

2006

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

Utah Court of Appeals

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

Ronald W. Perkins; Attorney for Appellee.

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

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

BRIEF OF APPELLEE

Appeal from a Final Judgment of the
First Judicial District Court
Box Elder County, Utah
The Honorable Judge Gordon J. Low Presiding
(Trial Court No. 964000113 DA)

Lyle W. Hillyard (Bar No.1494)
Brian G. Cannell (Bar No. 7477)
HILLYARD, ANDERSON & OLSEN P.C.
175 East 1st North
Logan, Utah 84321
(435) 752-2610

Ronald W. Perkins (Bar No. 2568)
RONALD W. PERKINS P. C.
2510 Washington Blvd, Suite 200
Ogden, Utah 84401
(801) 621-6546

Attorneys for Petitioner / Appellant

Attorney for Respondent/ Appellee

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175 East 1st North
Logan, Utah 84321
(435) 752-2610

Attorneys for Petitioner / Appellant

Ronald W. Perkins (Bar No. 2568)
RONALD W. PERKINS P. C.
2510 Washington Blvd, Suite 200
Ogden, Utah 84401
(801) 6212-6546

Attorney for Respondent/ Appellee

LIST OF ALL PARTIES IN THE DISTRICT COURT

The following parties and attorney appeared in the proceedings in the trial court.

1. Jerald F. Jensen, Petitioner / Appellant was represented by Lyle W.

Hillyard of Hillyard, Anderson & Olsen P.C.

2. LuJean Jensen, Respondent / Appellee was represented by Ronald W.

Perkins of Ronald W. Perkins P.C.

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

JERALD F. JENSEN, /

Petitioner /

BRIEF OF APPELLEE

vs. /

LUJEAN JENSEN, /

Appeal Case No 20060633

/ Trial Court No. 964000113 DA

Judge: Gordon J. Low

Respondent. /

JURISDICTIONAL STATEMENT

The Utah Court of Appeals has jurisdiction over this proceeding pursuant to U.C.A. 78-2a-3(2)(h) and pursuant to Rules 3 and 4 of the Utah Rules of Appellate Procedure.

STATEMENT OF THE ISSUES

ISSUE NO. 1

Whether the Court erred as a matter of law as to whether or not the Petitioner's evidence established that the Respondent cohabitated for a short period of time in Las Vegas, Nevada in the spring or summer of 2000.

STANDARD OF REVIEW: Whether or not the Respondent cohabitated in 2000 is a mixed question of law and fact and while this Court defers to the trial court's factual

findings unless they are clearly erroneous, this Court reviews its ultimate conclusion for correctness. Pendleton v. Pendleton, 918 P.2d 159 (Utah App. 1996)

ISSUE NO. 2

Whether the Court erred in modifying the decree of divorce reducing the alimony award from \$2150.00 to \$1500.00.

STANDARD OF REVIEW: A trial court has considerable discretion to adjust an award of alimony should there be a material change in circumstances of the parties from the time the original decree of divorce was entered. Such modification is entitled to a presumption of validity that will only be altered upon a showing of clear and prejudicial abuse of discretion by the trial court. Throckmorton v. Throckmorton, 767 P.2d 121 (Utah App. 1988) .

ISSUE NO. 3

Whether or not the court erred in determining that the Respondent was still unable to work from the testimony presented.

STANDARD OF REVIEW: The moving party in order to secure change in alimony must allege and prove changed conditions arising since entry of original decree and the trial court is vested with considerable discretion in determining amount of alimony appropriate in given case, and will be upheld unless clear and prejudicial abuse of discretion is shown. Bridenbaugh v. Bridenbaugh , 786 P.2d 241 (Utah App.,1990).

DETERMINATIVE CONSTITUTIONAL / STATUTORY PROVISIONS

Utah Code Annotated 30-3-5 (7) (10) as set forth in Addendum of Appellant.

STATEMENT OF THE CASE

Nature of the Proceedings

The appellant Jerald Jensen on January 16, 2004 filed a petition to modify the party's decree of divorce seeking to terminate his monthly alimony payments of \$2150.00 based upon his early retirement from Thiokol despite the fact he was receiving both his retirement and social security benefits.

The appellant on or about December 5, 2005 filed an amended petition to modify seeking to terminate his monthly alimony payments based upon alleged cohabitation of respondent in the spring and summer of 2000.

Neither Appellant's Petition to Modify or his subsequent Amended Petition to Modify alleged or contended that Respondent had been employed since entry of the parties decree of divorce of April 11, 1997 or that she was now employable based upon improvements to Respondent's physical and mental status.

The matter came on regularly for trial on April 12, 2006 before the Honorable Gordon J. Low who took the matter under advisement and thereafter issued a Memorandum Decision on April 27, 2006.

