

1994

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

Utah Court of Appeals

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Recommended Citation

Brief of Appellee, *Bugger v. Bugger*, No. 940394 (Utah Court of Appeals, 1994).

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IN THE UTAH COURT OF APPEALS

WILMA R. BUGGER,	:	
	:	
Plaintiff-Appellee,	:	Case No. 940394-CA
	:	
vs.	:	Priority No. 15
	:	
CHARLES B. BUGGER,	:	
	:	
Defendant-Appellant.	:	

BRIEF OF APPELLEE

Appeal from Decree of Divorce and Judgment
of the Third District Court, Salt Lake County, Utah
the Honorable Tyrone E. Medley, Presiding

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UTAH COURT OF APPEALS

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CASE NO. 940394

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

BRIEF OF APPELLEE
WILMA R. BUGGER

I. INTRODUCTION

Comes now the Plaintiff/Appellee, Wilma R. Bugger, by and through her attorneys of record, W. Kevin Jackson and Douglas P. Hoyt, and respectfully submits the following appellate brief in this matter.

II. STATEMENT OF JURISDICTION

This Court has jurisdiction to decide this appeal pursuant to Utah Code Annotated Section 78-2a-3(2)(i)(1994). This is an appeal by the Defendant from a Decree of Annulment (Entered Nunc Pro Tunc) entered by the Third District Court, Judge Tyrone E. Medley presiding, on or about the 3rd day of June, 1994. No post judgment motions were filed by either party. A notice of appeal was filed by the Defendant on or about the 30th day of June, 1994. The Plaintiff did not file a cross appeal.

III. STATEMENT OF ISSUES

The following four (4) issues are presented to this Court by the Appellant Charles B. Bugger (hereinafter referred to as the "Defendant"):

1. Did the Third District court err, as a matter of Law, in entering the June 3, 1994 Decree of Annulment, Findings of Fact and Conclusions of Law "Nunc Pro Tunc", and if so why?

2. Did the Third District court err, as a matter of Law, in setting aside Appellant's Amended Decree of Annulment, entered on or about July 22, 1993?

3. Did the Third District 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?

4. Did the Third District court err, as a factual finding, in concluding that the Respondent (sic) did not intentionally and willfully disregard Judge Conder's ruling in the 1983 proceedings?

5. The appeal also presents the issue of whether or not the ruling by the Third District Court can be sustained on alternative grounds?

IV. THE STANDARD OF REVIEW ON APPEAL

This court has defined the standard of review for an appeal from a decree of divorce. The standard of review that is used is as follows: The Court of Appeals will not disturb the findings of fact of the trial court unless a clear abuse of discretion is shown. Burnham v. Burnham, 716 P.2d 781 (Utah 1986), Greene v. Greene, 751 P.2d 827 (Utah App. 1988) cert. denied 765 P.2d 1278

(Utah 1988). The Appellate Court will therefore give great deference to the factual findings of the Trial Court. Cummings v. Cummings, 821 P.2d 472 (Utah App. 1991).

Issues of law are reviewed by this Court under the correction of error standard with no special deference being given to the District Court's rulings on the law. Smith v. Smith, 793 P.2d 407 (Utah App. 1990), Cummings, 821 P.2d at 476.

V. DETERMINATIVE STATUTES

The determinative statute for purposes of this appeal is Utah Code Annotated Section 30-4a-1 (1983). This section reads as follows:

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.

VI. STATEMENT OF THE CASE

A. The Nature of the Case:

This appeal is made by reason of an action for an annulment of a marriage between the Plaintiff and the Defendant. The Defendant filed the action for an annulment in the Third District Court, for Salt Lake County, on or about the 3rd day of August, 1982.

B. The Course of Proceedings

On or about the 23rd day of October, 1981 the Plaintiff, Wilma R. Bugger, filed a Verified Complaint for a divorce against the Defendant, Charles Bugger. The Defendant did not file an answer to the Complaint and on the 7th day of December, 1981 a default was taken against the Defendant. A Decree of Divorce was thereafter

entered on the 25th day of May, 1982 by the Honorable Raymond S. Uno. Notice of the entry of the Decree was then sent to the Defendant's attorney of record, Horace J. Knowlton.

