

2006

Kenneth Clark Ranson v. Marianna Di Paolo : Brief of Appellant

Utah Court of Appeals

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Kenneth C. Ranson; Appellant.

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IN THE UTAH COURT OF APPEALS

KENNETH CLARK RANSON	:	
Petitioner and Appellant		
Pro Se	:	
		Appellate Case No.
vs.	:	20060449-CA
 MARIANNA DI PAOLO	 :	
Respondent and Appellee		

BRIEF OF APPELLANT

APPEAL FROM A DECREE OF DIVORCE AND OF DENIAL OF MOTION FOR NEW TRIAL, IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE JOSEPH FRATTO, PRESIDING

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Appellant

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UTAH APPELLATE
FEB 12 2007

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No person shall be...deprived of life, liberty, or property without due process of law.	
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No State shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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3, 10, 27

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BRIEF OF APPELLANT

STATEMENT OF JURISDICTION

Appellant appeals the Decree of Divorce and denial of his Motion for New Trial. The Utah Court of Appeals has jurisdiction to hear this matter under Utah Code Annotated (Utah Code Ann.) 78-2a-3-2(h).

ISSUES FOR REVIEW

- 1) That the trial court erred in denying Appellant's motion for a new trial.
- 2) That the trial court's denial of Appellant's motion for new trial violates Appellant's constitutional protections of due process and equal protection of the law.
- 3) That the trial court erred in determining Appellant's financial need by failing to make any allowance for taxes, including Federal income and Social Security taxes, and Utah state income taxes.
- 4) That the trial court erred in determining Appellant's financial need by failing to make any allowance for: The expense of owning an automobile; The expense of making major purchases; Or adequate allowance for the expense of clothing, entertainment, or travel.

- 5) That the trial court erred in determining Appellant's financial need by making no allowance for funds for retirement.
- 6) That the trial court erred by failing to give any consideration to equalizing the parties standards of living after divorce and failed to make any finding as to the parties standard of living during marriage.
- 7) That the trial court erred by failing to make any adjustment in its award of property or alimony in consideration of the fact that the Appellee's earning capacity had been greatly enhanced during the marriage by the efforts of both parties.
- 8) That the trial court erred in finding that the Appellant can earn \$32,000 per year immediately when he has been out of the workforce for 20 years, suffers from significant health problems, and when his average earnings per year before marriage were \$3,230.
- 9) That the trial court's decree of divorce is based on illegal sexual prejudice.

STANDARDS OF REVIEW

Issues 1) 2) 3) 4) 5) 6) 7) and 9) are questions of law or mixed questions of law and fact and are reviewed by the Court of Appeals for correctness with no deference given to the interpretation of the lower court. State v. Richardson, 843 P.2d 517,518. Saleh v. Farmer's Insurance Exchange, 2006 UT 20

The questions of fact in Issue 8) are reviewed by the Court of Appeals under the clearly erroneous standard. State v. Pena, 869 P.2d 932. However that portion of the finding based on an erroneous legal conclusion is reviewed for correctness with no deference granted to the opinion of the trial court. Saleh v. Farmer's Insurance Exchange, 2006 UT 20. In reviewing these issues the Court of Appeals must also

consider the patent sexual prejudice shown by the trial court throughout its ruling. The effect of this sexual prejudice is a question of law reviewed for correctness with no deference given to the interpretation of the lower court. State v. Richardson, 843 P.2d 517,518.

DETERMINATIVE LAW

As to the question of the legality and fairness of the trial court's decree, there is a lengthy tradition in Utah law which holds that the parties to a marriage are entitled to an equal share of its financial success even if only one of them worked outside the home. This tradition is made law in Utah Code Ann. § 30-3-5 (8), some subsections quoted in relevant part below:

(c) As a general rule, the court should look to the standard of living existing at the time of separation, in determining alimony

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

(e) If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

This statute codifies at least five decades of decisions by Utah's appellate courts. The authorities cited in the Table of Authorities are only a small fraction of the cases affirming these principles. However, as concerns equalizing standard of living during marriage, English v English 565 P.2d 409 (1977) and Higley v Higley 676 P.2d 379 (1983) may be taken as authoritative. As concerns the enhancement of one spouse's

earning capacity by the efforts of both parties, Martinez v Martinez 818 P.2d 538 (1991) may be taken as authoritative. As concerns the need to address funds for retirement in an alimony award, Gardner v Gardner 748 P.2d 1076(1988) is authoritative, and as concerns the need to address retirement savings, Bakanowski v Bakanowski 80 P.3d 153 (2003) is authoritative.

As concerns the question of a new trial, Maltby v. Cox Construction Utah 598 P,2d 336 (1979) is authoritative concerning the applicability to civil cases, State v. Lopez 886 P.2d 1105, 1113 (1994) is authoritative in applying the standards of Strickland v. Washington 466 U.S.668 (1984) to cases brought under Utah state law.

As to the question of sexual discrimination The Constitution of the United States, Amendments V and XIV, is authoritative.

STATEMENT OF THE CASE

The parties in this case were married for 20 years. They moved to Utah so that Ms. Di Paolo could pursue a career as a professor of Linguistics at the University of Utah. By mutual agreement of the parties Mr. Ranson worked in the home, keeping house, caring for their child, managing their investments, and supporting Ms. Di Paolo's career. During the marriage Ms. Di Paolo completed her dissertation and received her PhD., paid her student loans from marital funds, was fired from her position and restored to it as a result of a tenure appeal authored by Mr. Ranson, and went on to become one of the most successful women administrators at the University. During the marriage her salary went from \$17,000 to \$78,000 per year.

Mr. Ranson contributed to the success of the marriage in the following ways. In the early years of the marriage he designed, built with his own hands, and primarily paid for with the use of the money his parents had given him to pay for a college education, the parties home. As a result of the ownership of this home the parties could afford, in the early years of the marriage, to live off of Ms. Di Paolo's very low salary and, in the later years of the marriage, to amass substantial savings.

When Mr. Ranson indicated that he wanted to have children Ms. Di Paolo agreed, but only on condition that he stay home and care for the child so that she could pursue her career. To this Mr. Ranson agreed. As a result he fulfilled all the duties of primary care giver for their son including, dressing and bathing the child, organizing his daily schedule, choosing day care providers and schools, and fulfilling volunteer requirements at those schools. Mr. Ranson also fulfilled all of the duties of homemaker, including cleaning, marketing, and routinely preparing 21 nutritious meals from scratch each week.

In addition Mr. Ranson was actively involved in Ms. Di Paolo career. When Ms. Di Paolo was terminated from the University Mr. Ranson conducted an appeal. He reviewed University Policies and Procedures, contacted professional organizations, arranged for expert witnesses, and authored up to 50 pages of analytic writing per month for 14 months, Ms. Di Paolo signed this writing and submitted it as her response in the appeal. As a result of this appeal, Ms. Di Paolo was restored to her position at the University. This is the only example of a successful tenure appeal at the University of Utah within memory.

Mr. Ranson acted as unpaid research assistant on Ms. Di Paolo's scholarly work. He wrote an extensive article on Utah ethnicity which was used without citation by Ms. Di Paolo in her published work. He also collected and analyzed data, prepared research materials, and helped to administer tests of linguistic perception.

Mr. Ranson wrote Ms. Di Paolo's second tenure review which she signed and submitted as she had the appeal, and which resulted in the award of tenure to her. Mr. Ranson wrote Ms. Di Paolo's Year's Work forms. He conducted a job search on her behalf and he researched and wrote a memo which argued that her salary was unacceptably low due to sexual discrimination. Each of the above actions resulted in Ms. Di Paolo receiving substantial increases in salary.

When it became necessary for him to seek a divorce, Mr. Ranson contacted 19 members of the Utah Bar who specialize in family law. None of them would agree to represent him if he, a man, intended to seek alimony. Many of them made sexist comments to the effect that he could receive alimony if he were a woman but that this would not be appropriate because he was a man.

Finally Bridget Romano agreed to take his case and to seek alimony. However, either through incompetence or deliberate fraud, Ms. Romano failed to research and prepare anything approaching an adequate case on his behalf. In spite of having virtually unlimited time and resources she failed to investigate information necessary to his case, withheld crucial information she did possess from the court, and misrepresented her actions to Mr. Ranson.

The trial court deliberated for ten minutes before returning a massively flawed verdict in this matter. The trial court failed to make any allowance for payroll taxes in establishing Mr. Ranson's needs. The trial court failed to consider three issues which it is required by statute to consider: the standard of living during marriage, the need to equalize standards of living after divorce, and the great enhancement of Ms. Di Paolo's earning capacity during the marriage. The trial court found that Mr. Ranson could immediately earn \$32,000 per year when his average earnings in his most productive years before marriage were \$3,200.

STATEMENT OF FACTS

1. The parties were married on February 28, 1986 in Salt Lake County, Utah. (Findings of Fact and Conclusions of Law, ¶2, Index on Appeal 520-3)
2. The decree of Divorce was entered February 10, 2006. (Decree of Divorce, Index on Appeal 534-42)
4. Before and during the marriage Mr. Ranson, purchased the lot for, built, and in largest part paid for a house. (Trial Transcript.70, 71-89; Index on Appeal 842, Petitioner's Exhibit 3, Index on Appeal 445, Petitioner's Exhibit 4, Index on Appeal 445, Petitioner's Exhibit 5, Index on Appeal 445, Petitioner's Exhibit 6, Index on Appeal 445, Petitioner's Exhibit 7, Index on Appeal 445)
5. The parties have one child, Sean Ranson, born December 2, 1987. (Findings of Fact and Conclusions of Law, ¶4, Index on Appeal 520-3)

6. Ms. Di Paolo insisted that if they were to have a child Mr. Ranson would have to stay home and care for the child so that her career would not be interrupted. (Trial Transcript 91-93, Index on Appeal 842)

7. Mr. Ranson was the primary care giver of the parties' son and performed all of the duties of a stay at home spouse. (Trial Transcript 105, Index on Appeal 842)

8. At the beginning of the marriage Ms. Di Paolo's salary was \$17,000 per year. (Trial Transcript 67, Index on Appeal 842)

9. After Ms. Di Paolo was terminated from her position at the University of Utah Mr. Ranson conducted an appeal on her behalf which resulted in Ms. Di Paolo being given an extension of 2 years in which to obtain tenure. (Trial Transcript 93-98, 112-114, Index on Appeal 842, Petitioner's Exhibit 8, Index on Appeal 445)

10. To increase Ms. Di Paolo's salary Mr. Ranson prepared Ms. Di Paolo Year's Work forms for her signature. (Trial Transcript 115-118, Index on Appeal 842, Petitioner's Exhibit 9, Index on Appeal 445)

11. Mr. Ranson worked extensively as an unpaid assistant on Ms. Di Paolo's scholarly research. (Trial Transcript 98-100, 118-119, Index on Appeal 842, Petitioner's Exhibit 10, Index on Appeal 445)

12. In 1990 Mr. Ranson prepared Ms. Di Paolo responses for her second tenure review which resulted in her being granted tenure. (Trial Transcript 101, Index on Appeal 842)

13. To increase Ms. Di Paolo's salary further, Mr. Ranson organized a job search on her behalf (Trial Transcript 102-103, 119-121, Index on Appeal 842, Petitioner's Exhibit 11, Index on Appeal 445)

14. To obtain salary equity for Ms. Di Paolo, Mr. Ranson prepared a case demonstrating salary inequity based on sexual discrimination against her. (Trial Transcript 101, 103-104, Index on Appeal 842)

15. At the time of trial Ms. Di Paolo earned \$78,300 per year. (Findings of Fact and Conclusions of Law, ¶16, Index on Appeal 520-3)

16. The trial court found that Ms. Di Paolo has the ability to pay \$2,500 per month in alimony. (Findings of Fact and Conclusions of Law, ¶53, Index on Appeal 520-3)

17. The trial court deliberated for less than 10 minutes before arriving at its decision. (Ranson v. Di Paolo, Videotape 8/29/05, Not indexed.) (The Honorable Judge Fratto rises from the bench at 12:03PM and returns at 12:17PM. Allowing a conservative 5 minutes to walk to and from his office on the floor below leaves 9 minutes for deliberation.)

18. The trial court failed to allow for payroll taxes in calculating Mr. Ranson's needs. In spite of the fact that Ms. Di Paolo's own exhibit does this and in spite of the fact that her counsel had just made this point in closing argument. (Trial Transcript 613, Index on Appeal 845, Respondent's Exhibit 29, Index on Appeal 447)

19. The trial court made no finding as to the standard of living during marriage, gave no consideration to that standard in denying alimony, and made no explanation of

its failure to do so. The court gave no consideration to equalizing the parties' standards of living after divorce and made no statement as to why it failed to do so. The court gave no consideration to the great enhancement of Ms. Di Paolo's earning capacity during the marriage due to the efforts of both spouses, and made no statement as to why it failed to do so. (Trial Transcript 616-629, Index on Appeal 845)

SUMMARY OF ARGUMENT

The overwhelming weight of precedent in Utah law holds that in a marriage of long duration, when the marriage has enjoyed financial success as a result of the efforts of both parties, the parties are entitled to equal standards of living after the marriage, even if only one of them worked outside the home. This tradition supercedes the previous standard that alimony was adequate if it kept the recipient spouse from becoming a public charge, and applies even if the recipient spouse could subsist without alimony. This tradition is supported by the equitable principle that it would be unfair for a spouse who sacrifices career development and earning capacity so that the marriage may prosper as a joint venture, to be made to suffer for that decision at divorce. This tradition was finally codified in statute in Utah Code Ann. § 30-3-5 (8), which requires trial courts to consider this factor in rendering a decision in a divorce.

The trial court in this matter gave absolutely no consideration to the parties' standard of living during marriage, or the need to equalize that standard of living, in its decision. It instead ruled that Mr. Ranson could live on less than half of his expenses during marriage. This ruling placed him in the position of having to spend down marital

assets immediately to survive, while his former wife has tens of thousands of dollars per year in disposable income.

There is an equally strong tradition in Utah law that when one party to a marriage has enjoyed a substantial increase in earning capacity due to the efforts of both parties, the court will consider this in dividing property and awarding alimony. In this case, as described above, Mr. Ranson was of crucial help to Ms. Di Paolo's career, both as homemaker and primary care giver to their child, and in saving her job and providing direct assistance to her work. The trial court again gave absolutely no consideration to this in its ruling.

Indeed, the trial court deliberated for less than ten minutes in this matter before returning a massively flawed decision. The trial court was only able to deny Mr. Ranson alimony by failing to subtract federal and state payroll taxes from its accepted level of his gross earnings. The trial court failed to consider, in assessing Mr. Ranson's needs, any allowance for the ownership costs of a car, for the purchase of major appliances, adequate amounts for the purchase of clothes or travel, or any allowance whatsoever for retirement. Mr. Ranson shows in his needs no expense for housing only because he purchased the parties' home from Ms. Di Paolo with his share of their retirement funds. The court must allow him either a large sum of money for retirement or a large sum for housing. It cannot, in justice, deduct both.

The trial court found that Mr. Ranson could earn \$32,000 per year immediately with no retraining. This amount is 10 times his average earnings in his most productive years before marriage. In reaching this decision the trial court relied on the testimony of

Kristy Farnsworth. This testimony was deliberately misleading in that it conflated accurate data with personal opinion and rank hyperbole. Stripped of its inaccuracies this testimony confirms that Mr. Ranson can earn \$20,800 per year, which is the figure he stipulated to, and is what he in fact earns.

As concerns the appeal of the denial of Motion for New Trial, the trial court ruled that no legal basis exists to grant a new trial in civil matters. In so ruling it relied on a memo from Ms. Di Paolo's counsel, which deliberately misquotes the relevant precedent. This memo cites only the minority opinion and deliberately ends the citation just before the diametrically opposed, and precedential, majority opinion. Utah law requires, in fact, that civil litigants have the same right to new trials as criminal litigants, in conformity with the two-pronged test of Strickland. This case meets both of those prongs abundantly. The facts show that in spite of having time and resources, and repeatedly assuring him that she would do so, Mr. Ranson's counsel made no investigation of three crucial issues. The facts also show that she withheld from the trial court, apparently deliberately, crucial information which she had assured Mr. Ranson she would present. This meets abundantly the first prong of the test. The trial court itself identifies two of these items as crucial to its decision. This meets conclusively the second prong.

If this court fails to grant Mr. Ranson a new trial, or to do justice on the available facts, it will be sanctioning a novel method for denying him due process of law and equal protection of the law.

There is further substantial evidence that the inequities and irregularities in this matter are the result of sexual prejudice.

Argument

I The Trial Court's Denial of Appellant's Motion for New Trial was based on Deliberate Miscitation and Misapplication of Applicable Law. Definitive Evidence Supports the Requirement of a New Trial in Accordance with Established Precedent

In Maltby v. Cox Construction, Utah 598 P,2d 336 (1979) then Chief Justice Crockett resoundingly rejected the idea that while ineffective assistance of counsel provided grounds for a new trial in criminal cases it did not do so in civil cases. In his majority opinion Chief Justice Crockett said, in relevant part:

The main opinion stresses the thought that while incompetence of counsel may be a ground for nullifying a judgment in a criminal case, it has not been done and therefore should not be done in a civil case. The statement seems too broad and inclusive. The purpose of all court proceedings is, of course, to do justice. If the processes have so clearly gone awry that an injustice has resulted, the court in charge of the trial, or this court on review, should rectify such an unfortunate occurrence, whether the proceeding is civil or criminal.

In so saying, I am aware that it is generally said that mistake, error of judgment, or negligence of counsel in presenting or defending a case is not sufficient cause of vacating a judgment and granting a new trial. However, consistent with the principle stated above, it has been held that under exigent circumstances, incompetence or negligence of counsel which appears to have resulted in an injustice, will justify the granting of a new trial. It is therefore my view that in determining whether relief should be granted the matter of critical concern should not be as to the nature of the proceeding, but whether there is such a strong likelihood that an injustice has resulted that good conscience requires that it be remedied.

