

2006

Jerald F. Jensen v. Lujean Jensen : Brief of Appellant

Utah Court of Appeals

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Lyle W. Hillyard; Brian G. Cannell; Hillyard, Anderson & Olsen; Attorneys for Appellant.

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**IN THE UTAH COURT OF APPEALS
IN AND FOR THE STATE OF UTAH**

JERALD F. JENSEN,)	
)	BRIEF OF APPELLANT
Petitioner/Appellant,)	
)	Case No. 20060633-CA
vs.)	
LUJEAN JENSEN,)	
)	
Respondent/Appellee.)	

BRIEF OF APPELLANT

Appeal from a Final Judgment of the
First Judicial District Court
Cache County, Utah
The Honorable Judge Gordon J. Low Presiding
(Trial Court Case No. 964100113)

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Attorney for Respondent/Appellee



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UTAH APPELLATE COURTS
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LIST OF ALL PARTIES IN THE DISTRICT COURT

The following parties and attorneys appeared in the proceeding in the trial court:

1. Jerald J. Jensen, Petitioner/Appellant, was represented by Lyle W. Hillyard of Hillyard, Anderson & Olsen, P.C.

2. LuJean Jensen, Respondent, Respondent/Appellee, was represented by Ronald W. Perkins of Phillips Law Office LLC.

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vs.)	
LUJEAN JENSEN,)	Trial Court No. 964100113
)	Judge Gordon J. Low
Respondent/Appellee.)	

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this matter pursuant to the provisions of Rules 3 and 4 of the Utah Rules of Appellate Procedure and Utah Code Ann. §78-2a-3(h)(2004).

STATEMENT OF THE ISSUES

ISSUE NO. 1.

Whether the Court erred as a matter of law in not finding that Ms. Jensen had cohabitated with her boyfriend in Las Vegas when she testified that her intent in moving in with him was to establish a marital type relationship for an indefinite length of time?

STANDARD OF REVIEW: Whether Ms. Jensen was residing with her boyfriend is a mixed question of fact and law. While this court defers to the trial court's factual findings unless they are clearly erroneous, this court review its ultimate conclusion for

correctness. *Pendleton v. Pendleton*, 918 P.2d 159, 160 (Utah Ct. App. 1996) (citations omitted.).

PRESERVATION OF ISSUE NO. 1: Page 21, lines 4-12 of Ms. Jensen's deposition (p. 242 of Trial Record) and the Court's Memorandum Decision dated April 27, 2006 (p. 300 - 310 of the Trial Record).

ISSUE NO. 2.

Whether the court erred in reallocating the property that was already divided at the time of the divorce to force Mr. Jensen to continue to pay alimony after the source of income used for alimony at the trial terminated?

STANDARD OF REVIEW: A trial court has considerable discretion to adjust divorcing parties' finances and property interests in modifications of an earlier decree. Such action is entitled to a presumption of validity that will only be altered upon showing clear and prejudicial abuse of discretion. *Throckmorton v. Throckmorton*, 767 P.2d 121, 122, 123 (Utah Ct. App. 1988).

PRESERVATION OF ISSUE NO. 2: The Court's Memorandum Decision dated April 27, 2006 (p. 300 - 310 of the Trial Record).

ISSUE NO. 3.

Whether the court erred in failing to require Ms. Jensen to prove by medical evidence her inability to work and to become employable which was established at trial by medical evidence thus switching the burden of proof to Mr. Jensen to prove Ms. Jensen's ability with the help of therapy to become gainfully employed?

STANDARD OF REVIEW: A trial court's finding that is devoid of evidentiary support constitutes an abuse of discretion. *McCrary v. McCrary*, 599 P.2d 1248, 1250 (Utah 1979).

PRESERVATION OF ISSUE NO. 3: The Court's Memorandum Decision dated April 27, 2006 (p. 300 - 310 of the Trial Record).

DETERMINATIVE CONSTITUTIONAL/STATUTORY PROVISIONS

Utah Code Annotated §30-3-5(10), set forth in addendum

STATEMENT OF THE CASE

Nature of the Case/Course of Proceedings.

Appellant, Gerald F. Jensen (Mr. Jensen), and Appellee, LuJean G. Jensen (Ms. Jensen), were divorced on April 11, 1997, after a day long trial before Judge Gordon J. Low. Their only two children had reached majority so after granting the divorce and dividing the marital property and debts, the trial court set an alimony award of \$2,150.00 per month based on one-half of Mr. Jensen's net income from his employment at Thiokol. Based on the testimony of two psychologists, Ms. Jensen was found incapable of earning money and had no earnings imputed to her for the purposes of alimony, but the court specifically reserved the issue of a modification of the alimony once she obtained employment without the normal requirement of proving a substantial change of circumstances. The trial court also noted that she would need therapy in order to become employable.

In addition, as part of the Decree of Divorce, the court found that farming operations, which Mr. Jensen had inherited from his father and shared with family members, was non-marital but the net rent that he received from the property would be paid to Ms. Jensen. That property was sold several years after the divorce, so that income terminated and no further action was taken by Ms. Jensen in regards to the non-payment of that money.

On January 16, 2004, Mr. Jensen filed a Petition to Modify the Decree seeking to terminate alimony because he had reached the age of 65 and had retired from Thiokol. His income had, thus, ended upon which the alimony award was originally based.

During the course of preparing for trial, the deposition of Ms. Jensen was taken and it was discovered that for just short of a year (approximately four years after their marriage ended) she had gone to Las Vegas to live. While there, she became a friend with a man and lived with him in his apartment for a time period. She acknowledged that sexual relations occurred, that they had contemplated marriage, and that she had given him a bulk of her retirement money for the purpose of acquiring a home together. They lived together for at least two months and then she became suspicious of him, so she terminated the relationship and had him sign a promissory note to repay the \$49,000 she had advanced for the home.

At the trial, the court found that the circumstances of living together was not enough to prove residency and refused to terminate alimony. The court further ordered Mr. Jensen to use his assets and income he had received in the divorce settlement (which

are premarital, divided marital, and/or post marital assets) to continue to pay alimony at \$1,500.00 a month. The court accepted Ms. Jensen's testimony without medical support that even though she had not taken any therapy contemplated at the time of the divorce, she was still incapable of working and again imputed no earnings to her. At the conclusion of the trial, the court took the matter under advisement and issued its Memorandum Decision dated April 27, 2006. An Order was issued by the trial court on June 12, 2006. This is an appeal from said Memorandum Decision and Order.

Statement of Facts.

1. The parties were divorced on April 11, 1997 after a day long trial before Judge Gordon J. Low. (See Decree of Divorce - pp 90-95 of Trial Record.)

2. The only issues before the trial court were granting the divorce, dividing marital property and debts, and awarding alimony and attorney fees. (See Findings of Fact - pp 83-89 of Trial Record.)

3. At the time of the divorce, the trial court found certain assets which the Mr. Jensen had inherited from his family to be non-marital which were awarded free and clear to Mr. Jensen, and the rest of the assets were divided equally including Mr. Jensen's ESIP at Thiokol (now known as ATK) and his defined benefit pension program under the Woodward formula and their equity in the family home. (See Findings of Fact - pp 83-89 of Trial Record.)

4. Mr. Jensen's net income at Thiokol was equally divided between the parties as an ongoing alimony award of \$2,150.00 per month, plus Ms. Jensen was given one-half

of the net proceeds from the farm land rental income. (See paragraph 13 of Findings of Fact - p. 87 of Trial Record.) This farm land was found to be non-marital and received by Mr. Jensen jointly with other family members by way of inheritance. (See paragraph 10 of Findings of Fact and Conclusions of Law - p. 80 of Trial Record.) The farm property was sold several years after the divorce and the rental income then terminated as well as any payments to Ms. Jensen.

5. The court found Ms. Jensen was not capable of working at that time because of mental issues based on the testimony of Mr. Thomas Beasley (her psychologist) and the written report of an evaluation conducted by Dr. Van Uitert (see paragraph 8 of Findings of Fact - p. 85 of Trial Record) and in need of therapy. The court reserved jurisdiction to review the alimony should Mrs. Jensen become employed (see paragraph 13 of Findings of Fact – p. 87 of Trial Record).

6. On January 16, 2004, Mr. Jensen filed a petition to modify the decree by terminating alimony, because he had reached the age of 65 and retired from Thiokol (see Verified Petition, pp. 104-105 of Trial Record). This retirement was not only because of his age but because of a special benefit that Thiokol had that if Mr. Jensen retired at that time, he could continue his health insurance coverage. If he delayed retirement past age 65, that benefit would not be available. Mr. Jensen had suffered two heart attacks and was diagnosed with diabetes since the divorce which made his continued health insurance coverage very important. (See Trial Transcript – p.45, lines 1-6; p. 48, lines 21-25; p. 49, lines 1-11, p.348 of Trial Record.)

7. With this retirement, his salary at Thiokol ended and hence the source of the money to pay alimony was gone.

8. During the preparation for the trial, Ms. Jensen's deposition was taken and the circumstances of her leaving her home in Brigham City and living in Las Vegas for about one year in 2000 revealed the following:

A) She moved for almost a year to Las Vegas about three years after the divorce to reestablish her life there. See Ms. Jensen's deposition, page 8, lines 15-20. (p. 222 of Trial Record); page 9, lines 2-4 (page 224 of Trial Record); page 10, lines 21-22 (p. 225 of Trial Record).

B) During the time she was there, she became acquainted with a man whom she knew for about six months. See page 16, lines 17-21 (p. 235 of Trial Record).

C) She moved into his apartment with what personal property she had and they lived together so he could get to know her better. See page 21, lines 4-12 (p. 242 of Trial Record).

D) During this time, she gave him \$49,000 so they could build a home together. See page 26, lines 6-10 (p. 24 of Trial Record).

E) They discussed marriage. See page 17, lines 1-5 (p. 236 of Trial Record); page 23, lines 17-20 (p. 244 of Trial Record); page 32, lines 20-23 (p. 253 of Trial Record).

F) They engaged in sexual relations. See page 18, lines 1-2 (p. 238 of Trial Record).

G) They lived together for three (3) months. See page 18, lines 6-9 of Ms. Jensen's corrections (p. 238 of Trial Record).

9. At trial, Ms. Jensen testified that she had not been to therapy as found needed by the court at the original trial (see paragraph 13 of Findings of Fact, p.87 of Trial Record) and claimed to still not be able to work but presented no medical testimony to substantiate this claim.

10. The court ordered alimony to continue at \$1,500.00 per month requiring Mr. Jensen to use premarital, previously divided marital, and post marital moneys to pay for this obligation.

SUMMARY OF ARGUMENT

1. The trial court erred as a matter of law in not finding Ms. Jensen had cohabitated with her boyfriend in Las Vegas when she testified that her intent in moving in with him was to establish a marital type relationship for an indefinite length of time.

2. The trial court erred in reallocating the property that was already divided at the time of the divorce to force Mr. Jensen to continue to pay alimony after the source of income used for alimony at the trial terminated.

3. The court erred in failing to require Ms. Jensen to prove by medical evidence her inability to work and to become employable which was established at trial by medical evidence thus switching the burden of proof to Mr. Jensen to prove Ms. Jensen's ability with the help of therapy to become gainfully employed.

ARGUMENT

- I. THE COURT ERRED AS A MATTER OF LAW IN NOT FINDING MS. JENSEN HAD COHABITATED WITH HER BOYFRIEND IN LAS VEGAS WHEN SHE TESTIFIED THAT HER INTENT IN MOVING IN WITH HIM WAS TO ESTABLISH A MARITAL TYPE RELATIONSHIP FOR AN INDEFINITE LENGTH OF TIME.

Utah law is clear that cohabitation terminates alimony. (See *Utah Code Ann.* §30-3-5 (10) 1953 as amended). Cohabitation is defined by case law as a common residency and sexual contact involving a conjugal association. *Haddow v. Haddow*, 707 P.2d 669 (Utah 1985). “Common residency means the sharing of a common abode that both parties consider their principal domicile for more than a temporary or brief period of time.” See *Haddow* at p. 673.

Residing is an issue of intent of Ms. Jensen at the time she moved in with her boyfriend. Once residency is established, a change in that status by a change in intent does not alter the fact that cohabitation has occurred. It is just like a marriage. The fact one change their mind shortly after the ceremony does not undo the fact that they intended to get married and in fact are, so they are bound by the legal consequences of that intent and action.

Because cohabitation is generally either openly denied or not admitted, leaving a challenging position for the spouse paying alimony to secure its termination as provided by law, courts must generally rely on specific objective facts to determine if the burden of proof has been met to show that specific intent and action have been established because of that denial or refusal to admit. This is a rare case where Ms. Jensen, not aware of the

potential issue, admitted during her sworn testimony in a deposition of her intent to take up residency with her boyfriend when she moved in with him. That was to live together to become better acquainted with marriage contemplated. She even gave him money to establish their own home together. The so called “loan agreement” was not prepared or signed until they had separated. Her intent and actions, when the relationship began, control. The court did not need to go any further in looking for objective facts as is commonly required. She did not need a key, so one was never requested or refused. She was never asked to share expenses in the apartment so she never paid any, but she did share other common expenses with her boyfriend away from his apartment by the use of her credit card. Her vacant home in Brigham City was about 600 miles away and was certainly not considered her living accommodations for that long period while she lived in Las Vegas where she had gone to find herself and start a new life. When sexual relations are added to this situation, “residency” within the meaning of *Utah Code Ann.* §30-3-5(10) 1953, was established about as permanent as any conjugal relation in today’s society can be.

The trial court focused too much on the “trees” by looking at the various objective factors created by appellate decisions, such as *Pendleton v. Pendleton*, 918 P.2d 159 (Utah Ct. App. 1996) and *Sigg vs. Sigg*, 905 P.2d 908 (Utah Ct. App. 1995) where the person receiving alimony either denies their intent to reside with another person or refuses to make any admissions. The trial court missed the “forest” that Ms. Jensen removed the need for analysis of such factors by her own sworn admission of her intent

when she moved in with her boyfriend as stated very clearly in her deposition before any issue of cohabitation was raised. She testified as to the events that occurred for the nine (9) months she lived in Las Vegas without guarding her testimony. Once the issue of cohabitation was raised by legal proceeding based on these admissions, she moved into the denial mode at trial, but it was too late. The truth was out. The first area the court should look is the admitted intent and once that shows residency without a temporary purpose, further analysis of objective factors is not necessary.

This court must follow the law that there are legal consequences for a person receiving alimony who moves in with another person with the intent of becoming “better acquainted”, contemplates marriage, admits to staying for at least two months, invests in a permanent home with the boyfriend, and engages in sexual relations while living together. The status of the case law currently focusing on the “trees” has made it very hard to terminate alimony for such conduct unless it is really blatant, because the “trees” can be carefully covered up. In this case, the “forest” was exposed before the “trees” could be hidden.

II. THE COURT ERRED IN REALLOCATING THE PROPERTY THAT WAS ALREADY DIVIDED AT THE TIME OF THE DIVORCE TO FORCE MR. JENSEN TO CONTINUE TO PAY ALIMONY AFTER THE SOURCE OF INCOME USED FOR ALIMONY AT THE TRIAL TERMINATED.