On or about the 3rd day of August, 1982 the Defendant filed, with the clerk of the Third District Court, an Answer and Counterclaim. The Defendant's Counterclaim requested the Court to dismiss the Plaintiff's Complaint and for the entry of a Decree of Annulment. A trial on the merits of the Defendant's Counterclaim was thereafter held before the Honorable Dean E. Conder on the 19th day of April, 1983. At the conclusion of the trial Judge Conder entered his findings of fact and conclusions of law and the final judgment for the disposition of the property the parties acquired during the course of the marriage. The judge's findings and conclusions and the judgment of the court were all made on the record, a copy of the transcript of said record is attached hereto as Exhibit "A".

The Plaintiff's attorney of record, Kenn Hanson, then prepared the Findings of Fact and Conclusions of Law and the Decree of Annulment and submitted them to the Court for entry. It appears from the court's records that said findings and decree were never entered by the court or filed by the clerk of the court. Mr. Hanson prepared an affidavit stating that he prepared the findings and the decree and submitted them to the court for filing and entry. (R. 137-152). A copy of Mr. Hanson's Affidavit is attached hereto as Exhibit "B". This affidavit contains as attachments the Decree of Annulment and the Findings of Fact and Conclusions of

Law, as exhibits to the affidavit, as Mr. Hanson prepared them for entry. The Plaintiff cannot determine that they were lost or misplaced by the clerk of the court.

In any event, the Plaintiff and the Defendant then went about their separate lives for approximately ten (10) years. Neither party was aware that the Court's official record may have been deficient. During this period of time the parties acted as if the findings and the decree had been signed and duly entered by the court. The Defendant never tried to execute or enforce the Decree of Annulment entered by the Court until around the 19th day of April, 1993. The Defendant did nothing to compromise, settle or have the Plaintiff comply with the Decree for exactly ten (10) years.

At this time the Defendant attempted to locate the Findings of Fact and Conclusions of Law and the Decree of Annulment in the Court files. When he discovered that the documents were not in the file he prepared them himself and submitted them to the Court for the Court's signature. (R. 47 and 51). The Defendant then submitted to the court amended Findings of Fact and Conclusions of Law and an amended Decree of Divorce. (R. 57 and 61). The Trial Court, Judge Tyrone Medley now presiding, entered the Amended Findings of Fact and Conclusions of Law and the Amended Decree of Annulment on or about the 22nd day of July, 1993. The Defendant never gave the Plaintiff any notice of the submission of these new or amended documents to the court and the subsequent entry of by the court, as is evidenced by the lack of any type of certificate

of delivery attached to these pleadings. During the time that the Defendant was preparing and submitting these amended pleadings the Plaintiff was not a resident of the State of Utah and could not have known that the documents were being submitted to the court. She was serving a mission for the Church of Jesus Christ of Latter-day Saints in New York State. It was only on the Plaintiff's return to the State of Utah that she learned the Defendant was trying to execute on the judgment that was now over ten years old.

The Defendant next sought the issuance of an Order to Show Cause in the Trial Court. The Plaintiff responded with a counterclaim against the Defendant's Order to Show Cause claiming offsets for amounts the Plaintiff paid towards debts Judge Conder ordered the Defendant to pay under the Decree of Annulment. A hearing on the Defendant's Order to Show Cause and the Plaintiff's counterclaim was held on the 19th day of April, 1994. The issue presented to the District Court by the Defendant pursuant to the Order to Show Cause was why the Plaintiff had not paid the Defendant the sum of money the Defendant claims was awarded him by the Court at the time of the hearing held in 1983. At the hearing on the Order to Show Cause Judge Medley found that the Plaintiff had not been given proper or sufficient notice of the filing and the entry of the amended findings and decree. Judge Medley then set the amended findings and decree aside. The court then proceeded to hear the Defendant's Order to Show Cause.

At the conclusion of the hearing on the Order to Show Cause Judge Medley found that good cause existed for the entry of the

Findings of Fact and Conclusions of Law and the Decree of Annulment. This finding was based upon Judge Conder made the decisions on the items in question ten years prior to the hearing. Judge Medley found that the transcript of the 1983 trial "clearly bears this out." (R. 260-61). Judge Medley further found that both parties were barred from their respective claims by the equitable doctrine of Laches for failing to pursue these claims until ten (10) years after the court granted the annulment. (R. 261).