The Petitioner and Appellant, hereafter referred to as Mr. Ranson, is therefore fully entitled to request a new trial in this civil matter on the same terms as if it were a criminal case.

In State v. Lopez 886 P.2d 1105, 1113 (1994) Justice Howe, writing for a unanimous Utah Supreme Court, accepts in determining effective assistance of counsel the two pronged test advanced in Strickland v. Washington 466 U.S.668 (1984). “The first prong of the test requires the defendant to show that counsel’s performance fell below an objective standard of reasonable professional judgment.” “The second prong requires the defendant to show that counsel’s performance prejudiced the defendant.”

In Utah v Templin 805 P.2d 182 (1990) then Chief Justice Hall applies these tests to facts that closely parallel this case. As concerns the first prong of the test he says for a unanimous Utah Supreme Court:

If counsel does not adequately investigate the underlying facts of a case, including the availability of prospective defense witnesses, counsel’s performance cannot fall within the “wide range of reasonable professional assistance.” This is because a decision not to investigate cannot be considered a tactical decision. It is only after an adequate inquiry has been made that counsel can make a reasonable decision to call or not call a particular witness for tactical reasons. Therefore, because defendant’s trial counsel did not make a reasonable investigation into the possibility of procuring prospective witnesses, the first part of the Strickland test has been met.

Justice Hall also notes that Templin’s counsel had adequate time and resources to prepare his case, having been hired almost a year before trial and charging Templin \$9,000.

In this case Mr. Ranson’s counsel, Bridget Romano, failed to present at trial numerous pieces of evidence which would have strengthened his case, of these four were crucial: 1) Evidence of Mr. Ranson’s continuing serious health problems, 2) Testimony of an employment counselor as to Mr. Ranson’s current earning ability, 3) Evidence that Mr. Ranson’s average earnings per year before marriage were \$3,230, 4) Evidence of the

parties actual expenses during marriage. The first three of these involve decisions not to investigate and so specifically meet the first prong of the Strickland test as established by the Templin precedent. In the case of the fourth, after repeatedly assuring Mr. Ranson that she would present this information at trial, Ms. Romano unilaterally and without informing Mr. Ranson failed to do so.

Mr. Ranson retained Ms. Romano in September, 2004. Trial in this matter was held August 16, 2005. Ms. Romano then had nearly 1 year to prepare a case. She charged Mr. Ranson over \$30,000 in fees. Mr. Ranson supplied her with every piece of information she asked him for. In spite of this Ms. Romano failed utterly to prepare an affirmative case on Mr. Ranson's behalf.

Numerous memoranda and emails document Ms. Romano failure to prepare a case. Space permits reference to only a few crucial ones here. At a meeting on November 29, 2004 Mr. Ranson gave Ms. Romano a memo outlining his case as he wished to pursue it. (A copy of this memo is included as Addendum A-1, Index on Appeal 558-63) In this memo he specifically asked Ms. Romano to subpoena his personal physician Dr. Lewis Barton so his medical records could be introduced at trial, outlined the steps necessary to make a case for him to receive alimony sufficient to equalize the parties incomes, and asked if he should see an employment counselor. On that same date, after their meeting, Mr. Ranson prepared a memo arguing that he should not submit an expense statement based on his expenses during separation but instead on his expenses during the marriage so as to reflect the standard of living at that time (A copy of this memo and many other items mentioned are not included due to the length limitations of

this brief. Mr. Ranson moved for permission to present them but was denied.) Ms. Romano did not object to any of these points and instead assured Mr. Ranson that she would pursue the evidence he had cited. Mr. Ranson then prepared a statement of his expenses during the marriage and this was used by Ms. Romano during mediation (Addendum A-2).

On March 17, 2005 Mr. Ranson spoke to Dr. Barton and found he was adamantly opposed to testifying in court. Mr. Ranson promptly informed Ms. Romano of this. On April 5, 2005 Ms. Romano suggested that she prepare a written settlement offer (Addendum A-3, Index on Appeal 578). For the next two months Mr. Ranson invested many hours a week in supplying information for this offer. This process generated many thousands of dollars in fees for Ms. Romano and her firm. On April 22, 2005 Ms. Romano thanked Mr. Ranson for his work on this matter and said that she would now prepare a written settlement offer. Mr. Ranson continued to supply information to Ms. Romano's office until May 24, 2005. Mr. Ranson heard nothing further from Ms. Romano until July 18, 2005. On that date she sent him an email which showed that she had not prepared a written settlement offer and had in fact forgotten completely about his case and all of the information he had paid her thousands of dollars to familiarize herself with (Addendum A-4, Index on Appeal 581).

There were now 13 days left in which Ms. Romano could issue subpoenas and submit a witness list. She assured Mr. Ranson that she would get to work on his case immediately. She did not. When Mr. Ranson met with Ms. Romano on July 26, 2005 she had still done nothing on his case. However, she assured him again that she would.

When Mr. Ranson contacted Ms. Romano's office on July 28, 2005 he discovered that instead of working on his case she had gone to San Francisco on vacation. In an email on that same date Mr. Ranson implored Ms. Romano to obtain testimony from an employment counselor. She in fact gave him the name of such a counselor but indicated that he would be acting entirely on his own when he consulted her. On August 1, 2005 the deadline for adding names to the witness list passed and Ms. Romano did not add the name of the employment counselor

On August 3, 2005 Ms. Romano spoke to Dr. Lewis Barton for the first time, nine months after Mr. Ranson had first asked her to contact to him. She discovered, as Mr. Ranson had told her in March, that Dr. Barton was unwilling to testify. Mr. Ranson then provided Ms. Romano with the names of other physicians who were familiar with his medical history and could testify on his behalf. Ms. Romano stated that it was too late to add names to the witness list and told Mr. Ranson that it was his fault his medical records could not now be introduced at trial (Addendum A-5, Index on Appeal 594-6).

On August 4, 2005 Ms. Romano asked Mr. Ranson to prepare a detailed statement of his expenses during separation. Mr. Ranson replied that he thought it essential that his expenses during marriage be used. He sent Ms. Romano a memo citing Gardner v Gardner 748 P.2d 1076(1988), Martinez v Martinez 818 P.2d 538 (1991), and Dunn v Dunn 802 P.2d 1314 (1990), to emphasize this. Ms. Romano replied that she had these cases in his case file. This assured Mr. Ranson that she intended to pursue the line of argument he had set out. In fact, without Mr. Ranson's knowledge or consent, Ms. Romano deliberately withheld his statement of expenses during marriage from the court,

and submitted as his sole statement of expenses, the statement of expenses during separation which she had compelled him to prepare.

On August 5, 2005 Ms. Romano again stopped preparation for trial saying she preferred to pursue negotiation with the Respondent and Appellee, hereafter referred to as Ms. Di Paolo. It was only on August 12, 2005 that Ms. Romano informed Mr. Ranson that she was again “scrambling” to prepare his case (Addendum A-6). As a result Mr. Ranson never saw the exhibits which had been prepared for his own trial except such of them as were handed to him on the witness stand. This is why he was unaware his expense statement had been changed.

As a further result of this “scrambling” Ms. Romano never discussed with Mr. Ranson his own testimony, which was now almost his sole case. Thus when Ms. Di Paolo’s counsel asked Mr. Ranson on the witness stand how much he had earned before the parties were married, Mr. Ranson was surprised by the question. No one had told him that this information might be important and he answered , based on his recollection of events 30 years prior, that he might have made as much as \$25,000 per year. In fact Mr. Ranson’s Social Security records show that his average earnings in his most productive years before marriage were \$3,230 per year. (A copy of Mr. Ranson’s Social Security earnings statement is included as Addendum A-7).

These facts clearly support a finding of ineffective assistance of counsel. Ms. Romano completely failed to make any investigation of Mr. Ranson’s medical history, or witnesses who could testify to it, until it was too late to have that information presented at trial. Ms. Romano refused to make any investigation of Mr. Ranson’s current

employability. Ms. Romano failed to make any investigation of Mr. Ranson's employment and earnings history. As per Utah v Templin, *supra*, these are not debatable tactical decisions. Because Ms. Romano made no investigation of them whatsoever she could not reasonably conclude that the information was not crucial to her client's case. In spite of having represented Mr. Ranson for nearly a year before trial, and in spite of eventually charging him over \$30,000 in fees, Ms. Romano was never quite able to find time to prepare a case on his behalf.

As to her failure to present his expenses during marriage an even more serious conclusion emerges. Mr. Ranson and Ms. Romano discussed repeatedly the need for him to obtain alimony in an amount which, when combined with what he could earn, would allow him to maintain the standard of living he had during the marriage. In his email of August 4, 2005, Mr. Ranson gave the specifics of the cases supporting such an award and Ms. Romano, in her reply, assured him that they were "in his file." Then when Ms. Romano presented that file to the court she deliberately, and without informing Mr. Ranson, removed those expenses and never presented them to the court. The simplest explanation for this is that Ms. Romano did not believe that Mr. Ranson should receive alimony and deliberately removed the evidence that supported his claim so as to prevent him from doing so.

The second prong of the Strickland test is usually the most difficult to meet as the party seeking a new trial must show that their counsel's incompetent conduct prejudiced the result. In this case however that fact is stated specifically by the decider of fact. In its ruling from the bench the trial court states:

I think I need to make this finding from the evidence that's been presented at this trial and to a preponderance of that evidence...I find that the petitioner is able to...enjoy...an income of \$32,000 a year...I base that on the testimony and the evidence that I have which is the testimony of the Witness Farnsworth. The petitioner responds with an opinion that his age prohibits that but I quite frankly don't have much evidence to that, competent evidence to that proposition. In fact, the expert in the subject opined to the contrary. (Trial Transcript 623-4)

As concerns Mr. Ranson's health problems the court says:

The other factor advanced was health considerations and this was the petitioner's opinion in terms of both what he suffers from and how it would impact the kind of employment that the Witness Farnsworth would opine that he's eligible to obtain. These include the optic migraine episodes...but I'm not convinced from the evidence that that condition or any of the other conditions to which Mr. Ranson suffers adversely affects the ability to obtain employment of \$32,000 per year. (Transcript 624)

Here the court states specifically that it does not have competent evidence on two propositions which it finds crucial to its decision against Mr. Ranson. As shown above, Mr. Ranson had been imploring his attorney for at least the last 9 months to produce exactly that evidence. She repeatedly assured him she would do so. In fact she never made any attempt to do so until, by her own admission, it was too late. Since the court itself identifies as crucial to its adverse ruling the absence of two of pieces of evidence which were not presented solely due to the ineffective assistance of Mr. Ranson's counsel, the second prong of the Strickland test is clearly met.

There is also a reasonably probability that if the court had been presented Mr. Ranson's Social Security earnings history, and known that in his most productive period his earnings averaged \$3,230 per year, it would not have found that he was capable of earning \$32,000 per year immediately.

There is also a reasonable probability that if the court had been presented Mr. Ranson's accurate statement of his expenses during marriage, which showed those expenses as \$3,400 per month, which does not include the \$450 which the court allowed for his purchase of comparable health insurance, or any allowance for rent or retirement, that the court would not have found that Mr. Ranson's needs were only \$2,500 per month. Clearly the deliberate suppression of this information by Ms. Romano was also crucial to the decision of the court.

In his response to Mr. Ranson's Motion for a New Trial, Ms. Di Paolo's counsel, Robert Pusey, argued that no legal basis exists to seek a new trial in a civil matter on the basis of ineffective assistance of counsel. (Memorandum in Opposition, ¶15, Index on Appeal 604-10, Addendum A-8). Mr. Pusey cites Maltby v Cox, *supra*, as his authority for this. However he quotes only the MINORITY opinion, stopping just above the MAJORITY opinion, which was cited at length above. As shown, this majority opinion resoundingly rejects the minority opinion and sets as the standard for the State of Utah the precedent that civil litigants are just as entitled as criminal litigants to new trials, and on the same grounds.

Since in all copies of the opinion that Mr. Ranson has seen, the minority opinion is directly above the majority opinion, the most logical explanation for Mr. Pusey's claim is that he was deliberately trying to mislead the court. The court relied on this false information in its denial of Mr. Ranson's Motion for New Trial saying, "The legal concept of ineffective assistance of counsel, as a basis to either reverse a decision or

mandate a new trial, is applicable only in criminal cases” (Minute Entry April 11, 2006, Index on Appeal 638-9, Addendum A-9).

As then Chief Justice Hall points out in Utah v Templin, *Supra*, questions of ineffective assistance of counsel present mixed questions of fact and law, as a result, “reviewing courts are free to make an independent determination of a trial court’s conclusions.” Therefore this court is free to remedy the false reading of the law promoted by Ms. Di Paolo’s counsel and to grant Mr. Ranson a new trial.

II IF THE COURT OF APPEALS FAILS TO GRANT A NEW TRIAL IT WILL BE SANCTIONING A NOVEL METHOD FOR CIRCUMVENTING THE GUARANTEES OF THE U.S. CONSTITUTION OF DUE PROCESS OF LAW AND EQUAL PROTECTION UNDER THE LAW.

In attempting to find counsel to represent him Mr. Ranson contacted 19 members of the Utah Bar who specialize in divorce law (A table containing specifics has been omitted due to length.). Not one of them would agree to take a case in which a man sought alimony. In refusing, many of them made comments which indicated sexual prejudice including: ‘he would receive alimony if he were a woman in the same circumstances but could not receive alimony because he was a man,’ ‘he was lazy and had been living off of his wife,’ ‘an arbiter would beat sense into him’. It was for this reason that Mr. Ranson was forced to rely on Ms. Romano. She was the only attorney he contacted who would agree to seek alimony on his behalf. However, as can be seen from the above, her efforts were at best incompetent and at worst fraudulent.

If this court refuses to grant Mr. Ranson a new trial it will be sanctioning a novel, extralegal method for circumventing the due process and equal protection clauses of the

U.S. Constitution. Under the law, when someone has been the victim of illegal prejudice they can take the offending party to court and receive relief. But in this case we are confronted with a situation where a large body of attorneys all share the same societal prejudice. As a result they refuse to represent the victim of discrimination. Eventually one of their number does agree to represent him, but fails to place crucial evidence before the court, so that the discriminated person is unable to obtain relief. It is then, of course, impossible for the appellate courts to provide relief since the crucial information is not part of the record. If this court fails to grant a new trial in this matter, or to grant Mr. Ranson equality under the law on the extant record, it will be ratifying this method of “discrimination by attorney” and placing it beyond the reach of the law.

When Mr. Ranson’s case is seen as it is in fact, his contributions to his marriage, his health, his earnings history, his standard of living during marriage, it is irrefutable. It is only the incompetence, possibly deliberate, of his counsel that gives any pretense of defensibility to the actions of the trial court. To fail to require the trial court to reopen this matter would be to countenance a grotesque act of sexual discrimination.

III THE TRIAL COURT MADE EGREGIOUS ERRORS IN DETERMINING PETITIONER’S FINANCIAL NEED

After a trial which took place over parts of four days the court deliberated for less than ten minutes before delivering its ruling. This ruling was massively flawed, contained egregious errors of fact, and failed to consider essential points of law.

A. The trial court failed to subtract federal and state payroll and income taxes from Mr. Ranson’s earnings in determining his income.

In determining Mr. Ranson's earning ability the trial court found that he could earn \$32,000 per year. This is equivalent to \$2,666 per month. The court then determined that Mr. Ranson's financial need was \$2,500 per month. The trial court then concluded that Mr. Ranson had the ability to earn more than his needs.

This conclusion however completely ignores federal and state income and payroll taxes. In Ms. Di Paolo's Exhibit 29 the witness Diana Castell specifically considered this and found that on an income of \$32,864 Mr. Ranson's net monthly income would be \$2,117.42 (Index on Appeal 447, Addendum C-1). Using the court's figure of an annual income of \$32,000 the net monthly income would be \$2,071.83 (Calculation omitted due to length). This figure is \$428.17 less than the need arrived at by the court.

Thus even if we accept, in arguendo, the ridiculously high earnings figure of the court, accept also the ridiculously low need, and accept the complete failure of the court to consider any of the statutorily required factors for determining alimony, the minimum alimony award to Mr. Ranson should be not \$0 but \$428 per month, for a period equal to the 20 years of the marriage. This failure of the trial court is plain error.

B. The trial court failed to make any allowance for the ownership costs of an automobile, for major purchases such as furniture or appliances, or to make adequate allowance for clothing or travel.

The trial court arrives at its determination of Mr. Ranson's need by taking the calculation of his expenses during separation (Addendum C-2, Index on Appeal 445), which Ms. Romano submitted without Mr. Ranson's knowledge, and deducting from them what it terms "one time expenses" and living expenses for his son, Sean. The

resulting expense calculation is clearly not adequate to meet Mr. Ranson's needs. It contains no allowance for the ownership costs of an automobile, for major purchases such as appliances or furniture, or remotely adequate allowances for clothing or travel. At the time the expenses during separation were incurred Mr. Ranson was desperately attempting to both attend college and to raise enough money to pay his attorneys. Since he had no access to his savings he was forced to borrow money to live. Naturally he deferred purchases which would be a normal part of an American household budget.

As Mr. Ranson testified at trial the automobile expense listed is just enough for gas and repairs on a 14 year old car. If Mr. Ranson were to purchase a car the equivalent of the one Ms. Di Paolo received in the property settlement, which then had a value of \$22,000, and if he were to obtain a 5-year car loan at 5.25% interest, this would require a monthly payment of approximately \$450.

