in Duchesne County, Utah, subject to any and all underlying obligations thereon.

5. The Defendant is hereby awarded as his sole and separate property the 12' x 60' mobile home subject to any and all underlying obligations thereon.

6. The Defendant is hereby awarded as his sole and separate property the proceeds of a Uniform Real Estate Contract amounting

to \$79.11 per month until said payments terminate according to the terms and provisions of said contract.

7. The Plaintiff is hereby awarded as her sole and separate property the fixtures, furniture and personally located within the real property at 4098 West 5500 South, Kearns, Utah.

8. The Defendant is hereby ordered to assume and pay, holding the Plaintiff harmless from any liability thereon, all of the debts and obligations arising from the Defendant's company known as B&B Siding.

9. The Defendant is hereby awarded as his sole and separate property the proceeds from the sale of the following automobiles:

- a. The B&B Siding panel truck
- b. 1948 Plymouth automobile
- c. 1965 LeMan's Pontiac automobile
- d. the Mercury automobile.

10. The Plaintiff is hereby awarded as her sole and separate property the 1975 Cadillac automobile.

11. The Defendant is hereby awarded as his sole and separate property the tools of his trade that remain in Plaintiff's possession.

12. The Defendant is hereby ordered to pay and assume one-half of the bills owing to:

- a. Sears
- b. Dr. Regal
- c. payments on the mobile home
- d. personal loan

e. The IRS lien obligation

13. Each party is ordered to assume and pay their respective attorney's fees and costs in maintaining this action.

14. Pursuant to the hearing and trial conducted by the Court on April 19, 1994, the above orders and decrees are hereby entered and shall be deemed effective from the 19th day of April, 1983 and they are hereby entered NUNC PRO TUNC.

DATED this ____ day of _____, 1994.

BY THE COURT:

JUDGE TYRONE MEDLEY

APPROVED AS TO FORM AND CONTENT:

X_____
DAVID BROWN

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing document to the following:

David Brown, Esq.
#9 Exchange Place #1120
Salt Lake City, Utah 84111

by placing the same in the United States Mail, postage prepaid, this 10th day of May, 1994.

BUGG-DEC-ANL