The law is clear that once marital property is divided, it is not re-divided without showing of fraud or gross misinterpretation at the time of trial. See *Throckmorton v. Throckmorton*, 767 P.2d 121 (Utah Ct. App. 1988). The court very clearly established alimony at the original trial as one-half of the net income Mr. Jensen was earning at his

employment. The other marital assets were equally divided. This implicitly means once that source is gone, through no fault of the payor, his duty to pay alimony also ends. That is what happened with the net rental from the farmland. Ms. Jensen raised no legal concerns when that source of money ended. It is like a case when the payor dies but leaves a sizable estate, for the court to order the estate to continue the alimony payments because the former spouse needs the money and the estate can afford to pay it. Further reallocation of Mr. Jensen's pre-marital, marital, and post marital assets should have been reserved at the original trial in the event the therapy needed did not succeed. That way Mr. Jensen would have known of his potential liability and could have tried to encourage Ms. Jensen to receive therapy and be more prudent with his money. The order instead contemplated that Ms. Jensen would obtain therapy and find employment, thus, reducing the pressure on Mr. Jensen to pay one-half of his earned income. Ms. Jensen can show no change of circumstances to justify claiming Mr. Jensen's separate property that was already fairly divided at the time of the divorce. She still is unemployed but chose not to enroll in therapy nor did she ever seek any employment. She squandered a major part of her share of the marital estate by giving it to her boyfriend to acquire a house for them. She is left with her remaining marital property, such as the family home which was not touched by the court as part of the "new division".

The court in the *Throckmorton* case clearly stresses that before the court can modify an existing property division order, there must be a substantial change of circumstances. There, the wife had gone from being employed to medically being unable

to work. Here, Ms. Jensen has not only stayed the same but testified she made no effort to undergo therapy or even find a job to improve her status. Also, the husband in the *Throckmorton* case had a new source of income to make the payments, that is his retirement that was not touched in the divorce decree. Mr. Jensen lost his source. His retirement was already divided and his potential Social Security benefit was known and she will share in his Social Security benefit when she qualifies in the future. The change is clearly to Mr. Jensen's ability to pay; hence, a reason to terminate alimony but Ms. Jensen remains the same, so there is no reason to give her more of his property in the form of alimony.

On the other hand, Mr. Jensen honored the order by faithfully paying alimony as long as his wages continued. He carefully invested his assets to be able to face a life after retirement and the loss of his regular income with his own challenging health needs. The court by going back and reallocating his property by requiring him to continue to pay alimony is rewarding Ms. Jensen for not doing what the court expected and for giving her money to a boyfriend and punishing Mr. Jensen for being frugal and careful in his investments to take care of his needs after retirement.

III. THE COURT ERRED IN FAILING TO REQUIRE MS. JENSEN TO PROVE BY MEDICAL EVIDENCE HER INABILITY TO WORK AND TO BECOME EMPLOYABLE WHICH WAS ESTABLISHED AT TRIAL BY MEDICAL EVIDENCE THUS SWITCHING THE BURDEN OF PROOF TO THE MR. JENSEN TO PROVE MS. JENSEN'S ABILITY WITH THE HELP OF THERAPY TO BECOME GAINFULLY EMPLOYED.

The law of this case set by competent medical evidence presented at the original trial to show Ms. Jensen at that time could not work but with therapy could become

employed, requires updated professional medical evidence to prove Ms. Jensen's continued inability to work. She comes back to the court ten years later and claims to not be employable but admits to not undergoing any therapy as recommended and thought to be helpful in the original trial. The court erred by in effect switching the burden of proof from Ms. Jensen to Mr. Jensen to present medical evidence of his ex-wife's inability to respond to therapy and find gainful employment by accepting her self-serving statements as sufficient evidence of her continued disability without medical support. They have been divorced for ten years and had little contact, so Mr. Jensen does not know what she has done to become employable. Ms. Jensen has a duty to mitigate her lack of income or to prove it by greater evidence than merely her word.

CONCLUSION

The law in Utah is clear that a person receiving alimony has that right terminated when they choose to reside with a boyfriend and engage in sexual relations which she certainly intended and did for a number of months in Las Vegas. Mr. Jensen should not be forced to use up his limited resources that he has carefully set aside for his retirement after his recent medical challenges to continue to pay an ex-wife, who has not only failed to take steps to improve her ability to support herself but foolishly gave the bulk of her liquid assets to this boyfriend. The trial court should have required Ms. Jensen to carry her burden of proof with competent medical testimony of her continued inability to work after undergoing the recommended therapy.

DATED this 13 day of April, 2007.

HILLYARD, ANDERSON & OLSEN, P.C.



LYLE W. HILLYARD

Attorney for Petitioner/Appellant

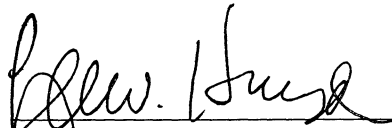
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MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing **BRIEF OF
PETITIONER/APPELLANT** was mailed, postpaid, to the following this 13 day of
April, 2007:

RONALD W. PERKINS
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HILLYARD, ANDERSON & OLSEN, P.C.



LYLE W. HILLYARD

Attorney for Petitioner/Appellant

(original signature)

ADDENDUM

1. May 11, 1997 Findings of Fact and Conclusions of Law
2. May 11, 1997 Decree of Divorce
3. August 10, 2005 Deposition of LuJean C. Jensen with her corrections dated February 1, 2006.
4. April 27, 2006 Memorandum Decision
5. June 12, 2006 Findings of Fact and Conclusions of Law
6. June 12, 2006 Order of Modification
7. *Utah Code Annotated* §30-3-5(10)

Tab 1

RANDINE SALERNO, #4137
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IN THE FIRST JUDICIAL DISTRICT COURT, STATE OF UTAH
BOX ELDER COUNTY, BRIGHAM CITY DEPARTMENT

JERALD F. JENSEN,	/	FINDINGS OF FACT AND
Plaintiff,	/	CONCLUSIONS OF LAW
vs.	/	Civil No. <u>964000113DA</u>
LUJEAN C. JENSEN,	/	Judge Gordon J. Low
Defendant.	/	

This matter came on regularly for trial on the 22nd day of January, 1997 before the Honorable Judge Gordon J. Low, one of the Judges of the above entitled Court. Plaintiff was present in person and was represented by his attorney, Randine Salerno. Defendant was present in person and represented by her attorney, Ronald W. Perkins. The parties were both sworn and both testified. The parties put on their evidence and marked exhibits and the Court having reviewed the file and having heard the parties' testimony, and good cause there appearing, now makes and enters the following:

FINDINGS OF FACT

1. That both parties are actual and bona residents

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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of Box Elder County, Utah and have been for at least three (3) months immediately prior to the commencement of this action.

2. That the parties are husband and wife, having been married on June 5, 1971.

3. That the parties have had two (2) children born as issue of their marriage, both of whom are over the age of eighteen (18) years and otherwise emancipated, although they continue to remain living with their father in the marital home in Brigham City, Utah.

4. That there are irreconcilable differences of the marriage.

5. That the parties have acquired real property of the marriage located at 25 West 700 North in Brigham City. Mr. Bill Bate, certified appraiser, testified that the fair market value of the property on July 3, 1996 was \$83,000.00. The Court finds and Mr. Bate testified that it was reasonable that the property had increased by \$3,500.00 since the date of inspection to the date of this trial.

6. The Court finds that the Plaintiff is not entitled to any pre-marital interest in the parties' marital home, in as much as the parties had lived in said home for many years and have both have invested a great

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Civil No.: 964000113DA

deal of time and effort into the maintenance and upkeep of said home.

7. That the parties have purchased a 5th wheel recreational vehicle during their marriage that the Defendant has been living in. The parties are ordered to sell said 5th wheel and equally divide the net proceeds therefrom. The Plaintiff is to advertise this 5th wheel and sell said 5th wheel. The Plaintiff shall use his best efforts to sell said 5th wheel and the parties shall divide all net proceeds derived from that sale.

8. That the Defendant is not capable of working at this time based upon the testimony of Mr. Thomas Beesley and based upon the written report of an evaluation conducted by Dennis van Uiter, Ph.D Psychologist. Although the Defendant cannot work at this time, she is ordered to move out of the 5th wheel trailer in which she has been living and seek suitable living conditions elsewhere.

9. That the 1981 GMC pickup is awarded to the Plaintiff, subject to any debt thereon. This pickup is valued at \$1,250.00 according to the written appraisal conducted by Michael Thyberg at Davis Chrysler Dodge in Brigham City. That the New Yorker automobile is valued at \$2,000.00. Said automobile is awarded to the

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Civil No.: 964000113DA

Defendant, subject to any debt thereon, holding the Plaintiff harmless.

10. That the three (3) parcels of farm land that the Plaintiff received as an inheritance is hereby awarded solely to the Plaintiff, free from any claim whatsoever from the Defendant.

11. That the Defendant has testified that she desires possession of the parties' marital residence located at 25 West 700 North in Brigham City, Utah. She is hereby given a period of thirty (30) days from the date of this trial to obtain financing to refinance the marital home and pay the Plaintiff all of his equity that exists therein. If she fails to do so, the Plaintiff shall be awarded the parties' marital home, subject to his payment to the Defendant in full in the amount of her equity within thirty (30) days from the date that the Defendant has failed to comply with this Court's order. Whoever so shall refinance the parties' marital home, the proceeds from the refinance shall first go to pay all the parties' marital debts, the Plaintiff shall have a \$750.00 credit against his equity in the parties' marital home as and for an offset with regards to the difference in value of the automobiles belonging to both Plaintiff and the Defendant. The debts to be paid shall be the MBA

JENSEN VS. JENSEN
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Mastercard debt, the Visa debt, the AT&T credit card debt, the curb and gutter debt and the debt due and owing to Mr. Beasley for expenses incurred prior to the Court's order that the Defendant pay 100% of any medical and/or psychological expenses incurred that are not preferred providers as per the Thiokol insurance policy.

12. That the parties are each entitled to approximately \$30,000.00 from the equity in the home.

13. That the Court finds that the Defendant is unemployed and is in need of therapy. This has been a marriage of over twenty-five (25) years. The Defendant shows that she has need and expenses that are approximately equal to that of the Plaintiffs. Based upon the Plaintiff's income of \$4,400.65, deducting the FICA tax of \$143.00 per month, the Defendant is entitled to alimony in the amount of \$2,150.00 per month, plus one-half (1/2) of the net proceeds from the farm land rental income. The Plaintiff is to provide yearly accountings of the farm land income. Should the Defendant become employed, this Court shall retain jurisdiction to review the alimony issue. In addition, this Court finds that if the Defendant does not get a suitable place to live, this Court retains jurisdiction to review the alimony issue.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

JENSEN VS. JENSEN
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14. The Court finds that each party is entitled to and shall receive one-half (1/2) of the value of the personal property. The parties shall have thirty (30) days to distribute that property. In the event that the parties fail to agree as to the distribution of the property, the Plaintiff shall make two (2) lists of personal property, which shall equal the same values from both lists. The Defendant shall choose one (1) list and the parties shall thereafter distribute said property according to the lists.

15. That the Defendant is entitled to one-half (1/2) of the Plaintiff's ESIP money that has been earned since the date of marriage. Further, the Defendant is entitled to and shall receive her Woodward share of the Plaintiff's pension at his place of employment.

16. That the Plaintiff and the Defendant are hereby ordered to pay any attorney's fees that are due and outstanding out of the equity interest in the parties' marital home, once one party or the other has refinanced same. In addition, the Plaintiff is to pay the Defendant and her attorney \$1,000.00 in attorney's fees and pay said money out of his share in the equity of the parties' marital home. This money is intended to be used for the Defendant to repay her parents for the \$1,000.00 retainer

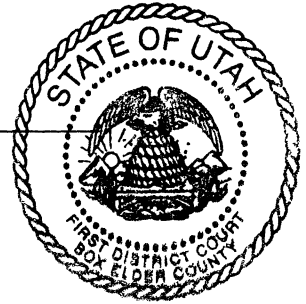
JENSEN VS. JENSEN
Civil No.: 964000113DA

that they paid at the beginning of this action.

DATED this 11TH day of APRIL, 1997.



GORDON J. LOW,
District Court Judge



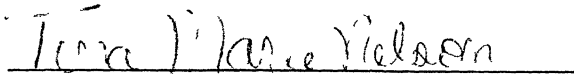
APPROVED AS TO FORM:



RONALD W. PERKINS,
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing Findings of Fact and Conclusions of Law was posted in the United States mail, postage prepaid and addressed to Attorney Ronald W. Perkins, attorney for Defendant, at 205 26th Street, Suite 34, Ogden, Utah 84401 on this 11th day of February, 1997.


Secretary

Tab 2

IN THE FIRST JUDICIAL DISTRICT COURT, STATE OF UTAH
BOX ELDER COUNTY, BRIGHAM CITY DEPARTMENT

JERALD F. JENSEN, / JUDGMENT AND DECREE OF
Plaintiff, / DIVORCE
vs. / Civil No. 964000113DA
LUJEAN C. JENSEN, / Judge Gordon J. Low
Defendant. /

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

764-113-11

a Decree of Divorce from the Defendant, LuJean C. Jensen, same to become final upon the signing and entry.

2. That Plaintiff is not entitled to any pre-marital interest in the parties' marital home, in as much as the parties had lived in said home for many years and have both have invested a great deal of time and effort into the maintenance and upkeep of said home.

3. That the parties are ordered to sell the 5th wheel and equally divide the net proceeds therefrom. The Plaintiff is to advertise this 5th wheel and sell said 5th wheel. The Plaintiff shall use his best efforts to sell said 5th wheel and the parties shall divide all net proceeds derived from that sale.

4. Defendant is ordered to move out of the 5th wheel trailer in which she has been living and seek suitable living conditions elsewhere.

5. That the 1981 GMC pickup is awarded to the Plaintiff, subject to any debt thereon. This pickup is valued at \$1,250.00 according to the written appraisal conducted by Michael Thyberg at Davis Chrysler Dodge in Brigham City. That the New Yorker automobile is valued at \$2,000.00. Said automobile is awarded to the Defendant, subject to any debt thereon, holding the Plaintiff harmless.

6. That the three (3) parcels of farm land that the Plaintiff received as an inheritance is hereby awarded solely to the Plaintiff, free from any claim

whatsoever from the Defendant.

7. Defendant is awarded possession of the parties' marital residence located at 25 West 700 North in Brigham City, Utah and is hereby given a period of thirty (30) days from the date of this trial to obtain financing to refinance the marital home and pay the Plaintiff all of his equity that exists therein. If she fails to do so, the Plaintiff shall be awarded the parties' marital home, subject to his payment to the Defendant in full in the amount of her equity within thirty (30) days from the date that the Defendant has failed to comply with this Court's order. Whoever so shall refinance the parties' marital home, the proceeds from the refinance shall first go to pay all the parties' marital debts, the Plaintiff shall have a \$750.00 credit against his equity in the parties' marital home as and for an offset with regards to the difference in value of the automobiles belonging to both Plaintiff and the Defendant. The debts to be paid shall be the MBA Mastercard debt, the Visa debt, the AT&T credit card debt, the curb and gutter debt and the debt due and owing to Mr. Beasley for expenses incurred prior to the Court's order that the Defendant pay 100% of any medical and/or psychological expenses incurred that are not preferred providers as per the Thiokol insurance policy.

8. That the parties are each entitled to approximately \$30,000.00 from the equity in the home.

JENSEN VS. JENSEN
Civil No.: 964000113DA

paid shall be the MBA Mastercard debt, the Visa debt, the AT&T credit card debt and the curb and gutter debt.

8. That the parties are each entitled to approximately \$30,000.00 from the equity in the home.

9. The Defendant is awarded alimony in the amount of \$2,150.00 per month, plus one-half (1/2) of the net proceeds from the farm land rental income. The Plaintiff is to provide yearly accountings of the farm land income. Should the Defendant become employed, this Court shall retain jurisdiction to review the alimony issue. In addition, this Court finds that if the Defendant does not get a suitable place to live, this Court retains jurisdiction to review the alimony issue.

10. The Court finds that each party is entitled to and shall receive one-half (1/2) of the value of the personal property. The parties shall have thirty (30) days to distribute that property. In the event that the parties fail to agree as to the distribution of the property, the Plaintiff shall make two (2) lists of personal property, which shall equal the same values from both lists. He shall give one list to the Defendant and the parties shall thereafter distribute said property according to the lists.


