

1994

Gloria J. Hight v. David Hight : Brief of Appellant

Utah Court of Appeals

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Harry Caston; McKay, Burton & Thurman; Attorneys for Appellant.

Joane Pappas White; Attorney for Appellee.

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IN THE COURT OF APPEALS

DOCKET NO. 940721

GLORIA J. HIGHT, :
Defendant/Appellant, :
v. : Case No. 940721-CA
DAVID HIGHT, : Priority No. 15
Plaintiff/Appellee. :

BRIEF OF APPELLANT

APPEAL FROM A DECISION ENTERED BY
THE SEVENTH DISTRICT COURT IN AND FOR CARBON COUNTY,
THE HONORABLE BRYCE W. BRYNER PRESIDING
(Case No. Below 890715978)

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FILED

APR 21 1995

OF APPEALS

IN THE COURT OF APPEALS

GLORIA J. HIGHT,	:	
Defendant/Appellant,	:	
v.	:	Case No. 940721-CA
DAVID HIGHT,	:	Priority No. 15
Plaintiff/Appellee.	:	

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STATEMENT OF JURISDICTION

Jurisdiction is conferred on this Court by § 78-2(a)-3(2)(h)(i) Utah Code Ann.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

The issue presented on appeal is whether the court could find a substantial change in circumstances sufficient to modify the Decree of Divorce so as to increase Mrs. Hight's child support obligation without considering whether Mrs. Hight's income at the time the Petition for Modification came on for hearing was needed to pay her medical expenses and treatment, as well as her living expenses, when the court's previous order that Mrs. Hight not pay child support was based on the specific finding of fact that all of Mrs. Hight's available income would be utilized to pay for her medical treatment and expenses, and her living expenses.

Citation to the Record Showing That the Issue Was Preserved in the Trial Court.

This issue was argued to the court as is set forth in pages 32-37, and 47-56 of the transcript

Standard of Review.

Substantial and prejudicial error has resulted by misunderstanding or misapplication of the law. *English v. English*, 565 P.2d 409 (Utah 1977); and *Pope v. Pope*, 589 P.2d 752 (Utah 1978).

DETERMINATIVE STATUTES

§ 30-3-5(3) Utah Code Ann.:

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

STATEMENT OF THE CASE

Nature of the Case.

This case is an appeal of the order of the Seventh Judicial District Court in and for Carbon County that modified the Decree of Divorce so as to increase the Appellant's child support obligation.

Course of the Proceedings.

The Appellee filed a Petition to Modify the Decree of Divorce seeking to increase the Appellant's child support obligation. The Petition came on for hearing on August 26, 1994.

Statement of the Facts Relevant to the Issues Presented For Review.

1. Following a trial held on October 15, 1990, the parties were divorced pursuant to a Decree entered on January 18, 1991.
2. According to the Decree of Divorce and the Amended Decree, Mr. Hight was awarded the legal care and custody of the parties' three (3) minor children:

Amanda Ashley Hight who was born on October 25, 1985; Adam Parker Hight who was born on June 5, 1987; and Sean David Hight who was also born on June 5, 1987.

3. Pursuant to paragraph 4 of the Decree of Divorce entered on January 18, 1991, no child support was awarded. The particular factual findings that supported the court's order that Mrs. Hight not pay child support were as follows:

a. That the Defendant's gross income at the time of the Decree of Divorce was \$990.00 per month for the year 1990 (Paragraph 5, Findings of Fact and Conclusions of Law).

b. "That the Defendant has experienced ongoing emotional problems which have required numerous hospitalizations, and which have required various medications. Although the Defendant appears to be demonstrating an improvement in her condition, the court finds that the Defendant has never exhibited emotional problems or been required to take prescriptions which have mood-altering effects." (Paragraph 5(d), Findings of Fact and Conclusions of Law).

c. "The court will not require the Defendant to pay child support to the plaintiff to assist with the support of the children at this time because the Defendant will need all of her available income to take care of her living expenses as well as meet payments on the large debt obligations which she owes for her medical treatment and expenses." (Paragraph 9, Findings of Fact and Conclusions of Law).

4. That on or about February 9, 1994, Mr. Hight filed his Petition for Modification. In the Petition for Modification, Mr. Hight alleged one (1) substantial change in circumstance, in that:

There has been a substantial change in circumstance with respect to Defendant's earning capacity since the time of the entry of the Decree of Divorce, and that she is currently working at the United States Post Office as a full-time employee at a Level 5 pay rate and is capable of providing support for the minor children.

(Paragraph 5, Petition for Modification).

5. The Petition for Modification did not include any allegation as to the status of Mrs. Hight's living expenses or the cost of her medical treatment and expenses.

6. In replying to the Petition for Modification, Mrs. Hight set forth the affirmative defense that the Petition for Modification failed to state a cause of action upon which relief may be granted; admitted that Mrs. Hight was working as a full-time employee; and denied the remaining allegations of paragraph 5 of the Petition for Modification.

7. The Petition for Modification came before the court for hearing on August 26, 1994.

8. In support of his Petition for Modification, Mr. Hight called two (2) witnesses - himself and Mrs. Hight.

9. Through the testimony of Mrs. Hight, Mr. Hight established that at the time of the hearing, Mrs. Hight was earning \$16.50 per hour, and working forty (40) hours per week for a net income of \$800.00 every two (2) weeks. (Transcript, p. 18, ll. 5-9).

10. The court also found that "At the time of the entry of the Decree of Divorce the Defendant had an average gross income of \$990.00 per month. She now has monthly gross income of \$2,838.00 from her employment with the U.S. Post Office." (Paragraph 3, Findings of Fact and Conclusions of Law on Petition for Modification).

11. Mr. Hight did not elicit any evidence or testimony in his case in chief as to (a) the current state of Mrs. Hight's ongoing emotional problems; (b) the current state of Mrs. Hight's living expenses; and (c) the existence or non-existence of debt obligations which Mrs. Hight currently owed for her medical treatment and expenses.

12. At the close of Mr. Hight's case in chief, Mrs. Hight moved for directed verdict. The basis of the directed verdict was that Mr. Hight had failed to present any testimony as to Mrs. Hight's living expenses, medical condition, the cost of her treatment, and existing bills that Mrs. Hight has for her medical expenses. (Transcript, pp. 28-33). Mrs. Hight argued that as the court's order that Mrs. Hight not be required to pay child support was based on the court's finding that "Defendant will need all of her available income to take care of her living expenses as well as meet payments on the large debt obligations which she owes for her medical treatment and expenses", the court could not find a change in circumstances sufficient to modify the portion of the Decree of Divorce as to child support based solely on Mrs. Hight's increased income without finding that she would not need her available income to take care of her living expenses as well as meet her cost of medical treatment and expenses. (Transcript, pp. 32,33).

13. The court denied Mrs. Hight's motion for directed verdict. (Transcript, p. 35, l. 25; p. 36, l. 1).

14. Based solely on the increase in Mrs. Hight's income since the entry of the Decree of Divorce, the court found that there was a material and substantial change in the conditions of the parties since the time of entry of the Decree of Divorce. (Paragraph 5, Findings of Fact and Conclusions of Law on Petition for Modification; and Transcript, p. 56, ll. 10-17).

15. The court found that based on the present incomes of the parties, and pursuant to the Uniform Child Support Guidelines, Mrs. Hight's child support obligation would be \$689.00 per month. (Paragraph 7, Findings of Fact and Conclusions of Law on Petition for Modification).

16. The court did consider Mrs. Hight's monthly expenses, including medical expenses, only for the purpose of determining whether to depart from the Child Support Guidelines. The court ordered that Mrs. Hight pay child support in the total amount of \$525.00 per month. (Paragraph 9, Findings of Fact and Conclusions of Law on Petition for Modification).

SUMMARY OF THE ARGUMENT

That as the court's previous order that Mrs. Hight not pay child support was based upon the specific finding that "The Defendant will need all of her available income to take care of her living expenses as well as meet payments on the large debt obligations which she

owes for her medical treatment and expenses", the court cannot modify the Decree of Divorce based solely on a finding that Mrs. Hight's income has increased without also finding that Mrs. Hight would no longer need all of her available income for living expenses, and debts and obligations that she owes for medical treatment and expenses.

ARGUMENT

Mrs. Hight recognizes that pursuant to § 30-3-5(3) Utah Code Ann., the trial court retains "continuing jurisdiction" regarding the support of children. Mrs. Hight also recognizes that this court has never wavered from the standard that "a party seeking modification of a child support award must show that a substantial change of circumstances has occurred since the divorce itself, not contemplated within the decree itself." *Ostler v. Ostler*, 789 P.2d 713 (Utah App. 1990).

In *Haslam v. Haslam*, 657 P.2d 757 (Utah 1982), the court stated: "The change in circumstances required to justify a modification of a divorce decree varies with the type of modification sought." *Id.* at 758. It is Mrs. Hight's contention that the *Haslam* decision stands for the proposition that in order to modify a particular provision of a decree of divorce, there must be a substantial change in the circumstance upon which the provision of the decree of divorce was based. For example, in the case of *Hogge v. Hogge*, 646 P.2d 51 (Utah 1982), the court originally granted custody of the parties' children to their father. This custody award was based on the finding that at the time of the decree, the mother had emotional problems which rendered her incapable to care for the parties' children.

Subsequent to the decree of divorce, the mother overcame her emotional problems. The mother then petitioned the court for a modification of the decree of divorce to award her custody. As the original custody award to the father was predicated and based upon the mother's emotional illness, the fact that the mother had overcome that emotional illness was correctly determined by the trial court to be a material change in circumstance sufficient to modify the custodial portion of the decree.

In the instant case, after resolving the issues by trial, the court ordered that Mrs. Hight was not to pay child support. The order was based on the specific finding that Mrs. Hight would "need all of her available income to take care of her living expenses as well as meet payments on the large debt obligations which she owes on her medical treatment and expenses." Applying the lessons of the above-cited cases to the facts of the instant case, Mr. Hight could modify the provisions of the Decree of Divorce related to child support only by demonstrating that Mrs. Hight did not need all of her available income to pay her living expenses, and the debts that she owes for her medical treatment and expenses.

It is undisputed that Mrs. Hight's income increased substantially. If the trial court's order that Mrs. Hight not pay child support was based solely on her income at the time of the Decree of Divorce, Mrs. Hight would agree that her change in income would be a sufficient basis for the court to find a substantial change in circumstance. The trial court's order that Mrs. Hight not pay child support was based on more than Mrs. Hight's income. The court's previous order was based on a determination that after Mrs. Hight paid for her

living expenses, medical expenses and treatment, she would have no income available out of which to pay child support. It was not proper for the court to find that a substantial change in circumstances existed sufficient to modify Mrs. Hight's child support obligation without determining that Mrs. Hight's present living expenses and costs for medical treatment and expenses had not also increased so as to still require all of Mrs. Hight's present income.