Even if this court rejects Mr. Ranson's argument that he should be able to maintain the standard of living during the marriage, it is not reasonable to expect that he would be able to live without purchasing a car, appliances, furniture, or clothing. If any reasonable allowance is made for these purchases, the minimum amount of alimony Mr. Ranson should receive increases from \$428 to more than \$1,000 per month. The failure of the trial court to include basic necessities in its analysis of Mr. Ranson's need is clear and prejudicial error.

IV THE TRIAL COURT MADE NO PROVISION FOR FUNDS FOR RETIREMENT IN DETERMINING PETITIONER'S NEED AND MADE NO FINDING AS TO WHY IT FAILED TO DO SO

During the marriage Mr. Ranson paid for and built a house which the parties owned without encumbrance. The parties also made regular contributions to a retirement account, 25 times a year, automatically, from every paycheck, every year, for 20 years. During settlement negotiations Ms. Romano insisted that Mr. Ranson purchase Ms. Di Paolo's interest in the home in return for an equal dollar amount of their retirement account. For this reason no need for rent or mortgage appears in Mr. Ranson's expenses, a fact crucial to the trial court's denial of alimony. However, Mr. Ranson now has a large need for retirement funds, a need which the trial court gave no consideration in its ruling.

At this time Mr. Ranson is 55 years old which means he is 9 1/4 years from retirement age. He has approximately \$42,000 in retirement savings. After taxes and legal fees he has \$46,000 in other savings. Because he remained home to support Ms. Di Paolo's career and to raise their son, Mr. Ranson is not qualified for Social Security benefits. If we accept the unreasonably high finding of the trial court and assume Mr. Ranson can earn \$32,000 immediately and every year until retirement, Mr. Ranson will be eligible for \$685 in social security retirement benefits (Calculation omitted due to length). If we assume that Mr. Ranson can retire on 70% of his court allowed \$32,000 income, he will have a need for retirement savings of \$2,800 per month to retire at age 65 (Omitted due to length). This example of course does not explain why Mr. Ranson should be living on \$22,400 a year in retirement while Ms. Di Paolo will be living on an income over three times as large.

In Gardner v Gardner, *supra*, the Utah Supreme Court considered the question of the need for alimony in retirement. It overturned the alimony award of the trial court and

remanded for further proceedings in part because the trial court's award of alimony "is insufficient to equalize the parties standard of living following...retirement."

In Bakanowski v Bakanowski 80 P.3d 153 (2003) this court addressed the issue of whether the present need to save for future retirement could ever be a part of an alimony determination. It found that, "The critical question is whether funds for post-divorce savings, investment, and retirement accounts are necessary because contributing to such accounts was standard practice during the marriage and helped form the couple's marital standard of living." In the present case that requirement is abundantly met.

At trial Mr. Ranson testified several times to his need for alimony to provide funds for retirement (Transcript 132, 149, 196). In spite of this the court made no finding concerning this issue and made no provision for retirement savings or equal standards of living after retirement in its consideration of alimony. This is clear and prejudicial error.

V THE TRIAL COURT GAVE NO CONSIDERATION TO THE STANDARD OF LIVING DURING THE MARRIAGE IN DETERMINING PETITIONER'S NEED AND MADE NO FINDING AS TO WHY IT FAILED TO DO SO

Utah Code §3-3-5(8)(c) states that, "as a general rule, the court should look to the standard of living existing at the time of separation in determining alimony." It allows the court to base alimony on the standard of living at the time of trial if this is supported by "equitable principles." In this case the trial court based its decision solely on the standard of living at the time of trial, gave no consideration to the standard of living during marriage, and made absolutely no mention of its reasons for doing so.

The overwhelming weight of precedent in Utah law requires alimony to be based on the standard of living that existed during the marriage. This tradition began with

MacDonald v Macdonald 236 P.2d 1066(1951) in which the Utah Supreme Court disposed of the previous tradition that alimony was adequate if it prevented the wife [sic] from becoming a public charge and found instead that divorced parties are entitled to be provided for according to their “station in life”.

By the time of English v English 565 P.2d 409 (1977) our supreme court, citing its own previous opinion, stated with absolute clarity:

the most important function of alimony is to provide support for the wife [sic] as nearly as possible at the standard of living she enjoyed during marriage.

In Higley v Higley 676 P.2d 379 (1983) then Justice Durham ,writing for the court majority, stated:

An alimony award should, in as far as possible, equalize the parties’ respective standards of living and maintain them as close as possible to the standard of living enjoyed during the marriage.

One argument that Ms. Di Paolo may have meant to advance at trial is that the trial court should read Jones v Jones 700 P.2d 1072 (1985) as superceding the previous citations. In Jones our Supreme court proposes a three-pronged test for alimony, the second prong of which is the ability of the wife [sic] to produce income for herself. Ms. Di Paolo may have intended to claim that this is a reversion to the old public charge doctrine, and may have intended for the court to interpret this as meaning that if the recipient spouse can support themselves without public assistance, alimony is not required. This reading is completely false. Immediately before proposing its three-pronged test the Jones court quotes the passage from English v English already cited above and says that it is for this purpose, the purpose of supporting the wife [sic] *at the*

standard of living during the marriage (Italics added) , that the three-pronged test is promulgated.

The only citation to law that the trial court even suggests in its ruling is when it seems to paraphrase English v English, *supra*, in saying that alimony is neither an annuity or a penalty (Transcript 621). In English the court says that alimony is neither “a penalty against the husband nor a reward to the wife.” However the court in English immediately afterward makes the statement quoted above, that the purpose of alimony is to support the recipient *at the standard of living of the marriage* (Italics added).

The trial court seems to follow English further as it next acknowledges the “need to take into account the standard of living that one enjoyed when they were married” (Transcript 622). But having said this, the trial court gives absolutely no consideration to the standard of living during marriage and proceeds to base its ruling solely on the standard of living during separation when, as pointed out above, Mr. Ranson was living in desperate financial circumstances.

The issue of his expenses was mentioned by Mr. Ranson at several points during the trial (Transcript 154, 295). He discusses several times submitting a statement of his expenses during marriage at mediation, and discusses some of the ways in which the statement of his expenses during separation fails to reflect the required level of expenses. During this testimony Mr. Ranson had no idea that his attorney would not submit his actual expenses during marriage to the trial court.

Clear precedent exists for this court to set aside the trial court’s reliance on the expense calculation at time of trial and use the calculation that reflects the standard of

living during marriage. In Gardner v Gardner, *supra*, the trial court relied on a calculation which listed Mrs. Gardner's expenses as \$1,200 per month. In reaching its verdict our Supreme Court relied, instead, on a calculation Mrs. Gardner prepared prior to trial, which listed her expenses as \$1,700 per month. It found that this was a reasonable expression of her needs and that it supported her claim for alimony in that amount. It therefore reversed and remanded for further action.

In comparing the statement of Mr. Ranson's expenses during separation relied on by the trial court (Addendum C-2), with the statement of Mr. Ranson's expenses during marriage which was used at mediation in February, 2005 (Addendum A-2), it can be seen that the total amount of Mr. Ranson's expenditures is actually higher at the time of trial. What is different is the nature of the expenses. During separation Mr. Ranson is living off of borrowed money and paying enormous legal fees. These needs replace more normal ones such as automobile and appliance payments. When the trial court leaves out these extraordinary expenditures it arrives at a figure that is 73% of Mr. Ranson's expenses during marriage for similar, after tax items. However, this figure does not include the \$455 per month allowed by the trial court for Mr. Ranson to purchase comparable health care, or any allowance for retirement. Adding these items makes the actual shortfall more than 50% of his normal expenses.

This court should follow the abundant precedent in marriages of long duration and base its assessment of Mr. Ranson's need on the standard of living during marriage. It should follow the precedent of Gardner and base its assessment of this need on

Addendum A-2, adding to that amount provision for health care and retirement, which during the marriage were pre-tax expenditures.

The failure of the trial court to base Mr. Ranson's need on his standard of living during marriage or to make any finding as to why it did not do so is a clear and prejudicial abuse of discretion.

VI THE TRIAL COURT MADE NO ATTEMPT TO EQUALIZE THE PARTIES STANDARDS OF LIVING AFTER DIVORCE AND MADE NO FINDING AS TO WHY IT FAILED TO DO SO

The same tradition of law that requires the needs of parties to be based on the standard of living during marriage also requires that in marriages of long duration, where the parties have prospered as a result of their joint efforts, the standards of living of the parties after marriage be equalized to the extent possible. Indeed the purpose of basing the needs of the parties on the standard during marriage is so that a decree can be fashioned that maintains it afterward. This is clear from the quotations from the rulings in English v English, and Higley v Higley, *supra*.

In Frank v Frank 585 P.2d 453 (1978) the trial court awarded alimony even though it stated at one point in its ruling that "in one sense plaintiff does not need alimony in that she could probably subsist without it." The payor spouse appealed on the grounds that this finding demonstrated that alimony was not necessary. Writing for a unanimous Utah Supreme Court then Justice Crockett rejected this argument saying:

How the defendant, or anyone on his behalf, could even suggest that a wife who had devoted 21 years to her marriage and reared a family should be turned out to subsist on her own is as discordant with our sense of justice as it was to the trial judge.

In Rasband v Rasband 752 p.2d 1331 (1988) in rejecting an award of declining alimony as insufficient the Utah Court of Appeals said:

The award herein leaves Mr. Rasband with some discretionary income and Mrs. Rasband with none. The lower court found \$45,000 of disposable income. He needs \$18,000 annually and she needs \$16,800, for a total of \$34,800. This leaves him with \$10,000 annual discretionary income...These facts appear to warrant permanent alimony in an amount greater than \$800.

In Dunn v Dunn, *supra*, the Utah Court of Appeals reversed the ruling of the trial court which awarded the husband the largest portion of the marital property. The Court of Appeals found that, Mrs. Dunn was “an equal partner in the marriage.” It rejected the ruling that Dr. Dunn was entitled to a superior financial position after the divorce because in the words of the trial court, “the period of the marriage covered probably the most productive period of his life.” The Court of Appeals noted that these years were also the most productive of Mrs. Dunn’s life during which time she “gave up or at least greatly postponed... pursuing her own education and career.”

The parallels between Mr. Ranson’s situation and those of the prevailing parties in these, the foundational precedents for Utah law governing divorce, are compelling. Mrs. Gardner had been married 38 years. She had not worked outside the home in 30 years. As a stay at home spouse, she supported Dr. Gardner’s career while he built a successful medical practice. She had once been a skilled executive secretary but the court found that it would be difficult for her to regain those skills after so long an absence. She received property and alimony to equalize their standards of living.

Mrs. Higley was married 30 years. The Utah Supreme Court found that her work as a homemaker had made her husband’s successful career as a welder possible. Mrs.

Frank was married 21 years. She helped her husband succeed as a heart surgeon. While he was hospitalized with an emotional illness she opened a gift shop with the help of her parents and supported the family.

Mrs. Jones was married 30 years. During the marriage the parties established a successful pharmacy. She worked occasionally in the business and also did extensive volunteer work, in addition to raising their children and maintaining their home.

Mr. Ranson was married for 20 years. During the marriage he raised the parties son and maintained their home. He supported his wife's career. When she was fired from her tenured job as a professor he wrote the appeal that resulted in her being reinstated. He did unpaid work on her articles, researching and writing portions of them. He paid for and built their house.

All of the spouses in the foundational cases above received alimony and/or property sufficient to allow them to maintain the standard of living during marriage. Mr. Ranson received zero alimony. He was, as the Frank court put it, "turned out to subsist on his own" as though the marriage had never happened and as though he had no part in creating, and no claim on, Ms. Di Paolo's financial success.

At trial Mr. Ranson submitted several schedules showing the amount of alimony needed to equalize the incomes of the parties after taxes. These used a higher gross income for Ms. Di Paolo than was accepted by the court. A schedule is included showing the amount of alimony which would equalize the parties incomes at Ms. Di Paolo's current salary level and at two levels of income for Mr. Ranson, the \$32,000 the trial

court found he could earn, and the \$20,800 he actually is capable of earning (Addendum F-1).

The schedule also shows that equalizing incomes does not in fact equalize the parties' standards of living since Ms. Di Paolo receives benefits which total 23% of her salary and which pay for her medical insurance and retirement. Mr. Ranson must pay these expenses out of his after tax income.

The failure of the trial court to award alimony which will equalize the parties' standards of living and maintain them at the level during the marriage, or to offer any reason why it did not do so, is a clear and prejudicial abuse of discretion.

VII THE TRIAL COURT MADE NO ADJUSTMENT TO ITS AWARD OF PROPERTY, OR IT'S FAILURE TO AWARD ALIMONY, IN CONSIDERATION OF THE GREAT ENHANCEMENT OF MS. DI PAOLO'S EARNING CAPACITY THROUGH THE EFFORTS OF BOTH PARTIES DURING THE MARRIAGE, AND MADE NO FINDING AS TO WHY IT FAILED TO DO SO

During the course of this marriage Mr. Ranson has made enormous contributions to the advancement of Ms. Di Paolo's career. In the first instance, he stayed home to manage their household and raise their child. Under Utah case law these contributions alone make him a full partner in the marriage, see Higley v Higley, and Dunn v Dunn, *supra*. But Mr. Ranson's contributions went far beyond that to active support for Ms. Di Paolo's career.

In 1988 Ms. Di Paolo was fired from her tenure track job as a professor at the University of Utah. Mr. Ranson did almost all of the work on an appeal of this firing including: contacting witnesses, researching evidence, and writing responses for Ms. Di Paolo's signature. As a result, for the first time in the memory of anyone at the

University such an appeal was successful and Ms. Di Paolo was restored to her position. Thereafter Mr. Ranson worked as an unpaid assistant on Ms. Di Paolo's scholarly publications, performing research and writing sections of her articles. He also wrote her Year's Work letters, which are essentially applications for raises, and prepared applications for other, more remunerative, positions for her signature.

As a result of the efforts of both parties Ms. Di Paolo's salary went from \$17,000 per year at the beginning of the marriage to \$78,000 per year at the time of trial.

There is a long tradition in Utah case law that when the parties have prospered through their joint efforts that this should be acknowledged in awards of property and alimony in the event of divorce, see Higley v Higley, Jones v Jones, Frank v Frank, and Gardner v Gardner, *supra*. This tradition received its clearest statement in Martinez v Martinez, *supra*. In this case the Utah Supreme Court stated unequivocally "if one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, it may be appropriate for the trial court to make a compensating adjustment in dividing the marital property and in awarding alimony."

In a concurring opinion, then Justice Zimmerman stated that, "there can be no doubt that trial judges are empowered and enjoined to take circumstances like those presented here into account in making alimony and property division awards."

In this same matter then Justice Durham offered a dissenting opinion. Unlike Ms. Di Paolo and her counsel, Mr. Ranson does not argue that minority opinions confer authority, but this opinion goes so directly to the facts of this case that it must be brought before this court. Justice Durham wrote in part:

The legal status quo is unacceptable...and I hope that the majority will be willing in the future to make good on its representation that the concept of alimony...can be accommodated to the need for equity. Unless and until that happens any woman (or man, for that matter) who sacrifices her own education, earning capacity, or career development so that a spouse may advance and the marriage may prosper as a joint venture will inevitably suffer the full cost of that decision at divorce, while the advantaged spouse will continue to walk away from the marriage with all of the major financial gain. That is unfair, and...the responsibility of the law is to seek fairness.

This statement exactly describes this case. Mr. Ranson sacrificed his career, his earning capacity, his education, to advance the career of his wife. When they divorced he was told by the trial court that it was fair that he should live at the level of whatever he could earn now, with no right to live at the level the parties had earned during marriage, with no allowance for the reduction a 20 year break in his career had made in his earning capacity, and with no consideration for the substantial health problems he had developed with age.

When Mr. Ranson and Ms. Di Paolo began their marriage they had very little. He had his college money, which he invested in their home. She had her job at the University of Utah, which she promptly lost, but together they persevered and they succeeded beyond their wildest dreams. She became a department chair at the University and her salary went from \$17,000 to \$78,000 per year. Anyone would have thought that they were both successful, but this is wrong. According to the trial court only Ms. Di Paolo succeeded and Mr. Ranson has no claim to her success, and no claim on her earning power, which was created through the efforts of them both.

Even if we accept, in arguendo, the trial court's absurd finding that Mr. Ranson can earn \$32,000 immediately, and accept also its finding that he can live on less than half of his expenses during the marriage, his income is still not enough to meet his needs. Mr. Ranson must begin spending down marital assets immediately just to live. He must spend these same assets to pay for his retirement. Thus the ruling of the court envisions Mr. Ranson living in declining circumstances, on an budget of \$30,000 per year, falling to near nothing in retirement, while Ms. Di Paolo has substantial assets she need not touch, retirement more than adequate to maintain her standard of living, and an income of \$78,000 per year.

This situation is clearly and grotesquely unfair. If precedent did not already exist, this court would have to craft an equitable remedy to correct this situation. But in fact, in the statute and in case after case of precedent, the laws of Utah already address this situation and find it intolerable.

Consider the words of two distinguished jurists who would go on to become Chief Justice of the Supreme Court of Utah. Chief Justice Crockett asks, "How the defendant, or anyone on his behalf, could even suggest that a wife who had devoted 21 years to her marriage...should be turned out to subsist on her own." Chief Justice Durham asks how it is fair that, "any woman (or man, for that matter) who sacrifices her own education, earning capacity, or career development so that a spouse may advance and the marriage may prosper as a joint venture will inevitably suffer the full cost of that decision at divorce" and concludes "That is unfair, and...the responsibility of the law is to seek fairness."

The law of Utah provides a remedy for the injustice of this situation and that remedy is routinely applied to circumstances exactly matching those in this case. There are strong indications that it was not applied here solely due to illegal sexual prejudice. To do justice in this matter, it is only necessary for the Court of Appeals to apply the law impartially.