The Defendant timely filed a notice of appeal and has timely filed a brief with this court.

VII. STATEMENT OF THE FACTS

1. The Plaintiff was married to Dale L. Alexander. The parties were divorced on January 21, 1946. The divorce was to become absolute and final six (6) months after the entry of the Decree of Divorce.

2. The Plaintiff and the Defendant were married on June 10, 1946 in Las Vegas, Nevada. At the time of this marriage the Plaintiff's divorce had not yet become absolute.

3. The Plaintiff sued the Defendant for a divorce on or about the 23rd day of October, 1981. (R. 2)

4. The Defendant did not timely answer the Plaintiff's Complaint for a divorce and a default was taken against the Defendant on or about the 7th day of December, 1981. (R. 7)

5. On or about the 3rd day of August, 1982 the Defendant finally answered the Plaintiff's complaint and counterclaimed for an annulment of the marriage. (R. 24)

6. On the 19th day of April, 1983 a trial was scheduled to be held before the Honorable Dean D. Conder. Judge Conder granted the Defendant's claim for an annulment and made a division of the joint assets held by the parties. At time of the trial Judge Conder considered the evidence presented to him as the basis for the property division.

7. The Plaintiff's attorney, Kenn Hanson, prepared the original Findings of Fact and Conclusions of Law and the Decree of Annulment. (R. 137-152). He then presented the documents to the court for the court's signature and for filing of record by the clerk of the court. For an unknown reason the documents were never placed in the file along with the other pleadings in this case.

8. After approximately ten (10) years later the Defendant attempted to enforce the Decree and to collect on the judgment. At no time prior to this date did the Defendant try to determine the contents of the court's file. (R. 74)

9. When the Defendant learned that the Findings of Fact and Conclusions of Law and the Decree of Annulment were not in the court's file, he prepared and submitted a proposed Decree and proposed findings for the court's signature. (R. 74)

10. After having obtained the judge's signature on the proposed decree and the proposed findings the Defendant prepared Amended Findings of Fact and Conclusions of Law and an Amended

Decree of Annulment and had the court sign these documents. (R. 57-63).

11. The Defendant never gave the Plaintiff any notice that he was submitting any of these pleadings to the clerk of the court for subsequent entry. None of these documents include a certificate of service. No certificate of service was file with the court.

12. After entry of the amended Decree of Annulment the Defendant then brought an Order to Show Cause against the Plaintiff trying to enforce the Amended Decree of Annulment and seeking payment of the judgment in the sum of approximately \$11,562.00. (R. 64).

13. The trial court held an evidentiary hearing on the Defendant's Order to Show Cause on the 19th day of April, 1994. (R. 112).

14. At the hearing Judge Medley set aside the Defendant's Amended Findings and Amended Decree of Annulment because the Plaintiff had not been given proper notice the Defendant had submitted the documents. (R. 183).

15. Judge Medley also found that no Findings of Fact and Conclusions of Law nor a Decree of Annulment were ever entered of record in the case. (R. 180).

16. Judge Medley found, at the conclusion of the hearing, that the Plaintiff did not intentionally disregard the orders of the court as they were stated on the record by Judge Conder during the 1993 trail. (R. 261).

17. Judge Medley found that good cause existed for the entry of the Findings and Decree nunc pro tunc. The judge based the good cause on the fact that Judge Conder had made decisions on the record of the issues presented during the 1983 hearing. He made this finding based upon the transcript of the 1983 trial which was provided by the Defendant. (R. 260-261).

18. Judge Medley was not persuaded that there was sufficient evidence presented that would sustain the Defendant's Order to Show Cause. The judge then struck the Order to Show Cause. (R. 262).

19. Judge Medley further found that both the Plaintiff and the Defendant were lacking in credibility as witnesses to varying degrees. (R. 262-263).

20. Judge Medley found that both parties were barred from pursuing their respective claims by the legal doctrine of laches. (R. 261 and 263).