CONCLUSION

Mrs. Hight prays that the Court rule that as the trial court's original order respecting child support was based on a finding that Mrs. Hight's living expenses and costs for medical treatment and other medical costs would require all of her available income, that the trial erred in modifying the provisions regarding child support based solely on an increase in Mrs. Hight's income.

DATED this 20th day of April, 1995.

McKAY, BURTON & THURMAN

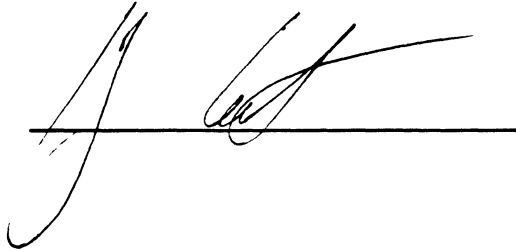
By: 

Harry Caston
Attorneys for Appellant

MAILING CERTIFICATE

I hereby certify that on the 20th day of April, 1995, a true and correct copy of the foregoing Brief of Appellant was mailed, postage prepaid, to the following:

Joane Pappas White
Attorney for Appellee
475 East Main #1
Price, Utah 84501

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a horizontal line extending to the right.

cliz\harry\highgt04.brf

Tab 1

SEVENTH DISTRICT COURT
CARBON COUNTY, UTAH
FILED

ORIGINAL

JAN 13 1991

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BY *A. Bunnell*
DEPUTY

IN THE SEVENTH DISTRICT COURT IN AND FOR
CARBON COUNTY, STATE OF UTAH

DAVID HIGHT,)	
)	
Plaintiff,	)	DECREE OF DIVORCE
)	
Vs.)	
)	
GLORIA J. HIGHT,	)	Civil No. 15978
)	
Defendant.)	

The above-entitled matter came on regularly for trial before the Court on the 15th day of October, 1990, the Honorable BOYD BUNNELL, District Judge presiding; and, the Plaintiff appeared personally and with his counsel, JOANE PAPPAS WHITE; and, the Defendant appeared personally and with her counsel JOHN E. SCHINDLER; and, the Court heard sworn testimony and received exhibits and announced findings from the bench and a ruling concerning the issue of custody of the minor children which ruling will now be repeated herein; and, the Court took the balance of the issues under advisement; and, each of the parties filed a Motion to Reconsider certain items contained in the Court's original Memorandum Decision and the rulings on said Motions are contained herein; and, the

Court having been fully advised in the premises and having entered the foregoing Findings of Fact and Conclusions of Law now, therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That the Plaintiff is granted a divorce from the Defendant.

2. That the Plaintiff is awarded the care, custody and control of the three (3) minor children of the parties, namely, AMANDA ASHLEY HIGHT, born October 25, 1985; ADAM PARKER HIGHT, born June 5, 1987 and SHAWN DAVID HIGHT, born June 5, 1987 (Twin boys), subject to Defendant's rights to visit said children at all reasonable times and places, including but not limited to the following:

A. The Defendant is entitled to take the children every other weekend from 5:00 p.m. on Fridays until 7:30 p.m. on Sundays; and

B. The Defendant is entitled to visit with the children commencing at 9:30 a.m. and terminating at 7:30 p.m. on every other major holiday which shall be deemed to be Easter, Memorial Day, July 4, Labor Day and Thanksgiving. She shall commence her holiday visits with Thanksgiving of 1990; and

C. The Defendant is entitled to visit with the minor children every Christmas holiday commencing at 9:30

a.m. on December 26th and continuing until 6:00 p.m. on December 29th; and

D. The Plaintiff is entitled to have the children every Father's Day and the Defendant shall have the right to visit with the children every Mother's Day, irrespective of weekend visitations; and

E. The Defendant is entitled to take the children for two (2) weeks during the month of June and two (2) weeks during the month of August of each school summer vacation period and the Defendant will be allowed designate the dates for said summer visitation provided that she notifies the Plaintiff of those dates by May 1st of each year.

F. The Plaintiff is ordered to keep the Defendant advised of any major medical care required for the children as well as keeping her advised of their progress in school and other significant aspects of the children's lives.

3. The parties hereto have accumulated certain real and personal property during this marriage and said property is awarded as follows:

A. The Plaintiff is awarded the home of the parties provided that he assumes the outstanding indebtedness thereon and holds the Defendant harmless therefrom.

B. The Plaintiff is awarded the 1980 Honda automobile and the 1974 Porsche automobile.

C. The Defendant is awarded the 1985 Ford Bronco.

D. The Defendant is awarded the savings bonds with a value of approximately THREE THOUSAND FIVE HUNDRED (\$3,500.00) DOLLARS.

E. Each party is awarded those items of personal property in his or her possession as of October 15, 1990.

F. The Plaintiff is ordered to furnish the Defendant with a working and useable washing machine.

G. Each party is awarded his or her respective retirement benefits, free and clear of all claims of the other party.

4. No child support is awarded herein.

5. No alimony is awarded herein.

6. The parties hereto have accumulated certain debts and obligations during the marriage and the Defendant has accumulated certain debts and obligations for her medical treatment following the separation of the parties, said debts and obligations are allocated as follows:

A. The Plaintiff is ordered to assume and pay the outstanding debts and obligations as designated in his Financial Declaration, namely, Hanover Mastercard (new account), Hanover Mastercard (old account), the Discover Card, the Sears account, the children's ABC books, and the Fleetwood mortgage on the home together with various medical and dental bills accumulated on behalf of the minor children.

B. The Plaintiff is ordered to pay one-half of the medical expenses incurred by the Defendant as stated in her Financial Declaration.

C. The Defendant is ordered to pay one-half of the medical expenses incurred by her as stated in her Financial Declaration.

7. Each party is ordered to maintain medical, dental and optical insurance on the minor children of the parties if it is available through a group policy at their place of employment, as a benefit of their employment at little or no expense and each party is further ordered to pay one-half of any reasonable and necessary major medical, dental and/or optical expense incurred for and on behalf of the minor children which is not covered by a policy of insurance. The Plaintiff's insurance shall be designated as the primary carrier.

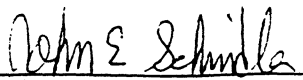
8. Each party is ordered to pay his or her respective Court costs and attorney's fees in this matter.

9. Each parties' Motion for Reconsideration is hereby denied.

DATED this 18 day of January, 1991.


BOYD BUNNELL
District Court Judge

APPROVED AS TO FORM & CONTENT:


JOHN E. SCHINDLER
Attorney for Defendant

Tab 2

FEB -4 92

SEVENTH DISTRICT COURT
STATE OF UTAH

Civil No. 15978

The above-entitled matter came on regularly for trial before the Court on the 15th day of October, 1990, the Honorable BOYD BUNNELL, District Judge presiding; and, the Plaintiff appeared personally and with his counsel, JOANE PAPPAS WHITE; and, the Defendant appeared personally and with her counsel JOHN E. SCHINDLER; and, the Court heard sworn testimony and received exhibits and announced findings from the bench and a ruling concerning the issue of custody of the minor children which ruling will now be repeated herein; and, the Court took the balance of the issues under advisement; and, each of the parties filed a Motion to Reconsider certain items contained in the Court's original Memorandum Decision and the rulings on said Motions are contained herein; and, the

Court having been fully advised in the premises and having entered the foregoing Findings of Fact and Conclusions of Law now, therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That the Plaintiff is granted a divorce from the Defendant.

2. That the Plaintiff is awarded the care, custody and control of the three (3) minor children of the parties, namely, AMANDA ASHLEY HIGHT, born October 25, 1985; ADAM PARKER HIGHT, born June 5, 1987 and SHAWN DAVID HIGHT, born June 5, 1987 (Twin boys), subject to Defendant's rights to visit said children at all reasonable times and places, including but not limited to the following:

A. The Defendant is entitled to take the children every other weekend from 5:00 p.m. on Fridays until 7:30 p.m. on Sundays; and

B. The Defendant is entitled to visit with the children commencing at 9:30 a.m. and terminating at 7:30 p.m. on every other major holiday which shall be deemed to be Easter, Memorial Day, July 4, Labor Day and Thanksgiving. She shall commence her holiday visits with Thanksgiving of 1990; and

C. The Defendant is entitled to visit with the minor children every Christmas holiday commencing at 9:30

a.m. on December 26th and continuing until 6:00 p.m. on December 29th; and

D. The Plaintiff is entitled to have the children every Father's Day and the Defendant shall have the right to visit with the children every Mother's Day, irrespective of weekend visitations; and

E. The Defendant is entitled to take the children for two (2) weeks during the month of June and two (2) weeks during the month of August of each school summer vacation period and the Defendant will be allowed designate the dates for said summer visitation provided that she notifies the Plaintiff of those dates by May 1st of each year.

F. The Plaintiff is ordered to keep the Defendant advised of any major medical care required for the children as well as keeping her advised of their progress in school and other significant aspects of the children's lives.

3. The parties hereto have accumulated certain real and personal property during this marriage and said property is awarded as follows:

A. The Plaintiff is awarded the home of the parties located at 286 North 100 West, Price, Utah, provided that he assumes the outstanding indebtedness thereon and holds the Defendant harmless therefrom. Said home is more particularly described as follows:

BEGINNING at a point 50 feet South of the Northwest Corner of Lot 2, Block 7, LOCAL SURVEY, a.k.a. TIDWELL'S SURVEY of a part of Section 16, Township 14 South, Range 10 East, of Salt Lake Base and Meridian, according to the official plat thereof; and running thence East 210 feet; thence South 59 7/8 feet; thence West 210 feet; thence North 59 7/8 feet to the point of beginning.

Together with all improvements and appurtenances thereunto appertaining.

B. The Plaintiff is awarded the 1980 Honda automobile and the 1974 Porsche automobile.

C. The Defendant is awarded the 1985 Ford Bronco.

D. The Defendant is awarded the savings bonds with a value of approximately THREE THOUSAND FIVE HUNDRED (\$3,500.00) DOLLARS.

E. Each party is awarded those items of personal property in his or her possession as of October 15, 1990.

F. The Plaintiff is ordered to furnish the Defendant with a working and useable washing machine.

G. Each party is awarded his or her respective retirement benefits, free and clear of all claims of the other party.

4. No child support is awarded herein.

5. No alimony is awarded herein.

6. The parties hereto have accumulated certain debts and obligations during the marriage and the Defendant

has accumulated certain debts and obligations for her medical treatment following the separation of the parties, said debts and obligations are allocated as follows:

A. The Plaintiff is ordered to assume and pay the outstanding debts and obligations as designated in his Financial Declaration, namely, Hanover Mastercard (new account), Hanover Mastercard (old account), the Discover Card, the Sears account, the children's ABC books, and the Fleetwood mortgage on the home together with various medical and dental bills accumulated on behalf of the minor children.

B. The Plaintiff is ordered to pay one-half of the medical expenses incurred by the Defendant as stated in her Financial Declaration.