11. That the Defendant is entitled to one-half

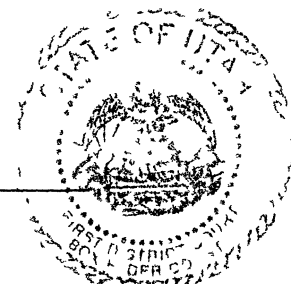
JENSEN VS. JENSEN
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(1/2) of the Plaintiff's ESIP money that has been earned since the date of marriage. Further, the Defendant is entitled to and shall receive her Woodward share of the Plaintiff's pension at his place of employment.

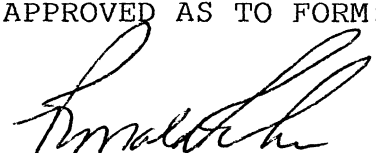
12. That the Plaintiff and the Defendant are hereby ordered to pay any attorney's fees that are due and outstanding out of the equity interest in the parties' marital home, once one party or the other has refinanced same. In addition, the Plaintiff is to pay the Defendant and her attorney \$1,000.00 in attorney's fees and pay said money out of his share in the equity of the parties' marital home. This money is intended to be used for the Defendant to repay her parents for the \$1,000.00 retainer that they paid at the beginning of this action.

DATED this 11TH day of ~~January~~ ^{APRIL}, 1997. 2


GORDON J. LOW,
District Court Judge



APPROVED AS TO FORM:


RONALD W. PERKINS,
Attorney for Defendant

JENSEN VS. JENSEN
Civil No.: 964000113DA

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing Judgment and Decree of Divorce was posted in the United States mail, postage prepaid and addressed to Attorney Ronald W. Perkins, attorney for Defendant, at 205 26th Street, Suite 34, Ogden, Utah 84401 on this 19th day of ~~January~~^{February}, 1997.

Tina Marie Nelson
Secretary

Tab 3

Ronald W. Perkins #2568 of
RONALD W. PERKINS P.C.
Attorney for Respondent
Historic Ben Lomond Hotel
2510 Washington Blvd. Suite 200
Ogden, UT 84401
Telephone (801) 621-6546

IN THE FIRST JUDICIAL DISTRICT COURT OF BOX ELDER COUNTY

STATE OF UTAH

JERALD F. JENSEN,	/	
Petitioner	/	AFFIDAVIT IN ADDITION TO RESPONDENT'S DEPOSITION
vs.	/	
LUJEAN C. JENSEN,	/	Civil No. 964000113 DA
Respondent.	/	Judge:

STATE OF UTAH)
 :SS
COUNTY OF WEBER)

LUJEAN C. JENSEN, being first duly sworn upon her oath, deposes and says:

1. That I am the Respondent in the above entitled matter and have personal knowledge of the facts stated herein.
2. That my deposition was taken by Petitioner's attorney on August 10, 2005.
3. That it was the first time I ever had my deposition taken and because of all the shock treatments I had in the 1980s my memory and ability to think is impaired.
4. That my attorney did not ask me any questions at the deposition and between my memory issues and without fully explaining certain issues my deposition is incomplete and needs

further explanation which is set forth herein.

5. That I have gone through my deposition which I first saw in December 2005 and have tried to further explain my answers by adding handwritten answers on a copy of my deposition which is attached to this affidavit as well as provide further information herein,

6. That as stated in my deposition I never had a key to the apartment as did the other three occupants of the apartment nor did I ever pay any rent, utilities, or other bills nor was I responsible for maintaining the interior or exterior of the apartment in any way.

7. That I maintained my home in Brigham City and while in Las Vegas both before and after moving in with the Andrews I looked into to buying or building a condominium but never intended to change my residence or abode without a permanent place to live.

8. That I resided with Robert, his mother and sister because it was economically feasible but if I would have secured a condominium I would have moved there and brought personal property from Utah.

9. That I had no household personal property in Las Vegas and I only items I had was a suitcase of clothing as well as makeup and toiletry items I purchased as necessary.

10. That I never changed my Brigham City address and the only mail I received was mail from my son who forwarded my mail to me in Las Vegas.

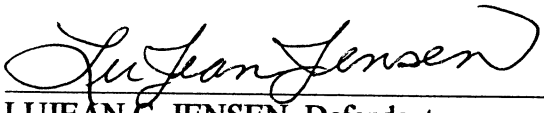
11. That I did many things with "Robert's" mother and sister whether he was in Las Vegas or in Texas .

12. That while I stayed with the Andrews I continued to use my own vehicle while the Andrews continued to use their own vehicle(s).

13. That I had no idea he was conning me throughout and was acting interested in me basically to steal my money.

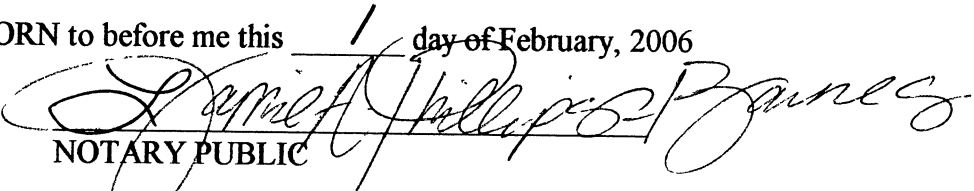
FURTHER, AFFIANT SAYETH NAUGHT.

DATED this 1 day of February, 2006

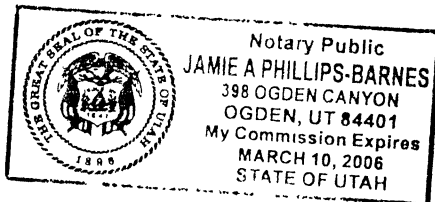


LUJEAN C. JENSEN, Defendant

SUBSCRIBED AND SWORN to before me this 1 day of February, 2006



NOTARY PUBLIC



IN THE FIRST JUDICIAL DISTRICT COURT
BOX ELDER COUNTY, STATE OF UTAH

* * *

JERALD F. JENSEN,)	
)	Deposition of:
Petitioner,)	LUJEAN C. JENSEN
)	
vs.)	
)	
LUJEAN C. JENSEN,)	Civil No. 964100113
)	Judge Gordon J. Low
Respondent.)	

BE IT REMEMBERED that on Wednesday, the 10th day of August, 2005, commencing at the hour of 2:30 p.m., the deposition of LUJEAN C. JENSEN, produced as a witness at the instance and request of the Petitioner in the above-entitled action, before the above-named Court, was taken before Annette Loosle, a Certified Shorthand Reporter, Registered Professional Reporter, and Notary Public in and for the state of Utah, at the Box Elder County Courthouse, Brigham City, Utah.

Annette Loosle, CSR, RPR
379 South 455 East, Smithfield, Utah 84335

A P P E A R A N C E S

For the Petitioner: Lyle W. Hillyard
HILLYARD, ANDERSON & OLSEN
175 East 100 North
Logan, Utah 84321

For the Respondent: Ronald W. Perkins
2510 Washington Boulevard
Suite 200
Ogden, Utah 84401

Also Present: Jerald F. Jensen

I N D E X

The Witness

Page

LUJEAN C. JENSEN

Examination by Mr. Hillyard. 03

I AM REANSWERING THESE QUESTIONS.
I DIDN'T UNUERSTAND THE QUESTIONS
AND MY MIND HAS A HARD TIME
FOCUSING BECAUSE OF THE SHOCK
TREATMENTS, SO I NEED TO
REANSWER THE QUESTIONS.

1 AUGUST 10, 2005

2
3 LUJEAN C. JENSEN,

4 called as a witness on behalf of Petitioner,

5 having first been duly sworn,

6 was examined and testified as follows:

7
8 BY MR. HILLYARD:

9 Q Have you ever had your deposition taken
10 before?

11 A No.

12 Q Just for a background, I'm going to be
13 asking you questions and you will be answering. It's
14 a way for me to find out your version of what's been
15 going on so I can better analyze the case for my
16 client.

17 We have a court reporter who takes down
8 everything I say and everything you say. So it's
9 going to be important that I let you answer before I
0 ask the next question and you let me finish my
1 question because she can only write one person at a
2 time. It's also going to be important that you answer
3 yes or no. Sometimes when you nod your head or say
4 uh-huh or uh-uh she has to guess what the question and
, answer is.

1 You are sworn as though you were testifying
2 in court, so we expect you to tell us the best you
3 recall the facts so I can get a better understanding
4 of this case. Do you understand that?

5 A Yes.

6 MR. HILLYARD: May we stipulate, counsel, this is
7 taken pursuant to notice and rules and all
8 reservations reserved?

9 MR. PERKINS: Yes.

10 Q (BY MR. PERKINS) And you've got to say yes
11 or no. Don't just nod. Yes?

12 A Yes.

13 Q (BY MR. HILLYARD) Lujean, for the record,
14 would you state your name and address?

15 A Lujean Jensen, 25 West 700 North, Brigham
16 City, Utah, 84302.

17 Q And you know that there's an issue now
18 before the Court about the modification of the alimony
19 award made by the Judge in 1997. The issue really is
20 that your ex-husband now has retired from Thiokol and
21 doesn't have the income there he had before. That's
22 really the basic issue.

23 Part of the issue being raised by your
24 attorney is that you still suffer from some
25 disabilities and challenges you had at the time of the

1 trial and it's difficult and impossible for you to go
2 get a job. I just want to explore that. You gave me
3 your address in Brigham City. How long have you lived
4 there?

5 A I was married in 1971 and then I went
6 through my divorce. I lived in my fifth wheel for two
7 years and so -- let's see. I went back -- my divorce
8 was final in 1997. Around thirty-three years.

9 Q So this is the family home you are living
10 in that you were living in at the time of the divorce?

11 A No. He had custody of the home while I was
12 going through my divorce. I was in the fifth wheel.

13 Q But after the divorce then you moved from
14 the fifth wheel back into this home?

15 A Yes. I got a loan.

16 Q Okay. I had understood that you had lived
17 for a time in Ogden. Is that right or not right?

18 1- A NO I WENT DOWN TO HELP A FRIEND, YES, THAT HAD
19 gotten divorced. But that wasn't the only reason that

20 I went down there. MY FACE WAS HEALING FROM JERALD

21 Q In Ogden? Who was the friend? AND MY DAUGHTER LAURIE PHYSICAL ABUSE FROM MY 2ND CAR
WRECK.

22 A Valerie Morgan.

23 Q Does she still live in Ogden?

24 A I don't know where she is.

25 Q How did you know Valerie Morgan?

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Line 18

#1- A NO I WENT DOWN TO HELP A FRIEND,
YES, THAT HAD GOTTEN DIVORCED.
BUT THAT WASN'T THE ONLY REASON
THAT I WENT DOWN THERE. MY FACE
WAS HEALING BECAUSE JERALD AND LAURIE
HAD BEATEN ME UP FOR GETTING IN
A CAR WRECK.

1 A I knew her through her parents.

2 Q And how long had you known her when you
3 went down to help her move?

4 A I started swimming aerobics and she was the
5 teacher and she went through a divorce and had some
6 health problems and her parents asked me if I wouldn't
7 go down and take care of her and stay with her.

8 Q I probably misstated my question. I said
9 to help her move. I just assumed that. You said you
10 went to help her because she was having some health
11 problems?

12 A She tried to kill herself and was in the
13 hospital for quite a while and when she came home her
14 parents asked me to come and help her.

15 Q How long did you stay with her? Was it a
6 day, a week, three months?

7 1- A SEE YELLOW PAPER ATTACHED NEXT PAGE
8 I stayed with her a month and then I came
9 home and then I traveled back and forth to see her and
stay.

0 Q Why would her parents ask you to come and
1 do that?

2 A Because they didn't want the job and the
hospital was plain to see they wanted to push it onto
me. They didn't want to take care of her and I was
having trouble at home and when I got down there it

Pg. 6

Line 17

1- I STAYED WITH HER A MONTH AND THEN I CAME HOME AND THEN I TRAVELED BACK AND FORTH TO SEE HER AND STAY.

SEE THAT SHE WAS OK. SHE DIDN'T WANT TO BE ALONE. I WENT BACK AND FORTH TO MY HOME TO SEE JERALD AND CLEAN HOME FROM KIDS AND ANIMALS. ME AND JERALD WENT TO SEE MOVIES ON WEEKENDS. WE WENT AND SAW THE MOVIE BRIDGES OF MADISON COUNTY.

1 was kind of a relief for me because I didn't know what
2 was wrong with me but I was in a state where I could
3 feel relaxed and I started to sleep and started
4 feeling better healthwise. SEE YELLOW PAPER # 1-

5 Q Was this after the divorce?

6 #2- A NO. Because my kids were giving me a lot of
7 problems at home and me and him were having disputes
8 about what was going on with the house. SEE YELLOW PAPER #2

9 Q Was this after your divorce?

10 A No. This was before.

11 Q Okay. After your divorce did you live any
12 place else other than your home here in Brigham City?

13 A After my divorce?

14 Q Uh-huh.

15 A I went to Las Vegas. I went for a trip and
16 visited Las Vegas for a while.

17 Q How long were you in Las Vegas?

18 A I traveled back and forth. I went down
19 there in September and I was -- I was deathly sick
20 when I got my home back because I didn't want the
21 divorce. I pleaded with him. I mean, I made an idiot
22 of myself pleading with him not to go through with the
23 divorce because I didn't want my family ripped apart.
24 And he was so cruel to me. He was so cruel. I don't
25 know what I was saying.

Pg. 7

Line 4)

I HAD BEEN WORN OUT FOR A LONG TIME,
HAD MUSCLE PROBLEMS AND MEMORY PROBLEMS
FROM THE SHOCK TREATMENTS. JERALD
HAD ABUSED ME AFTER 2ND CAR WRECK I
WAS IN.

Line 8

AND THE CAR & KIDS AND MY DAUGHTERS
BOYFRIEND WAS LIVING WITH US AND DRINKING
ALCOHOL AND SMOKING WITH MY DAUGHTER
IN HER BEDROOM. JERALD WAS BELILLING
ME AND MENTALLY & PHYSICALLY ALSO. MY DAUGHTER
WAS FIGHTING WITH ME. JERALD'S FRIEND
CAROL, HUSBAND WAS CALING ME ABOUT THEM ALSO.
I WAS TIRED OF TAKING CARE OF HIS BROTHER
LYNN WHO WAS CAUSING PROBLEMS.

1 Q. Why did you choose to go to Las Vegas?

2 1- A BECAUSE IT WAS WARM THERE & I NEEDED WATER THERAPY.
Because I had gotten my home back and

3 everybody told me -- I made a friend, Marlene, who was
4 trying to help me and I got my home back and it's like
5 a knife through my heart because he was treating me so
6 mean. Everybody told me he wouldn't leave, we'd be a
7 family again. It was like a knife -- going back into
8 that house was a knife going through my heart. I
9 tried to fix it up. There was cat manure and cat pee
10 all over. I mean, there wasn't a carpet in that house
11 that wasn't saturated. The house was a complete
12 wreck. I had to clean and restore and redo it.

13 Q Who had been living in the home before you
14 moved back?

15 2- A SEE YELLOW PAPER ATTACHED
My son and his wife lived with me for a
16 while and then they moved out and then I was just
17 devastated. A friend said you need to get away and so
18 I went to Las Vegas and I started to heal and felt
19 better about life and I started feeling like I was a
20 human being again.

21 Q Who was the friend?

22 A Marlene.

23 Q What's her last name?

24 A England.

25 Q Where does she live?

Pg. 8

Line 15

JERALD, TROY MY SON, LAURIE MY DAUGHTER AND
GREG HER BOYFRIEND, 6 CATS AND 1 DOG
AND PET RATS IN DAUGHTERS ROOM.