VIII THE TRIAL COURT'S RULING IS BASED ON ILLEGAL SEXUAL PREJUDICE

There is substantial evidence to indicate that the ruling in this matter was the result of sexual prejudice. To confirm this Mr. Ranson undertook a statistical study of divorce cases filed in Third District Court contemporaneously with his. He examined a total of 297 cases(case numbers 044900577 through 044900781, 054904232 through 054904248, and 064902574 through 064902651, Summary of data omitted due to length). The majority of these cases were from the period February, 2004 through April, 2004, in which month Mr. Ranson filed for divorce. He also sampled cases from other periods to confirm that this period was not a statistical aberration. To find cases comparable under the law to his, Mr. Ranson considered only marriages of long duration, which he took to be of 10 years duration or greater.

The results of this study can be given in one sentence. In every case of a marriage of long duration, in which a spouse requested alimony, they received alimony. There is no instance of a spouse in a marriage of long duration, during the period in which Mr. Ranson filed, in the court in which he filed, requesting alimony and being denied, except in the case of Mr. Ranson.

In the cases in which a spouse requested alimony, a combination of alimony, child support, and or, property awards usually served to equalize the parties' standards of living after marriage. As an example, in the case of Williams v Williams, 04490-0601, the parties were married for 22 years. They had one child who was 12 at the time of divorce. The husband earned \$5,417 gross per month, \$65,004 annually. The wife earned \$1,570 gross monthly, \$18,840 annually, at two part time jobs.

The wife was awarded two thirds of the equity in the home, a 2002 model car, child support of \$530 per month, and alimony of \$1,000 per month for a time equal to the duration of the marriage. As a result of this ruling in the first year after divorce her monthly gross income from all sources would be \$3,100 and his would be \$3,887. She would be compensated for the difference by increased equity in the home.

This case is almost identical to the one before this court. In the current case the parties were married 20 years, their child was 16 at the time of divorce, and Mr. Ranson had no earnings. In the case of Williams, Mrs. Williams received \$530 per month in child support and \$1,000 per month in alimony so that the discrepancy in incomes was \$787 per month after divorce. In the current case, Mr. Ranson receives no child support, no alimony, and the difference in incomes after divorce, even using the unsupported income finding of the trial, court is \$3750 per month. That is, the difference is \$1,100 more than Mr. Ranson's imputed income.

Numerous other examples with strongly similar outcomes have been omitted solely due to the length requirements of this brief. There is only one substantive difference between Mr. Ranson and the spouses who were granted alimony and equal

standards of living. All of them are women and Mr. Ranson is a man. These facts provide clear evidence that Mr. Ranson is the victim of sexual discrimination. This sexual discrimination is a violation of the equal protection clause of the Constitution of the United States. As such it is clear and prejudicial error.

X THE TRIAL COURT MADE AN ERROR OF FACT IN FINDING THAT MR. RANSON CAN EARN \$32,000 PER YEAR WHEN HIS AVERAGE EARNINGS PER YEAR BEFORE MARRIAGE WERE \$3,230

In reaching its decision that Mr. Ranson could earn \$32,000 per year immediately the trial court relied on the opinion of Kristy Farnsworth, a self employed vocational specialist. Dr. Farnsworth holds a PhD. in human development and has 20 years experience in her field. Dr. Farnsworth submitted a ten page written report in which she finds that Mr. Ranson can find employment in fields ranging from customer service representative to first line supervisor/manager of construction workers at "salaries" ranging from \$19,760 to \$32,864. She also indicates in her report and testimony that these "salaries" are really too low and that Mr. Ranson can easily earn up to \$45,000 per year. The court accepted this testimony and found that Mr. Ranson could earn \$32,000 per year almost immediately. (A copy of Dr. Farnsworth's report is included as Addendum H-1, Index on Appeal 445)

In reaching its decision the trial court failed to recognize the large number of crucial flaws that make Dr. Farnsworth's testimony not only completely unreliable but deliberately misleading. As she acknowledges in her testimony, Dr. Farnsworth obtained information only from Ms. Di Paolo and made not attempt to contact Mr. Ranson. (Transcript 5, 20) As a result

Dr. Farnsworth's opinion is really only the opinion of Ms. Di Paolo placed in the mouth of a supposed expert.

Dr. Farnsworth did not have access to Mr. Ranson's actual earnings history. It is impossible to believe that she would have concluded that he was capable of earning \$32,000 immediately if she had known that his average earnings per year as a carpenter had been \$3,200. Dr. Farnsworth believed that Mr. Ranson had been a licensed general contractor when he had not. Dr. Farnsworth was not given accurate information about Mr. Ranson's medical condition. She believed that he suffered from migraine headaches and was never told that he suffers from atypical migraine episodes that can blind him without warning for periods up to one hour. Dr. Farnsworth also made no allowance for layoffs even though she admitted under oath that construction does not provide full time employment.

The record also shows that Dr. Farnsworth deliberately mislead the court. She did this by suggesting in her report and testimony that Mr. Ranson could occupy jobs which she was forced to admit under oath he was not qualified for. She also suggested that evidence existed that Mr. Ranson would receive rapid raises, when she was forced to admit under oath that she had consulted no such evidence.

On page ten of her report Dr. Farnsworth lists the actual conclusions of her analysis, that Mr. Ranson can earn from \$19,760 as a customer service representative, to \$24,336 as a finish carpenter, to \$32,864 as a "first line construction manager". But throughout her report and testimony she refers to jobs such as "construction manager" which pays as much as \$45,000. The implication is that Mr. Ranson is qualified for these

jobs as well. Under cross examination Dr. Farnsworth admits that Mr. Ranson is not qualified to be a “construction manager” and that the only jobs he is qualified for are the three identified above from her conclusion on page 10 (Transcript 36). When asked why she would include higher paying jobs in her report at all Dr. Farnsworth replies with a non-sequitur saying that such jobs would not be a good option for Mr. Ranson (Transcript 37). Dr. Farnsworth thus tacitly admits to larding her report with discussion of high paying options for which Mr. Ranson is not qualified.

The second way in which Dr. Farnsworth deliberately misleads the court is by suggesting that Mr. Ranson will receive rapid raises from the levels of starting “salary” she lists. The only evidence she gives for this however concerns the customer service jobs (Transcript 12). She suggests to the court that such rapid raises are available in the construction industry as well and refers to government figures which show this. However, later in her testimony, she admits that she did not actually consult any such statistics in preparing this report and that this claim is based only on her unsupported opinion (Transcript 13).

In her testimony Dr. Farnsworth admits that she gave no consideration to Mr. Ranson’s health problems in making her analysis. As he testifies to the court, Mr. Ranson, suffers from atypical migraine, gout, high cholesterol, rosacea, and sleeplessness, and takes six prescription medicines daily to treat these conditions. Crucial to his work ability is atypical migraine, the symptoms of which are not headache but episodes of blindness which come on with no warning and last up to one hour. Mr. Ranson experiences such symptoms hourly and experiences the longer episodes three to

four times a year. Obviously if he were to have such an episode on a construction site he could be killed.

Mr. Ranson takes the medicine Inderal to prevent these episodes from being more severe. This medicine lowers his heart rate so much that he cannot exert himself until he has gradually exercised over a period of 10 to 15 minutes. This makes it completely impossible for him to work on construction jobs, where the ability to go from doing the most sedentary detail work to heavy lifting, immediately, is crucial. In her report Dr. Farnsworth identifies this skill as “explosive strength” and says Mr. Ranson’s possession of it is important to her analysis. (H-1, p.4)

In her testimony Dr. Farnsworth admits that she thought Mr. Ranson suffered from headaches (Transcript 28), that she did not have enough information to consider the effects of his health on Mr. Ranson’s employability (Transcript 29), and that she would need more information to determine whether being struck blind without warning would affect his ability to do construction work (Transcript 30).

In arriving at her figures for “minimum starting salary” Dr. Farnsworth also fails to consider the effect of layoffs. While she calls these figures “salaries” her own calculations show that these are hourly earnings and that she has arrived at the final figures by assuming full time employment. However, under cross-examination Dr. Farnsworth admits that construction work does not provide full time employment (Transcript 40-1). Therefore a deduction for time off, perhaps on the order of 20% or 30%, must be made from Dr. Farnsworth’s figures to find Mr. Ranson’s actual annual earnings.

Stripped of its deliberate deception Dr. Farnsworth's report does not contradict but confirms Mr. Ranson's stipulation that he can earn \$20,800 per year. Dr. Farnsworth lists a starting salary for Mr. Ranson as a carpenter of \$24,336, which must be reduced for layoffs. This gives a figure almost identical to Mr. Ranson's stipulated earnings. In an attempt to arrive at a higher value, Dr. Farnsworth first argues that Mr. Ranson is qualified to be a "first line construction manager". She supports this idea with the claim that Mr. Ranson was once a Licensed General Contractor. The sole evidence for this is a license form labeled "contractor" shown to her by Ms. Di Paolo. Dr. Farnsworth claims that in 1986 there was only one type of contractor's license, that this means that Mr. Ranson was a general contractor, and that therefore he is qualified to manage construction.

In fact in 1986 contractor's licenses were differentiated by the dollar value of open contracts the licensee could have at one time. Mr. Ranson's license permitted a maximum value of \$5,000, therefore he was clearly not a general contractor. In fact, as shown by his earnings statement (A-7), Mr. Ranson did not contract for work using this license and obtained it solely so that he could buy materials for the parties' home at wholesale prices.

When challenged on this point Dr. Farnsworth admits that she does not know whether Mr. Ranson was a general contractor or not (Transcript 26). She argues that her belief that Mr. Ranson was a general contractor was not a factor in her determination that he was capable of being a construction supervisor (Transcript 22). She then contradicts herself, again, by referring repeatedly to the idea that Mr. Ranson was a general

contractor and claiming that this provides support for her idea that he is qualified as a supervisor (Transcript 35).

Having disposed of the idea that Mr. Ranson is qualified to occupy management positions there is only one way in which Dr. Farnsworth can support a claim that he can earn more than the amount he stipulated, and that is by insisting that Mr. Ranson can immediately earn 66% of the maximum wage for the most skilled category of carpenter, finish carpenter (Transcript 15). She bases this on no data whatsoever but solely on her personal opinion based on "the years of experience he has had". Under examination Dr. Farnsworth denies that any allowance must be made for the years Mr. Ranson has been out of the workforce because carpentry consists of "pounding nails, that certainly there's not much change in that" (Transcript 27). This is not only classist prejudice but shows Dr. Farnsworth's complete ignorance of the vast changes in construction in the last 20 years. Dr. Farnsworth's testimony on this point shows her desperation to reach a conclusion that shows Mr. Ranson can make \$32,000 per year, in accordance with the wishes of her client.

Reference to his earnings statement (A-7) should remove any doubt that Mr. Ranson's is not able to earn in this range. In fact the only job he has been able to obtain since the divorce was a temporary one at Home Depot which paid him \$10 per hour, which would be \$20,800 per year if he worked full time. (Mr. Ranson's W-2 is not included due to length)

Finally, let us assume, in arguendo, that Mr. Ranson's health problems did not prevent him from working construction. He is 55 years old. If he were able to perform

the strenuous activities of construction now, would he be able to do so in 5 years when he is 60, in 10 years when he is 65? Mr. Ranson has no financial ability to retire. He will have to work as long as he lives. It is obvious that he must retrain now, in a field other than construction, which he will be able to pursue for as long as he can stand upright.

CONCLUSION

For the foregoing reasons the Petitioner and Appellant prays the court for the following relief: For an order modifying the decree of divorce to award Mr. Ranson alimony in the amount of \$2,400 per month. This is the amount that would equalize the parties' incomes at the level Mr. Ranson can actually earn. It would not equalize their total receipts due to the benefits Ms. Di Paolo receives.

Failing this:

For an order for a New Trial so that Mr. Ranson can present an affirmative case on his own behalf which would include: Testimony from a physician who has treated Mr. Ranson for ocular migraine and the entry of Mr. Ranson's medical records; Testimony from an employment counselor employed by Mr. Ranson and the entry of the records of Mr. Ranson earnings history; Mr. Ranson's statement of his actual expenses during marriage;

In its order for New Trial this court should require the trial court to make findings as to: Mr. Ranson's need for retirement; The standard of living during marriage and the need to equalize standards of living after divorce; Mr. Ranson's contributions to Ms. Di Paolo's earning ability; Ms. Di Paolo's current income; The effect of taxes on Mr. Ranson's ability to meet his needs, as well as other pertinent issues.

If, against the law and the facts, this court chooses to sustain the trial court's deeply flawed verdict it should, at the least, enter an order awarding Mr. Ranson alimony in the amount of \$428 per month for a period equal to the 20 year duration of the marriage, to correct the plain error of the trial court in failing to allow for the effect of taxes on Mr. Ranson's ability to meet his needs.

There is absolutely no grounds for sustaining the current decree which has no basis in law or fact.

DATED this 12th day of February, 2007.



Kenneth Clark Ranson

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of February, 2007, I caused to be delivered by first class mail, two true and correct copies of the foregoing BRIEF OF APPELLANT to the following:

Robert Devin Pusey
140 West 9000 South, #7
Sandy, UT 84070



Kenneth Clark Ranson

ADDENDUM A

Divorce

Case for Trial

Alimony

Method

Establish Marianna's income.

Establish my income.

Establish our needs.

Demonstrate that our joint current needs are greater than our joint income and that my needs are greater than my income plus one half of Marianna's income and ask for income sharing.

Marianna's Income

Marianna absolutely refuses to produce her Dean's Salary letters or her Compensation Status forms for the last two years. She claims they are lost and the College can't give her copies.

These forms show what she actually makes. The latter includes all of her benefits as well and shows her total compensation. She is desperate to keep us from seeing these, obviously because they show her making more income than she is reporting otherwise.

Get copies of Dean's Salary letters and Compensation Status Forms for 2004-2005 and 2003-2004.

My Income

I cannot return to work as a carpenter because I have been out of the field for 16 years and because of health problems. My physician will make an affidavit attesting that I cannot work as a carpenter or do any physically strenuous work. This will mean that I will have to work for entry level wages now and from now on, unless I can retrain in another professional

field. This is why I am going to college and why it makes sense for both me and Marianna that I be allowed to go to college.

Do I need to see an employment counselor to establish what I can make or should I just take the most remunerative job I can qualify for?

Get affidavit from Dr. Lewis Barton.

See employment counselor??

Get Job.

Expenses

So far I have done all of the work on trying to determine our expenses while Marianna has taken our financial records and refuses to let me see them or provide information from them.

I have worked on the principal that we should determine our expenses as they were during the marriage since I am entitled to spousal support that will allow me to maintain the lifestyle that we had during the marriage.

I have done a breakdown of our expenses for 2002 and I have received additional information from Marianna, from records that I maintained and she stole after having me removed from the house under a protective order she later withdrew, that may be enough to let me determine the same expenses for 2003. I have not done this because it takes tens of hours of work and I did not know if we needed it.

To the 2002 expense calculation I made we will have to add the new expenses we will have living separately, health insurance for me, rent for her, etc. We should also add the amount that we saved each year. These funds were for the most part not savings for the future but were in lieu of time purchase agreements for large items. Because we owned the house that I built we were able to put money in savings every month and then when we needed a large consumer item, a car, furniture, an expensive trip, we paid for it in cash. These "savings" then took the place in our budget that a car payment or installment payments take in the budgets of other people.

Am I right in thinking that if both Marianna's needs and my needs living separately are greater than one half of her salary that this is grounds to ask the court to order income equalization alimony??

Do I need to calculate 2003 expenses and on what basis??

Division of Property

House

Marianna proposes that she take one half of the property that I brought to the marriage, the house that I built and paid for, the large gains from investments that I researched and followed, but that I not receive a share of the value of her career which she could not have had without my saving her job and researching her articles, not to mention taking care of the house and Sean.

I can demonstrate that I contributed most of the money and all of the work to choose the location, buy the lot, design and build our house. Of the money used to build the house 37,000 was a gift from my parents which they gave me in place of any money they might have contributed to my college education. It was never their intention or my intention that Marianna be gifted with this money. It has always been my separate property which was invested in the house. My records show that I always accounted for this money separately. It was never commingled with or exchanged for any other asset. Now that I have to return to school and get a college education it is only fair that I receive this money back.

Repairs

The house needs extensive repairs. There is nothing unusual about this. We have lived in it almost 17 years and raised our family there and it is at the end of a wear cycle. Houses often need extensive repairs or remodeling at this stage. Also I have not been able to keep up with the repairs I would normally make because I had health problems every year for the three years previous to this one. My medical records will document this.

Marianna wants the house sold without repairs so that my share of our estate will be reduced. While this will reduce her receipts also she is willing to do this to revenge herself on me. She knows that she can easily get more money through her career and that I cannot.

House to be deeded to Ken

It would be reasonable for Marianna to deed the house to me. She can be fully compensated by receiving a larger share of her retirement funds. In this way I could make the repairs to the house which I built and paid for and which is really an asset I brought to the marriage and Marianna would keep more of her retirement. This would allow us to separate our affairs completely and would prevent arguments, recriminations, and lawsuits over who was making the repairs, whether they were being done fast enough and in the right way, etc.

Primary Care Giver/Use of the House

Regardless of how the house is disposed of on a permanent basis I should receive the use of the house until Sean graduates from high school. I have always been his primary care giver, delaying my career and staying home with him. It is in his best interests that we continue this relationship until he goes to college which will occur in one and a half years from now. It would be very hard on him to have to adjust to a completely new living arrangement for that period. Sean agrees with this and wants to stay in his home.

Get an affidavit from my mother concerning the nature and purpose of her gift.

Get from Marianna my file marked Lot Purchase-Parkcrest Number 4 and its contents. I need this to finish documenting the source of funds used to construct the house.

Have house appraised as to its current value. Get Marianna to agree to pay for half of this.

Other Monetary Assets

Our other monetary assets, Marianna's retirement after an offset for the house, and our stock account, should be divided equally between us. Their value can be easily determined because it is published every weekday in dollars.