C. The Defendant is ordered to pay one-half of the medical expenses incurred by her as stated in her Financial Declaration.

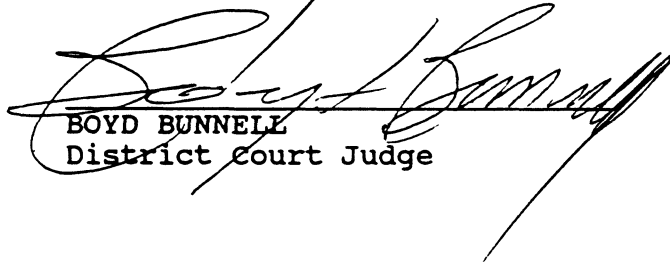
7. Each party is ordered to maintain medical, dental and optical insurance on the minor children of the parties if it is available through a group policy at their place of employment, as a benefit of their employment at little or no expense and each party is further ordered to pay one-half of any reasonable and necessary major medical, dental and/or optical expense incurred for and on behalf of the minor children which is not covered by a policy of insurance. The Plaintiff's insurance shall be designated as the primary carrier.

8. Each party is ordered to pay his or her respective Court costs and attorney's fees in this matter.

9. Each parties' Motion for Reconsideration is hereby denied.

10. This Amended Decree of Divorce - is entered herein Nunc Pro Tunc, and is retroactive back to the date of the entry of the original Decree of Divorce on January 18, 1991.

DATED this 4 day of February, 1992.


BOYD BUNNELLE
District Court Judge

Tab 3

SEVENTH DISTRICT COURT
CARBON COUNTY, UTAH
FILED

ORIGINAL

JUN 18 1991

JOANE PAPPAS WHITE #3445
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475 East Main-Street
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BY *L. Burdage*
DEPUTY

IN THE SEVENTH DISTRICT COURT IN AND FOR
CARBON COUNTY, STATE OF UTAH

DAVID HIGHT,)	
)	
Plaintiff,	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
Vs.)	
)	
GLORIA J. HIGHT,	)	Civil No. 15978
)	
Defendant.)	

The above-entitled matter came on regularly for trial before the Court on the 15th day of October, 1990, the Honorable BOYD BUNNELL, District Judge presiding; and, the Plaintiff appeared personally and with his counsel, JOANE PAPPAS WHITE; and, the Defendant appeared personally and with her counsel JOHN E. SCHINDLER; and, the Court heard sworn testimony and received exhibits and announced findings from the bench and a ruling concerning the issue of custody of the minor children which ruling will now be repeated herein; and, the Court took the balance of the issues under advisement; and, each of the parties filed a Motion to Reconsider certain items contained in the Court's original Memorandum Decision and the rulings on said Motions are contained herein; and, the

Court having been fully advised in the premises now finds as follows:

FINDINGS OF FACT

1. ~ That the parties hereto were actual and bona fide residents of Price, Carbon County, State of Utah, and had been for more than three (3) months immediately next prior to the commencement of this action.

2. That the Plaintiff and the Defendant were married on the 17th day of January, 1981 at Orem, Utah County, state of Utah and have been husband and wife since that time.

3. That there have been three (3) children born as the issue of this marriage, namely, AMANDA ASHLEY HIGHT, born October 25, 1985; ADAM PARKER HIGHT, born June 5, 1987 and SHAWN DAVID HIGHT, born June 5, 1987 (Twin boys).

4. The Court finds that irreconcilable differences have occurred in the marital relationship that makes it impossible for the Plaintiff to continue in said relationship and, therefore, the Court finds that the Plaintiff is entitled to a Decree of Divorce terminating his marriage to the Defendant. In reviewing the file, the Court finds that the Defendant has no Answer or Counterclaim on file herein but that the parties entered an oral stipulation at the time of the Pretrial before the Court Commissioner whereby a general denial was entered on the record in Defendant's behalf and was deemed to constitute an Answer for the Defendant.

5. The Court finds that the Defendant earned a gross sum of EIGHT THOUSAND NINE HUNDRED SIXTY-THREE (\$8,963.00) DOLLARS to the first part of October, 1990 from her part-time employment with the United States Postal Department and, therefore, the Court finds that her average gross income is the sum of NINE HUNDRED NINETY (\$990.00) DOLLARS per month for the year 1990.

6. The Court finds that the Plaintiff is currently employed at Sears as a repairman and earns approximately TWO THOUSAND FOUR HUNDRED (\$2,400.00) DOLLARS per month from said employment.

7. With respect to the issue of custody, the Court entered the following Findings of Fact from the bench following the presentation of evidence on October 15, 1990:

A. That the Plaintiff has been the primary caretaker of the three (3) minor children of the parties during much of the time since their respective births and particularly for the last year since the Defendant was hospitalized and subsequently separated from the Plaintiff.

B. The Court finds that the Plaintiff has consistently demonstrated his willingness to place the needs of the children ahead of his own needs and provide a stable home environment for the children.

C. The Court finds that the minor children are doing well in the Plaintiff's care and finds that it would

be in their best interest to maintain the stability which they have in the Plaintiff's environment.

D. The Court finds that the Defendant has experienced ongoing emotional problems which have required numerous hospitalizations and which have required various medications. Although the Defendant appears to be demonstrating an improvement in her condition, the Court finds that the Plaintiff has never exhibited emotional problems or been required to take prescriptions which have mood altering effect.

E. The Court is mindful of the various case law establishing the criteria to evaluate and determine a custody award. From the evidence the Court finds that it is in the best interests of the minor children of the parties that their care, custody and control be awarded to the Plaintiff.

8. The Court finds that it is in the best interest of the children that they have visitation with their mother and that said visitation should be on a regular basis without being overly disruptive of their normal home environment; therefore, the Court finds that the Defendant should be entitled to reasonable visitation with the minor children, at all reasonable times and places, including but not limited to the following:

A. The Defendant shall be entitled to take the children every other weekend from 5:00 p.m. on Fridays until 7:30 p.m. on Sundays; and

B. The Defendant shall be entitled to visit with the children commencing at 9:30 a.m. and terminating at 7:30 p.m. on every other major holiday which shall be deemed to be Easter, Memorial Day, July 4, Labor Day and Thanksgiving. She shall commence her holiday visits with Thanksgiving of 1990; and

C. The Defendant shall be entitled to visit with the minor children every Christmas holiday commencing at 9:30 a.m. on December 26th and continuing until 6:00 p.m. on December 29th; and


D. The Plaintiff shall be entitled to have the children every Father's Day and the Defendant shall have the right to visit with the children every Mother's Day, irrespective of weekend visitations; and

E. The Defendant shall be entitled to take the children for two (2) weeks during the month of June and two (2) weeks during the month of August of each school summer vacation period and the Defendant shall be allowed designate the dates for said summer visitation provided that she notifies the Plaintiff of those dates by May 1st of each year.

F. The Plaintiff should keep the Defendant advised of any major medical care required for the children

as well as keeping her advised of their progress in school and other significant aspects of the children's lives.

9. The Court will not require the Defendant to pay child support to the Plaintiff to assist with the support of the children at this time because the Defendant will need all of her available income to take care of her living expenses as well as meet payments on the large debt obligations which she owes for her medical treatment and expenses)

10. Based on the Plaintiff's present income and his obligation to solely support his children because of the Defendant's current limited earning capacity and debt level and because of the Court's Order requiring the Plaintiff to contribute to the payment of medical debts for the benefit of the Defendant, the Court will not order the Plaintiff to pay the Defendant any alimony. 

11. The Court further finds that the Plaintiff should be required to pay the debts listed on his financial statement, namely, the Hanover Mastercard (new account), the Hanover Mastercard (old account), the Discover card, the Sears card, the children's ABC books, and the Fleetwood mortgage debt as well as the miscellaneous medical and dental providers expenses incurred on behalf of the minor children. The Plaintiff is further ordered to pay one-half of all the outstanding medical bills incurred by the Defendant as shown on her Financial Declaration. The Defendant is also ordered

to pay one-half of all the outstanding medical bills incurred by her as designated in her Financial Declaration

12. Each of the parties is ordered to maintain medical, dental and optical insurance on the children if it is available through a group policy at their place of employment and each is ordered to pay one-half of all reasonable and necessary major medical, dental and/or optical expense incurred for and on behalf of the children which is not covered by a policy of insurance. The Plaintiff's insurance shall be designated as the primary carrier.

13. The parties hereto have accumulated some real and personal property during this marriage and said property is awarded and distributed as follows:

A. The Court finds that the Plaintiff will need the use of the marital residence in order to provide a home for the minor children and, therefore, the Court finds that said home should be awarded to the Plaintiff provided that he assumes the outstanding indebtedness thereon and holds the Defendant harmless therefrom. The Court specifically finds that the real property has an equity of approximately SIX THOUSAND (\$6,000.00) DOLLARS.

B. The Court finds that the 1980 Honda automobile and the 1974 Porsche automobile have a combined value of approximately ONE THOUSAND NINE HUNDRED (\$1,900.00) DOLLARS and that those vehicles have traditionally been the Plaintiff's vehicles and that he should be awarded same.

C. The Court finds that the 1985 Ford Bronco has a value of approximately EIGHT THOUSAND FIVE HUNDRED (\$8,500.00) DOLLARS and that said vehicle should be awarded to the Defendant.

D. The Court finds that the parties had accumulated savings bonds during the marriage with a value of approximately THREE THOUSAND FIVE HUNDRED (\$3,500.00) DOLLARS and that the bonds have been turned over to the Defendant and should be awarded to her herein.

E. The parties have previously divided the balance of their personal property between them and the Court finds that each party should be awarded those items in his or her possession as of the date of hearing, namely, October 15, 1990 with the provision that the Plaintiff is ordered to furnish to the Defendant a working and useable washing machine.

F. The Court finds that each of the parties have accumulated retirement benefits through the course of their respective employments and the Court finds that each of the parties should be awarded his or her respective retirement programs free and clear of any and all claims of the other party.

14. The Court finds that each party has the capacity to pay his or her respective Court Costs and attorney's fees in this matter and that each party should be ordered to do so.

15. Each of the parties hereto submitted a request for the Court to reconsider part of the rulings in its Memorandum Decision, the Court has previously entered a Memorandum Decision on said Motions dated December 5, 1990 which is incorporated herein, as follows:

A. Plaintiff has moved the Court to reconsider the medical debt distribution as previously ordered by the Court based upon newly discovered evidence. It is the contention of the Plaintiff that the Defendant incurred medical bills for elective treatment that may have not been covered by his insurance and, therefore, the Plaintiff should *not be required to pay all of those elective medical bills.* The Defendant has objected to any change and has denied the elective nature of the surgery and treatment.

B. The Defendant has also asked the Court to reconsider the decision relative to the distribution of personal property.

C. The matters presented in these Motions could have been aired at the time of the trial and the Court finds that said Motions should be denied with the exception that the Court will order that the Defendant should be given one-half of the family photos of the children and any other photos in the possession of the Plaintiff that are requested for the purposes of having copies of same made.