AFTER I GOT MY KIDS MARRIED MY SON
AND HIS WIFE LIVED WITH ME.

1 A She lives in Ogden.

2 Q And you went, I think you said, to

3 Las Vegas in September? 1- OCTOBER OR END OF SEPTEMBER
DON'T KNOW EXACT DATE.

4 A Yes.

5 Q If the divorce was final in January of 1997
6 when was it that you went to Las Vegas?

7 A 1999, I think.

8 Q And when you went to Las Vegas how long did
9 you intend to be there? Was it a day trip, a week
10 trip, a month trip?

11 A Not very long. Just enough to swim and get
12 some sun.

13 Q How long were you there?

14 A I was there about three months and then I
15 came back home and then I went back down.

16 Q The first three months you were there,
17 where did you stay?

18 A Extended Stay America.

19 Q Is that a motel?

20 A It's a motel. It's where you pay monthly.

21 Q Do you know where it's located?

22 2- A Yeah. On Boulder Highway AND OTHER HIGHWAYS

23 Q Marlene, your friend, is she married,

24 unmarried? 3- MARRIED

25 A She came back. I'm the one that stayed.

1 Q Was anyone staying there with you?

2 A No.

3 Q You came back to Brigham City after the
4 three months?

5 A Yeah.

6 Q How long did you stay here in Brigham City
7 before you went back to Las Vegas again?

8 A I got a few more clothes and went back

9 down. 1- I STAYED A FEW WEEKS HOME AND THEN
WENT BACK DOWN TO LOOK AT SOME CONDOS.
10 Q So it was a day trip back and forth?

11 A It was more than a day. It was a few days
12 and then I went back.

13 Q How long did you stay in Las Vegas the
14 second time?

15 A I was back and forth. I run into some
16 people -- people told me to get out and see Las Vegas
17 and it would be a nice location. I have Fibromyalgia
18 and I was swimming and the swimming did miracles to
19 how I felt and so I was going to try and locate down
20 there.

21 Q When did you come back?

22 A I came back in June. 2- I CAME BACK IN
MAY SOMETIME.

23 Q Why did you come back?

24 A Because I found out that I had been conned

25 Q What do you mean by "conned"?

1 A I had a contractor that I was under that
2 was helping me to establish moving down there and he
3 had taken my money. 1- WHO SAID HE COULD BUILD ME
A NICE PLACE FOR HALF THE MONEY.

4 Q What was his name?

5 A Robert Andrews.

6 Q I want to bring this all closer together.
7 I'm just kind of following as you talk. I'll let you
8 just kind of talk. I sense you are nervous with me
9 asking you these questions, and I don't intend to do
10 that. I want you to be more relaxed than you would be
11 in a court setting. Tell me who Robert Andrews -- is
12 it Robert Andrews?

13 A Robert Andrews.

14 Q How did you meet him?

15 A I met him at a casino with his mother and
16 sister.

17 Q Where were you living at the time?

18 A Extended Stay America.

19 Q And when you met him -- did you make any
20 other friends in Las Vegas besides this
21 Robert Andrews? Is that his name?

22 A I met other acquaintances but no other

23 close friends, no. 2- I DID MEET A GUY BEFORE THAT JOE.

24 Q Is this Robert Andrews married?

25 A No. He was divorced. He was a contractor

3- HE SAID HE WAS DIVORCED

2/1

1 down there.

2 Q You said he conned you. Tell me what he
3 did. What happened?

4 A We got involved in seeing each other and
5 his mother really liked me and he was a good talker.
6 He built me up, he got my self-esteem back up. He
7 told me I needed to feel good about my life again and
8 that I was pretty. The first amount of money I gave
9 him was to go buy his "ex" out on some land to
10 purchase land in Vegas.

11 Q How much money did you give him?

12 A \$49,000.

13 Q Was it evidenced as a loan or a gift?

14 A No. It was for housing. *1- TO BUILD ME A NEW HOME.*

15 Q Did you get any kind of a document back
16 from him?

17 A Yes. *2- SEE ATTACHED YELLOW PAPER*

18 MR. PERKINS: You asked that in an interrogatory
19 and we're getting information together.

20 A *3- SEE ATTACHED YELLOW PAPER* My brother flew in and met his mother and

21 him and he talked to my brother and he thought I was
22 in good hands. I took him down and showed him my aunt
23 in Escondido and she thought he was a nice guy.

24 MR. PERKINS: I don't have my copy. I'll get
25 it.

- 07

Pg. 12

Line 17, 20

2- YES BUT HE LATER GOT AND DISTROYED IT AFTER I KNEW HE WAS LYING TO ME, AND I WAS HAVING A NERVOUS BREAKDOWN GOING FROM MY HOUSE TO VEGAS TRYING TO GET IT STAIGHED OUT.

Line 20

3- MY BROTHER FLEW IN AND VISITED WITH ME AND MET ROBERTS MOTHER AND ROBERT AND HE TALKED TO MY BROTHER AND HE THOUGHT I WAS IN GOOD HANDS. I TOOK HIM DOWN ON A WEENEND TRIP AND SHOWED HIM MY AUNT IN ESCONDIDO AND SHE THOUGHT HE WAS A VICE INTILLGENT MAN. THIS WAS BEFORE I KNEW HE WAS A CON ARTIST AND WAS RABBING ME.

1 A He talked to both of my parents on the
2 phone and told them he was helping me to relocate and
3 they all thought I was in good hands.

4 Q Did you give him any more money than this
5 \$49,000?

6 A No. Actually, the last check he stole from
7 me. The first two checks was going for the swimming

8 pool *AND FOR LAND AND HOUSING.* but the last check is when I realized he had

9 gotten me in such a mess because he had been using my

10 cards also. *1- SEE YELLOW PAGE*

11 Everywhere we went his cards didn't work

12 and so we used mine and then his son back in Texas was

13 using lodging on my cards so I had to take bankruptcy

14 out because of him. *2- SEE YELLOW PAPER*

15 Q How did he get access to your credit

16 cards? You just trusted him and gave him those? *3- NO!*

17 A Well, in the beginning when we went his

18 didn't work and so he'd use my card and then he would

19 give me money for it. I found out later he had been

20 using it to pay his insurance and his son had been

21 lodging in Texas under my credit card. *4- WHEN I WENT
BACK HOME TO BRIGHAM IS WHEN I FOUND OUT.*

22 Q Did you ever file any criminal complaint

23 about this fraud? *5- I WAS SCARED OF MY LIFE AND
HIS THREATS.*

24 A Yes.

25 MR. PERKINS: She did make contact.

Pg 13

Line 10

1- CHECK WAS FOR ME TO GET MY LIFE
TOGETHER AGAIN AND MY BILLS PAYED FOR
IN UTAH. HE STOLED ALL THIS MONEY
HE GAVE ME NOTHING.

Line 14

2- I DIDN'T KNOW THIS UNTIL MY STATEMENTS
CAME TO ME IN BRIGHAM

1 A I have a whole thing full of when we went
2 to the F.B.I.

3 MR. PERKINS: She did try to.

4 A I did everything in my power.

5 Q What did they tell you? *THAT I NEEDED TO CATCH*
6 A *HIM IN LAS VEGAS OR TEXAS WITH AGREEMENT*
 The trustee in the bankruptcy said that he *PAPER*

7 had forced me into bankruptcy and he admitted
8 bankruptcy fraud. And they were going to go after him
9 and nothing was ever done.

10 MR. HILLYARD: Do you have all of that
11 information, Ron?

12 MR. PERKINS: She just brought me this stuff
13 today. This just shows who she contacted and when back
14 in -- I'm not even sure. It just shows she made
15 contact, the person's name, the U.S. Attorney in
16 Nevada with his number, and Scott Shirley in ~~Salt Lake~~
17 *OGDEN* City. I guess he would have been in the U.S.

18 Attorney's office here.

19 Q (BY MR. PERKINS) Is he with the U.S.
20 Attorney's office here? *SEE YELLOW PAPER*

21 A Brian helped me with all of this.

22 Q (BY MR. HILLYARD) Who's Brian?

23 A He was a friend that helped me through my
24 divorce that my brother was close to. He was a friend
25 of my brother's.

Pg 14

Line 19

WE ALSO CONTACTED #702-388-6336
THE US ATTORNEY IN NEVADA. WE
WERE TOLD TO ASK TO TALK TO SOMEBODY
IN THERE WHITE COLLAR SECTION ABOUT
WHERE TO GO. They'll PROBABLY HAVE YOU
CONTACT FBI DOWN THERE AND GIVE
SOMEWAY TO CONTACT THEM. WE DIDN'T
GET ANY FURTHER THAN THIS AND I WAS
VERY ILL. SPENT TWO MONTHS IN BED.
AND I LOST 25 LBS AFTER ALL THIS

1 Q Who actually prepared this document? I'm
2 holding up now the general agreement dated July 7th.

3 A Robert did.

4 Q He prepared it? So I would assume that the
5 handwriting of this document is his handwriting?

6 A Yes.

7 Q Were you present when he made it or did he
8 make it and bring it to you?

9 A I went back to try to find him and my
10 father forced him into making this agreement up to pay
11 me back.

12 Q It says the \$49,000 will be paid in three
13 payments. So when this document was prepared you'd
14 already gotten three checks?

15 *1-I HADN'T GOTTEN ANY CHECKS FROM MY IRA BACK FROM HIM!*

16 A Yes. The last one was taken out for me to

17 *2-SO I COULD*
18 get back home because I realized he had gotten me in a
19 mess. *HE TOOK THAT MONEY TOO!*

20 I was down to -- he had kept me going and I was

21 *BACK AND FORTH TOO UTAH,*
22 so sick and I was down to nothing and I had no -- I

23 couldn't fight him back. I had no -- I mean, I was

24 sick myself. I came home and it took me two months to

25 heal from being with him and he promised he would show

up and give me that \$25,000 so I could get back on my

feet and get things straightened out and then he

conned me again. *3- SEE YELLOW PAPER?*

Q Do you know where he is now?

Pg. 15

Line 24

- I THOUGHT WITH THE AGREEMENT PAPER
HE HAD TO PAY ME BACK. THE PEOPLE
WHO NOTORIZED THE PAPER SAID HE WOULD
GO TO JAIL IF HE DIDNT PAY ME BACK. I
RECIVED NO MONEY FROM HIM

1 A No.

2 Q Where's his mother or sister?

3 A They went back to Texas also.

4 Q Why were they there with him? Do you
5 know?

6 A On vacation with him. He was down there
7 establishing a new life for himself and doing
8 contracting and his mother and sister had flown in and
9 was staying with him. ¹⁻IN HIS UNIT

10 Q Do you know whether he had any business
11 name he was using like Andrews Construction or
12 Robert's, or anything like that?

13 A I know that the construction company that
14 he owned in Texas was -- I'm not sure. I would have
15 to go through my papers. It was Anderson's Painting
16 Company or -- I don't know.

17 Q How long did you know him? You met him,
18 you said, at a casino and then you found out near the
19 end he had gotten you in a mess. How long of a time
20 period was that?

21 A About six months.

2-MET ROBERT IN MARCH CAME
HOME TO BRIGHAM IN MAY SOMETIME

22 Q During that time did you live together?

23 A I lived at the Extended Stay America for
24 about two months while we got to know each other and
25 then I moved in with his mother and sister and him.

3- I MOVED IN THE COMPLEX WITH HIS MOTHER AND SISTER

235

Pg. 16

Line 25

- I MOVED IN THE COMPLEX WITH HIS MOTHER AND SISTER AND HIM. THERE WERE HUNDREDS OF US LIVING TOGETHER THERE. WE ALL SWAM TOGETHER IN THE SAME SWIMMING POOL, USED THE SAME HOT TUB AND THE SAME LAUNDRY FACILITIES. WE ALL GOT OUR MAIL TOGETHER IN A GREAT BIG WALL UNIT, WITH SMALL DOORS WHERE WE USED OUR OWN INDIVIDUAL KEYS TO GET OUR MAIL.

1 Q Did he promise to marry you? Was that ever
2 a conversation?

3 A He brought that up but I didn't want to get
4 married. He tried to get me to sell my home in
5 Brigham City and I wouldn't.

6 Q He wanted that money too?

7 A Yes.

8 Q Do you know of any money or property he had
9 in Las Vegas?

10 A He had property in Texas that he was trying
11 to sell. That's what the first money was to go to was
12 to buy his "ex" out to sell it so we could get the
13 property in Vegas.

14 Q Do you ever remember meeting his wife or
15 talking to his ex-wife, or whoever it was?

16 A ¹⁻ YES, HE WAS ON THE PHONE ALL THE
TIME WITH HER & FLEW TO TEXAS TO SEE HER.

17 Q Did he ever show you any divorce decree
18 papers?

19 A I know he was divorced.

20 Q He showed you papers?

21 A ²⁻ YES. NOT SURE

22 Q If I remember correctly, the interviews you
23 had with your psychologist, Ron sent me copies of
24 that, indicated that you had sexual relations with him
25 and that was part of the devastating part of it. Is

1 that true, did you have sexual relations with him?

2 A Yes.

3 Q Would that be there in the apartment?
1- WHICH APARTMENT? THERE WERE TWO. HIS OR MINE?

4 A Yeah. Sometimes. And sometimes

5 elsewhere.

6 Q About how long of a period did that go on?

7 2- THREE MONTHS
You were there living for ~~four~~ months with the mother

8 and sister, you were living there with them for about

9 THREE
~~four~~ months?

10 3- A No. I was at Extended America for a couple

11 months, or longer, and ~~he~~ ^{JOE} dated me while I was there

12 at Extended America. I didn't move. ^{ROBERT} ~~he~~ courted me

13 over a period of time. In fact, I told him I needed

14 to get back to Utah and he kept talking me into

15 JOE HAD PAID CASH FOR SOME NIGHTS FOR ME
staying. ~~He paid for my bills~~ at Extended America for

16 ~~quite a while.~~ SEE YELLOW PAPER

17 Q I'm trying to figure this out. You said you

18 moved there in September and came home in June, if I

19 remember correctly. You said two months you were at

20 Extended America and then you were -- that's how I got

21 the four months in that time period. I don't know.

22 I'm just trying to find out from you what happened.

23 4- I CAME HOME IN NOVEMBER AND THEN WENT BACK TO CHECK ON CONDO.
A I didn't move into Extended America until

24 October, November. The last of November is when I

25 moved again. 5- JANUARY

Pg. 18

Lines 16

I WAS STAYING AT EXTENDED AMERICA FOR TWO MONTHS OR MORE THEN I WAS SEEING JOE. I DATED HIM FOR A MONTH OR SO. ABOUT THREE OR FOUR NIGHTS A WEEK. HE SHOWED ME LAS VEGAS AND I LOOKED AT CONDOS AND WENT TO UTAH AND BACK. JOE LIVED IN LAS VEGAS AND NEW THE SIGHTS. WE GOT IN A FIGHT AND I BROKE IT OFF, BECAUSE I CAUGHT HIM WITH ANOTHER WOMAN HE HAD BEEN WITH SAME TIME FRAME AS ME. I WAS RESTING AND GETTING READY TO RETURN HOME TO MAKE DECISION OF WHAT OR WHERE I WANTED TO BE. THEN I RAN INTO ROBERTS MOTHER AND HIM. I TOLD THEM I WAS LEAVING AND GOING BACK TO UTAH. ROBERT KEPT TALKING ME INTO STAYING AND I FINALLY LET HIM COURT ME FOR AWHILE. WENT TO UTAH AND RETURNED AND ROBERT STARTED DATING ME FROM EXTEND A STAY AMERICA IN MARCH.