21. With these findings by the Court, which were made on the record at the April 19, 1994 hearing, Judge Medley dismissed each party's claims against the other party. (R. 260-263)

22. The Defendant then filed a Notice of Appeal and has filed his brief in the matter. (R. 162).

VIII. SUMMARY OF ARGUMENT

1. The Trial Court did not err in entering the Findings of Fact and Conclusions of Law and the Decree of Annulment nunc pro tunc. "At common law, nunc pro tunc allowed a court to correct *its* earlier error or supply *its* omission so the record accurately reflected that which in fact had taken place." Bagshaw v. Bagshaw,

788 P.2d 1057 (Utah App. 1990). Plaintiff's former attorney of record had prepared the Findings of Fact and Conclusions of Law and the Decree of Annulment and submitted the documents for entry, for an unknown reason the documents were never entered by the clerk or were lost after execution. Therefore, the Trial Court was not in error when it ordered the Findings and the Decree entered nunc pro tunc.

2. The Trial Court did not err when it set aside the Defendant's Amended Decree of Annulment and the Amended Findings of Fact and Conclusions of Law. The Plaintiff was not given notice of the entry of these documents by the Defendant when the Defendant presented the documents for entry. Utah Rule of Civil Procedure 58A(d) requires a party to promptly give notice of the signing or entry of judgment to all other parties and to file proof of service of such notice with the court. The Defendant gave no such notice to the Plaintiff of the signing of the documents by Judge Medley nor did he file any proof of the giving of the notice with the clerk of the court. Judge Medley properly set aside the Decree for the Defendant's failure to follow the Utah Rules of Civil Procedure.

3. Judge Medley did not err when he found that there was good cause for entering the Decree of Annulment and the Findings of Fact nunc pro tunc. The Appeals Court will not reverse a Trial Court's determination of facts if the ruling is correctly based upon a proper ground. Peterson v. Peterson, 645 P.2d 37 (Utah App. 1991). In this case Judge Medley based his finding of good cause

on the fact that Judge Conder had made a judgment on the record at the 1983 trial on the merits.

4. The Trial Court did not err in finding that the Plaintiff did not intentionally and willfully disregard Judge Conder's ruling in the 1983 trial. The judge at the trial level is better able to determine the credibility of a witness. The Court of Appeals should assume that the Trial Court believed the evidence which supports the findings. Stone v. Stone, 431 P.2d 802, 20 Utah 2d 287 (1967). Judge Medley found that the Plaintiff did not intentionally disregard the 1983 order.

VIII. ARGUMENT

A. The Trial Court did not abuse its description when it entered the Findings of Fact and Conclusions of Law and the Decree of Annulment nunc pro tunc.

The Trial Court may "enter an order nunc pro tunc in a matter relating to marriage . . . or annulment of marriage" upon the Court finding that good cause exists. See UCA §30-4a-1. This Court has stated that "'good cause' must be determined on a case by case basis, in light of all of the surrounding circumstances, as equity and justice require." Horne v. Horne, 737 P.2d 244 (Utah App. 1987). The Trial Court found the necessary good cause for entering the Decree and the Findings nunc pro tunc. Judge Medley specifically stated that he believed good cause existed "because Judge Conder actually made the decisions on these issues some ten years ago and I think the transcript clearly bears this out." (R. 260-261). The affidavit of Mr. Hanson also substantiates the fact that the pleadings were prepared and actually submitted to the

Court. What happens thereafter to the pleadings is beyond the control of the Plaintiff.

The finding of good cause by the Trial Court is specific and spells out what the facts are in the case which give rise to the entry of the Decree and the Findings nunc pro tunc. The Trial Court's factual finding needs to be given great deference by this court. The Utah Supreme Court states that they accord "considerable deference to findings and judgment of the trial court due to its advantageous position." Fletcher v. Fletcher, 615 P.2d 1218 (Utah 1980).

Judge Medley was able to review the case at length, make factual findings based upon the evidence presented to the court, listen to testimony by both parties and to make a determination about the credibility of the parties during and at the conclusion of the 1994 hearing. His determination was that good cause existed to allow him to enter the Decree and the Findings nunc pro tunc. This Court should give this decision the same deference to this finding.

The Defendant argues in his brief that the facts are not sufficient to support Judge Medley's decision. This argument cannot be upheld in light of the evidence of the case. The Defendant argues that it was the Plaintiff's responsibility to prepare the original Decree of Annulment and the original Findings of Fact, through the work of Mr. Hanson. The Defendant goes on to argue that it is "undisputed that Judge Conder never signed the final Decree of Annulment because it was never submitted for his

review." (Appellant's Brief at p. 13). The pleadings filed by the Plaintiff and the evidence presented show that this statement is inaccurate. Mr. Hanson filed an affidavit with the court in which he states "As the Plaintiff's Attorney of record I prepared the Decree of Annulment and the Findings of Fact and Conclusions of Law as required by the Court and to forward them to the Court for entry." (R. 138).