D. The Court expressly finds that the personal property distribution made in the Court's original

Memorandum Decision was made so that the children could take advantage of the majority, if not all, of the personal property accumulated by the parties during the marriage.

The Court having entered the foregoing Findings of Fact now concludes as follows:

CONCLUSIONS OF LAW

1. That the Plaintiff is granted a divorce from the Defendant.

2. That the Plaintiff is awarded the care, custody and control of the three (3) minor children of the parties, namely, AMANDA ASHLEY HIGHT, born October 25, 1985; ADAM PARKER HIGHT, born June 5, 1987 and SHAWN DAVID HIGHT, born June 5, 1987 (Twin boys), subject to Defendant's rights to visit said children at all reasonable times and places, including but not limited to the following:

A. The Defendant is entitled to take the children every other weekend from 5:00 p.m. on Fridays until 7:30 p.m. on Sundays; and

B. The Defendant is entitled to visit with the children commencing at 9:30 a.m. and terminating at 7:30 p.m. on every other major holiday which shall be deemed to be Easter, Memorial Day, July 4, Labor Day and Thanksgiving. She shall commence her holiday visits with Thanksgiving of 1990; and

C. The Defendant is entitled to visit with the minor children every Christmas holiday commencing at 9:30

a.m. on December 26th and continuing until 6:00 p.m. on December 29th; and

D. The Plaintiff is entitled to have the children every Father's Day and the Defendant shall have the right to visit with the children every Mother's Day, irrespective of weekend visitations; and

E. The Defendant is entitled to take the children for two (2) weeks during the month of June and two (2) weeks during the month of August of each school summer vacation period and the Defendant will be allowed designate the dates for said summer visitation provided that she notifies the Plaintiff of those dates by May 1st of each year.

F. The Plaintiff shall keep the Defendant advised of any major medical care required for the children as well as keeping her advised of their progress in school and other significant aspects of the children's lives.

3. The parties hereto have accumulated certain real and personal property during this marriage and said property is awarded as follows:

A. The Plaintiff is awarded the home of the parties provided that he assumes the outstanding indebtedness thereon and holds the Defendant harmless therefrom.

B. The Plaintiff is awarded the 1980 Honda automobile and the 1974 Porsche automobile.

C. The Defendant is awarded the 1985 Ford Bronco.

D. The Defendant is awarded the savings bonds with a value of approximately THREE THOUSAND FIVE HUNDRED (\$3,500.00) DOLLARS.

E. Each party is awarded those items of personal property in his or her possession as of October 15, 1990.

F. The Plaintiff is ordered to furnish the Defendant with a working and useable washing machine.

G. Each party is awarded his or her respective retirement benefits, free and clear of all claims of the other party.

4. No child support is awarded herein.

5. No alimony is awarded herein.

6. The parties hereto have accumulated certain debts and obligations during the marriage and the Defendant has accumulated certain debts and obligations for her medical treatment following the separation of the parties, said debts and obligations are allocated as follows:

A. The Plaintiff is ordered to assume and pay the outstanding debts and obligations as designated in his Financial Declaration, namely, Hanover Mastercard (new account), Hanover Mastercard (old account), the Discover Card, the Sears account, the children's ABC books, and the Fleetwood mortgage on the home together with various medical and dental bills accumulated on behalf of the minor children.

B. The Plaintiff is ordered to pay one-half of the medical expenses incurred by the Defendant as stated in her Financial Declaration.

C. The Defendant is ordered to pay one-half of the medical expenses incurred by her as stated in her Financial Declaration.

7. Each party is ordered to maintain medical, dental and optical insurance on the minor children of the parties if it is available through a group policy at their place of employment, as a benefit of their employment at little or no expense and each party is further ordered to pay one-half of any reasonable and necessary major medical, dental and/or optical expense incurred for and on behalf of the minor children which is not covered by a policy of insurance. The Plaintiff's insurance shall be designated as the primary carrier.

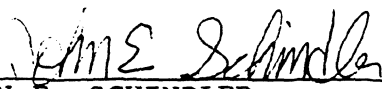
8. Each party is ordered to pay his or her respective Court costs and attorney's fees in this matter.

9. Each parties' Motion for Reconsideration is hereby denied.

DATED this 18 day of January, 1991.


BOYD BUNNELL
District Court Judge

APPROVED AS TO FORM & CONTENT:


JOHN E. SCHINDLER
Attorney for Defendant

Tab 4

COPY

JOANE PAPPAS WHITE #3445
Attorney for Plaintiff
Fifth Street Plaza, Suite 1
475 East Main Street
Price, Utah 84501
Telephone: (801) 637-0177

IN THE SEVENTH DISTRICT COURT IN AND FOR
CARBON COUNTY, STATE OF UTAH

DAVID HIGHT,)	
)	
Plaintiff,	)	PETITION FOR MODIFICATION
Vs.)	
)	
GLORIA J. HIGHT,	)	Civil No. 890715978
)	
Defendant.)	

COMES NOW the Plaintiff, by and through his attorney, JOANE PAPPAS WHITE, and hereby petitions the Court as follows:

1. That the Petitioner herein was Plaintiff in the above-entitled matter.
2. That the parties hereto were divorced by Decree entered by the above-entitled Court on the 18th day of January, 1991.
3. That said Decree of Divorce awarded to the Plaintiff, the father, the legal care and custody of the three (3) minor children of the parties.
4. That at the time of the entry of the Decree of Divorce, the Defendant was off from her employment on medical

leave and was experiencing substantial problems that made it difficult for her to maintain herself financially.

5. That there has been a substantial change in circumstances with respect to Defendant's earning capacity since the time of the entry of the Decree of Divorce in that she is currently working at the United State Post Office as a full time employee at a level 5 pay rate and is capable of providing support for the minor children.

6. At the time of the entry of the Decree of Divorce the Plaintiff was employed by Sears as a repairman and that his income is basically the same as it was at the time of the entry of the Decree.

7. That the Court should review child support and enter a child support order commensurate with the Utah Uniform Child Support Guidelines.

8. The Court should further make any increase in child support retroactive back to the date of the filing and service of this Petition upon the Defendant.

9. The Plaintiff has incurred costs and attorney's fees in this matter and the Court should make an equitable order with respect to the payment of said costs and attorney's fees including awarding to the Plaintiff all or a portion of said costs and attorney's fees which were brought in order to protect the minor children's support right.

WHEREFORE, Petitioner prays for relief as follows:

1. That the Court determine that there has been a substantial and material change in circumstances in the Defendant's earning capacity since the time of the entry of the Decree of Divorce; and

2. That the Court enter an order requiring the Defendant to pay to the Plaintiff child support commensurate with the Utah Uniform Child Support Guidelines.


3. That any increase and/or order of child support be made retroactive back to the date of service of this Petition upon the Defendant; and

4. That the Plaintiff be granted an Order to Withhold and Deliver to assist in the collection of child support.

5. That the Plaintiff be awarded all or a portion of his costs and attorney's fees associated with establishing the minor children's right of support.

6. For such other and further relief as the Court deems just and equitable in the premises.

DATED this 9th day of February, 1994.


JOANE PAPPAS WHITE
Attorney for Plaintiff

Tab 5

HARRY CASTON (4009)
MCKAY, BURTON & THURMAN
Attorneys for Defendant
Suite 600 Kennecott Building
10 East South Temple Street
Salt Lake City, Utah 84133
Telephone: (801) 521-4135

IN THE SEVENTH JUDICIAL DISTRICT COURT OF CARBON COUNTY
STATE OF UTAH

DAVID HIGHT,	:	REPLY TO PETITION FOR
	:	MODIFICATION
Plaintiff,	:	
	:	
v.	:	
	:	
GLORIA J. HIGHT,	:	Civil No. 890715978
	:	
Defendant.	:	

COMES NOW the defendant, Gloria J. Hight, by and through her attorney of record, who hereby replies to the plaintiff's Petition for Modification as follows:

FIRST AFFIRMATIVE DEFENSE

The plaintiff's Petition for Modification fails to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

1. The defendant admits the allegations of paragraphs 1, 2, and 3.
2. The defendant denies the allegations of paragraph 4.

3. The defendant admits the allegation in paragraph 5 that she is working as a full-time employee at the United States Post Office, and denies the remaining allegations of paragraph 5.

4. The defendant admits that at the time of the entry of the Decree of Divorce, the plaintiff was employed as a repairman, and is without sufficient information to form a belief as to the truth or falsity of the remaining allegations of paragraph 6, and on that basis denies the same.


5. The defendant denies the allegations of paragraphs 7, 8, and 9.

6. The defendant denies any allegations not specifically admitted herein.

WHEREFORE, having fully answered the Petition for Modification, the defendant prays that the same be dismissed, that the plaintiff take nothing thereby, and for a reasonable attorney's fee incurred in defending the same.

DATED this 23rd day of February, 1994.

McKAY, BURTON & THURMAN

By: 
 Harry Caston
 Attorneys for Defendant

MAILING CERTIFICATE

I hereby certify that on the 23 day of February, 1994, a true and correct copy of the foregoing Reply to Petition for Modification was mailed, postage prepaid, to the following:

Joane Pappas White, Esq.
Attorney for Plaintiff
Fifth Street Plaza, Suite 1
475 East Main Street
Price, Utah 84501

Elizabeth Hight

eliz\harry\hight2.rpm

Tab 6

FILED ORIGINAL

NOV -4 94

JOANE PAPPAS WHITE #3445
Attorney for Plaintiff
Fifth Street Plaza, Suite 1
475 East Main Street
Price, Utah 84501
Telephone: (801) 637-0177

SEVENTH DISTRICT COURT
STATE OF UTAH

IN THE SEVENTH DISTRICT COURT IN AND FOR
CARBON COUNTY, STATE OF UTAH

DAVID HIGHT,)	
)	
Plaintiff,	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW ON
Vs.	)	PETITION FOR MODIFICATION
)	
GLORIA J. HIGHT,	)	Civil No. 890715978
)	
Defendant.	)	Judge Bryner

Plaintiff's Petition for Modification of Decree came on regularly for hearing before the Court on the 26th day of August, 1994, the Honorable BRYCE K. BRYNER, District Court Judge, presiding. Plaintiff was personally present and represented by his attorney, JOANE PAPPAS WHITE. Defendant was personally present and represented by her attorney, HARRY CASTON. The Court received sworn testimony from the parties, received certain exhibits into evidence and took the matter under advisement and now, being fully advised in the premises the Court finds as follows:

FINDINGS OF FACT

1. The parties hereto were divorced by Decree entered by the above-entitled Court on the 18th day of January, 1991.

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2. Said Decree of Divorce awarded the Plaintiff father the legal care and custody of the three (3) minor children of the parties, namely, AMANDA ASHLEY HIGHT, born October 25, 1985; ADAM PARKER HIGHT, born June 5, 1987 and SHAWN DAVID HIGHT, born June 5, 1987 (twin boys).