1 Q So from November to June?

2 A I don't remember where I was. I was on
3 Bonanza and another place. I didn't know my way around
4 very well and I needed to get somewhere where I was
5 stable where I could get stable and back on my own. I
6 don't have a very good memory and I had to get
7 somewhere where I, you know, knew where I was at so I
8 went down to Extended America where it was cheaper and
9 I moved into there.

10 Q Can you tell me where you were on Bonanza?
11 Do you remember where it was? Was it a condominium, a
12 motel?

13 A It was an apartment house and it was -- it
14 was like a one room with, you know, you had a little
15 kitchen and a TV and the bedroom was all in one unit.

16 Q Why did you move from the first place to
17 the second place?

18 A Why did I move from the first place?
19 Because it was cheaper.

20 Q Were you living alone in both places?

21 A Yes.

22 Q When you moved in with Robert and his
23 mother and his sister did you ever sign the lease?

24 A No. *1- THERE WAS NO LEASE*

25 Q Did you ever pay the rent?

1- I PAYED NOTHING ON ROBERTS APPARTMENT

1 A No. I was paying on my home in Brigham.

2 Q Did you have a key so you could come and go
3 the way you wanted?

4 A No.

5 Q And always somebody was there to let you
6 in?

7 **2-** A I was mostly with his mother.

BUT TEX HAD A KEY

8 Q Did you go out with Robert and come back
9 with him?

10 **3-** A Yes. **HE LEFT ME OFF AT MY UNIT**

11 Q Did you get mail there?

12 A We all got mail together.

13 Q Did your mail come there too?

14 A Not my mail.

15 Q What about your mail?

16 A My son was helping me with my mail.

17 Q What's his name?

18 A And then after a while he just quit sending
19 it and I didn't get the rest of it until I came home.

20 Q So he was sending it to this address that
21 Robert and his mother and sister were at?

22 A To Extended Stay America.

23 Q Even though you were not living there?

24 A No. It's where he was sending it to.

25 Q But you weren't living there, were you?

cul

1 A Yes.

2 Q Okay. I'm trying to figure this out. You
3 moved there for two months and another apartment on
4 Bonanza. Why did you move in with Robert and his
5 mother and sister?

6 A Because he wanted to get to know me better.

7 Q I assume you had all of your stuff there,
8 you moved all of your clothes?

9 A I didn't have that much with me at all. I
10 had taken very little down with me.

11 Q But what you had was there?

12 A Yeah.

13 Q Did you ever eat meals there?

14 A At the apartment? *1- BOTH APARTMENTS*

15 Q Yes.

16 A Yes.

17 Q With Robert and his mother and sister?

18 A Yes. *WE HAD BARBERQUES IN THE EATING
COMPLEX WITH OTHER NEIGHBORS.*

19 Q When you had sexual relations you said it
20 occurred there among other places, is that right?

21 A I don't feel like I need to answer that.

22 Q I don't really feel comfortable asking it
23 either but I think I need to ask it.

24 MR PERKINS: I think she already answered it.
25 She said there before.

1 Q What finally brought this thing and the
2 relationship with Robert to an end?

3 A Because he was wearing me out but yet he
4 was bringing me up. I finally came to the point where
5 I knew something was wrong, you know, when your
6 instinct tells you that something is not quite right,
7 and I told him I wanted to go home.

8 Q Can you think of anything that he said or
9 did that triggered this other than just an instinct
10 feeling?

11 A I felt like I had been conned.

12 Q The \$49,000, is that what you got out of
13 the retirement when the divorce occurred? Is that
14 where that money came from?

15 A An IRA that my father put my money in.

16 Q Did you have any more money other than your
17 home up here?

18 A No.

19 Q Was he aware of that fact, that he was
20 taking all of your money?

21 A Yes. He had gone through my papers. I
22 didn't realize all this until past tense but he had
23 gone through my papers and I had sat down with him and
24 gone through my medical records so that he knew that I
25 wasn't physically all well because he knew that I was

nu3

1 having a hard time keeping up with him and I wasn't
2 sleeping well and that so I sat down and I let him
3 read my medical records because I felt like he needed
4 to know I wasn't fully normal and I think he took
5 advantage of that.

6 Q When did that occur, when did that sit-down
7 meeting occur?

8 A After I had given him that \$8,000.

9 Q Was this conversation, when you showed him
10 the medical records, at the beginning of the
11 relationship when you moved in with the mother and
12 sister, near the middle, or the end when you knew
13 things were falling apart?

14 A It's after I gave him the eight. I didn't
15 want it to go any further unless he realized and he
16 would accept me for the way I was.

17 Q Was that because you were talking about
18 marriage?

19 A At one point, yes, we were talking about
20 marriage.

21 Q Did you ever exchange rings, or anything
22 like that?

23 A No.

24 Q What did his mother and sister do while
25 they were there? Just sit around the house?

1 A His mother went out with us all the time.
2 She loved me. She thought I was just a sweetheart.
3 She just totally loved me and took me under her wing.

4 Q What did the sister do?

5 A She just backed Robert up saying he was
6 being truthful and honest with me, especially when he
7 took my money. She had gone back to Texas by then but
8 I was kind of in contact on the phone and she said he
9 was good on the paper and he was a nice man and he
10 would pay me back.

11 Q About how old was she?

12 A I have no idea.

13 Q Was she older or younger than Robert?

14 A I'd say younger.

15 Q How old is Robert?

16 A I think he was maybe a couple of years
17 older than me.

18 Q Did he have any children?

19 A One son.

20 Q Did you ever meet him?

21 A Yes. He came down also.

22 Q How long was he there?

23 A For about a month and then he left.

24 Q While he was there did he just sit around
25 and watch TV all day, did he go out to work?

1

A He went out painting. *1- THINK, BUT I
ACTUALLY DON'T KNOW.*

2

Q Did he paint for his dad or did he get a

3

job.

4

A He was painting for the -- I can't remember

5

the names of Robert's -- the guys he was involved with

6

at work but he was painting for them.

7

Q Did Robert actually have a construction

8

company out doing work or was he planning to create

9

one?

10

A He wanted to get -- he was working for

11

someone at the time but he wanted to make his own

12

business, establish his own business, like he had in

13

Texas.

14

Q Did you ever go to the job site where

15

Robert was working?

16

A I went to some housing districts that he

17

showed me, yes.

18

Q Was this after hours or were you there

19

during the daytime?

20

A No, he went with me. *2- ONE TIME DURING THE
DAY, AND REST OF TIMES AFTER HOURS.*

21

Q What kind of a worker was he; was he a

22

carpenter, was he a painter, was he a mason?

23

A A general contractor and painter.

24

Q Did he have any employees working for him?

25

A No. He was working for his -- he had his

1 own business in Texas and then he was working for some.
2 men that worked under him that had moved out to Vegas
3 and then he was working under them out there.

4 Q Was he a member of the union?

5 A I wouldn't know.

6 Q What was he going to do with the \$49,000?

7 A We were going to establish a place there.

8 Q Okay. The two of you were going to build a
9 home?

10 A Yes.

11 Q Did you locate the land where the home was
12 going to be built?

13 A Well, at the time he showed me a model home
14 and he was going to try to get into that.

15 Q And so he wasn't going to build a home,
16 just buy a home? Is that what the \$49,000 was for?

17 A Yeah.

18 Q Did he put up any money?

19 1- A Well, I've got a -- **NO**

20 Q (BY MR. PERKINS) Just answer the question.

21 A He said that I was to help him with the
22 land, the \$16,000 was to go towards the swimming pool,
23 and I had to help with some food. Other than that, he
24 would supply the house and the furniture.

25 Q And when were you planning on moving into

2- NONE OF THIS HAPPENED. ROBERT CONNED ME!

1. this home?

2 A It never happened.

3 Q I realize, Lujean, it didn't happen. When
4 you were talking and you were giving the money and
5 talking about these plans was there a time set when
6 you were going to move into this home?

7 A No.

8 Q I was under the impression initially that
9 you were going to build a home and you said you found
10 a model home you were going to buy. Apparently it was
11 already built and it was just a matter of finalizing
12 the terms and moving in. Am I correct?

13 A He was finishing his job up and getting the
14 money to purchase it and then him and his friend was
15 going to put a swimming pool in for me.

16 Q Is there any document or papers you have at
17 all, cancelled checks for rent or anything, that would
18 tell me where you were first -- I've forgotten the
19 name -- the first place you lived for two months and
20 then you moved to someplace on Bonanza and then moved
21 in with Robert?

22 A I was on Bonanza and I don't remember the
23 name of the place. Somebody would have to take me to
24 Vegas or I'd have to look it up in the phone book or
25 something.

1 Q Did you continue to pay rent on the Bonanza
2 place even though you had moved in with Robert?

3 A No. I went to Extended America.

4 Q That was the first place?

5 A No. That was the second place.

6 Q What was the first place?

7 A I don't know. It was on Bonanza and I
8 don't remember the name of it.

9 Q So you were at Bonanza first?

10 A It was more like an apartment. Extended
11 America was like a motel where it was cheaper.

12 Q So do you remember how long you were at
13 Extended America?

14 A A couple of months, or longer.

15 Q During the time you were in Las Vegas what
16 was happening to your home; was it vacant, did you
17 have people renting it?

18 A My family was taking care of it.

19 Q They were actually living there?

20 A My mother and father was going down and
21 taking care of it for me.

22 Q So, as far as you know, the house was
23 vacant?

24 A Yes, BECAUSE I DROVE HOME ONCE A
MONTH.

25 Q So then you came home in June or July?

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2
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25

A 1- June. MAY

Q I see this document is titled July 7th.

Was this the actual date that he signed the contract

and not the days he gave you the money or is this the

days he gave you the money?

2- HE GAVE ME NO MONEY
HE GAVE ME NO MONEY EVER!

A After I came home and realized I had been

conned. In fact, he was lying to me on the phone

then. Me and my father were going to go down and my

father chickened out because of my mother and I had to

go down and I had a friend that I met in Vegas that

flew in and drove my car down for me. I don't know my

way around so he flew in, drove my car down, and I had

to go find Robert to get this made up.

Q Who is the friend who drove your car down?

A A guy that both me and Robert had met when

we went out that was a good friend of his mother. Him

and his mother knew each other, Robert's mother and

him.

Q Do you know what his name is?

A They called him Tex. That's all I know.

Q And you just got in the car with him and

rode down with him to Las Vegas?

A Yes. And he was trying to help me.

Q And how did you get back? Did you drive?

A I drove back alone.

1 Q How long were you in Las Vegas?

2 A I told my son I was really, really sick and
3 I wasn't sure if I was going to make it home and so
4 Robert paid for me some days to stay there because I
5 was sick and then I finally made it home. 1- AT VIRGIN

6 Q RIVER IN MESQUITE If I remember, you said when you first went
7 down there and had the Fibromyalgia problems it was
8 warm, you could swim, and you really felt pretty good
9 when you first went there. Is my recollection
10 correct?

11 A After I'd been there a while, yeah, I
12 started feeling better. I was swimming every other
13 day, if not every day.

14 Q When did it get worse again? You said you
15 had trouble driving home.

16 A Because he had me on the go all the time
17 and I had to take care of myself. Like when I was at
18 Extended Stay America there for a while I had to stay
19 in one night and take care of myself or I don't rest
20 and then I can go out the next night and do something.
21 I have to take care of myself or else I get in a mess,
22 torment, pain all through my body and my muscles won't
23 relax and I can't go under, I couldn't sleep. So I
24 have to take care of myself.

25 When I seen these videos at home and

1 realized what I've done wrong with Jerald I was
2 determined I was going to be a better person. I
3 thought he was a nice guy and I put what I had learned
4 from these videos into this relationship and I tried
5 to keep up with everything I could but I was pretty
6 well wore out because I couldn't handle or keep up
7 with him.

8 Q Tell me about the videos. What videos are
9 you talking about?

10 A Ellen Creedman, psychological videos on
11 relationships and marriage.

12 Q And when did you get those?

13 A I ordered them after my divorce and
14 listened to them.

15 Q So you didn't take those to Las Vegas? Had
16 you seen them before or did you take them to Las Vegas
17 with you?

18 A No, I didn't take them with me. I just
19 studied them very closely at home to know where him
20 and me had gone wrong.

21 Q I'm still going back -- I've started out
22 where you've lived after your divorce. You said prior
23 to your divorce you went down to Ogden to help a
24 friend. You were asked by her mother to do that?

25 A Yes.

1 Q Did you ever live for any extended period
2 of time over a week outside of your home other than
3 this Las Vegas thing from October until June? Did you
4 live any other places?

5 A You'll have to restate that.

6 Q Did you stay at any other place for an
7 extended period of time of over a week other than this
8 one trip to Las Vegas from roughly October through

9 June? *MAY*

10 A No.

11 Q So you didn't stay in Ogden or any other
12 place other than just a night or two?

13 A I'd go for a night or two.

14 Q Have you dated or been -- I'll use the word
15 emotionally involved -- with any other men other than
16 Robert?

17 A No. Robert was the one that I truly --
18 *2-* because until I was healed I couldn't get over *JERALD* ~~him~~
19 until I went to Vegas.

20 Q I sense by what you are saying that you
21 were prepared to get married to him if he had followed
22 through. Is that a true statement?

23 A Yes.

24 Q Do you have any contact with his mother
25 since July the 7th?

JERALD

1- A No. I had to have my phone cut off when he quit paying me and I haven't heard from him for a year or a couple of years before I had my phone cut off. I had no IRA left because he quit paying me, too. I was living on nothing.

2- JERALD

3- 933.05 EVERY TWO WEEKS GROSS

Q By that you mean when he reduced the ~~\$2,300~~ alimony to \$1,000?

A He totally quit paying me. He didn't pay me for over a year.

4- JERALD

Q Okay. So prior to that time had you received any telephone calls from his mother?

A No. They got to the point where they were laughing at me because I was so devastated in calling them.

Q Do you think the mother was part of a game that they were playing with you?

A YES I think they were sincere in the beginning but I think he got greedy.

5- YES!

Q Did he date any other women, as far as you know?

A No. 6- YES HIS EX-WIFE

Q Let me talk about your health a little bit. You mentioned Fibromyalgia. And I don't want to have a whole history. Since your divorce, could you describe to me your health condition?

1 A Well, when he actually went through with
2 it, it was like I lost half of me. Half of me was
3 gone. And my self-esteem, I just totally lost -- I
4 thought I was going to die. Through the divorce I
5 thought I was going to die.

6 Q I'm sure we've got a Kleenex.

7 A Him and the kids were my whole world and I
8 didn't think he would go through with it. It was just
9 like he might as well cut my arms and legs off.

10 Q What doctors have you seen since the
11 divorce?

12 A Since the divorce I was seeing a
13 psychiatrist, ^{1-CARL}~~Bert~~ Rasmussen, and then I lost my
14 health insurance and I wasn't able to see doctors.

15 Q Do you qualify for Medicaid?

16 A No.

17 Q Do you have any health insurance now?

18 A No.

19 Q How old are you?

20 A Fifty-four. ⁵⁵

21 Q Won't the doctors see you without
22 insurance?

23 A They will see me but they won't examine me
24 or give me tests or anything. They just go by my past
25 records.

1 Q I'd like to know, who is the neurologist?

2 A Dr. Imani.

3 Q And where is he at?

4 A In Ogden.

5 Q How do you spell his name?

6 A I-M-A-N-I.

7 Q Okay. And when's the last time you saw
8 him?

9 A Last Thursday. Two weeks ago, a week ago.
10 I'm not sure.

11 Q How many times have you seen him?

12 A How many times have I seen him? I see him
13 to keep my medicine up.

14 Q What medicine do you take from this doctor?

15 A Imitrex for migraines. They've got me on
16 Paxil, they've got me on --

17 Q What's the Paxil?

18 A -- Klonopin. Paxil is for depression. I
19 was sick. I got sick when my kids were little. I
20 went through a very hard trauma and had shock
21 treatments. Jerald knows all about the history of my
22 health. My health -- I had a hard time keeping the
23 house clean. There was times when I'd have to crash
24 and I'd go for days without sleep. In fact, the last
25 car wreck I got in I hadn't had any sleep and I was

1 taking my daughter shopping.