Personal Property

After having me removed from the home with a false protective order which she withdrew as soon as I responded to it Marianna helped herself to all of the newest and most valuable personal property including a new car, the artwork and all of the new furniture and left me with old broken almost worthless items.

This is not fair.

All of the personal property in possession of both of us should be seen by us both and marital property inventoried and valued by an appraiser. We should then divide this property with each party receiving an equal dollar amount.

Inventory and appraise personal property. Marianna to pay half.

Details of child custody

There are some real problems with our current child custody arrangement. Sean is falling asleep in class because Marianna lets him stay up all night on Friday and Saturday nights when he is in her custody. As nearly as I can tell he does not do any work when he is with her. We need to agree on a schedule for him that allows him to get enough sleep and under which he does some school work every day.

We need to agree to a vacation schedule that will allow both parents to take longer trips with Sean. Ken has always done this with him and these are an important part of Sean's education.

Other Issues

Return of my financial records.

I need copies of all of the files that I maintained and which Marianna removed from the house when I was not permitted to be there because of her phony protective order claim.

Christmas schedule

I would like to make an agreement that would divide Sean's time during the Christmas holidays so that we could each take him to our respective homes for Christmas.

ADDENDUM A-2

Estimate of expenses from 25/FEB/05 using 2002 figures
Needs to be updated from current actuals were applicable
Table 2

Petitioner's Expenses based on actual 2002 expenses and addtions due to divorce

Actual expenses have been divided by 2 to reflect expenses for Petitioner and Sean living at home half time.

The value of the parties actual accumulations in lieu of installment payments has been added.

An amount for health insurance for Petitioner has been added.

Category	Total
Groceries	329
Restaurant	231
Auto	123
Travel	185
Utilities	308
Clothes	106
Home Repairs	86
Medical, Drugs, and Grooming	135
Miscellaneous (wine, Sean's toys and activities, gifts, pets)	113
Mobile Phones	40
Household Items	40
Books and Office	46
Entertainment	37
Insurance	165
	Honda 75
	Ramcharger 44
	Homeowner's 46
Health Insurance	450
Accumulations in lieu of car, appliance, and furniture payments	596
Cash	23
Marianna's uncategorized checks	275

Property Tax	114
Total Expenses (with house)	3402
Rent(when house is sold)	1000
Total Expenses (without house)	4402

a schedule where one parent would have every Mon and Tues; the other parent would have every Wed and Thur; and then you all would alternate every other Fri, Sat and Sun - which again gives you both weekend time and the ability to take extended 3 or 4 day weekend trips. Think about this one as it has the potential to avoid a lot of problems.

4. Finally, Marianna appears to still be stuck on the money you spent in the early days/weeks of your separation. Specifically, she believes your squandered up to \$15,000 in 6 weeks and she wants you to have to bear the burden of these expenses. I indicated that you all were still married and that these are marital debts that you should equally bear. Robert and Marianna view it differently. Given the waste of time, money, and emotional energy this issue will no doubt command, I suggest we propose that (once more with the exception of the art/baskets which should remain on the table) you waive your concern over the monetary difference in the present personal property division, in exchange for Marianna waiving this claim. They have approximate = equal values. Further, much mileage and good faith can come from such a compromise.

So, while we did not reach any answers, Robert and I did script out further discussions. Per Robert, Marianna remains open to continuing in mediation - with counsel only. Marcie has tentatively set aside April 20 at 1:00 for a further meeting. Please review this stuff and get back with me.

At the end of it all, it is quite clear that you all are in a power struggle, whereby Marianna wants more control over parenting and parent time (an area where you have traditionally dominated) and you want more equality and control over income and money (an area that Marianna has controlled). I hope we can resolve many or most of your issues, but am not convinced mediation is the only way to accomplish this. I believe room still remains for you and I to finalize a written response to Marianna's written proposal and see where that takes us. It would be more time and cost-efficient and if we act quickly, we can get out a proposal before April 20 - which could avoid that meeting or make it much more productive.

Let me know your thoughts.

Bridget K. Romano, Esq.
Kruse Landa Maycock & Ricks, LLC

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"MMVVNVTI" " " "

From: "Bridget Romano" <bromano@klmrlaw.com>
Subject: Your Case
Date: July 18, 2005 2:51:48 PM MDT
To: <kennethranson@earthlink.net>

Ken,

I will be turning up the heat on trial prep in the coming days. Please let me know whether there have been any new developments I should be aware of. Also, please let me know if you've decided upon any terms that I am authorized to put forward in the hopes we may reach a settlement in this matter.

I have notes of the proposals we have tossed about, but have never made. It is often the case that as a trial looms large, cases which appeared stuck in the mud somehow get jump-started once more.

Also, let me know the status of your present employment.

Bridget K. Romano, Esq.
Kruse Landa Maycock & Ricks, LLC

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11/11/11 11:11

From: bromano@klmrlaw.com
Subject: Re: Bit of good news
Date: August 4, 2005 9:30:08 AM MDT
To: kennethranson@earthlink.net

Ken,

The problem respecting the admissibility of your medical information is not simply Dr. Barton's reluctance. It is also a factor of my not knowing of the additional information you are now providing before this week.

Had I known you were recently seen at the ER for a complex migraine or that you had completed a neurological workup with a physician other than Dr. Barton, we could have identified this information on your witness and exhibit lists. While I can submit amended lists setting out new names and information, given the late date, Robert Pusey has every right to object and it would clearly be within the judge's discretion to sustain that objection. Furthermore, it gives the newly identified medical providers very little notice.

You've only talked about Dr. Barton up to this point and I have always understood he was the doc who diagnosed and who actively managed your migraines. This appears not to be the case and thus we are in a box, so to speak. Dr. Barton believes he made the limitations of his knowledge of ocular migraines clear in March. He also believes he made it clear he was not able to provide you with the type of information you were seeking to rebut a claim that you are malingering and are indeed employable. I do not know what happened during your consultation in March. I only have your account * that Dr. Barton was getting cold feet b/c he treats both you and Marianna and is loathe to go to court * and Dr. Barton's recollection and sparse medical record. Dr. Barton indicates he did not contact me earlier, as HIPPA prevents him from doing so. He called this week only b/c he was compelled by my subpoena to do so.

I realize it is frustrating to you that we cannot simply submit records or complex affidavits. However, due process dictates that Marianna receive notice and an opportunity to confront proposed testimony. She cannot cross examine medical records or an affidavit any more than I can * and it is for this reason I have objected to Marianna's intent to introduce her own medical records without also calling as a witness the doctor who prepared these records.

You may certainly testify about your lengthy history, your understanding or your diagnoses, and of the debilitating impact of your

migraines.

Quite frankly, the most important witnesses in most divorce cases are the parties. Further, many trial are conducted with only the Petitioner and Respondent providing testimony.

Your medical history is relevant, but it is not the lynch-pin. You have not been certified as disabled; you have not applied for or been granted SSI benefits; and your migraines do not render you unemployable per se. The real use of your medical history is to rule out a job in construction. This testimony and evidence in my opinion, however, is simply gravy. I believe your age, the fact you have not worked in construction (or any trade) for 20 years, and your present enrollment in college do more to advance your claims respecting your limited employability than the fact of ocular migraines. Additionally, I suspect Judge Fratto is not really going to assume you should put on a tool belt and start swinging a hammer.

As I have indicated, focusing unduly upon your migraines is a risky proposition in view the fact you still hold a valid driver's license; you operate a vehicle w/ no apparent restrictions; and you frequently transport your son. Likewise, your migraine condition does not stand in the way of your pursuing a degree or in meeting your academic requirements. If we attempt to drive home over and again the blinding and limiting effect of ocular migraine, you unintentionally and unwittingly put your judgement respecting Sean and his safety before the court, and, you risk looking foolish given your other intended testimony respecting the sheer number of hours you spend reading and preparing for class and the fact of your excellent marks.

I have still not seen Kristy Farnsworth's report respecting her view of your employment options. I have asked for it 2x. Accordingly, on Monday I filed a motion asking the court to exclude this report b/c you and I have been denied the opportunity to review and rebut the report.

I will be in touch today with any questions and I will let you know if I talk further with Dr. Barton or with the U's General Counsel.

Bridget K. Romano, Esq.
Kruse Landa Maycock & Ricks, LLC

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Kenneth Ranson <kennethranson@earthlink.net> 8/3/2005 4:53 PM >>>
Bridget

Well all of that seems perfectly reasonable.

What I cannot believe is that because one physician does not like to go to court that my entire medical history is inadmissible. There must be some way around this. (Just as a side note I had to close my eyes five times while writing that last sentence.)

On 5/MAY/05 I went to the University Hospital emergency room for numbness on the entire right side of my body. The resident neurologist who treated me was,

Dr. Jean Louis
University of Utah Neurology Department
581-2121

His supervising physician was apparently

Dr. M. Scott Lindscott

The emergency room physician who saw me was

Dr. Deane Long

Her supervisor was apparently

Dr. Alan Condie

They ordered an MRI to rule out stroke and arrived at a diagnosis of complex migraine.

ADAMSON # 6

"Bridget Romano" <bromano@klmrlaw.com>

COBRA policy

August 12, 2005 10:19:41 AM MDT

<kennethranson@earthlink.net>

Ken,

Please contact the U of U benefits office to get a letter or written statement verifying the info you received over the phone respecting COBRA coverage.

I have called, they cannot release info to me.

I looks like you talked to Thaina Kazakevicius, who told you the total premium for med and dent would be \$454.63 and med only would be \$418.51.

We will plug those numbers into an updated expense schedule, but would be wise to have written support.

Also, in the event we are going to trial and Dr. Farnsworth testifies, please contact the pros you have referred to so I may talk with them about your ptotntial for being accepted to grad school.

Alternatively, if trial is going and if only to streamline matters, I propose we agree to stipulate that you can earn \$10.00 per hour or \$20,800 per year.

And, I have just received your email and I will be in touch.

I am scrambling with the rest of the exhibits today * which I had put on hold and which need to be copied and delievered to Pusey and the court if we are a go.

Bridget K. Romano, Esq.
Kruse Landa Maycock & Ricks, LLC

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Help Us Keep Your Earnings Record Accurate

You, your employer and Social Security share responsibility for the accuracy of your earnings record. Since you began working, we recorded your reported earnings under your name and Social Security number. We have updated your record each time your employer (or you, if you're self-employed) reported your earnings.

Remember, it's your earnings, not the amount of taxes you paid or the number of credits you've earned, that determine your benefit amount. When we figure that amount, we base it on your average earnings over your lifetime. If our records are wrong, you may not receive all the benefits to which you are entitled.

▼ **Review this chart carefully** using your own records to make sure our information is correct and that we've recorded each year you worked. You're the only person who can look at the earnings chart and know whether it is complete.

—Some or all of your earnings from **last year** may not be shown on your *Statement*. It could be that we were still processing last year's earnings reports

when your *Statement* was prepared. Your complete earnings for last year will be shown on next year's *Statement*. **Note:** If you worked for more than one employer during any year, or if you had both earnings and self-employment income, we combined your earnings for the year.

▼ **There's a limit on the amount of earnings on which you pay Social Security taxes each year.** The limit increases yearly. Only the maximum taxable amount will appear on your earnings chart. (For Medicare taxes, the maximum earnings amount began rising in 1991. Since 1994, **all** of your earnings are taxed for Medicare.)

▼ **Call us right away** at 1-800-772-1213 (7 a.m.–7 p.m.) if any earnings for years **before last year** are shown incorrectly. If possible, have your W-2 or tax return for those years handy. (If you live outside the U.S., follow the directions at the bottom of Page 4.)

Your Earnings Record at a Glance

Years You Worked	Your Taxed Social Security Earnings	Your Taxed Medicare Earnings
1970	\$ 2,494	\$ 2,494
1971	1,329	1,329
1972	3,921	3,921
1973	2,674	2,674
1974	8,553	8,553
1975	2,900	2,900
1976	5,288	5,288
1977	4,364	4,364
1978	470	470
1979	310	310
1980	0	0
1981	0	0
1982	0	0
1983	192	192
1984	0	0
1985	0	0
1986	0	0
1987	0	0
1988	0	0
1989	0	0

Years You Worked	Your Taxed Social Security Earnings	Your Taxed Medicare Earnings
1990	\$ 0	\$ 0
1991	0	0
1992	0	0
1993	0	0
1994	887	887
1995	1,375	1,375
1996	0	0
1997	1,071	1,071
1998	677	677
1999	0	0
2000	0	0
2001	0	0
2002	Not yet recorded—	

Totals over your working career:

Estimated taxes paid for Social Security:

You paid: \$2,059

Your employers paid: \$1,565

Estimated taxes paid for Medicare:

You paid: \$381

Your employers paid: \$267

Note: If you are self-employed, you pay the total tax on your net earnings.



ROBERT DEVIN PUSEY #2665
Attorney for Respondent
Bank of the West Building
140 West 9000 South, Suite 7
Sandy, Utah 84070-2033
Telephone: (801) 566-9286

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

KENNETH CLARK RANSON,

Petitioner,

vs.

MARIANNA DIPAOLO,

Respondent.

*

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**MEMORANDUM OF POINTS &
AUTHORITIES IN OPPOSITION
TO PETITIONER'S
MOTION FOR NEW TRIAL**

Civil No. 044900818 DA
Judge Joseph C. Fratto, Jr.
Comm. T. Patrick Casey

COMES NOW the Respondent above-named, by and through counsel, and hereby offer her memorandum of points & authorities in opposition to Petitioner's Motion for New Trial as follows:

PRELIMINARY STATEMENT OF THE FACTS

1. Prior to commencing trial of this divorce action, the parties stipulated to a resolution of all issues save two, to wit: Petitioner's claim for alimony and Petitioner's claim for a pre-marital share in the marital residence.

2. The Court then convened for trial to hear evidence regarding the two reserved

issues on August 16th, 17th, 25th and 29th, 2005. During trial both parties were called to offer direct testimony in support of their claims and defenses, and each party was extensively cross-examined by opposing counsel. An expert witness was also called by Respondent and subjected to extensive cross-examination. Also in furtherance of the case the Court received thirty exhibits into evidence, at least 23 offered by Petitioner.

3. At the conclusion of the four-day trial, the Court rendered its findings, conclusions and ruling from the bench.

4. By his *pro se* pleadings Petitioner apparently seeks a new trial, and as authority offers Rule 59, U.R.C.P.

POINT I.

RULE 59, U.R.C.P., DOES NOT AFFORD A LEGAL BASIS FOR PETITIONER TO REQUEST A NEW TRIAL IN THIS CASE

5. Rule 59, U.R.C.P, provides in relevant part as follows:

Rule 59. New trials; amendment of judgment.

(a) *Grounds.* Subject to the provisions of Rule 61, a new trial may be granted to all or any of the parties and on all or part of the issues, for any of the following causes; provided, however, that on a motion for new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment:

(a)(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court , or abuse of discretion by which either party was prevented from having a fair trial;.

.....

(a)(3) Accident or surprise, which ordinary prudence could not have guarded against;

(a)(4) Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produce

6. The relief requested by petitioner is not supported by the rule.

a. Irregularity in the proceedings.

7. First under the rule, a party can only seek a new trial based upon an irregularity arising from anyone other than themselves (the Court's conduct, ruling or abuse of discretion, or the conduct of the opposing party or the jury). Thus Rule 59(a)(1) does not support the request for relief.

b. Accident or surprise.

8. Next, under the rule a new trial may be granted upon a theory of accident or surprise, which ordinary prudence could not have guarded against. Yet according to Plaintiff's pleadings he anticipated each issue that would be presented at trial, and was apprised of the evidence supporting Respondent's case. Thus, a new trial cannot be granted on a theory of accident or surprise.

c. Newly discovered evidence.

9. Next, a new trial may also be warranted on the ground of newly discovered evidence. Petitioner now postulates three now-considered deficiencies in his case: (1) an absence of medical testimony; (2) an absence of medical records; and (3) an absence of employment-related testimony.

10. However, these deficiencies cannot be considered newly discovered evidence because such a claim requires three elements: First, it must be material, competent evidence which is in fact newly discovered. Second, it must be such that it could not, by due diligence, have been discovered and produced at trial. Finally, it must not be merely cumulative or incidental, but must be of sufficient substance that there is a reasonable likelihood that with it there would have been a different result. Barson v. E.R. Squibb & Sons, 682 2.d 832,841 (Utah 1984) In this case a claim of newly discovered evidence cannot be supported by the facts.

11. First, each of these issues were known to Petitioner in advance of trial as admitted in his affidavit and supporting exhibits.

12. Second, Petitioner has not demonstrated that he exercised due diligence in developing this information. While Petitioner lays blame on his former counsel, his pleadings and the exhibits attached thereto amply illustrate that he personally active in his case and at some points steering it, that he was given the information required to develop such evidence but apparently failed to do so. For instance, Petitioner was given every opportunity to seek an expert relative to his vocational status, Saara Grizell, but chose not to do so. (See Petitioner's Exhibit

A-16 attached to his affidavit) Indeed, even Petitioner's personal physician was unwilling to testify that Petitioner was not malingering, nor that he was unable to work. (See Petitioner's Exhibit A-17 attached to his affidavit)

13. Third and finally, to assert a claim of newly discovered evidence Petitioner must be able to establish that the then-missing evidence is now in existence, but he has failed to do so. The evidence that Petitioner proposes he may offer is merely speculative at this time, and does not currently exist to support his motion. See In the interest of S.R. & B.R., 735 P.2d 53 (Utah 1987)

14. For the foregoing reasons Petitioner's request for relief under Rule 59 is not well taken and should be denied.

POINT II

PETITIONER'S REQUEST FOR A NEW TRIAL ON THE BASIS OF INEFFECTIVE ASSISTANCE OF COUNSEL IS NOT SUPPORTED BY THE LAW OR THE FACTS OF THIS CASE.