3. At the time of the entry of the Decree of Divorce, the Defendant had average gross income of NINE HUNDRED NINETY (\$990.00) DOLLARS per month. She now has monthly gross income of TWO THOUSAND EIGHT HUNDRED THIRTY-EIGHT (\$2,838.00) DOLLARS from her employment with the U.S. Post Office.

4. All of Defendant's medical expenses which were encompassed and contemplated by paragraph 9 of the Findings of Fact have been discharged by Defendant's Chapter 7 bankruptcy.

5. The Court finds that an increase in income of ONE THOUSAND EIGHT HUNDRED FORTY-EIGHT (\$1,848.00) DOLLARS per month constitutes a material and substantial change in the conditions of the parties since the time of the entry of the Decree of Divorce.

6. The Court finds that the Plaintiff is employed by Sears as a service technician and has monthly gross income of TWO THOUSAND FIVE HUNDRED THIRTY-TWO (\$2,532.00) DOLLARS.

7. Based on the present income of the parties, the Uniform Child Support Guidelines provide for child support to be paid by the Defendant to the Plaintiff in the sum of SIX

HUNDRED EIGHTY-NINE (\$689.00) DOLLARS per month. The only question remaining to the Court is whether good cause exists to deviate, at Defendant's request, from the guideline amount.

8. In analyzing the Defendant's monthly expenses, the Court finds the following:

A. The Defendant has no expenses out of the ordinary, or any types of expenses that have not already been taken into consideration by the guidelines, except for her medical expenses of SEVEN THOUSAND EIGHT HUNDRED SIXTY-SEVEN DOLLARS THIRTY-NINE CENTS (\$7,867.39). (The total on exhibit 9 should be corrected to \$7,867.39 as Gold Cross Ambulance has been paid off, Pioneer Valley Hospital has been reduced by \$50.00, and 80% of the bills from Dr. Reyser and Consultant Radiologist will be paid by the insurance company according to the testimony of the Defendant. The Court also notes that the bill from University Hospital for \$5,543.71 has been submitted to the Defendant's insurance company but it has not yet been determined whether payment will be made). She has had certain home repairs which necessitated a \$4,000.00 loan but the monthly payment thereon of \$260.00 is not so out of proportion to her income that it would, by itself, justify a deviation from the guidelines.

B. In arriving at the above findings, the Court has considered that the Defendant has net income of EIGHT HUNDRED (\$800.00) DOLLARS every two (2) weeks or ONE THOUSAND SEVEN HUNDRED TWENTY (\$1,720.00) DOLLARS for a 4.3

work week month. She has expenses of TWO THOUSAND ONE HUNDRED TWO DOLLARS TWENTY-FIVE CENTS (\$2,102.25) (Exhibit No. 9) and a TWENTY (\$20.00) DOLLAR payment per month to Levitz and a payment to Signet on the balance of ONE THOUSAND TWO HUNDRED (\$1,200.00) DOLLARS on which no monthly payment was furnished.

C. The Defendant presented testimony that she has average medical expenses each month which are not covered by insurance in the amount of SEVEN HUNDRED NINE (\$709.00) DOLLARS as a result of her schizo-affective bi-polar disorder. Defendant further stated that this amount was computed by adding up the face amount of checks she has written in the past year but Defendant did not provide any documentation to support her claim.

9. The Court finds that Defendant's medical expenses are extraordinary in light of her psychological condition and that it would be unjust to require her to pay the entire SIX HUNDRED EIGHTY-NINE (\$689.00) DOLLARS per month as child support. Accordingly, the Court also finds that the presumption of correctness of the guideline amount has been sufficiently rebutted and that Defendant should be required to pay child support in the amount of ONE HUNDRED SEVENTY-FIVE (\$175.00) DOLLARS per child per month for a total of FIVE HUNDRED TWENTY-FIVE (\$525.00) DOLLARS in child support, commencing with the month of August, 1994.

10. The Court recognizes that the Petition to Modify was filed in February of 1994 but also takes into

consideration the fact that the Defendant has no savings and it would be impractical to require her to pay the sum of FIVE HUNDRED TWENTY-FIVE (\$525.00) DOLLARS per month since January of 1994.

11. The FIVE HUNDRED TWENTY-FIVE (\$525.00) DOLLARS per month in child support was determined after a consideration of the factors stated below as required by Section 78-45-7:

A. The standard of living and situation of both parties: The Court finds that the Defendant is living in a mobile home which she purchased in November of 1993 for THREE THOUSAND FIVE HUNDRED (\$3,500.00) DOLLARS. Substantial repairs have had to be made on the home which required a FOUR THOUSAND (\$4,000.00) DOLLAR loan. The Defendant is renting the lot on which the mobile home is situated. The Defendant has an automobile which is paid for and the Court, therefore, concludes that she is living a rather austere life style but one which is adequate. The has been supporting himself and his three (3) children on his income of approximately TWO THOUSAND FIVE HUNDRED (\$2,500.00) DOLLARS per month. The Court finds that his standard of living could not be much different from that of the Defendant who has actually had more disposable income than he in the past.

B. Relative wealth and income of each party: Each party has regular employment with the Plaintiff earning TWO THOUSAND FIVE HUNDRED THIRTY-TWO (\$2,532.00) DOLLARS per

month gross income and the Defendant earning TWO THOUSAND EIGHT HUNDRED THIRTY-EIGHT (\$2,838.00) DOLLARS per month gross income. Neither party has any substantial savings accounts nor does either party have any substantial material assets.

C. Ability of the Defendant to earn: The Defendant is employed by the U.S. Postal Service where she earned FORTY-ONE THOUSAND FIVE HUNDRED (\$41,500.00) DOLLARS in 1993 which included overtime. However, at the present time, she is earning SIXTEEN DOLLARS FIFTY CENTS (\$16.50) per hour. Her employment is secure even though she has been hospitalized several times in 1991 and in 1994. She has received full pay during those hospitalizations.

D. Ability of the Plaintiff to earn: The Plaintiff is employed by Sears as a service technician. His employment is secure and should continue for the foreseeable future. He currently gross income of TWO THOUSAND FIVE HUNDRED THIRTY-TWO (\$2,532.00) DOLLARS per month.

E. Needs of the parties and the children: The Plaintiff father has the legal custody of the three (3) minor children and places them in daycare when they are not in school while he is at work. His reasonable needs and the needs of the children exceed his income and he is, therefore, in need of assistance with child support. The Defendant has needs each month of ONE THOUSAND NINE HUNDRED THIRTY-EIGHT (\$1,938.00) DOLLARS (\$2,122.00 from Exhibit 9 and \$709.00 in child support which has been reduced to \$525.00). However, the

Court also finds that the maintenance costs and entertainment costs appear to be excessive and could be reduced.

F. The age of the parties: No testimony was presented with regard to the age of the parties but their appearance would indicate to the Court that each party is in their late twenties or early thirties.

G. Neither party has any responsibility for the support of others not contemplated by the facts of this case.

12. The Defendant should also be required to pay to the Plaintiff one-half of the actually incurred work related child care costs as provided by Section 78-45-7.16(1), Utah Code Annotated. (The Court finds that the actually incurred child care costs are the sum of \$400.00 per month at the current time.)

13. The Defendant shall pay one-half of the out-of-pocket health insurance premiums for the children. The Court finds that the premium paid for the children each month out-of-pocket by the Plaintiff is EIGHTY (\$80.00) DOLLARS and the Defendant should be required to pay one-half of that amount which is the sum of FORTY (\$40.00) DOLLARS pursuant to Section 78-45-7.15(3), Utah Code Annotated.

14. The Court finds that an Order to Withhold and Deliver should be immediately implemented pursuant to Title 62A Chapter 11, Parts IV and V, Utah Code Annotated.

15. Plaintiff has requested assistance in paying his attorney fee. Plaintiff's attorney proffered that she has expended 8 3/4 hours on this case at the rate of ONE HUNDRED (\$100.00) DOLLARS per hour for a total of EIGHT HUNDRED SEVENTY-FIVE (\$875.00) DOLLARS. In determining whether to award an attorney's fee, the Court must consider the financial need of the receiving spouse, the ability of the other spouse to pay, and the reasonableness of the requested fees. The Court may also consider, among other factors, the difficulty of the litigation, the efficiency of the attorneys, the reasonableness of the number of hours spent on the case, and the fee customarily charged in the locality, the amount involved in the case and the result obtained and the expertise and experience of the attorneys involved. The Court finds, in this matter, that the Plaintiff has need of assistance in paying his fees; however, the Court recognizes that the Defendant, because of her extraordinary medical expenses, can be expected to pay only a portion of Plaintiff's attorney's fees in light of the fact that the Plaintiff has prevailed in this matter. The Court finds that the amount requested is reasonable in view of the income of the parties and that the result attained, which was necessary to secure the rights of the minor children in their child support has been in the best interests of said children and further finds that the Plaintiff should be awarded one-half of the EIGHT HUNDRED SEVENTY-FIVE (\$875.00) DOLLARS incurred in pursuing this case,

namely, the sum of FOUR HUNDRED THIRTY-SEVEN DOLLARS FIFTY CENTS (\$437.50). The Defendant is ordered to pay said sum to the Plaintiff at the rate of FIFTY (\$50.00) DOLLARS per month commencing with the month of September, 1994 and continuing each and every month thereafter until said sum has been fully paid.

The Court having entered the foregoing Findings of Fact now concludes as follows:

CONCLUSIONS OF LAW

1. A substantial and material change of circumstances has occurred with respect to the earning capacities of the parties since the time of the entry of the Decree of Divorce and said change justifies a modification of the Decree of Divorce with respect to child support and other issues associated therewith.


2. The Defendant is ordered to pay to the Plaintiff child support in the sum of ONE HUNDRED SEVENTY-FIVE (\$175.00) DOLLARS per child per month for a total of FIVE HUNDRED TWENTY-FIVE (\$525.00) DOLLARS per month together with one-half of the actually incurred child care costs which is currently the sum of TWO HUNDRED (\$200.00) DOLLARS per month together with one-half of the actually incurred insurance premiums for medical insurance for the children which is the sum of FORTY (\$40.00) DOLLARS per month for a total of SEVEN HUNDRED SIXTY-FIVE (\$765.00) DOLLARS per month for and as child support pursuant to the Utah Uniform Child Support

Guidelines and the attached worksheet attached hereto as Exhibit A and incorporated herein by reference. Said child support shall commence with the month of August, 1994 and shall continue each and every month thereafter until further order of this Court.

3. In the event that the Plaintiff experiences any change in the actually incurred child care expense for his employment or in the actually incurred medical premiums paid by him for the benefit of the minor children, he shall immediately notify the Defendant and any third party agency such as the Office of Recovery Services, of said change.