2 Q Was that before the divorce?

3 A Yes.

4 Q So there's been no car accident since the
5 divorce?

6 A No.

7 Q Are you taking the same medicine now that
8 you were at the end of your marriage?

9 A No. I'm on more.

10 Q More?

11 A Yes.

12 Q What else -- is it Imani?

13 A Dr. Imani.

14 Q What else does he prescribe for you?

15 A He tries to help me with different pain
16 medication to help me.

17 Q Is he treating your Fibromyalgia?

18 A Yes.

19 Q Do you have any other doctors you've seen
20 in the last two years?

21 A Dr. Dibble also.

22 Q What kind of a doctor is he?

23 A A woman's doctor.

24 Q Is he prescribing any medication?

25 A He'll give me samples of Imitrex because he

1 knows I don't have insurance. And he also gives me
2 hormones.

3 Q What's the Imitrex for?

4 A Migraine headaches that I get.

5 Q Did you have migraines during your
6 marriage?

7 A Oh, yeah. Terrible migraines.

8 Q How often do you see Dr. Dibble?

9 A Maybe every six months.

10 Q Is that mainly just to renew your
11 prescriptions or to get samples?

12 A Samples. He loads me up with samples
13 because he feels bad for me because he says there's no
14 wonder I have a brain left because he feels like --
15 you know, yeah, he says after all the shock treatments
16 I had it's no wonder they didn't burn my brain up and
17 he's surprised I can even function.

18 Q What other doctors have you seen in the
19 last couple of years?

20 A That's all.

21 Q Are you seeing a psychiatrist? ²⁻ I CAN'T AFFORD ONE

22 A I did have an emergency hospital that I had
23 to go to. I knew I was sick but I didn't know what
24 was wrong with me and nobody would give me tests. My
25 son and daughter-in-law were living with me and I kept

1 telling them I didn't feel good and then one day I
2 just got so sick and started throwing up and I was in
3 so much pain that I couldn't stand it and I finally
4 relented and I had to be taken to the hospital and
5 they didn't know what was wrong with me. I had blood
6 in my urine and I had pus in my urine and I had no
7 white cells and they wanted to know why I hadn't come
8 in sooner and it was because I didn't have any
9 insurance. I hadn't felt so bad for so long. I
10 didn't know what was wrong with me.

11 Q When did this occur?

12 A I don't know. When my son was living with
13 me.

14 Q Was it here at the Brigham City Hospital
15 you went?

16 A Yes. A couple of years ago.

17 Q Who was the doctor who treated you?

18 A Dr. Hillam.

19 Q What specialty is Dr. Hillam?

20 A The stomach, intestines.

21 Q Did they find out what was wrong with you?

22 A He thought I had cancer in the intestines,
23 or something terribly wrong inside, and they rushed me
24 to a room and did surgery on me and he said my gall
25 bladder had been infected for a long time and poisoned

1 my whole body.

2 Q But it wasn't cancerous?

3 A No.

4 Q Feeling better physically since then?

5 A It took me a while.

6 Q But removing the gall bladder did help?

7 A Oh, yeah.

8 Q The Fibromyalgia is being treated. Are you
9 seeing a psychiatrist?

10 A No. I can't.

11 Q Okay.

12 A I don't have that kind of money.

13 Q When's the last time you saw one?

14 A After my insurance quit.

15 Q After?

16 A In 2000.

17 Q Okay. Have you seen a psychologist as
18 distinguished from a psychiatrist?

19 A I've seen Tom Beesley.

20 Q When's the last time you saw Tom Beesley?

21 A About a year ago.

22 Q Has he ever given you any tests or has he
23 just talked to you?

24 A No. /- YES HE GAVE ME TESTS.
25 talked to Wheelwright, the one that gave me the shock

1 treatments, and just talking to me.

2 Q But has Dr. Beesley given you any tests
3 himself or just talked to you?

4 A Yeah.

5 Q Like what?

6 A I don't know.

7 Q Are you taking any other medication
8 prescribed by Dr. --

9 A Imani?

10 Q Yeah. Or Dr. Dibble. Any other
11 prescriptions you've had other than those two doctors?

12 A I have a list of prescriptions and I can't
13 afford to fill them all.

14 Q Let me ask you about work. Have you ever
15 had a job outside of the home where you were paid for
16 working?

17 A I worked during my kids -- I worked after
18 my son was -- I think my son was two and I went to
19 work for Sears.

20 MR. PERKINS: She has her social security thing
21 that shows what her income has been for the last
22 thirty years.

23 Q Your attorney and I had a discussion about
24 you going and seeing if you qualified for social
25 security. Have you tried that since your ex-husband

1 has retired?

2 A My dad went down to the social security
3 office, and I also went down with Brian Swenson, who's
4 a friend of mine in Ogden, and we couldn't get
5 anywhere. They looked at my work history and told him
6 that I basically didn't qualify for anything. There
7 was nothing they could do for me.

8 Q My understanding is that's correct as long
9 as he's working, where you've been married over ten
10 years and still working, but when he goes on social
11 security then that triggers up your option at that
12 point. My question is: Have you applied since he's
13 gone on social security?

14 MR. PERKINS: That was after we had filed because
15 she went after we had had that discussion. What was
16 that, a year ago, eight months ago? She went after
17 that, I know.

18 Q My understanding, and I could be wrong, is
19 that if you've been married for over ten years and you
20 get a divorce you can access either your own social
21 security or your ex-husband's provided he's retired on
22 social security. You can't while he's still working.

23 A They told me and Brian that I couldn't
24 until I reached the age.

25 Q But I think the question really goes to

1 whether you qualify for disability because of your
2 health condition. You can qualify for social security
3 two ways, one with health conditions and one with
4 age. That's been a concern I have is I think you are
5 eligible for that. I don't know whether you are
6 getting somebody who doesn't know but my experience
7 has been that as long as your ex-husband is working
8 you can't qualify unless you prove you are disabled.
9 As soon as he is retired --

10 A It's not that I didn't want to work. I
11 mean, I tried to go to work after the shock treatments
12 and I couldn't do it. I was going without sleep and
13 my muscles were tight.

14 Q (BY MR. PERKINS) Lujean, he's asking you
15 now about social security, not about work.

16 Q (BY MR. HILLYARD) Yeah. Well, let me go
17 back to the work because that's what I was going to
18 ask you about before. Have you even tried to get a job
19 or just feel like you couldn't do it since the
20 divorce?

21 A I don't feel like I can handle it with my
22 memory and I'm not fast enough. I don't know when I'm
23 going to be able to sleep and when I'm not.

24 Q Do you leave your home very often?

25 A No.

1 Q If you left your home where would you go;
2 visit, shop, go to church, to the park?

3 A I quit shopping because I didn't have any
4 money for over a year. I had to live on hardly
5 nothing. So, no, I don't. I don't get out.

6 Q Well, that money has all been paid, your
7 attorney collected it all back?

8 A Yes. That's helped. I've had to pay some
9 bills with it.

10 Q Do you still have any of that left over?

11 A Some, but not much.

12 Q How much do you have left over?

13 1- A About \$8,000. *3,000.00*

14 Q How much?

15 2- A About eight. *ABOUT 3,000.00*

16 Q How do you support yourself? What are your
17 financial needs and budgets as you are living now?

18 A I don't know what you mean.

19 Q Well, do you have a house payment?

20 A Yeah, I have a house payment.

21 Q How much is your house payment?

22 A \$670.

23 MR. PERKINS: It's gone up then.

24 A I have a fixed rate at eight and a half

25 percent which I get into after

mlh

1 fourteen percent and getting nowhere and my father was
2 yelling at me to make double payments and I couldn't
3 do it.

4 Q Is the home larger than you need?

5 A I got into an eight and a half percent and
6 now it's gone into a variable.

7 Q Is the home larger than you need? How big
8 of a home is it? Does it have a basement? How many
9 bedrooms?

10 A It has two bedrooms -- well, two bedrooms
11 at the moment. I use the other one to keep my stuff.

12 Q I assume you live alone?

13 A Yes.

14 Q How long have you been living alone without
15 any children living with you?

16 A Well, my son lived with me while he was
17 building his home in Hyrum and it hasn't been too long
18 ago.

19 Q Did he pay any rent, or anything?

20 A The agreement was that he would give me
21 \$400 a month but I had to fight -- there's a couple of
22 months that went by he didn't pay me anything. And
23 there's repairs still at the house that ~~he~~ ^{TROY MY SON} did that I
24 still haven't caught up on.

25 Q Have you thought about the possibility of

9/10/5

1 selling the home and taking the equity and moving into
2 a smaller condo or something that's easier to handle
3 and not as large and then using that money to help
4 support yourself?

5 MR. PERKINS: The problem is there's no real
6 equity because of the loan and everything. That's the
7 big problem.

8 Q Tell me about that. As I read the divorce
9 decree you had the option to buy him out, as I
10 remember correctly, so there was some equity at the
11 time. You may have borrowed some money to pay him off
12 but that still should have left an equal amount of
13 equity for you. What happened to it?

14 A It went into the home. I owed \$69,000 when
15 I got the home and I got into a fourteen percent
16 interest rate and my father took my money and put it
17 in an IRA, which was a utilities fund stock market
18 type thing, and then he kept trying to make me make
19 double payments. *1- ON HOUSE*

20 Q I know I don't remember the numbers but the
1 concept is basically this: The two of you had a home
2 that was worth a certain amount and there was a
3 mortgage on the home less than the full amount. The
4 difference between that mortgage and the value of the
5 home is the equity that the two of you split so you

1 borrowed enough money to pay off half of the equity
2 and that would have left some equity above that for
3 you. What I'm trying to find out is what happened to
4 that equity that you would have had in the home?

5 A All I know is that it all went into the
6 home. The guy that managed the loan is the one that
7 dealt with Jerald. I had nothing to do with it.

8 MR. PERKINS: She just always tells me that
9 there's no equity in the home.

10 Q (BY MR. PERKINS) How much do you owe on the
11 home now?

12 MR. HILLYARD: She said sixty-nine.

13 A No. That's what I owed on it before. I owe
14 more than that now. I owe about \$71,000.

15 Q (BY MR. HILLYARD) What's the home worth?

16 A About one hundred.

17 Q Okay. And I just raised that -- I assume
18 you could live in a condo for less than \$670 a month
19 and not have the risk of a variable interest rate
20 changing on you.

21 A I don't have no credit.

22 Q Does your home have, where you are now
23 living, have a yard you have to keep up?

24 A Yes.

25 Q How do you do that?

1 A I have someone hired that comes in and mows
2 the grass.

3 Q Do you water your lawn?

4 A Yes.

5 Q So you do that?

6 A Yes.

7 Q What about the rosebeds or flowerbeds or
8 things around the house, do you keep those up?

9 A Somewhat. There's really not much to keep
10 up. Everything is dying.

11 Q You've told me you have the house payment,
12 which is six hundred and something dollars, what else
13 do you have to pay each month?

14 MR. PERKINS: She did a monthly expense exhibit
15 and it hasn't changed very much since we did that.
16 Bob Phillips was originally representing Jerald and I
17 don't know if you've got a copy of that or not.

18 Q So you are telling me the financial exhibit
19 you gave to Bob Phillips is about the same as now?

20 A Yes.

21 MR. PERKINS: This is my copy, if you want to
22 look at it. And also the next page, I think, is the
23 prescriptions -- or the page after that.

24 MR. HILLYARD: Okay.

25 MR. PERKINS: I think she said her health payment

1 is six seventy-two now, or something like that. So
2 it's more now than it was then.

3 MR. HILLYARD: You show on here installment
4 payments of one hundred and twenty-one a month. What's
5 that for?

6 MR. PERKINS: Next page.

7 MR. HILLYARD: What's the date of this?
8 Dr. Hillam in Brigham City, an anesthetist, is the
9 biggest on that.

10 MR. PERKINS: Probably the gall bladder surgery.

11 A Yeah.

12 Q You are telling me you can't afford this
13 medication list even when you were getting the ~~\$2,300~~
14 a month? *1,866.10*
GROSS

15 A I go up and get what I can get filled,
16 yeah.

17 Q Is it Dr. Dibble then that helps you with
18 the samples?

19 A Yes.

20 Q Do you know how much money you still have
21 in your IRA account after the \$49,000?

22 A I have no IRA. It is gone.

23 MR. PERKINS: She cashed that in in order to live
24 when she wasn't getting any alimony.

25 A That's what I lived on.

1 Q How much was left?

2 A I had \$6,000 and I took it out.

3 Q It's not in an IRA?

4 MR. PERKINS: Right.

5 Q If Jerald were to pass away and you would

6 have no alimony coming in how would you support

7 yourself?

8 A I don't know. I keep hoping my father will

9 help me but so far he hasn't.

10 Q Any church or charitable help at all?

11 A No.

12 Q What kind of a car do you have?

13 A 1988 Buick.

14 Q I assume you do drive that?

15 A Yes.

16 Q Even with the migraine headaches and

17 problems?

18 A I have to keep my medicine.

19 Q How far is it from your home to the

20 pharmacy?

21 A I go down to Shopko.

22 Q How many children do you have?

23 A I have two.

24 Q And where are they living?

25 A I do drive to Kamas. I've gone down and

1 helped my daughter with her children.

2 Q She lives In Kamas?

3 A Yes.

4 Q Where does the other child live?

5 A In Hyrum. My son.

6 MR. HILLYARD: Let me take a break and visit with
7 Jerald for just a minute.

8 (BREAK)

9 MR. HILLYARD: I'm done.

10 (WHEREUPON THE DEPOSITION WAS CONCLUDED AT 3:25 P.M.)

11 * * *

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I BELIVE ROBERT WAS ACTUALLY
MARRIED AND I WOULD LIKE TO
SUBMIT THESE CARDS AS EVDIENCE
FROM HIS WIFE.

Tab 4

**IN THE FIRST JUDICIAL DISTRICT COURT,
IN AND FOR BOX ELDER COUNTY, STATE OF UTAH**

JERALD F. JENSEN,

Petitioner,

vs.

LUJEAN C. JENSEN,

Respondent.

MEMORANDUM DECISION

Case Number: 964100113

JUDGE: GORDON J. LOW

This matter is a result of a Petition and an Amended Petition to Modify Decree of Divorce. The Decree was originally entered April 11, 1997 and provides in paragraph nine that the Respondent was awarded the sum of \$2,150.00 per month as alimony, equal to one half of the net proceeds of the Petitioner's salary and certain farmland rental income. The Respondent was also awarded half of the Petitioner's ESIP fund and her *Woodward* share of the Petitioner's pension plan. The Petitioner at that time was employed at Thiokol and his income was \$4,400.00 per month. Recognizing that this had been a 25 year marriage, the Court found that the Respondent was unemployed, in need of therapy, and that the parties' monthly expenses were about equal. The Court further found that the Respondent was not capable of working at that time, therefore no income was imputed to her. Other orders were made with respect to properties, both real and personal, and an effort was made to equalize those values.

The Petitioner filed a Verified Petition for the Modification of Decree of Divorce, suggesting a change in circumstances resulting from his retirement on January 14, 2004. An

Order to Show Cause was filed and an Order on Order to Show Cause was issued by the Court on the 20th day of January, 2005, temporarily modifying the alimony award from \$2,150.00 to \$1,000.00 per month. During that interim the farmland was sold, so any rental income therefrom, payable to either party, has been terminated.