15. The general theme of Petitioner's Motion for New Trial sounds on a theory of "ineffective assistance of counsel." No such basis exists to seek a new trial in a civil matter.

16. Contrary to Petitioner's representations regarding Maltby v. Cox Construction, Inc., 598 P.2d 336 (Utah 1979), in that case the Utah Supreme Court held as follows:

"And while incompetence of counsel may be a ground for granting a new trial in a

criminal case where the defendant's life and liberty are at stake, this Court has never, to our knowledge, granted a new trial on such a ground in a civil action. I would adopt the position of the Oklahoma Supreme Court as stated in the case of *Wilson v. Sherman*, 461 P.2d 606 (1969):

"While perhaps as an abstract proposition of law it may be possible to grant a new trial in civil litigation upon the ground that one of the parties was prevented from having a fair trial because of alleged negligence on the part of his attorney, we know of no such rule having been recognized in this or any other jurisdiction for that matter. Defendants cite no cases. Furthermore, it would seem unfair and harsh to thus penalize the other side in the litigation by requiring him to again present his cause to another jury at a new trial."

As criminal matters, the cases of *Strickland v. Washington* and *State v. Lopez* cited by Petitioner are clearly distinguishable from this matter.

17. Moreover, the record is replete with the zealous, professional efforts of Petitioner's counsel in all aspects of trial in this action. Plaintiff's other complaints related to counsel's performance regarding settlement offers, proposals, pre-trial settlement and the like are likewise not true, and additionally they are irrelevant to trial performance.

18. For the foregoing reasons Petitioner's request for relief under a theory of "incompetent counsel" is not supported by the law or the facts of this case, and should therefore be denied.

WHEREFORE, Respondent respectfully prays the Court for the following relief:

1. To dismiss Petitioner's Motion for New Trial, that Petitioner take nothing thereby;

2. For an award of her reasonable attorney's fees and costs incurred to respond to the motion in an amount to be established by affidavit; and

3. For such other and further relief as the Court may deem fair and proper in the premises.

DATED this 10 day of March, 2006.



ROBERT DEVIN PUSEY
Attorney for Respondent

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and accurate copy of the foregoing Memorandum in Opposition to Petitioner's Motion for New Trial by first class mail, postage prepaid, this 10 day of March, 2006, to:

KENNETH C. RANSON
Petitioner Pro Se
2096 E. 10095 South
Sandy, UT 84092.



KENNETH CLARK RANSON

V.

MARIANNA DIPAOLO

MINUTE ENTRY

Case No. 044900818

Judge Fratto

The matter is before the court to consider petitioner's Motion for New Trial. Petitioner argues that he is entitled to a new trial because his attorney was ineffective.

The legal concept of ineffective assistance of counsel, as a basis to either reverse a decision or mandate a new trial, is applicable only in criminal cases. If the court was persuaded that the proceedings (including the conduct of petitioner's counsel) had resulted in an "injustice," appropriate remedial action could be taken, including granting a new trial. Petitioner, however, has failed to demonstrate that an injustice has occurred in this case.

Petitioner has alleged that his lawyer failed to present certain evidence. There has been no showing that such evidence exists, it could have been presented at the trial and the decision would have been different after the court's consideration of this evidence.

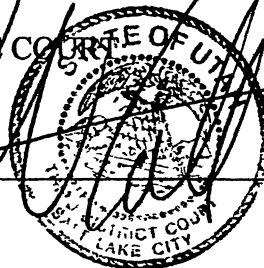
Accordingly, the motion is denied.

This minute entry constitutes the order regarding the matters addressed herein. No further order is required.

Dated this 11th day of April, 2006

BY THE COURT

JUDGE



ADDENDUM C

EX#29

ADDENDUM C-1

RANSON v. Di PAOLO

Civil No. 044900818 DA

ANALYSIS OF PETITIONER'S INCOME

Annual income identified by Dr. Farnsworth -	\$32,864.00
Annual federal tax identified by Diane Castell -	3,381.00
Annual state tax identified by Diane Castell -	1,559.00
Annual FICA tax identified by Diane Castell -	2,038.00
Annual medicare tax identified by Diane Castell -	477.00

GROSS MONTHLY INCOME:	\$2,738.67
Federal tax	(281.75)
State tax	(129.92)
FICA	(169.83)
Medicare	(39.75)

NET MONTHLY INCOME:	\$2,117.42
---------------------	------------

E*trade account	\$180,000	Sean	Kenneth	Marianna
Schooling	(15,000)	\$15,000		
Equalize autos	(5,265)		\$5,265	
One-half remainder	(79,867.50)		\$79,867.50	
One-half remainder	(79,867.50)			\$79,867.50
TOTALS:	-0-	\$15,000	\$85,132.50	\$79,867.50

P# 15 ADDENDUM ✓

RANSON v. DiPAOLO
Case No. 044900818
Judge Joseph C. Fratto, Jr.
Commissioner T. Patrick Casey

PETITIONER'S MONTHLY EXPENSES

Rent or mortgage payments	\$ 0
Real property taxes (residence) (current actual amount)	114
Real property insurance (residence)	43
Maintenance (residence)	50
Food and household supplies	394
Restaurant and eating out	253
Utilities:	
Electricity	45
Natural gas	66
Water and Garbage	58
Sewer	4
Cable Television	41
Internet	41
Telephone: Home; Cellular; Long Distance	134
Clothing, laundry & dry cleaning (Ken and Sean)	50
Medical, drugs and grooming	191
Dental expenses	0
Insurance – Medical/Dental Ins. Premium for Kenneth	455
Insurance – Auto	74
School – Sean's Tuition/Expenses	625
School – Kenneth's tuition and expenses	313
Entertainment	50
Health Club Membership	84
Loan Repayment: Rose Ranson	680
Travel	100
Auto expense (gas / repairs & maintenance)	280
Auto payments	0
Legal Fees	450
Misc. Cash Expenses	85
Other: Wine, Sean's toys and activities, gifts, pets	133
Books; Office Supplies; Postage	<u>37</u>
TOTAL MONTHLY EXPENSES:	\$4,800

4,125-

ADDENDUM F

APPENDUM F-1

Alimony-AB

Page 1

Income equalization alimony assuming different levels of income for Kenneth Ranson

Assume Mr. Ranson can earn the amount accepted by the trial court, \$32,000 per year

Marianna	Ken
77000 Gross Income	32000 Gross Income
Federal Income Tax	Federal Income Tax
0 Alimony	
77000 Adjusted Gross Income	32000 Adjusted Gross Income
6200 2 exemptions	3100 1 exemption
4850 standard deduction	4850 standard deduction
65950 Federal Taxable Income	24050 Federal Taxable Income
13231 Tax from IRS Schedule X 2004 single	3246 Tax from IRS Schedule X 2004 single
Utah Income Tax	Utah Income Tax
77000 Adjusted Gross Income	32000 Adjusted Gross Income
4650 2 exemptions	2325 1 exemption
4850 standard deduction	4850 standard deduction
6615.5 1/2 federal tax	1623 1/2 federal tax
60884.5 Utah Taxable Income	23202 Utah Taxable Income
4141 Tax from Utah Worksheet A 2004 Single	1503 Tax from Utah Worksheet A 2004 Single
59628 Marianna's Net Income After Taxes	27251 Ken's Net Income After Taxes

Assume alimony of \$1900 per month

Marianna	Ken
77000 Gross Income	54800 Gross Income
Federal Income Tax	Federal Income Tax
22800 Alimony	
54200 Adjusted Gross Income	54800 Adjusted Gross Income
6200 2 exemptions	3100 1 exemption
4850 standard deduction	4850 standard deduction
43150 Federal Taxable Income	46850 Federal Taxable Income
7519 Tax from IRS Schedule X 2004 single	8444 Tax from IRS Schedule X 2004 single
Utah Income Tax	Utah Income Tax
54200 Adjusted Gross Income	54800 Adjusted Gross Income
4650 2 exemptions	2325 1 exemption

4850 standard deduction
3759.5 1/2 federal tax
40940.5 Utah Taxable Income

2745 Tax from Utah Worksheet A 2004 Single

43936 Marianna's Net Income After Taxes

Marianna's income will be 498 greater than Ken's

4850 standard deduction
4222 1/2 federal tax
43403 Utah Taxable Income

2918 Tax from Utah Worksheet A 2004 Single

43438 Ken's Net Income After Taxes

Effects of Medical Expenses and Benefits

Marianna's Benefits as percentage of salary		Ken's premium to continue current level of health insurance COBRA premium per month	455
Retirement	14.2		
Medical Insurance	8.4	Annual total	5460
Dental Insurance	0.87		
Life Insurance	0.17	Ken's disposable income after health insurance	37978
Disability Insurance	0.07		
Total Benefits as percent	23.71		
Total cash value	18257		
Marianna's total compensation AFTER taxes AND benefits	62193		

Amount Marianna's total compensation including benefits is greater
than Ken's disposable income after health insurance.

24215

Assume Mr. Ranson can earn his actual earnings, \$10 per hour , \$20,800 per year

Marianna	Ken
77000 Gross Income	20800 Gross Income
Federal Income Tax	Federal Income Tax
0 Alimony	
77000 Adjusted Gross Income	20800 Adjusted Gross Income
6200 2 exemptions	3100 1 exemption
4850 standard deduction	4850 standard deduction
65950 Federal Taxable Income	12850 Federal Taxable Income
13231 Tax from IRS Schedule X 2004 single	1574 Tax from IRS Schedule X 2004 single
Utah Income Tax	Utah Income Tax
77000 Adjusted Gross Income	20800 Adjusted Gross Income
4650 2 exemptions	2325 1 exemption
4850 standard deduction	4850 standard deduction
6615.5 1/2 federal tax	787 1/2 federal tax
60884.5 Utah Taxable Income	12838 Utah Taxable Income
4141 Tax from Utah Worksheet A 2004 Single	778 Tax from Utah Worksheet A 2004 Single
59628 Marianna's Net Income After Taxes	18448 Ken's Net Income After Taxes

Assume alimony of \$2400 per month

Marianna	Ken
77000 Gross Income	49600 Gross Income
Federal Income Tax	Federal Income Tax
28800 Alimony	
48200 Adjusted Gross Income	49600 Adjusted Gross Income
6200 2 exemptions	3100 1 exemption
4850 standard deduction	4850 standard deduction
37150 Federal Taxable Income	41650 Federal Taxable Income
6019 Tax from IRS Schedule X 2004 single	7156 Tax from IRS Schedule X 2004 single
Utah Income Tax	Utah Income Tax
48200 Adjusted Gross Income	49600 Adjusted Gross Income
4650 2 exemptions	2325 1 exemption
4850 standard deduction	4850 standard deduction

3009.5 1/2 federal tax
35690.5 Utah Taxable Income

2377 Tax from Utah Worksheet A 2004 Single

39804 Marianna's Net Income After Taxes

Marianna's income will be -42 greater than Ken's

3578 1/2 federal tax
38847 Utah Taxable Income

2598 Tax from Utah Worksheet A 2004 Single

39846 Ken's Net Income After Taxes

ADDENDUM H

ANALYSIS OF EMPLOYABILITY

For

Kenneth Ranson

Prepared by

Kristy Farnsworth, Ph.D.
FARNSWORTH & ASSOCIATES
9557 South 700 East, #100
Sandy, UT 84070
(801) 572-5633



Farnsworth
& Associates

Kristy Farnsworth, Ph.D., P.C.

CRC, CVE, CDMS, DABVE

Rehabilitationist
Life Care Planner
Psychologist*
(Idaho Licensure)

ANALYSIS OF EMPLOYABILITY

CLIENT: Kenneth Ranson
REFERRED BY: Robert D. Pusey, Esq.
EVALUATED BY: Kristy Farnsworth, Ph.D.
Vocational Specialist
DATE: August 2, 2005

I have had an opportunity to complete a labor market survey and analysis of employability based upon information provided by Ms. DiPaolo for Mr. Kenneth Ranson.

It is my opinion that Mr. Ranson's starting salary would be expected to range from \$19,760 up to \$32,864.

CURRENT VOCATIONAL OPTIONS

1. Obtain employment as a Customer Service Representative at a starting salary of \$19,760.
2. Return to work as a Finish Carpenter or Bench Carpenter with annual earnings ranging from \$24,336 up to \$33,696.
3. Employment as a First-Line Supervisor/Manager of Construction Trades Workers with entry level wage of \$32,864 up to \$45,136.
4. Complete short-term training in Construction Management or General Contracting for increased earning potential.

METHODOLOGY

The following steps were completed to determine Mr. Ranson's employability:

1. Interview with Mrs. DiPaolo to obtain background information
2. Identification of Mr. Ranson's skills and abilities
3. Identification of jobs where skills and abilities could be used
4. Identification of the annual number of job openings
5. Identification of current openings listed with the Department of Workforce Services
6. Review of current classified ads in the Salt Lake Tribune.
7. Identification of potential barriers to employment
8. Establishment of capacity to produce income based on current skill level and job opportunities
9. Estimation of annual earnings

REFERRAL INFORMATION

I was asked to perform an evaluation of employability and earning capacity for Mr. Kenneth Ranson. Due to the upcoming trial, I was not able to meet with Mr. Ranson personally, and relied on basic information provided by Mrs. DiPaolo. Using that information, I completed an analysis of his skills and abilities and research of the Wasatch Front labor market.

INFORMATION PROVIDED

Mr. Kenneth Ranson is a 54 year-old man who currently resides in Salt Lake City Utah.

ACADEMICS

Mr. Ranson graduated from high school in San Antonio Texas then attended vocational training in Carpentry. He completed the academic program and supervised work hours to obtain a Journeyman's License in the state of Texas. He attended one quarter of school at the University of Texas at Austin in 1978 in general studies and more recently, two semesters of coursework at the University of Utah.

LICENSES/CERTIFICATIONS

Mr. Ranson possesses a valid drivers' license. In addition, he obtained professional licensure/certifications as a Journeyman Carpenter in Texas and General Contractor in Utah.

Journeyman Carpenter – status of license is unknown
Utah General Contractor License (1985), status of license unknown

VOCATIONAL HISTORY

Mr. Ranson is not currently employed. General work history is as follows:

Licensed Journeyman Carpenter beginning in 1974 He worked as a carpenter remodeling homes in Texas until 1982 when he relocated to Utah.

1982-1986 self-employed Carpenter, remodeling homes in the Salt Lake City area.

Mr. Ranson obtained his General Contractor License in 1986. He drew plans, obtained permits, supervised subcontractors and completed much of the work on a personal residence, including most of the finish work.

Since finishing the home, Mr. Ranson has written short stories and a novel, though none has been published.

Volunteer activities: School building committee
 History and literature lecturer, grade and middle school

MEDICAL HISTORY

Mr. Ranson does not have any medical condition that would interfere with his ability to work. Current medications include Inderal for atypical headache, Trazodone to aid sleep, Allopurinol for gout and Zocor for high cholesterol.

KNOWLEDGE, SKILLS AND ABILITIES

Considering his vocational training and past work experience, Mr. Ranson has specialized knowledge in the following areas:

- ***Building and Construction*** - Knowledge of materials, methods, and the tools involved in the construction or repair of houses, buildings, or other structures such as highways and roads.
- ***Mechanical*** - Knowledge of machines and tools, including their designs, uses, repair, and maintenance.
- ***Management of Financial Resources*** — Determining how money will be spent to get the work done, and accounting for these expenditures.
- ***Building and Construction*** – Knowledge of materials, methods, and the appropriate tools to construct objects, structures, and buildings
- ***Design*** -- Knowledge of design techniques, principles, tools and instruments involved in the production and use of precision technical plans, blueprints, drawings, and models.

Demonstrated skills include:

- ***Equipment Selection*** - Determining the kind of tools and equipment needed to do a job.
- ***Reading Comprehension*** - Understanding written sentences and paragraphs in work related documents.

- **Mathematics** - Using mathematics to solve problems.
- **Explosive Strength** - The ability to use short bursts of muscle force to propel oneself (as in jumping or sprinting), or to throw an object.
- **Information Ordering** - The ability to arrange things or actions in a certain order or pattern according to a specific rule or set of rules (e.g., patterns of numbers, letters, words, pictures, mathematical operations).
- **Static Strength** - The ability to exert maximum muscle force to lift, push, pull, or carry objects.
- **Control Precision** - The ability to quickly and repeatedly adjust the controls of a machine or a vehicle to exact positions.
- **Deductive Reasoning** - The ability to apply general rules to specific problems to produce answers that make sense.
- **Manual Dexterity** - The ability to quickly move your hand, your hand together with your arm, or your two hands to grasp, manipulate, or assemble objects.
- **Wrist-Finger Speed** - The ability to make fast, simple, repeated movements of the fingers, hands, and wrists.
- **Inspecting Equipment, Structures, Material** -- Inspecting or diagnosing equipment, structures, or materials to identify the causes of errors or other problems or defects.
- **Controlling Machines and Processes** -- Using either control mechanisms or direct physical activity to operate machines or processes (not including computers or vehicles).
- **Evaluating Info. Against Standards** -- Evaluating information against a set of standards and verifying that it is correct.
- **Estimating Needed Characteristics** -- Estimating the Characteristics of Materials, Products, Events, or Information: Estimating sizes, distances, and quantities, or determining time, costs, resources, or materials needed to perform a work activity.
- **Judging Qualities of Things, Srvcs., People** -- Making judgments about or assessing the value, importance, or quality of things or people.
- **Identifying Objects, Actions, and Events** -- Identifying information received by making estimates or categorizations, recognizing differences or similarities, or sensing changes in circumstances or events.
- **Implementing Ideas, Programs, etc.** -- Conducting or carrying out work procedures and activities in accord with one's own ideas or information provided through directions/instructions for purposes of installing, modifying, preparing,

delivering, constructing, integrating, finishing, or completing programs, systems, structures, or products.