4. The Defendant is ordered to pay to the Plaintiff the sum of FOUR HUNDRED THIRTY-SEVEN DOLLARS FIFTY CENTS (\$437.50) for and as a portion of Plaintiff's attorney's fees in this matter. Defendant shall pay said sum to the Plaintiff at the rate of FIFTY (\$50.00) DOLLARS per month commencing with the month of September, 1994 and continuing each and every month thereafter until said sum has been fully paid.

DATED this 4th day of Nov. ~~September~~, 1994.


BRYCE W. BRYNER
District Court Judge

INSURANCE PREMIUM AND CHILD CARE ADJUSTMENT WORKSHEET

INSURANCE ADJUSTMENT

Use this section of the worksheet to calculate how the children's medical insurance premium expenses change the amount the obligor pays to the obligee.

If the OBLIGOR parent is ordered to maintain medical insurance for the children complete this section.

A. Enter the amount of the children's portion of the medical insurance premium actually paid by the obligor.	\$
B. Multiply Line A. by .50 to obtain the obligee's share of the premium.	\$
C. Subtract the amount in Line B. from the base child support award to obtain the amount the obligor pays to the obligee for the months the premium is actually paid. Enter the result here.	\$

If the OBLIGEE parent is ordered to maintain medical insurance for the children complete this section.

D. Enter the amount of the children's portion of the medical insurance premium actually paid by the obligee.	\$ 80
E. Multiply Line D. by .50 to obtain the obligor's share of the premium.	\$ 40
F. Add the amount in Line E. to the base child support award to obtain the amount the obligor pays to the obligee for the months the premium is actually paid. Enter the result here.	\$ 729

No credit or offset is allowed unless the premium is actually paid. If the premium is not paid, the obligor must pay the amount of the base child support award.

CHILD CARE ADJUSTMENT

Use this section of the worksheet to calculate how the children's child care expenses change the amount the obligor pays to the obligee.

G. Enter the average amount of the monthly child care expense actually paid by the obligee.	\$ 400
H. Multiply Line G. by .50 to obtain the obligor's share of the child care expense. Enter the result here. Complete box I, J, or K. below.	\$ 200
I. If neither parent is maintaining insurance, add the amount in Line H. to the base child support award to obtain the amount the obligor pays to the obligee for the months the child care expense is incurred. Enter the result here.	\$
J. If the obligor is maintaining insurance, add the amount in Line H. to the amount in Line C. to obtain the amount the obligor pays to the obligee for the months the child care expense is incurred. Enter the result here.	\$
K. If the obligee is maintaining insurance, add the amount in Line H. to the amount in Line F. to obtain the amount the obligor pays to the obligee for the months the child care expense is incurred. Enter the result here.	\$ 929

Attorney Bar No. 3445

IN THE Seventh DISTRICT COURT

Carbon COUNTY, STATE OF UTAH

DAVID HIGHT,

vs.

GLORIA J. HIGHT,

) CHILD SUPPORT OBLIGATION WORK
) (SOLE CUSTODY AND PATERNITY)
)
)

Civil No. 890715978

	MOTHER	FATHER	COMBI
1. Enter the # of natural and adopted children of this mother and father for whom support is to be awarded.	////////// //////////	////////// //////////	3
2a. Enter the father's and mother's gross monthly income. Refer to Instructions for definition of income.	\$ 2838	\$ 2532	////////// ////////// //////////
2b. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case).	-	-	////////// //////////
2c. Enter previously ordered child support. (Do not enter obligations ordered for the children in Line 1).	-	-	////////// //////////
2d. OPTIONAL: Enter the amount from Line 12 of the Children in Present Home Worksheet for either parent.	-	-	////////// //////////
3. Subtract Lines 2b, 2c, and 2d from 2a. This is the Adjusted Gross Income for child support purposes.	\$ 2838	\$ 2532	\$ 5370
4. Take the COMBINED figure in Line 3 and the number of children in Line 1 to the Support Table. Find the Base Combined Support Obligation. Enter it here.	////////// ////////// //////////	////////// ////////// //////////	\$ 1300
5. Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	53 %	47 %	////////// //////////
6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$ 689	\$ 611	////////// //////////

7. BASE CHILD SUPPORT AWARD: Bring down the amount in Line 6 for the Obligor Parent or enter the amount from the Low Income Table.	\$ 689
--	--------

8. Which parent is the obligor? (X) Mother () Father
9. Is the support award ordered different from the guideline amount in Line 7?
(X) Yes () No If YES, enter the amount ordered: \$175 per child total \$525
10. What were the reasons stated by the Court for the deviation?
() property settlement
() excessive debts of the marriage
() absence of need of the custodial parent
(X) other: Extraordinary medical expenses

Tab 7

FILED **ORIGINAL**

NOV -4 94

SEVENTH DISTRICT COURT
STATE OF UTAH

JOANE PAPPAS WHITE #3445
Attorney for Plaintiff
Fifth Street Plaza, Suite 1
475 East Main Street
Price, Utah 84501
Telephone: (801) 637-0177

IN THE SEVENTH DISTRICT COURT IN AND FOR
CARBON COUNTY, STATE OF UTAH

DAVID HIGHT,

Plaintiff,

Vs.

GLORIA J. HIGHT,

Defendant.

ORDER ON PETITION FOR
MODIFICATION

Civil No. 890715978

Judge Bryner

Plaintiff's Petition for Modification of Decree came on regularly for hearing before the Court on the 26th day of August, 1994, the Honorable BRYCE K. BRYNER, District Court Judge, presiding. Plaintiff was personally present and represented by his attorney, JOANE PAPPAS WHITE. Defendant was personally present and represented by her attorney, HARRY CASTON. The Court received sworn testimony from the parties, received certain exhibits into evidence and took the matter under advisement and now, being fully advised in the premises and the Court having entered the foregoing Findings of Fact and Conclusions of Law now, therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

000204

1. A substantial and material change of circumstances has occurred with respect to the earning capacities of the parties since the time of the entry of the Decree of Divorce and said change justifies a modification of the Decree of Divorce with respect to child support and other issues associated therewith.

2. The Defendant is ordered to pay to the Plaintiff child support in the sum of ONE HUNDRED SEVENTY-FIVE (\$175.00) DOLLARS per child per month for a total of FIVE HUNDRED TWENTY-FIVE (\$525.00) DOLLARS per month together with one-half of the actually incurred child care costs which is currently the sum of TWO HUNDRED (\$200.00) DOLLARS per month together with one-half of the actually incurred insurance premiums for medical insurance for the children which is the sum of FORTY (\$40.00) DOLLARS per month for a total of SEVEN HUNDRED SIXTY-FIVE (\$765.00) DOLLARS per month for and as child support pursuant to the Utah Uniform Child Support Guidelines and the attached worksheet attached hereto as Exhibit A and incorporated herein by reference. Said child support shall commence with the month of August, 1994 and shall continue each and every month thereafter until further order of this Court.

3. In the event that the Plaintiff experiences any change in the actually incurred child care expense for his employment or in the actually incurred medical premiums paid by him for the benefit of the minor children, he shall

immediately notify the Defendant and any third party agency such as the Office of Recovery Services, of said change.

4. The Defendant is ordered to pay to the Plaintiff the sum of FOUR HUNDRED THIRTY-SEVEN DOLLARS FIFTY CENTS (\$437.50) for and as a portion of Plaintiff's attorney's fees in this matter. Defendant shall pay said sum to the Plaintiff at the rate of FIFTY (\$50.00) DOLLARS per month commencing with the month of September, 1994 and continuing each and every month thereafter until said sum has been fully paid.

DATED this 4th day of Nov. ~~September~~, 1994.


BRYCE K. BRYNER
District Court Judge

INSURANCE PREMIUM AND CHILD CARE ADJUSTMENT WORKSHEET

INSURANCE ADJUSTMENT

Use this section of the worksheet to calculate how the children's medical insurance premium expenses change the amount the obligor pays to the obligee.

If the OBLIGOR parent is ordered to maintain medical insurance for the children complete this section.

A. Enter the amount of the children's portion of the medical insurance premium actually paid by the obligor.	\$
B. Multiply Line A. by .50 to obtain the obligee's share of the premium.	\$
C. Subtract the amount in Line B. from the base child support award to obtain the amount the obligor pays to the obligee for the months the premium is actually paid. Enter the result here.	\$

If the OBLIGEE parent is ordered to maintain medical insurance for the children complete this section.

D. Enter the amount of the children's portion of the medical insurance premium actually paid by the obligee.	\$
E. Multiply Line D. by .50 to obtain the obligor's share of the premium.	\$
F. Add the amount in Line E. to the base child support award to obtain the amount the obligor pays to the obligee for the months the premium is actually paid. Enter the result here.	\$

No credit or offset is allowed unless the premium is actually paid. If the premium is not paid, the obligor must pay the amount of the base child support award.

CHILD CARE ADJUSTMENT

Use this section of the worksheet to calculate how the children's child care expenses change the amount the obligor pays to the obligee.

G. Enter the average amount of the monthly child care expense actually paid by the obligee.	\$
H. Multiply Line G. by .50 to obtain the obligor's share of the child care expense. Enter the result here. Complete box I, J, or K. below.	\$
I. <u>If neither parent is maintaining insurance, add the amount in Line H. to the base child support award to obtain the amount the obligor pays to the obligee for the months the child care expense is incurred. Enter the result here.</u>	\$
J. <u>If the obligor is maintaining insurance, add the amount in Line H. to the amount in Line C. to obtain the amount the obligor pays to the obligee for the months the child care expense is incurred. Enter the result here.</u>	\$
K. <u>If the obligee is maintaining insurance, add the amount in Line H. to the amount in Line F. to obtain the amount the obligor pays to the obligee for the months the child care expense is incurred. Enter the result here.</u>	\$

Attorney Bar No. 3445

IN THE Seventh DISTRICT COURT

Carbon COUNTY, STATE OF UTAH

DAVID HIGHT,

vs.