Commensurate with the Petitioner's portion of his pension plan, the Petitioner receives the sum of \$1,994.00 per month. In addition, he currently receives \$1,710.00 per month from Social Security. Meanwhile, Respondent's *Woodward* share of retirement is \$676.00 per month, she receives no other Social Security and her only other source of income is the \$1,000.00 per month alimony under the Order on Order to Show Cause.

On December 2, 2005, the Petitioner filed an Amended Petition to Modify Decree of Divorce, alleging not only the change of circumstances relative to his retirement but also that the alimony should be terminated on the basis that the Respondent cohabitated since the divorce with another man. A trial on this matter was conducted on April 12, 2006, wherein testimony from both parties was received.

Analysis

The issues before this Court are as follows:

- (1) Should the Respondent's alimony be terminated because Respondent cohabited with another?
- (2) If there has not been cohabitation, is the change in circumstances relative to the Petitioner's retirement sufficient to modify the decree and, if so, what are the needs and abilities of the parties and what is a reasonable sum, if any, to be awarded?
- (3) Should any income be imputed to the Respondent and is she able to earn income?

(4) In that the Petitioner receives Social Security benefit, as he is now reached 65 years of age and Respondent receives none, although the bulk of the Social Security benefits to which the Petitioner is now the beneficiary were earned during the 25 year marriage, should the Respondent be awarded a share of Petitioner's Social Security? Or, stated alternatively, should Petitioner's income be considered income for alimony purposes?

Under UCA 30-3-5(10);

Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.

In order to determine whether a party is cohabiting with another, Utah case law requires two key elements be present, "common residency and sexual contact evidencing a conjugal association."

Haddow v. Haddow, 707 P.2d 669, 673 (Utah 1985).

With respect the common residency requirement, "common residency means the sharing of a common abode that both parties consider their principal domicile for more than a temporary or brief period of time." *Id.*

Utah courts have considered various factors to determine whether a couple shares a common residents. These include: open access to the residence, possession of a key, time spent at the residence, using the same furniture, keeping clothing and toiletries at the residence, presence of vehicles, shared living expenses, and otherwise living as though they were husband and wife.

Sursa v. Sursa, 2005 UT App 282.

Here, the evidence before this Court is that sometime in late 1999 or early 2000, the Respondent went to Las Vegas, Nevada to, among other things, explore the possibility of moving there. Respondent moved first to a hotel and then to a certain condo in Las Vegas. Shortly thereafter, Respondent became associated with a man named Robert Andrews. Then, sometime

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in late March of 2000, Respondent moved into a home as a “guest” with Mr. Andrews, his sister, and his mother, and stayed there off and on for a period of two months. Reportedly, Respondent would live with the Andrews for various intervals and move out at other times, continually maintaining her Brigham City residence with the help of certain family members. Specifically, Respondent testimony was un-rebutted that while sojourning in Las Vegas, Respondent returned to Brigham City each month with respect to affairs here, including her prescriptions, and eventually she decided not to stay in Las Vegas. Further, it is not controverted that while staying at the Andrews’ home the Respondent did not have a key, she had only some of her clothing and toiletries, and that she was, at most, planning on moving into a new home with Mr. Andrews. Although testimony is exclusively from the Respondent relative to her stay in Las Vegas, the Court, in the review of the case, does not find sufficient evidence to support the residency requirement of cohabitation for purposes of terminating alimony. The Court, therefore, does not need address the sexual contact aspect of cohabitation.

Looking next at the petition for modification, the Court notes that pursuant to UCA § 30-3-5(8)(g),

[t]he Court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

Utah case law further requires that in an action for modification of alimony payments, the court must enter written findings of fact and conclusions of law with regard to the financial and

property interest and circumstances of the parties *Montoya v. Montoya*, 696 P 2d 1193 (Utah 1985) Additionally, a party's retirement or receipt of social security, unless expressly foreseen at the time of the divorce, may amount to a substantial material change of circumstances entitling the petitioner to a determination of whether the alimony should be modified *Bolliger v. Bolliger*, 2000 UT App 47, ¶21

In this case, the only testimony before this Court relative to the Respondent's ability to work and earn income is unchanged since the initial divorce decree, in that during the marriage she worked very little to almost none since her shock therapy treatments in 1987 Her Social Security record reflects that after 1967 she has earned \$210 00 for a two year period Essentially, she was not employed during the entirety of the 25 year marriage Because she was not employed during her marriage, she does not independently qualify for Social Security Income or Social Security benefits When she reaches sixty-three years of age, she will arguably qualify for benefits under the Petitioner's Social Security benefits Respondent did try to gain employment a couple of times but was unable to manage it Further, Respondent's medical conditions, by her un-rebutted testimony, are that she is in worse physical health now than she was in 1997 when the Court originally found her unable to work Her medical symptoms include short-term and long-term memory loss, change of personality, fibromyalgia, headaches, circulation problems, anxiety, paranoia, hip and knee joint problems, weak lungs, bowel problems, sciatic nerve problems, ringing in her ears, light sensitivity with headaches (both muscle and migraine), nasal and breathing difficulties, stiffness in her muscles causing her to fall down on occasion, aching hands, and insomnia Again, the testimony is, and the Court would have to find from that testimony, that

her physical condition is worse than it was at the time of the divorce at which time the Court found that she was unable to work.

The Court therefore finds now, based on the evidence, that she is still unable to work and no income will be imputed to her. The Court notes in this regard, that no evidence was presented to rebut the physical problems with which she testified. There was no rehabilitation expert testimony, no medical testimony, no employment specialist testimony, and nothing from Social Security or State Rehabilitation. The Court only has the testimony of the Respondent relative to her ability to work and her income, and makes the findings therefrom.

Further, with respect to abilities, the Court finds that the Petitioner is also retired and unable to be employed, but does have income of \$1,994.00 as his retirement, which includes both his *Woodward* formula split as well as augmentation by the fact that he was employed, by the same employer, before the marriage and continued after the divorce for some seven years. He also receives \$1,710.00 per month in Social Security. Petitioner continues to maintain his \$70,000.00 split of the 401K, plus all of the proceeds from the sale of the land, which has been invested or saved, and he has not drawn from his 401K, which has now been converted to an IRA, but that is invested with an investment company apparently at 12% interest per annum. Thus, Petitioner has available to him, by way of income, the proceeds from the sale of land, apparently in excess of \$50,000.00 (although the testimony was confusing and inadequate in that regard), his 401K converted into an IRA (from which no draws have been made), and \$3,704.00 income from retirement and social security per month. The Respondent, on the other hand, has only \$676.00 per month from her share of the retirement.

Some criticism is voiced relative to the fact that Respondent lost her income, which she might have received by investing her share of the 401K proceeds, by being affectionately involved with Mr. Andrews and in having it swindled from her. On the other hand, the Petitioner has been conservative and has managed his monies and assets very carefully. It should be noted that *Bolliger* asserts that it is good public policy to not only consider Social Security as income but also whether receipt of Social Security alters the parties' financial conditions and obligations. 2000 UT App 47, ¶19. Here, Petitioner worked for seven years after the divorce at a higher salary than ever before. In fact, he retired either at \$53,000.00 a year or \$68,000.00, though that information was entirely unclear. Petitioner also received one half of the rents and was able to otherwise conserve his assets. The Court notes that Petitioner's income since the retirement has also been remarkable in that he has had the full benefit of all Social Security that he received and the Respondent receives none.

During 2004 Petitioner failed to pay alimony, and a judgment was entered on an Order to Show Cause resulting in a garnishment in which checks were apparently cashed in late 2004 or early 2005. Whatever was left on the 401K split, the Respondent has spent to augment her living, and has been unable to save that, whereas the Petitioner has been able to do so, recognizing that for seven of the nine years, his income has been remarkably higher. Now he receives the entirety of the Social Security, hence his income is \$3,704.00 per month without drawing anything from his IRA. He also has the proceeds of the sale of land, which was his independently, separate and apart from the marriage, but that is a benefit that he has and it is not available to the Respondent.

Both parties presented evidence relative to their monthly needs, and with respect to the Petitioner, his was extremely confusing. He is unable to remember and the Court can make very little of what has been received. His expenses were unsupported entirely by documentation, as was the Respondent's, but a rather uninformed review, and that is all that was provided to the Court, is that the sum of \$3,449.00 is more than sufficient to must his needs. That is based on not only the bank records indicating he lives on considerably less, but also what this Court deems reasonable. For example, he does not have \$150.00 in rent payments, as reflected on exhibit 3, and has no rent payments and no mortgage payments since it has all been paid off. The Court will accept the property taxes, property insurance and the maintenance, although that is all extremely general. With respect to food, Petitioner lists his monthly expense as \$300.00 or \$450.00 with household supplies. The Court would suggest that is remarkably high for one person, particularly given in comparison to the Respondent's, which is at least \$150.00 less based upon her Exhibit #5. The Court will accept the incidentals, the utilities, including cable, although the phone seems high, and these amenities are expenses that the Respondent does not have and apparently cannot afford. Petitioner's clothing allowance is higher than Respondent's, at \$80.00, as is the laundry, and the Court would note with respect to medical, there is considerable confusion in his testimony with respect to the same. It would appear that the \$540.00 scheduled would be more in the area of \$280.00, even though that may still be decreased with the availability of a new prescription plan from the federal government.

The evidence is simply too lacking to make adequate finds with respect to dental, life and health insurance, the Court notes that Petitioner has expenses of which the Respondent is unable

to afford, including health care and entertainment. The Court questioned the Petitioner relative to his \$300.00 in gas and auto repairs, and suggests that Petitioner is high by probably as much as \$200.00. The Petitioner was unable to explain the \$78.00 installment payments, but did indicate that there was \$700.00 for income taxes. It would seem that unless that figure reflects income from other sources other than Social Security and retirement, he is probably at least \$200.00 high. The Court therefore suggests that though these may be the kind of expenses he would generally be used to incurring, they certainly are remarkably higher in some fashions than those of the Respondent, and that they might reasonably be reduced, considering the parties' relative comparable needs and abilities, by \$1,000.00, which appears to this Court more reasonable given the evidence before it.

With respect to the Respondent, her rent payment is \$710.00 and she is unable to pay that off because she does not have the ability to do so without independent monies. Her other expenses seem comparatively conservative, but her total expenses are \$1,963.00 plus almost \$900.00 in medical expenses. Some of those, again, are also provided for by a government plan, but she has no health insurance to assist her in paying for the same, and therefore, her needs are \$2,862.69.

Utilizing the above findings, the Court finds that the Petitioner's abilities, in light of his lifestyle both before divorce and since, actually exceed his needs, especially given other resources available to him including separate funds received from the sale of property, interest thereon, and his IRA. It also strikes this Court as being inequitable that the Social Security benefit received by

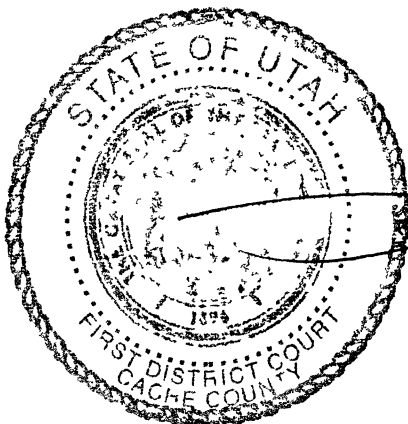
the Petitioner, the vast majority of which was earned during the marriage, is payable only to him from which she receives no present benefit.


Based thereon, the Court would find that the Petitioner's abilities exceed his needs by more than \$1,000.00, not even taking into consideration his abilities to draw out of his IRA account and other savings and resources from the sale of property. In contrast, the Respondent's needs far exceed her income of \$676.00. As such, the Order reducing the \$2,150.00 originally awarded to \$1,000.00 still proves inadequate. The Court therefore awards the Respondent the sum of \$1,500.00 as and for alimony. The Court notes that when the Respondent reaches 63 years of age, assuming her employment conditions do not improve, she would then possibly be the beneficiary of some Social Security and there should be, perhaps, another modification of this award should other conditions warrant the same.

Counsel for the Respondent is instructed to prepare a formal findings and order in conformance herewith.

Dated this 27th day of April, 2006.

BY THE COURT.




Judge Gordon J. Low
First District Court

CERTIFICATE OF NOTIFICATION

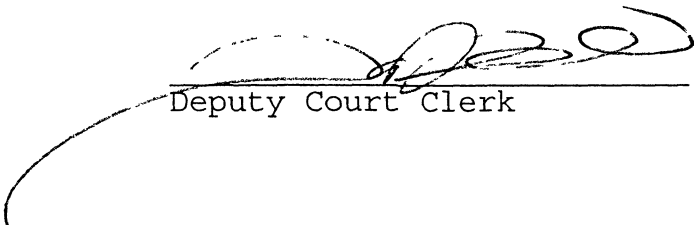
I certify that a copy of the attached document was sent to the following people for case 964100113 by the method and on the date specified.

METHOD NAME

Mail LYLE W HILLYARD
 ATTORNEY PLA
 175 E 100 N
 LOGAN, UT 84321

Mail RONALD W PERKINS
 ATTORNEY DEF
 HISTORIC BEN LOMOND HOTEL
 2510 WASHINGTON BLVD STE 200
 OGDEN UT 84401

Dated this 27 day of April, 2006.


Deputy Court Clerk

Tab 5

Ronald W. Perkins #2568 of
RONALD W. PERKINS P.C.
Attorney for Respondent
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2510 Washington Blvd. Suite 200
Ogden, UT 84401
Telephone (801) 621-6546

IN THE FIRST JUDICIAL DISTRICT COURT OF BOX ELDER COUNTY

STATE OF UTAH

JERALD F. JENSEN,	/	
Petitioner	/	FINDINGS OF FACT AND CONCLUSIONS OF LAW
vs.	/	
LUJEAN JENSEN,	/	Civil No. 964000113 DA
Respondent.	/	Judge: Gordon J. Low

THIS MATTER having come on regularly for trial on the Petitioner's Petition to Modify on the 12th day of April, 2006, before the Honorable Gordon J. Low, with the Petitioner being personally present and represented by his Attorney, Lyle W. Hillyard; and the Respondent being personally present and represented by her Attorney, Ronald W. Perkins. The parties having been sworn and testified and exhibits having been received by the Court and the Court having taken the matter under advisement and having issued its Memorandum Decision and the Court being fully advised in the premises hereby enters the following:

FINDINGS OF FACT

1. The Decree of Divorce was originally entered April 11, 1997 and provides in paragraph nine that the Respondent was awarded the sum of \$2,150.00 per month as alimony, equal to one half of the net proceeds of the Petitioner's salary and certain

farmland rental income.

2. The Respondent was also awarded half of the Petitioner's ESIP fund and her Woodward share of the Petitioner's pension plan.

3. The Petitioner at that time was employed at Thiokol and his income was \$4,400.00 per month.

4. Recognizing that this had been a 25 year marriage, the Court found that the Respondent was unemployed, in need of therapy, and that the parties' monthly expenses were about equal.

5. The Court further found that the Respondent was not capable of working at that time, therefore no income was imputed to her.

6. The Petitioner filed a Verified Petition for the Modification of Decree of Divorce, suggesting a change in circumstances resulting from his retirement on January 14, 2004.

7. An Order to Show Cause was filed and an Order on Order to Show Cause was issued by the Court on the 20th day of January, 2005, temporarily modifying the alimony award from \$2,150.00 to \$1,000.00 per month.

8. During that interim the farmland was sold, so any rental income therefrom, payable to either party, has been terminated.

9. Commensurate with the Petitioner's portion of his pension plan, the Petitioner receives the sum of \$1,994.00 per month and in addition, he currently receives \$1,710.00 per month from Social Security.