- The ability to direct and coordinate the activities of staff and contract personnel, and evaluate their performance.
- The ability to determine labor requirements and recruit workers
- The ability to direct and supervise workers.
- The ability to plan, organize, and direct activities concerned with the construction of structures and systems.
- The ability to schedule the project in logical steps and budget time required to meet deadlines.
- The ability to select, contract, and oversee workers who complete specific pieces of the project, such as painting or plumbing.

In addition to these job skills, Mr. Ranson is computer literate and familiar with common computer programs and the internet.

Examples of jobs where these skills, abilities and knowledge are used include:

First-line supervisors/managers of construction trades and extraction workers

Carpenters

Cost Estimators

Cabinetmakers and Bench Carpenters

Customer Service Representatives

Computer Support Specialists

EMPLOYMENT OPPORTUNITIES

Based on his demonstrated skills and abilities and transferable skills, possible job alternatives were identified. In addition, unskilled entry level jobs were considered. The Utah Non-Metro Occupational Outlook-Statewide and Service Delivery Areas 2002 – 2012 publication of the Utah Department of Workforce Services presents the official State of Utah projections of industry and occupational employment and provides labor market information in the form of labor demand, labor supply and occupational characteristics. Published in September 2004, this data relies on information gathered in 2003 wages. Relevant information for the Metro areas in the state of Utah follows:

	ANNUAL	ENTRY	ANNUAL	AVERAGE	ANNUAL
JOB	OPENINGS	WAGE	WAGE	WAGE	WAGE
First-line supervisors/managers of construction trades and extraction workers	240	\$15.80		\$21.90	
Carpenters	560	\$11.70		\$16.10	
Cost Estimators	80	\$14.30		\$23.00	
Cabinetmakers and Bench Carpenters	120	\$8.80		\$11.60	
Construction Manager	150	\$21.90		\$34.10	
Customer Service Representative	1130	\$9.10		\$12.00	
Computer Support Specialists	290	\$9.50		\$14.90 and	

Copies of the pages containing this data are provided in Section One.

Other labor market information was obtained from the Bureau of Labor Statistics, Office of Employment Projections and Utah Department of Workforce Services related to 2003 wages. The percentile rank distributions of wages in the state of Utah for these positions are as follows:

Job	Pay Period	2003				
		10%	25%	Median	75%	90%
First-line supervisors/Managers	Hourly	\$14.75	\$17.59	\$20.75	\$25.26	\$30.12
	Yearly	\$30,700	\$36,600	\$43,200	\$52,500	\$62,600
Carpenters	Hourly	\$10.63	\$13.34	\$16.30	\$19.25	\$21.37
	Yearly	\$22,100	\$27,700	\$33,900	\$40,000	\$44,400
Cabinetmakers and Bench Carpenters	Hourly	\$7.57	\$9.31	\$10.78	\$13.10	\$15.94
	Yearly	\$15,700	\$19,400	\$22,400	\$27,200	\$33,200
Construction Managers	Hourly	\$19.33	\$22.87	\$29.89	\$40.14	\$48.26
	Yearly	\$40,200	\$47,600	\$62,200	\$83,500	\$100,400
Cost Estimators	Hourly	\$13.04	\$16.88	\$21.92	\$29.56	\$37.15
	Yearly	\$27,100	\$35,100	\$45,600	\$61,500	\$77,300
Customer Service Rep	Hourly	\$8.37	\$10.19	\$12.79	\$16.39	\$21.04
	Yearly	\$17,400	\$21,200	\$26,600	\$34,100	\$43,800
Computer Support Specialist	Hourly	\$9.47	\$10.65	\$13.36	\$18.58	\$24.36
	Yearly	\$19,700	\$22,200	\$27,800	\$38,600	\$50,700

Wages specific to the Wasatch Front were studied. They are as follows:
Salt Lake City – Ogden Area Wages

Occupation Title	Entry Wage	Average	Median	Middle Range
First-Line Supervisors/Managers of Construction Trades and Extraction Workers	34,040	45,600	43,890	37770 to 52640
Carpenters	24,380	33,330	33,570	28170 to 38670
Cabinetmakers and Bench Carpenters	17,940	22,880	21,650	19440 to 24940
Construction Managers	45,280	71,200	64,750	51900 to 83530
Cost Estimators	34,350	50,390	46,490	38340 to 60950
Customer Service Representatives	18,740	25,140	23,500	20120 to 27980
Computer Support Specialists	22,960	35,140	32,440	25330 to 42270

Copies of the Occupational Reports for these jobs are provided in Section Two of this report. The reports contain a brief description, wage information, skills and an example of current job openings.

CURRENT EMPLOYMENT OPPORTUNITIES:

Examples of the current job openings listed with the Department of Workforce Services that are congruent with Mr. Ranson's demonstrated skills and abilities include:

JOB TITLE	ANNUAL WAGE
Foreman/Lead Man	\$17.30-18.50/per hour
Carpenter	\$17.30-18.50/per hour
Remodeling Lead Carpenter	\$16-17/per hour
Finish Carpenter	\$15-15/per hour
Finish Carpenter	\$13-19/per hour
Finish Carpenter	\$13-15/per hour
Finish Carpenters	\$13-13/per hour
Lead Carpenter	\$12.50-17.50/per hour
Lead Carpenter	\$12-20/per hour
Carpenter	\$12-20/per hour
Finish Carpenters	\$12-15/per hour
Lead Carpenter	\$12-15/per hour
Experienced Finish Carpenter	\$12-15/per hour
Skilled Carpenter	\$12-15/per hour
Foreman/Lead Man	\$16-19/per hour
Carpenter	\$16-18/per hour
Foreman/Lead Man	\$19-22/per hour
Lead Carpenter	\$13-15/per hour
Estimator Purchaser	Not provided
Cabinet Makers	Not Provided
Cabinet Makers	Not Provided
Mill Worker	Not Provided
Cabinet Maker	\$8-15/per hour
Cabinet Maker	\$10-13/per hour
Cabinet Makers/Woodworkers	\$9-14/per hour
Cabinet Makers/Woodworkers	\$9-14/per hour
Customer Service	\$10.00 - \$11.00
Customer Service Opportunities	\$9.00
Technical Support	\$15.00 - \$30.00
Help Desk Specialist	\$15.01

Copies of these job orders are provided in Section Three.

ADVERTISED JOB OPENINGS

Current job openings compatible with Mr. Ranson's abilities were located in the classified ads of the recent Sunday Tribune. Examples of the employment opportunities include:

JOB TITLE	ADVERTISED WAGE	ENTRY WAGE*
Building Inspector II	\$15.88-\$22.19	
Carpentry	\$16.00	\$11.80-\$16.208
Cabinetry	\$9.50	
Cabinetry	Not provided	\$11.80-\$16.208
Cabinetry – Installer	Not provided	
Cabinetry	Not provided	\$8.50 - \$11.30*

Call Center	\$9.00 - \$11.00	
Carpenter	Not provided	\$11.80-\$16.208
Carpenter	Not provided	\$11.80-\$16.208
Carpenter – Finish	Not provided	\$11.80-\$16.208
Technical Support Specialist	\$10.00 - \$13.00	
Technical Support	Not provided	\$9.90-\$15.40*
Computer Tech Support	Not provided	\$9.90-\$15.40*
Construction Superintendent	Not provided	
Construction Project Manager	Not provided	
Construction – Residential Remodel	Not provided	\$11.80-\$16.208
Construction – Remodeling	\$10.00 – 15.00	
Construction – Superintendent	Not provided	
Customer Service	\$9.50	
Technical Customer Service	\$9.50	
Customer Service	\$9.50	
Customer Service	Not provided	\$9.10 - \$12.00*
Customer Service	Not provided	\$9.10 - \$12.00*
Customer Service – Trainee	Not provided	\$9.10 - \$12.00*

*based on January 2005 publication

Copies of these ads are provided in Section Four of this report.

MARKETABILITY

Mr. Ranson's most marketable skills are in ^{*}construction trades, however it has been a number of years since Mr. Ranson worked full time in a competitive position. He would benefit from professional assistance to learn job seeking skills to locate jobs in the ^{*}"hidden" job market, to develop a resume emphasizing his skills, and to learn interview skills. Professional assistance is available through private career counselors and the Department of Workforce Services.

Marketability is determined by an ^{*}individual's skills and the ^{*}current job market. The outlook for employment in the various occupations is rated by the Department of Work Force Services based on employment the demand for workers and wages paid. Occupations are assigned a star rank based on the projected number of Utah job openings between 2002 and 2012 and how fast the occupation is expected to grow over that time period and the median annual wages.

The Utah occupational outlook for Cabinetmakers and Bench Carpenters, Construction Managers, Customer Service Representatives and Computer Support Technician is rated three star (out of five), representing a moderate to strong employment outlook and low to moderate wages.

Cost Estimator, Carpenter and First Line Supervisors/Mangers are rated five star. Five-star occupations have the strongest employment outlook and high wages.

Labor market research results indicate there are currently a number of advertised job openings that Mr. Ranson could pursue. With a focused effort, he would probably be able to locate a full-time position within thirty to forty five days. In the Utah labor market, the 4.9% rate of unemployment creates a positive market for job seekers.

Mr. Ranson's ability to locate a suitable job quickly would be enhanced with participation in employment workshops for job seeking skills, resume writing, interview skills and job keeping skills. These workshops are offered through the Department of Workforce Services. Individual assistance is available through private career counselors, the University of Utah and at times through Community Education programs.

POTENTIAL BARRIERS TO EMPLOYMENT

1. Current inactive labor force status *
2. Lengthy absence from the work force *
3. Lack of job goal and knowledge of labor market opportunities *

These vocational barriers could be minimized through work with a vocational counselor or job placement specialist to identify jobs compatible with his interests and abilities and guide vocational exploration to identify realistic options and steps necessary to formulate a plan to return to work. Salt Lake Community College and the University of Utah have career placement assistance including vocational testing and counseling services.

Mr. Ranson has stated to others that he would like to complete a Bachelor's Degree then pursue graduate education in film studies with a goal of becoming a University Professor. It is unlikely he could achieve this goal considering his age of 54. Although he may be able to complete the Bachelor's degree, there is a great deal of competition for the limited number of seats in graduate programs, where admission is based on professional achievement as well as academic achievement. Competition for an academic teaching position is likely to be very keen and it is more likely than not that he would not be successful in achieving that goal.

RECOMMENDATIONS

Considering Mr. Ranson's current vocational resources, his options are to obtain immediate employment in an area of the construction industry as either a carpenter or as a supervisor or use his computer knowledge and expertise to obtain an entry level job that would provide opportunities to build a career in computer information technology or a related area.

Recommendations for Mr. Ranson to begin an efficient job search effort would include these steps:

- Register for work with the Department of Work Force Services to receive referrals to current job openings.
- Complete the skill match form to receive referrals for employment with the state of Utah.
- Attend the free workshops sponsored by the Department of Work Force Services to learn job seeking techniques, how to write a resume and successful interview skills.

- Attend job fairs sponsored through the Department of Work Force Services to meet potential employers.
- Register for work with temporary placement agencies.

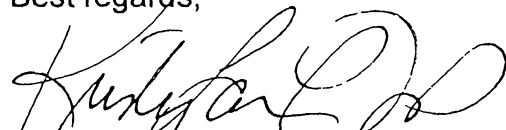
SUMMARY AND CONCLUSIONS

Based on his work experience and the current labor market, Mr. Ranson's minimum starting salary could be expected to range from \$19,760 as a Customer Service Representative, \$24,336 as a Finish Carpenter, up to \$32,864 as a First-Line Supervisor/Manager of Construction Trades Workers. I would expect a steady increase in earnings once he demonstrates his abilities and develops current work experience.

The conclusions detailed above are based on methodology used and accepted by Rehabilitation Specialists considered reliable pursuant to Daubert v. Merrell Dow Pharmaceuticals and Kumho Tire v. Carmichael. The conclusions are based on the information reviewed at the time the report was prepared and any additional or different information could alter the opinions.

If you have any question regarding this analysis, please let me know.

Best regards,



Kristy Farnsworth, Ph.D.

Diplomate, ABVE
CRC, CVE, CDMS

KF:me

Attachments:

Section One – Utah Metro Occupational Projections 2002 - 2012

Section Two – Occupational Reports

Section Three – Workforce Services Job Orders

Section Four - Tribune Ads

Section Five – Current Resume and List of Cases

ADDENDUM K

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Telephone: (801) 566-9286

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

KENNETH CLARK RANSON,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
Petitioner,)	
)	
vs.)	
)	
MARIANNA DI PAOLO,)	Civil No. 044900818
)	Judge Joseph C. Fratto
Respondent.)	Commissioner T. Patrick Casey

The above-entitled matter was tried to the Court on August 16, 17, 25, and 29, 2005. Petitioner was present and represented by counsel, Bridget K. Romano. Respondent was present and represented by counsel, Robert D. Pusey. The Court, having received the stipulations of the parties; having heard the testimony of the witnesses; having reviewed the exhibits entered into evidence; having fully considered the evidence presented and the arguments of counsel, and being otherwise fully informed in the premises, hereby enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Jurisdiction and Grounds:

1. Petitioner and Respondent were each actual and *bona fide* residents of Salt Lake County, State of Utah at the time the Verified Complaint for Divorce was filed in this matter, and each has maintained such residency for more than three months immediately prior to the commencement of this action.

2. Petitioner and Respondent are husband and wife, having married on February 28, 1986 in Salt Lake City, state of Utah.

3. During the course of the marriage, irreconcilable differences have developed between the parties, making the continuation of their marriage impossible.

Custody and Parent Time.

4. Petitioner and Respondent have one minor child born as issue of their marriage, Sean Ranson, born December 2, 1987. No further children are expected.

5. The minor child has resided in Salt Lake County for at least six (6) continuous months and the state of Utah is the child's home state of residency.

6. Neither party has participated as a party, a witness, or in any other capacity in litigation concerning custody of the minor child in Utah or any other state.

7. Neither party has knowledge of any custody proceeding concerning the minor child in any other court of Utah or any other state or of any person not a party to this action who has physical custody of the child or who claims to have custody or parent time rights to the child.

8. Neither party has applied for or received public assistance for themselves or the minor child therefore the State of Utah need not be joined to this action.

9. Petitioner and Respondent shall be awarded joint legal and physical custody of Sean Ranson.

10. The Court cannot legally award either party parent time with the minor child after December 2, 2005, the child's eighteenth birthday.

11. Upon attaining legal majority, Sean Ranson may determine how he will share time with Petitioner and Respondent and the court therefore declines to address the parties' respective requests regarding the 2006 Easter and spring break periods.

12. The Court denies Petitioner's request to "flip" the present parent time schedule and to award to Petitioner that end of the schedule Respondent has enjoyed, and *vice versa*.

13. The Court finds, instead, that until Sean Ranson attains the age of 18 on December 2, 2005, Petitioner and Respondent shall share parent time with the child on an equal basis and shall alternate parent time on weekly basis, from Sunday evening to Sunday evening.

14. Said schedule shall commence immediately, with Petitioner having the first full week of parent time.

15. Petitioner and Respondent shall alternate holiday parent time on an equal basis and shall alternate every other holiday as set forth in Utah Code Annotated § 30-3-35 until Sean attains the age of 18 on December 2, 2005. Said holiday timesharing shall commence on Labor Day, September 2, 2005, which holiday time shall belong to Respondent.

Child Support.

16. Petitioner is presently unemployed and it is reasonable to impute income to him in the amount \$32,000 per year, or \$2,666.66 gross monthly income. Respondent is employed at the University of Utah and earns \$78,300 per year, or \$6,525 gross monthly income. Effective September 1, 2005, Respondent shall pay child support to Petitioner in the amount of \$171 per month as set forth in the Child Support Worksheet attached as Exhibit A hereto. Child support shall be payable on the 5th and 20th day of each month and shall continue until the minor child graduates from high school in his normal expected year.

17. The parties' shall pay the child's education-related expenses, including private school tuition, books and fees in the approximate amount of \$15,000, from the parties' E-Trade Money Market Account.

Health Needs of the Child.

18. So long as child support is due, each party shall obtain and maintain health, hospitalization, dental, orthodontic, optical and eye-care, counseling and treatment, mental health, prescription drug and any other medical and dental insurance coverage for the benefit of Sean Ranson whenever it is available to him or her through employment at reasonable cost.

19. In the event of a conflict between the parties relative to insurance coverage, the Court shall consider the reasonableness of the cost of each plan and the availability of group coverage.

20. Petitioner and Respondent shall share equally the out-of-pocket costs of the premium actually paid by a party for the dependent child's portion of insurance, which expense shall be added to or deducted from the base amount of child support. The child's portion of the premium expenses shall be deemed the per capita share of the premium actually paid by a party.

21. Petitioner and Respondent shall share equally all uninsured medical, dental, hospitalization, dental, orthodontic, optical and eye-care, counseling and treatment, mental health, prescription drug, and any other related expenses, including deductibles and co-payments, incurred for the dependent child and actually paid by the parties.

22. The parties shall cooperate to exchange all claim forms and statements received from or by insurance companies in an effort to coordinate the payment of such expenses and consistent with Utah Code Annotated § 78-45-7.15, each party who carries insurance shall provide verification of coverage to the other upon initial enrollment of the child, and thereafter on or before December 1 of each year. Each party who maintains insurance coverage shall notify the other of any change of insurance carrier, premium or benefit within thirty (30) calendar days of the date the party knew or the change.

23. Each party who incurs medical, dental, hospitalization, dental, orthodontic, optical and eye-care, counseling and treatment, mental health, prescription drug, and any other related expenses, including deductibles and co-payments for the child shall provide written verification of the expense to the other within sixty (60) days of payment. A party

who fails to comply with this provision may be denied the right to receive credit or to recover the other parent's share of the expense.