The Plaintiff has supported her position that her attorney had properly followed through with the court's order from the 1983 trial. The Defendant's contention that good cause does not exist is unsupported by the facts and the pleadings prepared in this case. The Trial Court found "good cause" and this finding should be upheld by this Court.

The Defendant next argues that even if there is good cause for entering the Decree and the Findings nunc pro tunc the documents are not consistent with the 1983 ruling. This argument is moot. The defendant had the opportunity to object to the Decree and the Findings as they were prepared. The Decree and Findings were mailed to the Defendant's attorney of record David Brown on the 10th day of May, 1994. Judge Medley entered the Decree and signed the Findings on the 3rd day of June, 1994. The Defendant had notice and ample opportunity to object to the form of the Decree and the Findings. The Defendant, either by counsel or personally, did not object to the form when the documents were entered. The Defendant should not now be heard to complain that the documents are inaccurate even though he did not object to the documents when

they were presented to him. This Court should not entertain this issue when it was not raised at the trial court level where it could have been properly addressed.

Next, the Defendant argues that the Plaintiff willfully disobeyed Judge Conder's order from the 1983 trial. The Defendant argues that the facts are undisputed that the Plaintiff "knowingly, intentionally, and wrongfully" disobeyed the order of the Trial Court. (Appellant's Brief p. 14 and 15). This contention is against the factual findings of Judge Medley made at the conclusion of the hearing on Defendant's Order to Show Cause. Judge Medley specifically stated that "this Court is far from persuaded by the evidence that the plaintiff in this case intentionally and willfully attempted to disregard Judge Conder's ruling in this particular case." (R. 261, emphasis added).

The Defendant has the responsibility of showing this Court that the Trial Court's finding is clearly wrong and against the weight of the evidence. The Defendant must marshal "all evidence relevant to the finding and then shows the finding to be clearly erroneous." Barber v. Barber, 792 P.2d 134 (Utah App. 1990). Defendant does not provide this Court with any evidence, either in the record or now, which even hints that Judge Medley's finding would be an abuse of discretion. This Court must therefore presume that Judge Medley's findings are correct and in accord with the weight of the evidence as presented to the Court at the hearing.

B. The Plaintiff's personal and first-hand knowledge of Judge Conder's ruling in 1983 does NOT give the Plaintiff actual knowledge and notice of the Defendant's preparation and filing of a proposed Decree of Annulment and proposed Findings of Fact and Conclusions of Law.

The Defendant argues that the Plaintiff 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." (Appellant's brief p. 16 and 17). The Defendant relies upon a Montana State Supreme Court decision to say that the Plaintiff had constructive notice simply because she is a party to the case.

This argument is clearly against the Rules of Civil Procedure of the State of Utah. Rule 58A(d) requires a party to give "prompt notice of the signing or entry of judgment to all other parties and shall file proof of service of such notice with the clerk of the court." The Defendant did not give the Plaintiff any notice that he had prepared a proposed Decree and proposed Findings when he filed and had the Court enter the documents. The Defendant then prepared a proposed Amended Decree and Amended Findings. Again, the Defendant did not provide the Plaintiff with notice of the filing and the entry of these pleadings or decree.

The Plaintiff was not allowed an opportunity to be heard by the Court when the documents were entered since she did not have any knowledge of the Defendant's actions. The Plaintiff rights to defend and to be heard were violated by the Defendant's failure to

follow the Rules of Civil Procedure. The rules were adopted so that parties are given notice of the status of the case. Wilma believed that Mr. Hanson had prepared and filed the Decree of Annulment and the Findings of Fact and Conclusions of Law some ten (10) years earlier. Both of the parties acted under the belief that if the Decree had been entered for those ten years. The Plaintiff cannot be charged with "actual knowledge" of the Defendant's actions ten years after the fact. The Trial Court properly set aside the Decree of Annulment and the Findings of Fact and Conclusions of Law which had been entered without notice to the Plaintiff. Judge Medley found that the Plaintiff did not have actual knowledge of the entry of the Decree and the Findings the Defendant filed with the court. (R. 183). Again, if the Defendant wants this Court to overturn the findings of the Trial Court he must marshall all the evidence that shows the Trial Court's factual error. The Defendant makes an assertion that the Trial Court was wrong but does not offer any new evidence or any evidence from the record to show the findings are clearly wrong.