10. Respondent's Woodward share of retirement is \$676.00 per month and she receives no other Social Security and her only other source of income is the \$1,000.00 per month alimony she has been receiving pursuant to the Order on Order to Show Cause.

11. On December 2, 2005, the Petitioner filed an Amended Petition to Modify Decree of Divorce, alleging not only the change of circumstances relative to his retirement but also that the alimony should be terminated on the basis that the Respondent cohabitated since the divorce with another man.

12. The evidence before this Court is that sometime in late 1999 or early 2000, the Respondent went to Las Vegas, Nevada to, among other things, explore the possibility of moving there.

13. Respondent moved first to a hotel and then to a certain condo in Las Vegas and shortly thereafter became associated with a man named Robert Andrews.

14. Sometime in late March of 2000, Respondent moved into a home as a "guest" with Mr. Andrews, his sister, and his mother, and stayed there off and on for a period of two months.

15. Respondent would live with the Andrews for various intervals and move out at other times, continually maintaining her Brigham City residence with the help of certain family members.

16. Specifically, Respondent testimony was un-rebutted that while sojourning in Las Vegas, Respondent returned to Brigham City each month with respect to affairs here, including her prescriptions, and eventually she decided not to stay in Las Vegas.

17. Further, it is not controverted that while staying at the Andrews' home the Respondent did not have a key, she had only some of her clothing and toiletries, and that she was, at most, planning on moving into a new home with Mr. Andrews.

18. Although testimony is exclusively from the Respondent relative to her stay in Las Vegas, the Court, in the review of the case, does not find sufficient evidence to support the residency requirement of cohabitation for purposes of terminating alimony and therefore the Court does not need address the sexual contact aspect of cohabitation.

19. Looking next at the petition for modification, the Court notes that pursuant to UCA § 30-3-5(8)(g), the Court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce. The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action. Utah case law further requires that in an action for modification of alimony payments, the court must enter written findings of fact and conclusions of law with regard to the financial and property interest and circumstances of the parties.

20. A party's retirement or receipt of social security, unless expressly foreseen at the time of the divorce, may amount to a substantial material change of circumstances

21. In this case, the only testimony before this Court relative to the Respondent's ability to work and earn income is unchanged since the initial divorce decree, in that during the marriage she worked very little to almost none since her shock therapy treatments in

1987 and her Social Security record reflects that after 1967 she has earned \$210.00 for a two year period.

22. Essentially, Respondent was not employed during the entirety of the 25 year marriage and because she was not employed during her marriage, she does not independently qualify for Social Security Income or Social Security benefits and when she reaches sixty-three years of age, she will arguably qualify for benefits under the Petitioner's Social Security benefits.

23. Respondent did try to gain employment a couple of times but was unable to manage it.

24. Respondent's medical conditions, by her unrebutted testimony are that she is in worse physical health now than she was in 1997 when the Court originally found her unable to work.

25. Respondent's medical symptoms include short-term and long-term memory loss, change of personality, fibromyalgia, headaches, circulation problems, anxiety, paranoia, hip and knee joint problems, weak lungs, bowel problems, sciatic nerve problems, ringing in her ears, light sensitivity with headaches (both muscle and migraine), nasal and breathing difficulties, stiffness in her muscles causing her to fall down on occasion, aching hands, and insomnia.

26. The Court finds from that testimony that her physical condition is worse than it was at the time of the divorce at which time the Court found that she was unable to work.

27. The Court therefore finds based on the evidence that Respondent is still unable to work and no income will be imputed to her.

28. The Court finds that the Petitioner is also retired and unable to be employed, but does have income of \$1,994.00 as his retirement, which includes both his *Woodward* formula split as well as augmentation by the fact that he was employed, by the same employer, before the marriage and continued after the divorce for some seven years.

29. The Petitioner also receives \$1,710.00 per month in Social Security benefits

30. Petitioner continues to maintain his \$70,000.00 split of the 401K, plus all of the proceeds from the sale of the land, which has been invested or saved, and he has not drawn from his 401K, which has now been converted to an IRA, but that is invested with an investment company apparently at 12% interest per annum.

31. The Petitioner has available to him, by way of income, the proceeds from the sale of land, apparently in excess of \$50,000.00 (although the testimony was confusing and inadequate in that regard), his 401K converted into an IRA (from which no draws have been made), and \$3,704.00 income from retirement and social security per month

32. The Court notes that Petitioner's income since the retirement has also been remarkable in that he has had the full benefit of all Social Security that he received and the Respondent receives none.

33. The Respondent, on the other hand, has only \$676.00 per month from her share of the retirement.

34. During 2004 Petitioner failed to pay alimony, and a judgment was entered

on an Order to Show Cause resulting in a garnishment in which checks were apparently cashed by Respondent in late 2004 or early 2005 and whatever funds were left on the 401K split, the Respondent has spent to augment her living, and has been unable to save whereas the Petitioner has been able to do so, recognizing that for seven of the nine years, his income has been remarkably higher.

35. The Petitioner now receives the entirety of the Social Security, hence his income is \$3,704.00 per month without drawing anything from his IRA and Petitioner also has the proceeds of the sale of land, which was his independently, separate and apart from the marriage, but that is a benefit that he has and it is not available to the Respondent.

36. Both parties presented evidence relative to their monthly needs, and with respect to the Petitioner, his was extremely confusing

37. The Petitioner's expenses were unsupported entirely by documentation, as was the Respondent's, but a rather uninformed review, and that is all that was provided to the Court, is that the sum of \$3,449.00 is more than sufficient to must his needs

38. That is based on not only the bank records indicating he lives on considerably less, but also what this Court deems reasonable. For example, Petitioner does not have \$150.00 in rent payments as reflected on exhibit 3 and has no rent payments and no mortgage payments since it has all been paid off.

39. The Court will accept the property taxes, property insurance and the maintenance, although that is all extremely general.

40. The petitioner with respect to food lists his monthly expense as \$300.00 or

\$450.00 with household supplies.

41. The Court finds that is remarkably high for one person, particularly given in comparison to the Respondent's, which is at least \$150.00 less based upon her Exhibit #5.

42. The Court accepts the incidentals, the utilities, including cable, although the phone seems high, and these amenities are expenses that the Respondent does not have and apparently cannot afford.

43. The Petitioner's clothing allowance is higher than Respondent's at \$80.00, as is the laundry, and the Court finds with respect to his medical, there is considerable confusion in his testimony with respect to the same.

44. It would appear that the Petitioner's scheduled \$540.00 would be more in the area of \$280.00, even though that may still be decreased with the availability of a new prescription plan from the federal government.

45. The evidence is simply too lacking to make adequate findings with respect to dental, life and health insurance and the Court notes that Petitioner has expenses of which the Respondent is unable to afford, including health care and entertainment.

46. The Court questioned the Petitioner relative to his \$300.00 in gas and auto repairs, and suggests that Petitioner is high by probably as much as \$200.00.

47. The Petitioner was unable to explain the \$78.00 installment payments, but did indicate that there was \$700.00 for income taxes. It would seem that unless that figure reflects income from other sources other than Social Security and retirement and Petitioner is probably at least \$200.00 high in that regard.

48. The Court therefore finds that though these may be the kind of expenses he would generally be used to incurring, they certainly are remarkably higher than those of the Respondent and that they might reasonably be reduced considering the parties' relative comparable needs and abilities by \$1,000.00 which appears to this Court more reasonable given the evidence before it.

49. With respect to the Respondent, her rent payment is \$710.00 and she is unable to pay that off because she does not have the ability to do so without independent monies.

50. Her other expenses seem comparatively conservative, but her total expenses are \$1,963.00 plus almost \$900.00 in medical expenses.

51. Some of those, again, are also provided for by a government plan, but she has no health insurance to assist her in paying for the same, and therefore, her needs are \$2,862.69.

That from the above and forgoing Findings of Fact the Court arrives at the following:

CONCLUSIONS OF LAW

1. The Court in utilizing the above findings, finds that the Petitioner's abilities in light of his lifestyle both before divorce and since, actually exceed his needs, especially given other resources available to him including separate funds received from the sale of property, interest thereon, and his IRA.

2. It also strikes this Court as being inequitable that the Social Security benefit

received by the Petitioner, the vast majority of which was earned during the marriage, is payable only to him from which she receives no present benefit

3. The Court based upon the Petitioner's abilities concludes his needs are exceed by more than \$1,000.00 without even taking into consideration his abilities to draw out of his IRA account and other savings and resources from the sale of property.

4. The Respondent's needs in contrast far exceed her income of \$676.00

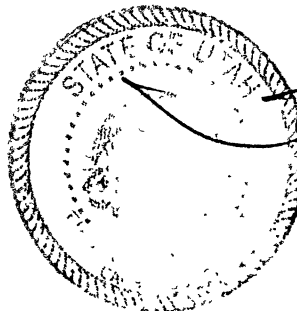
5. The Order reducing the \$2,150.00 originally awarded to \$1,000.00 pending final determination by the Court is inadequate alimony to Respondent

6. The Court therefore awards the Respondent the sum of \$1,500.00 as and for alimony.

7. The Court notes that when the Respondent reaches 63 years of age, assuming her employment conditions do not improve, she would then possibly be the beneficiary of some Social Security and there should be, perhaps, another modification of this award should other conditions warrant the same.

DATED this 12 day of ^{June}~~May~~, 2006.

BY THE COURT



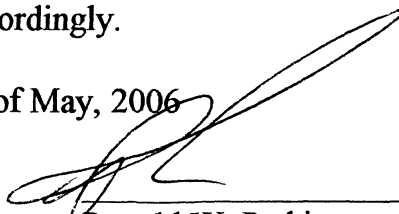
GORDON J. LOW
District Court Judge

NOTICE TO PETITIONER

TO THE ABOVE NAMED PETITIONER:

You will please take notice that pursuant to Rule 7 of the Utah Rules of Civil Procedure, you have five (5) days from the date of this Notice to file a written objection with the District Court clerk. Failure to do so will result in the order being signed by a District Court Judge. Govern yourself accordingly.

DATED this 8 day of May, 2006



Ronald W. Perkins
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certified that on the 8 day of May, 2006, a copy of the foregoing Findings of Fact and Conclusions of Law was served by mailing postage prepaid to Lyle W. Hillyard, Attorney for Petitioner at 175 East First North, Logan Utah 84321



SECRETARY.

Tab 6

Ronald W. Perkins #2568 of
RONALD W. PERKINS P.C.
Attorney for Respondent
Historic Ben Lomond Hotel
2510 Washington Blvd. Suite 200
Ogden, UT 84401
Telephone (801) 621-6546

IN THE FIRST JUDICIAL DISTRICT COURT OF BOX ELDER COUNTY

STATE OF UTAH

JERALD F. JENSEN,	/	ORDER OF MODIFICATION
Petitioner	/	
vs.	/	
LUJEAN JENSEN,	/	Civil No. 964000113 DA
Respondent.	/	Judge: Gordon J. Low

THIS MATTER having come on regularly for trial on the Petitioner's Petition to Modify on the 12th day of April, 2006, before the Honorable Gordon J. Low, with the Petitioner being personally present and represented by his Attorney, Lyle W. Hillyard; and the Respondent being personally present and represented by her Attorney, Ronald W. Perkins. The parties having been sworn and testified and exhibits having been received by the Court and the Court having taken the matter under advisement and having issued its Memorandum Decision and the Court being fully advised in the premises and having made its Findings of Fact and Conclusions of Law, separately stated and in writing, and good cause appearing therefor, does make and enter the following Order:

IT IS HEREBY ORDERED ADJUDGED AND DECREED as follows:

1. The Court in utilizing the above findings, finds that the Petitioner's abilities

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in light of his lifestyle both before divorce and since, actually exceed his needs, especially given other resources available to him including separate funds received from the sale of property, interest thereon, and his IRA.

2. It also strikes this Court as being inequitable that the Social Security benefit received by the Petitioner, the vast majority of which was earned during the marriage, is payable only to him from which she receives no present benefit

3. The Court based upon the Petitioner's abilities concludes his needs are exceed by more than \$1,000.00 without even taking into consideration his abilities to draw out of his IRA account and other savings and resources from the sale of property.

4. The Respondent's needs in contrast far exceed her income of \$676.00

5. The Order reducing the \$2,150.00 originally awarded to \$1,000.00 pending final determination by the Court is inadequate alimony to Respondent

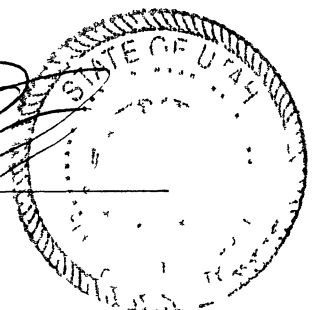
6. The Court therefore awards the Respondent the sum of \$1,500.00 as and for alimony.

7. The Court notes that when the Respondent reaches 63 years of age, assuming her employment conditions do not improve, she would then possibly be the beneficiary of some Social Security and there should be, perhaps, another modification of this award should other conditions warrant the same.

DATED this 12 day of ^{June}~~May~~, 2006.

BY THE COURT

GORDON J. LOW
District Court Judge

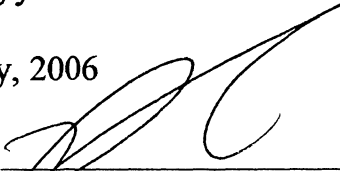


NOTICE TO PETITIONER

TO THE ABOVE NAMED PETITIONER:

You will please take notice that pursuant to Rule 7 of the Utah Rules of Civil Procedure, you have five (5) days from the date of this Notice to file a written objection with the District Court clerk. Failure to do so will result in the order being signed by a District Court Judge. Govern yourself accordingly.

DATED this 8 day of May, 2006



Ronald W. Perkins
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certified that on the 8 day of May, 2006, a copy of the foregoing Order of Modification was served by mailing postage prepaid to Lyle W. Hillyard, Attorney for Petitioner at 175 East First North, Logan Utah 84321



SECRETARY.

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Tab 7

30-3-5. Disposition of property -- Maintenance and health care of parties and children -- Division of debts -- Court to have continuing jurisdiction -- Custody and parent-time -- Determination of alimony -- Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children;

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders; and

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Recovery Services.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide child care for the dependent children, necessitated by the employment or training of the custodial parent.

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

(4) Child support, custody, visitation, and other matters related to children born to the mother and father after entry of the decree of divorce may be added to the decree by modification.

(5) (a) In determining parent-time rights of parents and visitation rights of grandparents and other members of the immediate family, the court shall consider the best interest of the child.

(b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include in an order establishing a parent-time or visitation schedule a provision, among other things, authorizing any peace officer to enforce a court-ordered parent-time or visitation schedule entered under this chapter.

(6) If a petition for modification of child custody or parent-time provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(7) If a petition alleges noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family where a visitation or

parent-time right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation or parent-time.

(8) (a) The court shall consider at least the following factors in determining alimony:

(i) the financial condition and needs of the recipient spouse;

(ii) the recipient's earning capacity or ability to produce income;

(iii) the ability of the payor spouse to provide support;

(iv) the length of the marriage;

(v) whether the recipient spouse has custody of minor children requiring support;

(vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and

(vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse or allowing the payor spouse to attend school during the marriage.

(b) The court may consider the fault of the parties in determining alimony.

(c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (8)(a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

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

(e) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. 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.

(f) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.

(g) (i) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

(ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

(iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this Subsection (8).

(A) The court may consider the subsequent spouse's financial ability to share living expenses.

(B) The court may consider the income of a subsequent spouse if the court finds that the payor's improper conduct justifies that consideration.

(h) Alimony may not be ordered for a duration longer than the number of years that the

marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

(9) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage or death of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

(10) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.

Amended by Chapter 129, 2005 General Session

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Last revised: Monday, December 18, 2006