GLORIA J. HIGHT,

) CHILD SUPPORT OBLIGATION WORKSH
) (SOLE CUSTODY AND PATERNIT
)
)
)

Civil No. 890715978

	MOTHER	FATHER	COMBINE
1. Enter the # of natural and adopted children of this mother and father for whom support is to be awarded.	////////// //////////	////////// //////////	3
2a. Enter the father's and mother's gross monthly income. Refer to Instructions for definition of income.	\$ 2838	\$ 2532	////////// ////////// //////////
2b. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case).	-	-	////////// //////////
2c. Enter previously ordered child support. (Do not enter obligations ordered for the children in Line 1).	-	-	////////// //////////
2d. OPTIONAL: Enter the amount from Line 12 of the Children in Present Home Worksheet for either parent.	-	-	////////// //////////
3. Subtract Lines 2b, 2c, and 2d from 2a. This is the Adjusted Gross Income for child support purposes.	\$ 2838	\$ 2532	\$ 5370
4. Take the COMBINED figure in Line 3 and the number of children in Line 1 to the Support Table. Find the Base Combined Support Obligation. Enter it here.	////////// ////////// //////////	////////// ////////// //////////	\$ 1300
5. Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	53 %	47 %	////////// //////////
6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$ 689	\$ 611	////////// //////////

7. BASE CHILD SUPPORT AWARD: Bring down the amount in Line 6 for the Obligor Parent or enter the amount from the Low Income Table.	\$ 689
--	--------

8. Which parent is the obligor? (X) Mother () Father

9. Is the support award ordered different from the guideline amount in Line 7?
(X) Yes () No If YES, enter the amount ordered: \$175 per child total \$525

10. What were the reasons stated by the Court for the deviation?
() property settlement
() excessive debts of the marriage
() absence of need of the custodial parent
(X) other: Extraordinary medical expenses

Tab 8

COPY

IN THE SEVENTH JUDICIAL DISTRICT COURT
CARBON COUNTY, STATE OF UTAH

DAVID HIGHT,	:	MEMORANDUM DECISION
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
	:	
GLORIA J. HIGHT,	:	
	:	
Defendant.	:	Civil No. 890715978
	:	

Plaintiff's Petition for Modification of Decree came on regularly for hearing August 26, 1994. The Court heard the sworn testimony of the parties, received certain exhibits into evidence, took the matter under advisement and now issues this Memorandum Decision.

1. The Defendant had average gross income of nine hundred ninety (\$990.00) dollars per month at the time of the Decree of Divorce. She now has monthly gross income of two thousand eight hundred thirty-eight (\$2,838.00) dollars from her employment with the U.S. Post Office.

2. All of Defendant's medical expenses which were encompassed and contemplated by paragraph 9 of the Findings of Fact have been discharged by Defendant's Chapter 7 Bankruptcy.

3. An increase in income of one thousand eight hundred forty-eight (\$1,848.00) dollars per month constitutes a material and substantial change in the condition of the parties.

4. The Plaintiff is employed by Sears as a Service Technician and has monthly gross income of two thousand five hundred thirty-two (\$2,532.00) dollars.

5. Based on the present income of the parties the Uniform Child Support Guidelines provide for child support to be paid by Defendant in the amount of six hundred eighty-nine (\$689.00) dollars per month. The only question remaining is whether good cause exists to deviate, at Defendant's request, from the guideline amount.

In analyzing the Defendant's monthly expenses the Court finds that:

6. The Defendant has no expenses out of the ordinary, or any types of expenses that have not already been taken into consideration by the guidelines except for her medical expenses of seven thousand eight hundred sixty-seven (\$7,867.39) dollars and thirty-nine cents.¹ She has had certain home repairs which necessitated a four thousand (\$4,000.00) dollar loan be incurred but the monthly payment thereon of two hundred sixty (\$260.00)

¹The total on Exhibit No. 9 should be corrected to \$7,867.39. (Gold Cross Ambulance has been paid off, Pioneer Valley Hospital has been reduced by \$50.00, and 80% of the bills from Dr. Reyser and Consultant Radiologists will be paid by the insurance company according to the testimony of Defendant.) The Court also notes that the bill from University Hospital for \$5,543.71 has been submitted to the Defendant's insurance company but it has not yet been determined whether payment will be made.

dollars is not so out of proportion to her income that it would by itself justify a deviation from the guidelines.

In arriving at the above findings the Court has considered that the Defendant has net income of eight hundred (\$800.00) dollars every two weeks or one thousand seven hundred twenty (\$1,720.00) dollars for 4.3 weeks per month. She has expenses of two thousand one hundred two (\$2,102.25) dollars and twenty-five cents (Exhibit No. 9) and a twenty (\$20.00) dollar payment per month to Levitz and a payment to Signet on a balance of twelve hundred (\$1,200.00) dollars on which no monthly payment was furnished.

7. The Defendant presented testimony that she has average medical expenses each month which are not covered by insurance in the amount of seven hundred nine (\$709.00) dollars as a result of her schizo-affective bi-polar disorder. Defendant further stated that this amount was computed by adding up the face amounts of checks she has written in the past year but Defendant did not provide any documentation to support her claim.

8. The Court finds that Defendant's medical expenses are extraordinary in light of her psychological condition and that it would be unjust to require her to pay the sum of six hundred eighty-nine (\$689.00) dollars per month as child support. Accordingly, the Court also finds that the presumption of

correctness of the guideline amount has been sufficiently rebutted and that the Defendant should pay child support in the amount of one hundred seventy-five (\$175.00) dollars per child per month for a total of five hundred twenty-five (\$525.00) dollars per month, commencing with the month of August, 1994. The Court recognizes that the Petition was filed in February of 1994 but also takes into consideration the fact that the Defendant has no savings and it would be impractical to require her to pay the sum of five hundred twenty-five (\$525.00) dollars per month since February of 1994. The five hundred twenty-five (\$525.00) dollars per month was determined after a consideration of the factors below required by Section 78-45-7:

A. The standard of living and situation of both parties: The Court finds that the Defendant is living in a mobile home which she purchased in November of 1993 for three thousand five hundred (\$3,500.00) dollars. Substantial repairs have had to be made on the home which required a four thousand (\$4,000.00) dollar loan. The Defendant is renting the lot on which the mobile home is situated. The Defendant has an automobile which is paid for and the Court therefore concludes that she is living a rather austere life style but one which is adequate. The Plaintiff has been supporting himself and his three (3) children on his income of approximately twenty five (\$2,500.00) dollars per month. The Court finds that his standard of living could not be much different from

that of the Defendant who has actually had more disposable income than he in the past.

B. Relative wealth and income of each party: Each party has regular employment with the Plaintiff earning two thousand five hundred thirty-two (\$2,532.00) dollars per month gross income and the Defendant earning two thousand eight hundred thirty-eight (\$2,838.00) dollars per month gross income. Neither party has any savings accounts nor does either party have any substantial material assets.

C. Ability of the Defendant to earn: The Defendant is employed by the U.S. Postal Service where she earned forty one thousand five hundred (\$41,500.00) dollars in 1993 which included overtime. However, at the present time she is earning sixteen (\$16.50) dollars and fifty cents per hour. Her employment is secure even though she has been hospitalized several times in 1991 and in 1994. She has received full pay during those hospitalizations.

D. Ability of the Plaintiff to earn: The Plaintiff is employed by Sears as a Service Technician. His employment is secure and should continue for the foreseeable future. He currently earns gross income of two thousand five hundred thirty-two (\$2,532.00) dollars per month.

E. Needs of the parties and children: The Plaintiff father has the legal custody of the three (3) minor

children and places them in daycare when they are not in school while he is at work. His reasonable needs and the needs of the children exceed his income and he is therefore in need of assistance with child support. The Defendant has needs each month of one thousand nine hundred thirty-eight (\$1,938.00) dollars (\$2,122.00 from Exhibit No. 9 and the \$709.00 child support has been reduced to \$525.00). However, the Court also finds that the maintenance costs and entertainment costs appear to be excessive and could be reduced.

F. The age of the parties: No testimony was presented with regard to the age of the parties but their appearance would indicate to the Court that each party is in their late twenties or early thirties.

G. Neither party has any responsibility for the support of others.

9. The Defendant shall also pay to Plaintiff one-half (1/2) of any work related child care costs actually incurred by Plaintiff as provided by 78-45-7.16(1).

10. The Defendant shall pay one-half (1/2) of the out-of-pocket health insurance premiums for the children. The Court finds that the premium paid for the children each month out-of-pocket by the Plaintiff is eighty (\$80.00) dollars and that the Defendant should pay one-half (1/2) of that amount pursuant to 78-45-7.15(3).

11. The usual provision for income withholding shall be included as provided for in Title 62A, Chapter 11, Parts IV and V.

12. Plaintiff is requesting assistance in paying his attorney fee. Plaintiff's attorney proffered that she had expended eight and three-quarters (8.75) hours on this case at the rate of one hundred (\$100.00) dollars per hour for a total of eight hundred seventy-five (\$875.00) dollars.

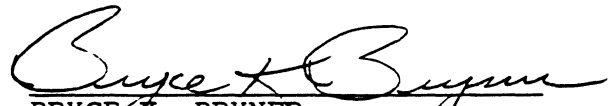
In determining whether to award an attorney fee the Court must consider the financial need of the receiving spouse, the ability of the other spouse to pay, and the reasonableness of the requested fees. The Court may also consider, among other factors, the difficulty of the litigation, the efficiency of the attorneys, the reasonableness of the number of hours spent on the case, the fee customarily charged in the locality, the amount involved in the case and the result obtained, and the expertise and experience of the attorneys involved.

The Court finds in this matter that the Plaintiff has need of assistance in paying his fees. However, the Court recognizes that the Defendant, because of her extraordinary medical expenses, can be expected to pay only a portion of Plaintiff's attorney fees in light of the fact that the Plaintiff has prevailed in this matter. The Court finds that the amount requested is reasonable in view of the income of the parties and the result attained and finds that the Plaintiff should be awarded one-half

(1/2) of the eight hundred seventy-five (\$875.00) dollars, to be paid at the rate of fifty (\$50.00) dollars per month commencing with the month of September, 1994.

Plaintiff's counsel is directed to prepare appropriate Findings of Fact, Conclusions of Law and an Order Modifying Decree consistent with this Memorandum Decision.

DATED this 29th day of August, 1994.

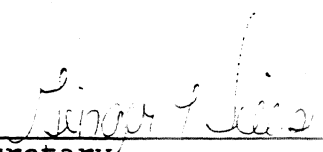

BRYCE K. BRYNER
District Court Judge

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of August, 1994, a true and correct copy of the foregoing MEMORANDUM DECISION was mailed, postage prepaid, to the following:

Joane Pappas White
Attorney at Law
Fifth Street Plaza, Suite 1
475 East Main Street
Price, Utah 84501

Harry Caston
MCKAY, BURTON & THURMAN
Attorneys at Law
Suite 600 Kennecott Building
10 East South Temple Street
Salt Lake City, Utah 84133



Secretary

Tab 9

1 Q And what happened four weeks ago?

2 A They put me on a day-time shift.

3 Q All right. And would you tell us what your income is
4 on the day-time shift?

5 A My take-home is approximately \$800 every two weeks.

6 Q What is your hourly rate of pay?

7 A It is approximately 16, rounded off, 16.50 an hour.

8 Q And how many hours are you working?

9 A Forty hours a week.

10 Q What is your gross income in an average month?

11 A Gross?

12 Q Before anything is withheld?

13 A I do not know.

14 Q Does your income vary at all during the year?

15 A It may, if I, for some reason take leave with--without
16 pay.

17 Q Now, from February of 1994 until approximately four
18 weeks ago, which would be about the end of July of 1994, then,
19 you were in the--still in the same job that was reflected on
20 your 1993 W-2?

21 A Correct

22 Q So the income reflected there would be the correct
23 income from February through July?

24 A No. No, ma'am, because I was a part-time flex at that
25 time, which they required me to work overtime, and sometimes I

1 today's hearing.