Judge Medley found the Defendant had violated the Plaintiff's due process rights by not giving the Plaintiff notice of the filing and entry of the Decree and Findings and the Amended Decree and Amended Findings. Judge Medley acted properly by setting aside the Decree and the Findings.

C. The Defendant's argument that the Lower Court erroneously set aside the 1993 Amended Decree of Annulment is moot in light of the Findings of the lower Court.

The Defendant argues that the Amended Decree and Amended findings should not have been set aside unless they are clearly erroneous. While this argument would be proper in most cases it is moot in this case. Judge Medley found that a due process violation occurred and set aside the Amended Decree and Amended Findings because of this violation. The Defendant's argument is without merit based upon the facts of the case and the specific finding of Judge Medley.

D. Judge Medley applied the equitable doctrine of Laches to both parties claims.

Judge Medley, at the conclusion of the 1994 evidentiary hearing on the Defendant's Order to Show Cause, found that the Defendant AND the Plaintiff had waited too long in bringing their actions before the Court. He therefore barred each party's claims due to the parties' failure to act when they properly should have acted.

The Defendant waited for ten (10) years before he tried to collect on the judgment. Utah Code Annotated Section 78-12-22 specifically states that a person has eight years to bring an action upon a judgment or decree. The Defendant brought an action to enforce the judgment ten (10) years after the judgment was entered by Judge Conder. Judge Medley found that Judge Conder had made findings and entered a judgment at the 1983 trial. As part of the 1994 hearing, Judge Medley also found that the Defendant made an unbelievable witness.

The Defendant should have brought an action within the specified time limit if he wanted to collect on the judgment. He did not and the Defendant cannot and should not be heard to complain due to his failure to act when he should have acted. Neither party should be allowed ten (10) years to prepare pleadings which they want to have enforced.

Judge Medley also found the Plaintiff was barred from her counterclaim to the Order to Show Cause because she had waited for too long to bring the counterclaim.

VIII. CONCLUSION


The Trial Court acted properly when it entered the Decree of Annulment and the Findings of Fact and Conclusions of Law nunc pro tunc. The Court found that Judge Conder had made findings about the issues presented by the Defendant in his Order to Show Cause. If the Defendant had wanted to collect on the judgment of Judge Conder he knew where the courthouse was to check to make sure the Decree had been entered. The Defendant also had an attorney he could have checked with to determine if the Decree had been entered. However, the Defendant did nothing for ten (10) years.

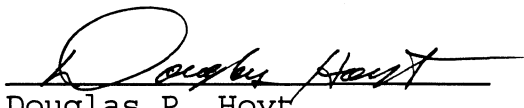
When the Defendant acted he did so without notice to the Plaintiff. The Defendant's actions violated the Plaintiff's rights to be heard and to defend herself before the court. Judge Medley found that the Plaintiff had not been given notice and he properly set aside the Amended Decree and Amended Findings which were filed by the Defendant.

The Court did not make any factual errors or legal errors in the entry of the Decree of Annulment nunc pro tunc and the Findings of Fact and Conclusions of Law nunc pro tunc. It is the Defendant's responsibility to marshal the evidence to support the contentions of the Trial Court's errors. The Defendant has failed to present any new evidence or show from the record any errors the Trial Court committed.

The Trial Court's Findings of Fact should be sustained by this Court. The Conclusions of Law by the Trial Court should be reviewed and found to be correct in accordance with the findings of the Trial Court. The appeal of the Defendant should therefore be dismissed.

DATED this 17th day of April, 1995.


W. Kevin Jackson
Attorney for Appellee/Plaintiff

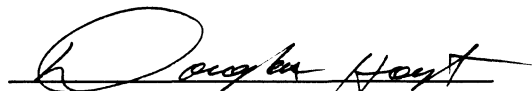

Douglas P. Hoyt
Attorney for Appellee/Plaintiff

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Appellee's Brief to the following:

Gary L. Bell
124 South 400 East, Suite 320
Salt Lake City, UT 84111

by placing the same in the United States Mail, postage prepaid, this 17th day of April, 1995.