Dependency Tax Exemption.

24. Respondent shall be awarded the right to claim the minor child as a dependency exemption on her state and federal income tax returns each year.

Real Property.

25. During the course of the marriage, the parties acquired an interest in a building lot and residence located at 2096 East 10095 South, Salt Lake County, State of Utah, which real property the parties agree has a market value of \$176,500.

26. The Court finds the parties purchased the building lot as a joint venture and with use of investment income and earnings Petitioner deposited into joint checking accounts and income and earnings Respondent deposited into joint checking accounts.

27. The Court finds the parties commingled their income and earnings in these joint checking accounts and paid all of their bills and expenses related to their general upkeep and maintenance, and related to the purchase of the lot, from the above-referenced joint checking accounts.

28. The Court finds no sufficient legal or equitable basis to grant Petitioner's request to reserve to him the sum of \$21,000 from the value of the marital home for Petitioner's claimed purchase of the building lot and therefore denies that request.

29. Petitioner shall be awarded the martial residence located at 2096 East 10095 South as his sole and separate property, free and clear of any claim by Respondent.

Respondent shall immediately execute and deliver to Petitioner a Quit Claim Deed in Petitioner's favor upon entry of a final Decree of Divorce.

Personal Property.

30. During the course of the marriage, Petitioner and Respondent have acquired a number of items of personal property. The parties have previously, generally divided their personal property in a fair and equitable fashion.

31. Petitioner and Respondent shall be awarded as his or her sole and separate property all items of real property currently found in his or her respective name, or in his or her respective possession, except as more specifically designated below:

TO PETITIONER:

1. Olympus digital camera;
2. Petitioner's Army uniform;
3. Petitioner's past school papers;
4. Petitioner's personal files, to include his apprenticeship and journeyman certificates, if Respondent has them;
5. Tohono O'odham basket nos. 1, 4 and 5, ranked accordingly to size of opening, with 1 being the largest;
6. 1 set of crystal wineglasses; and
7. 1992 Honda Accord vehicle.

TO RESPONDENT:

1. Antique electric typewriter;
2. Grandfather's garden tools;
3. Childhood dresser (currently in use by minor child);
4. Brother's antique highchair;
5. Handles to maple buffet;
6. Respondent's employment files;
7. Antique canning jars;
8. Petitioner's family Christmas ornaments;
9. Tohono O'odham basket nos. 2 and 3 ranked accordingly to size of opening, with 1 being the largest; and

10. 2002 Subaru Outback vehicle.

Bank and Depository Accounts.

32. Petitioner and Respondent shall each be awarded his or her own bank and depository accounts.

Investment Accounts.

33. During the course of the marriage, Petitioner and Respondent acquired an interest in certain investment accounts, including two E*Trade accounts currently valued at the approximate amount of \$180,000.

34. The parties shall pay the costs related to the minor child's private school tuition and bundled billing in the approximate amount of \$15,000 prior to dividing between themselves their investment funds.

35. Petitioner shall then be awarded the sum of \$5,265 as a concession for the disparity in the value of the vehicles awarded the respective parties in paragraph no. 31 above.

36. Thereafter, Petitioner and Respondent shall each be awarded one-half of all remaining interest in the investment funds accrued in the E*Trade accounts set out above.

37. Petitioner shall direct the division of these accounts immediately upon entry of a final Decree of Divorce by awarding to each party an equal number of shares of each age class and issue of stock, so that the total value, tax burden and type of stock are equalized. When an odd number of shares exist in any lot, the additional odd share shall be divided on an alternating basis as the stock appears on the E-Trade account report, with Petitioner to receive the first additional share.

Retirement Benefits.

38. Both before and during the course of the parties' marriage, Respondent accrued certain retirement benefits through her employment at the University of Utah through her TIAA and CREF accounts, which have an approximate value of \$296,968.

39. Respondent shall be awarded her separate, premarital interest in these retirement benefits in the amount of \$21,500 and shall be awarded the additional sum of \$176,500 from these retirement benefits to provide parity pursuant to Petitioner's receipt of the parties' marital residence in paragraph no. 29 above.

40. Petitioner and Respondent shall each be awarded one-half of the remaining retirement benefits in the approximate amount of \$98,968, which one-half interests shall be adjusted by any earnings or losses accruing from the date of valuation on or about June 30, 2005 through the date of actual distribution.

41. Petitioner's interests in these TIAA and CREF plans shall be secured by a Qualified Domestic Relations Order prepared by Petitioner's counsel and subject to approval as to form by Respondent's counsel.

Debts and Obligations.

42. Petitioner and Respondent have no remaining or known joint debts or obligations.

43. Petitioner and Respondent shall separately assume, be responsible for, indemnify and hold the other harmless from any and all debts and/or obligations incurred by him or her or in his or her sole and separate name or for his or her separate benefit.

Alimony.

44. This Court finds alimony is neither an annuity nor a penalty, but is designed to assist one spouse in terms of a need for financial assistance.

45. The Court finds further it may make and enter an alimony award pursuant to Utah Code Annotated §30-3-5(8) and the factors set forth therein, which factors include: 1) the financial condition of the requesting spouse; 2) the financial need of the requesting spouse; 3) the ability of the payor spouse to provide support; and 4) the ability of the requesting spouse to provide for his or her own support.

46. The Court finds Petitioner's financial condition as follows:

a. Petitioner is presently unemployed and enrolled as a full-time student at the University of Utah;

b. Petitioner receives a small income from his independent land investments;

c. Petitioner receives a small income from his security investments;

d. As agreed herein, Petitioner shall be awarded the marital residence, which has a market value of \$176,500 and no related mortgage indebtedness;

e. As agreed herein, Petitioner shall be awarded cash in the approximate amount of \$85,000;

f. Petitioner has no automobile payment; and

g. Petitioner has no consumer debt but has “other debt” in the form of loan to Petitioner from his mother in the approximate amount of \$39,000, which debt is not supported by a contract or note and which loan was made to Petitioner by his mother contingent upon Petitioner’s ability to repay the same.

47. The Court finds Petitioner’s financial needs are more problematic to articulate and the Court must take into account the parties’ “standard of living.”

48. The Court refuses to consider or to factor in Petitioner’s “one time” expenses or expenses which will come to a quick end following entry of a final decree; namely, Petitioner’s repayment of the loan from his mother and his payment of attorney fees related to this matter.

49. The Court likewise refuses to consider Petitioner’s expenses that are attributable to a third person.

50. The Court refuses to factor in or to consider any education or tuition expenses, whether they are incurred by Petitioner or on behalf of the minor child.

51. The Court must evaluate Petitioner’s “ongoing” expenses in order to properly evaluate his “standard of living” which expenses include Petitioner’s monthly and ongoing insurance, food, clothing, and entertainment expenses and the like.

52. The Court finds Petitioner to have reasonable monthly need in the amount of \$2,500.

53. The Court finds Respondent possesses the ability to pay the amount of \$2,500 in and for Petitioner’s support.

54. Upon the testimony and evidence adduced by Petitioner and Respondent at trial and upon the testimony of Dr. Kristy Farnsworth, the Court finds employment is available to Petitioner at the rate of \$32,000 per year.

55. The Court rejects Petitioner's testimony that his age prohibits him from earning income at this level.

56. The court rejects Petitioner's claim that his health, which includes ocular migraines and adverse medication reactions, renders Petitioner unemployable or unable to earn income at the rate of \$32,000 per year.

57. The Court is not convinced Petitioner's health problems adversely impact his ability to be employed.

58. The Court finds Petitioner is underemployed and that he possesses the ability to produce an income for his own self-support.

59. Upon the foregoing, the Court finds by a preponderance of the evidence that Petitioner is able to support himself and to enjoy gross annual income of \$32,000, or gross monthly income in the amount of \$2,666. Accordingly, the Court finds Petitioner is able to meet his own monthly needs and therefore an award of permanent alimony is not warranted.

60. The Court declines to award Petitioner any sum in and for rehabilitative alimony.

61. The Court also finds upon the testimony of Dr. Farnsworth, Petitioner may experience of transition period of up to 90 days before he is able to realize income equal to \$32,000 per year.

62. However, the Court finds that given the fact Petitioner has been awarded cash in the amount of \$85,000 and a home valued at \$176,500, Petitioner has sufficient assets to draw upon and therefore declines to award Petitioner any time as a transition period.

63. Accordingly, no alimony is awarded to Petitioner.

Attorney Fees.

64. Each party shall assume and pay his or her own attorney fees and costs incurred in this matter.

Disclosure.

65. Should either party discover the existence of undisclosed property, the other shall be entitled to receive an equal portion of such property.

Cooperation.

66. Petitioner and Respondent shall cooperate in clearing title or in transferring assets to accomplish the purpose and intent of these Findings. Each party shall execute any and all documents necessary to carry out the terms of the Decree of Divorce immediately upon execution and entry of the same.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter of this action.

2. Petitioner shall be awarded a Decree of Divorce from Respondent upon the grounds of irreconcilable differences, said Decree to be absolute and final upon entry.

3. The Decree of Divorce shall conform to the Findings of Fact made herein.

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140 W. 9000 South, Suite 7
Sandy, UT 84070-2033
Telephone: (801) 566-9286

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

KENNETH CLARK RANSON,)	DECREE OF DIVORCE
Petitioner,)	
vs.)	Civil No. 044900818
MARIANNA DI PAOLO,)	Judge Joseph C. Fratto
Respondent.)	Commissioner T. Patrick Casey

The above-entitled matter was tried to the Court on August 16, 17, 25, and 29, 2005. Petitioner was present and represented by counsel, Bridget K. Romano. Respondent was present and represented by counsel, Robert D. Pusey. The Court, having received the stipulations of the parties; having heard the testimony of the witnesses; having reviewed the exhibits entered into evidence; and the arguments of counsel; and having previously entered its Findings of Fact and Conclusions of Law, now hereby

ORDERS, ADJUDGES AND DECREES as follows:

Decree of Divorce.

1. Petitioner Kenneth Clark Ranson is hereby awarded a decree of divorce from respondent Marianna Di Paolo on the grounds of irreconcilable differences, such decree to become final upon signing, entry and the determination of the Court.

Custody and Parent Time.

2. Petitioner and Respondent have one minor child born as issue of their marriage, Sean Ranson, born December 2, 1987. No further children are expected.

3. Petitioner and Respondent shall be awarded joint legal and physical custody of Sean Ranson.

4. Upon attaining legal majority on December 2, 2005, Sean Ranson may determine how he will share time with Petitioner and Respondent and the court therefore declines to address the parties' respective requests regarding the 2006 Easter and spring break periods.

5. Petitioner and Respondent shall share parent time with Sean Ranson on an equal basis and shall alternate parent time on a weekly basis, from Sunday evening to Sunday evening, until the child attains the age of 18 on December 2, 2005.

6. Said schedule shall commence immediately, with Petitioner having the first full week of parent time.

7. Petitioner and Respondent shall alternate holiday parent time on an equal basis and shall alternate every other holiday as set forth in Utah Code Annotated § 30-3-35 until

Sean attains the age of 18 on December 2, 2005. Said holiday timesharing shall commence on Labor Day, September 2, 2005, which holiday time shall belong to Respondent.

Child Support.

8. Petitioner is presently unemployed and it is reasonable to impute income to him in the amount \$32,000 per year, or \$2,666.66 gross monthly income. Respondent is employed at the University of Utah and earns \$78,300 per year, or \$6,525 gross monthly income. Effective September 1, 2005, Respondent shall pay child support to Petitioner in the amount of \$171 per month as set forth in the Child Support Worksheet attached as Exhibit A hereto. Child support shall be payable on the 5th and 20th day of each month and shall continue until the minor child graduates from high school in his normal expected year.

9. The parties' shall pay the child's education-related expenses, including private school tuition, books and fees in the approximate amount of \$15,000, from the parties' E-Trade Money Market Account.

Health Needs of the Child.

10. So long as child support is due, each party shall obtain and maintain health, hospitalization, dental, orthodontic, optical and eye-care, counseling and treatment, mental health, prescription drug and any other medical and dental insurance coverage for the benefit of Sean Ranson whenever it is available to him or her through employment at reasonable cost.

11. In the event of a conflict between the parties relative to insurance coverage, the Court shall consider the reasonableness of the cost of each plan and the availability of group coverage.

12. Petitioner and Respondent shall share equally the out-of-pocket costs of the premium actually paid by a party for the dependent child's portion of insurance, which expense shall be added to or deducted from the base amount of child support. The child's portion of the premium expenses shall be deemed the per capita share of the premium actually paid by a party.

13. Petitioner and Respondent shall share equally all uninsured medical, dental, hospitalization, dental, orthodontic, optical and eye-care, counseling and treatment, mental health, prescription drug, and any other related expenses, including deductibles and co-payments, incurred for the dependent child and actually paid by the parties.

14. The parties shall cooperate to exchange all claim forms and statements received from or by insurance companies in an effort to coordinate the payment of such expenses and consistent with Utah Code Annotated § 78-45-7.15, each party who carries insurance shall provide verification of coverage to the other upon initial enrollment of the child, and thereafter on or before December 1 of each year. Each party who maintains insurance coverage shall notify the other of any change of insurance carrier, premium or benefit within thirty (30) calendar days of the date the party knew or the change.

15. Each party who incurs medical, dental, hospitalization, dental, orthodontic, optical and eye-care, counseling and treatment, mental health, prescription drug, and any other related expenses, including deductibles and co-payments for the child shall provide written verification of the expense to the other within sixty (60) days of payment. A party

who fails to comply with this provision may be denied the right to receive credit or to recover the other parent's share of the expense.

Dependency Tax Exemption.

16. Respondent shall be awarded the right to claim the minor child as a dependency exemption on her state and federal income tax returns each year.

Real Property.

17. Petitioner shall be awarded the martial residence located at 2096 East 10095 South as his sole and separate property, free and clear of any claim by Respondent. Respondent shall immediately execute and deliver to Petitioner a Quit Claim Deed in Petitioner's favor upon entry of a final Decree of Divorce.

Personal Property.

18. Petitioner and Respondent shall be awarded as his or her sole and separate property all items of real property currently found in his or her respective name, or in his or her respective possession, except as more specifically designated below:

TO PETITIONER:

1. Olympus digital camera;
2. Petitioner's Army uniform;
3. Petitioner's past school papers;
4. Petitioner's personal files, to include his apprenticeship and journeyman certificates if Respondent has them;
5. Tohono O'odham basket nos. 1, 4 and 5, ranked accordingly to size of opening, with 1 being the largest;
6. 1 set of crystal wineglasses; and
7. 1992 Honda Accord vehicle.

TO RESPONDENT:

1. Antique electric typewriter;
2. Grandfather's garden tools;
3. Childhood dresser (currently in use by minor child);
4. Brother's antique highchair;
5. Handles to maple buffet;
6. Respondent's employment files;
7. Antique canning jars;
8. Petitioner's family Christmas ornaments;
9. Tohono O'odham basket nos. 2 and 3 ranked accordingly to size of opening, with 1 being the largest; and
10. 2002 Subaru Outback vehicle.

Bank and Depository Accounts.

19. Petitioner and Respondent shall each be awarded his or her own bank and depository accounts.

Investment Accounts.

20. During the course of the marriage, Petitioner and Respondent acquired an interest in certain investment accounts, including two E*Trade accounts currently valued at the approximate amount of \$180,000.

21. The parties shall pay the costs related to the minor child's private school tuition and bundled billing in the approximate amount of \$15,000 prior to dividing between themselves their investment funds.

22. Petitioner shall then be awarded the sum of \$5,265 as a concession for the disparity in the value of the vehicles awarded the respective parties in paragraph no. 18 above.

23. Thereafter, Petitioner and Respondent shall each be awarded one-half of all remaining interest in the investment funds accrued in the E*Trade accounts set out above.

24. Petitioner shall direct the division of these accounts immediately upon entry of a final Decree of Divorce by awarding to each party an equal number of shares of each age class and issue of stock, so that the total value, tax burden and type of stock are equalized. When an odd number of shares exist in any lot, the additional odd share shall be divided on an alternating basis as the stock appears on the E-Trade account report, with Petitioner to receive the first additional share.

Retirement Benefits.

25. Both before and during the course of the parties' marriage, Respondent accrued certain retirement benefits through her employment at the University of Utah through her TIAA and CREF accounts, which have an approximate value of \$296,968.

26. Respondent shall be awarded her separate, premarital interest in these retirement benefits in the amount of \$21,500 and shall be awarded the additional sum of \$176,500 from these retirement benefits to provide parity pursuant to Petitioner's receipt of the parties' marital residence in paragraph no. 17 above.

27. Petitioner and Respondent shall each be awarded one-half of the remaining retirement benefits in the approximate amount of \$98,968, which one-half interests shall be adjusted by any earnings or losses accruing from the date of valuation on or about June 30, 2005 through the date of actual distribution.

28. Petitioner's interests in these TIAA and CREF plans shall be secured by a Qualified Domestic Relations Order prepared by Petitioner's counsel and subject to approval as to form by Respondent's counsel.

Debts and Obligations.

29. Petitioner and Respondent have no remaining or known joint debts or obligations.

30. Petitioner and Respondent shall separately assume, be responsible for, indemnify and hold the other harmless from any and all debts and/or obligations incurred by him or her or in his or her sole and separate name or for his or her separate benefit.

Alimony.

31. No alimony is awarded to Petitioner.

Attorney Fees.

32. Each party shall assume and pay his or her own attorney fees and costs incurred in this matter.

Disclosure.

33. Should either party discover the existence of undisclosed property, the other shall be entitled to receive an equal portion of such property.

Cooperation.

34. Petitioner and Respondent shall cooperate in clearing title or in transferring assets to accomplish the purpose and intent of this Decree of Divorce. Each party shall execute any and all documents necessary to carry out the terms of this Decree of Divorce immediately upon execution and entry of the same.