2 And that my billing rate is the sum of \$100 per hour.
3 That that includes no travel, and that I anticipate today's
4 hearing will probably take no more than three-quarters of an
5 hour; of course, any final document preparation will probably
6 also be assigned to me, since I--we are the moving parties, and
7 I would anticipate approximately one hour to prepare findings,
8 conclusions and order and circulate same to the Court.

9 I believe that that is a reasonable sum and is
10 commensurate with attorneys of my experience in this area, and
11 I believe that the work that has been done on this case is a
12 minimum of what is reasonably necessary.

13 THE COURT: Thank you.

14 Let's see. We'll have the record show that the
15 plaintiff has--or pardon me, the--yes, the plaintiff has rested,
16 has completed its presentation of witnesses.

17 Mr. Caston, you may proceed.

18 MR. CASTON: Before calling my first witness, I'm
19 going to make an argument that will prevent me, hopefully, from
20 having to call my first witness or call any witness. I'm moving
21 the Court for a directed verdict, your Honor.

22 As the Court well knows, it's-- the plaintiff's--the
23 plaintiff's obligation to prove to the Court that there has been
24 a substantial change in the circumstances upon which the decree
25 was based. If the Court will indulge me for a second, if I can

1 basically read, paraphrase from the decree, the decree states,
2 or the findings of facts states that the defendant is not
3 required to pay child support because she will need all of her
4 available income to take care of her living expenses and meet
5 payments on the large debt obligations which she has for her
6 medical treatment and expenses.

7 There has been absolutely no testimony as to what her
8 living expenses were then and what her living expenses are now.
9 There was some testimony offered by Mr. Hight that there was a
10 bankruptcy; he didn't testify as to what the effect of that
11 bankruptcy is, whether it was a Chapter 7 or Chapter 13, and he
12 didn't testify, or the defendant--the plaintiff has given no
13 testimony, your Honor, as to the current state of the medical
14 bill, that--that could have been all subject to discovery and
15 it's the plaintiff's job, it's the plaintiff's obligation to
16 produce that, to demonstrate to the Court a change in those
17 circumstances.

18 There's been no testimony regarding what her ongoing
19 expenses are, there's been no testimony as to what her medical
20 condition is, there's been no testimony as to the cost of the
21 treatment and the large bills that she does still have for her
22 medical expenses. Without the plaintiff--having put that forth
23 to the Court, as it is their obligation to do, not mine, as it
24 is the plaintiff's obligation, I'm asking the Court for a
25 directed verdict because the plaintiff has not proven their case

1 at all, made a prima facie case at all.

2 THE COURT: Let's see, Counsel, direct me to the
3 specific provision in the decree to which you're referring.

4 MR. CASTON: Your Honor, there is a finding in 7-D of
5 the findings of fact, or 7, (inaudible) and then Paragraph 9.

6 THE COURT: Now, there's an amended decree as well.
7 Are there amended findings?

8 MR. CASTON: Not to my knowledge. I've only got the
9 original findings of fact, conclusions of law and I don't know
10 whether the amended--I don't know whether I've got an amended
11 decree, your Honor; but I would direct the Court, I--I--excuse
12 me, to Paragraph 9 of those findings, and Paragraph--yeah, I was
13 right, 7-D.

14 THE COURT: 7-D?

15 MR. CASTON: Yes, sir. In the findings of fact on
16 Page 4, 7-D talks about the ongoing emotional problems, numerous
17 hospitalizations; but the most critical portion, I--I believe,
18 your Honor, to be on Page 6, Paragraph 9.

19 THE COURT: All right. Ms. White, you may respond?

20 MS. WHITE: The plaintiff's responsibility is to go
21 forward with the evidence on their petition, your Honor, until
22 such time as affirmative defenses are raised by the defendant.

23 In the case at bar, the Court has judicial notice of
24 the contents of its findings. I think in those same findings,
25 you will note that she had an income at that time of

1 substantially less than a thousand dollars a month.

2 She also had, if you look at the financial declaration
3 on file as a part of the Court's records, which you can also
4 receive judicial notice of, you may see that she had medical
5 debts.

6 Those two combined together to lead the Court to the
7 conclusion that she would need her available income, which, at
8 that time, according to her testimony, was nothing more than
9 Social Security to pay the medical debt assigned to her by the
10 Court, which the Court will notice was one-half, and I believe
11 as Mr. Hight said, one-half of about \$20,000.

12 The testimony established she then promptly filed for
13 bankruptcy. The bankruptcy was sufficient to relieve Mr. Hight
14 and discharge the accounts that he was paying on that had her
15 name and only her name on those accounts.

16 I think then that the evidence at this point in time
17 indicates that she indeed was discharged of all of the medical
18 bills that existed from the decree.

19 It's their burden now, if they want to go for and say
20 up--forth and say otherwise, as the evidence establishes, that
21 she filed bankruptcy. The Court certainly can take judicial
22 notice of the effect of a bankruptcy, particularly when it was
23 sufficient to relieve Mr. Hight of the obligations that he was
24 paying on accounts in her name as well.

25 Additionally, the Court will notice a, not just a

1 little change in circumstances, but a dramatic change of
2 circumstances. Her income last year was \$31,438. That's a
3 pretty dramatic income in comparison to the type of income she
4 had at the time of the divorce, which she testified was merely
5 Social Services, and which all the financial documents show was
6 less than a thousand dollars a month.

7 Now, that establishes without question that there has
8 been a material and substantial change in her earning capacity,
9 although there is almost no change in Mr. Hight's earning
10 capacity since that time; and even these minor modifications in
11 her income made during the last four weeks prior to trial have
12 certainly not diminished the fact that she still earns \$10,000
13 more a year than he does.

14 And in the entire time of 1993, while she was under
15 the doctor's care, she was working full-time and earned \$41,000.
16 Certainly, her medical conditions have improved enough to allow
17 her to literally magnify her income by close to ten times since
18 the time of the divorce decree.

19 The only thing that hasn't changed are these
20 children's needs, and the fact that when her income went to
21 \$41,000, she contributed nothing to their support.

22 We believe that clearly we have established a prima
23 facie case and a showing, and if she wants to try and rebut that
24 now, it's her responsibility.

25 MR. CASTON: Your Honor?

1 THE COURT: Mr. Caston?

2 MR. CASTON: As--once again, the decree is based on
3 certain findings, certain circumstances, and those circumstances
4 are that the income is outweighed by debt, medical debt and
5 living expenses.

6 Now, it may be true that there may have been a
7 bankruptcy. Counsel testifies as to what the effect of the
8 bankruptcy was. There was no testimony from Mr. Hight, other
9 than as it affected him. We don't know from--as we sit--stand
10 here right now, whether it was a 7, 13, whatever, we don't know;
11 we don't know, and it is the plaintiff's burden to show the
12 Court what the debt structure is now.

13 Mrs. Hight was not ordered to pay child support
14 because the income was insufficient considering her debts and
15 living expenses. Now, the income has gone up, that's true, but
16 that's part of the--all of the circumstances. They've got to
17 show a change in all of the circumstances, not some of them.

18 There has been no testimony, we--we only have one-half
19 of a picture; yes, the income has gone up, but the circumstance,
20 the entire picture that this was based upon was that income was
21 insufficient considering medical expenses and living expenses.

22 It is the plaintiff's job, it is the plaintiff's
23 burden to show that the circumstances have changed, not my job,
24 it's the plaintiff's job to show that the circumstances have
25 changed.

1 make the obligations on the debts for medical treatment.

2 Under the testimony which has been presented, the
3 Court finds that she now has income, at least during the last
4 year of \$41,000, and it appears that that--or the income for the
5 past few months has been somewhat less, between February and
6 July of this year, and I haven't computed that; but she is
7 earning \$16.50 per hour at the present time.

8 Do either of you have a calculator?

9 MS. WHITE: Yes, your Honor, I do. I believe the
10 testimony was her income stayed the same as '93, through July,
11 and changed the last four weeks to 16.50. And that comes out to
12 2,800 and--let me just find--\$2,838 for a 4.3 week work month
13 since the end of July.

14 THE COURT: Sixteen fifty per hour translates to 2,838
15 per month, \$2,838 per month. The Court finds therefore, that
16 the defendant at the present time is earning just under three
17 times the amount she was earning back then.

18 Because of the particular wording, and taking a strict
19 reading of Paragraph 9, the Court finds that the available
20 income she had at that time, \$990, was needed to take care of
21 her living expenses. There is nothing to show that anything in
22 excess of that amount was needed to take care of her medical
23 expenses and since she is now earning more, the Court finds that
24 there is, under a strict reading, additional income available.

25 So, the Court's going to deny the motion for a

1 directed verdict.

2 MR. CASTON: Call Gloria--oh, I'm sorry.

3 THE COURT: You may proceed.

4 MR. CASTON: Call Gloria Hight, your Honor.

5 THE COURT: Gloria Hight, return to the stand, please.
6 You're already under oath.

7 GLORIA JEAN HIGHT,

8 the defendant in this matter, called as a witness, after having
9 been previously duly sworn, was examined and testified further
10 in her own behalf as follows:

11 DIRECT EXAMINATION

12 BY MR. CASTON:

13 Q Gloria, do you recall whether the decree of divorce
14 provided that you then husband or ex-husband, David, was to pay
15 some medical expenses?

16 MS. WHITE: Objection, your Honor. The document
17 speaks for itself.

18 MR. CASTON: I'm asking her if she recalls that--

19 THE WITNESS: Yes. I do.

20 MR. CASTON: --the document says that.

21 THE COURT: Well, I'm going to sustain the objection.
22 Whether she remembers or not is immaterial.

23 MR. CASTON: Well, your Honor, what I'm--Mr. Hight
24 testified as to his payment of some expenses, that he paid some
25 expenses. I think I'm entitled to ask my client whether--

1 determine whether you want to go ahead and present--

2 MR. CASTON: Yes, your Honor.

3 THE COURT: --mitigation.

4 All right. Is there anything further you wish to
5 present with regard to her income?

6 MR. CASTON: No, your Honor. The Court has heard the
7 fact that she is working, that she's receiving an hourly rate,
8 that she is not working the graveyard shift any more, that she's
9 on an afternoon shift and--and the reasons therefor.

10 THE COURT: All right. The Court's going to make a
11 ruling here then that the Court does find that since the entry
12 of the decree, there has been a material and substantial change
13 in the conditions of the parties, upon which the decree was
14 entered or based, and that is, that the income of the defendant
15 has material and--materially and substantially increased from
16 the sum of \$990 per month to the sum of \$2,838 per month at the
17 present time.

18 The Court finds that that's almost a 300 percent
19 increase and certainly constitutes then a material and
20 substantial change.

21 So, the Court having made that determination, you may
22 now, if you wish, Mr. Caston, present additional testimony with
23 regard to unusual circumstances that you feel should cause the
24 Court to reduce the amount of the guideline amount.

25 MR. CASTON: And the Court would also consider, or not