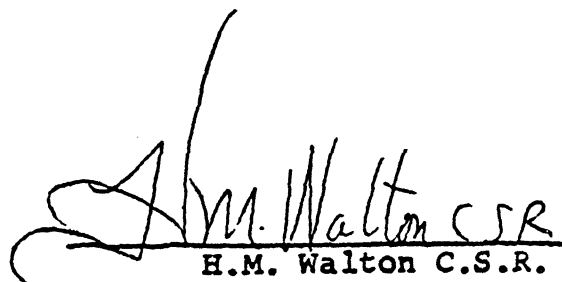
PLAINTIFF'S EXHIBITS

EXHIBIT "A"

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
-----0000000000000000-----

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 Anullment;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 rea 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. \$19,35,
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 guesstimate 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

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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EXHIBIT "B"

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4. I have personal knowledge concerning the facts setforth in this affidavit and the facts of the case during the time that I was the Attorney for the Plaintiff, Wilma R. Bugger.

5. If I am called to testify at trial my testimony would be as setforth herein.

6. That on or shortly after the 19th day of April, 1983, the above entitled Court entered a Decree of Annulment by and between the parties which became final and which has not been subject to any appeal by any party.

7. As the Plaintiff's Attorney of record I prepared the Decree of Annulment and the Findings of Fact and Conclusions of Law as required by the Court and to forward them to the Court for entry.

8. It was, and still is, my practice to timely prepare all Orders of the Court which I am required to prepare.

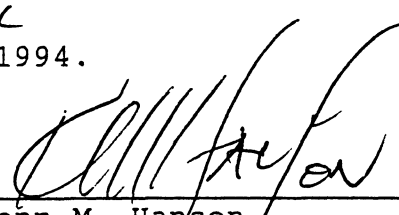
9. It was, and still is, my practice to submit to the Court all Orders when I have completed the Order and have had the opposing Counsel approve the Order as to form.

10. It was, and still is, my practice to follow up on any matter I submit for entry to the Court to ensure that the Court enters said Decree.

11. That to the best of my knowledge I followed my usual business custom and practice and submitted the Decree of Annulment and the Findings of Fact and Conclusions of Law. A copy of each is attached as Exhibit "A" and "B" and incorporated by this reference.

12. That had I known or reason to believe that the Decree of Annulment had not been entered by the Court after submission I would have again resubmitted the Decree of Annulment to be certain that the Decree was properly entered.

Further Affiant sayeth not
DATED this 11 day of ~~March~~ ^{APRIL}, 1994.


Kenn M. Hanson
Attorney at Law

VERIFICATION

STATE OF ARIZONA)
 : ss.
COUNTY OF MOHAVE)

I, the undersigned individual being first duly sworn under oath, deposes and says that:

I am the person described in the attached document, and have read said document in its entirety.

That the allegations made in said document are, to the best of my knowledge and belief, true and accurate representations, allegations and statements.

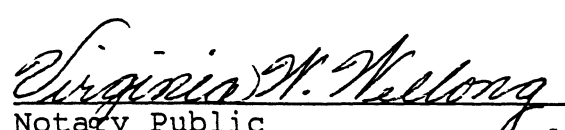
That the information supplied in said document is done so in good faith and is based on personal knowledge or belief.

Dated this 11 day of ~~March~~ ^{APRIL}, 1994.

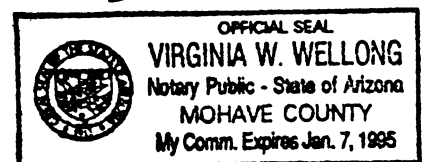


UNDERSIGNED

SUBSCRIBED and SWORN to before me on this 11th day of ~~March~~ ^{APRIL}, 1994.


Notary Public
Residing at: Bullhead City,
Arizona

My commission expires: Jan 7, 1995

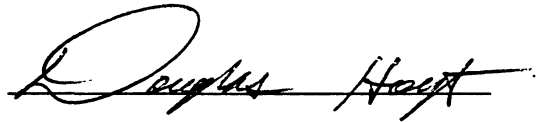


CERTIFICATE OF MAILING

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

David W. Brown, Esq.
Boston Building, Suite 1120
9 Exchange Place
Salt Lake City, Utah 84111

by placing the same in the United States Mail, postage prepaid,
this 13th day of April, 1994.

A handwritten signature in black ink, appearing to read "Douglas Hest", written over a horizontal line.

BUGGHATT.AFF

PENGAD-Beyonce, N. J.

**PLAINTIFF'S
EXHIBIT**

A

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)
WILMA R. BUGGER,
Plaintiff,

vs.

CHARLES B. BUGGER,
Defendant.

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DECREE OF ANNULMENT

Civil No. D-81-4371

DECREE

00141

2. The real property located at 4098 W. 5500 South, Kearns, Utah, is 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.

3. Plaintiff shall pay to Defendant the 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.

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

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

6. Defendant is 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. Plaintiff is awarded as her sole and separate property the fixtures, furniture and personalty located within the real property at 4098 West 5500 South, Kearns, Utah.

8. Defendant is ordered to assume and pay, holding Plaintiff harmless from any liability thereon, the debts and obligations arising from Defendant's company known as B&B Siding Co., listed as follows:

- a. Century Finance
- b. Valley Bank & Trust \$1000.00 I pd.
- c. VISA I pd.

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

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

10. Plaintiff is awarded as her sole and separate property the 1975 Cadillac automobile. Lane back.

11. Defendant is awarded as his sole and separate

PENCAD-Bayonne, N. J.

**PLAINTIFF'S
EXHIBIT**

B

WILMA R. BUGGER,
Plaintiff,

**FINDINGS OF FACT
and
CONCLUSIONS OF LAW**

Civil No. D-81-4371

FINDINGS OF FACT

00115

action have been residents of Salt Lake County, Utah.

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

3. During the course of the parties' relationship, six (⁷~~6~~) children were born as issue, all of whom have attained majority.

4. During the course of their relationship the parties acquired real property situated at 4098 West 5500 South, Kearns, Utah, consisting of a house and lot. The fair market value of said real property is \$47,000.00.

There exists an underlying 1st mortgage on said real property in the amount of \$5,633.13; there exists an underlying 2nd mortgage on said real property in the amount of \$8,236.10.

Based thereon, total present equity in said real property amounts to \$33,630.77.

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

6. 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 ^{500.00}~~\$7,000.00~~.

7. During their relationship the parties acquired certain vehicles described as follows with corresponding values:

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

8. 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. *2 pd.*

9. During the course of the relationship, the Defendant acquired tools of his trade which have a present value of \$1,700.00. *No*

10. During the course of the relationship, the parties incurred various obligations set forth below with corresponding balances which have been paid by Plaintiff:

a. Sears	\$ 423.00	
b. Dr. Regal	50.00	<i>?</i>
c. Mobile Home	1,500.00	<i>2 pd \$ 250.00</i>
d. Credit Union	744.00	<i>NINE</i>
e. IRS lien	2,650.00	<i>Charlie never filed WIRS in his life</i>

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

- a. Century Finance Company;
- b. Valley Bank & Trust; and *10,000.00 Bus. Loan.*
- c. VISA. *2 pd.*

12. It is fair and reasonable that the real property located at 4098 W. 5500 South, Kearns, Utah, be 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.

13. It is fair and reasonable that Plaintiff pay to Defendant the 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.

14. 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.

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

16. It is fair and reasonable that 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. *he got them all.*

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

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

- a. Century Finance
- b. Valley Bank & Trust *Spd.*
- c. VISA *Spd.*

19. It is fair and reasonable that Defendant be awarded

as his sole and separate property the proceeds from the sale of the following automobiles:

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

see truck to him

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

he got them all

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

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

- a. Sears *2 pd*
- b. Dr. Regal ?
- c. payments on the mobile home *2 pd.*
- d. personal loan *2 pd.*
- e. IRS lien *2 pd.*

23. 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 jurisdiction over the parties to and subject matter of this action.

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

3. There exists legally insufficient grounds to award attorney's fees to either party.

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

DATED this 11 day of April, 1983.

BY THE COURT:

KS/
DISTRICT COURT JUDGE

APPROVED AS TO FORM AND CONTENT:

HORACE KNOWLTON
Attorney for Defendant

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)	

6000
 7000
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