The court below in its memorandum decision considered at length (1) the issue of cohabitation and (2) the issues related to the appellant's economic situation as well as the Respondent's economic situation and her physical and mental difficulties and determined her condition was worse now than at the time of the 1997 divorce proceeding.

Thereafter, Jerald Jensen, the Appellant, appealed the Order of Modification entered by the District Court.

Statement of Facts

1. The parties were divorced on or about April 11, 1997 after a trial before the Honorable Gordon J. Low. (R. 90-95).

2. The Court's Findings of Fact reflect the income of the parties wherein the Plaintiff had a monthly income of \$4,400.65 and after deducting his FICA tax of \$143.00 per month, the Court awarded the Respondent alimony of \$2,150.00 per month plus one half of the net proceeds from the farmland rental income and provided further that should the Respondent become employed this Court would retain jurisdiction to review the alimony issue. (R. 87)

3. The Petitioner elected to voluntary retire on December 31, 2003 resulting in a loss of over \$300.00 per month in his monthly pension benefit amount. (Tr Respondent Exhibit 1).

4. The Petitioner presently receives as his portion of his pension plan, the sum of \$1,994.00 per month and in addition, he currently receives \$1,710.00 per month from Social Security for a monthly income from such sources of \$3,704.00 without considering medicare benefits. (R. 313).

5. The Petitioner's bank records which had been obtained previously by Respondent and were received by the Court as an exhibit showed for a seven month

period that the Petitioner's average monthly expenditures / draws from his checking accounts were only \$1,470.00 per month. (TR Respondent Exhibit 4).

6. The Petitioner's exhibit claimed \$3,449.00 as his presently monthly expenses. (TR Petitioner Exhibit 3)

7. The Petitioner when discussing over \$42,291.00 testified he did not put such sum in an IRA and put part of it under his mattress. (TR 72)

8. The Petitioner also testified relative to receiving another \$18,000.00 in November from the sale of real property and that he had been getting payments in that ballpark or more for the last six years. (TR 73-74)

9. The Petitioner also testified his house is paid off but for a \$50.00 per month payment for his car. (TR 63)

10. The Respondent also testified to making gifts to his adult son and daughter and helping them with bills. (TR 67)

11. The Respondent's total income without alimony is \$677.00 received as her portion of Petitioner's pension plan. (TR Respondent Exhibit 2).

12. The Respondent has had almost no income throughout her entire life as referenced by her Social Security Statement. (TR Respondent Exhibit 6)

13. The Respondent testified to the 88 double shock treatments she had around 1985 (TR 130) and after testifying to some of her present problems testified her conditions were getting worse as she was getting older. (TR 134-135)

14. The Respondent's exhibit claimed \$2,327.32.00 as her presently monthly expenses (TR Pet Exhibit 3) but in testimony such sum was corrected to \$2,862.29 based upon an incorrect addition by counsel. (TR 127).

15. The Respondent also testified that she is unable to purchase all her prescriptions and has relied on samples from her physicians when available and there are a number she just can't afford at the present time. (TR 126 -127).

16. The Respondent testified relative to the claimed cohabitation from the early part of the year 2000 that she was a visitor living with Robert Andrews, his sister and his mother in Las Vegas (TR 96).

17. The Respondent further testified relative to her living arrangement that she had her own room with the sister and that's where she kept her clothes and with whom she shared a bathroom. (TR 103)

18. The Respondent never secured a Nevada drivers license or registered her vehicle in Nevada (TR 93, 109).

19. The Respondent testified that the few items she had with her in Las Vegas were kept in the sister's room which was the room she used and that while she was staying there Robert Andrews would fly into Texas where he had a construction business about every two weeks and would be gone five to seven days each time. (TR 115 - 116).

20. The Respondent invested \$49,000.00 for a condo construction and later sought criminal charges be filed against Robert Andrews without success when he failed

to do so. (TR 118).

21. The Respondent being unable to collect and having amassed extensive debt ultimately filed bankruptcy. (TR 115).

SUMMARY OF ARGUMENT

The trial court in its memorandum decision when identifying the issue of cohabitation analyzed the facts and applied the leading cases dealing with cohabitation and properly ruled in applying the law to the facts that the Respondent did not cohabit and such finding should be affirmed by this Court.

The trial court again discussed at length the economic situation of both the parties in its memorandum decision and correctly determined that the Petitioner's alimony award should not be terminated and that it should be reduced and such determination of the trial court should be affirmed.

ARGUMENT

I.

THE COURT CORRECTLY APPLIED THE LAW TO THE FACTS IN FINDING THE RESPONDENT DID NOT COHABITATE FOR A SHORT PERIOD OF TIME IN THE SPRING OF 2000 AND SUCH DETERMINATION IS A MIXED QUESTION OF LAW AND FACT AND WHILE THIS COURT DEFERS TO THE TRIAL COURT'S FACTUAL FINDINGS UNLESS THEY ARE CLEARLY ERRONEOUS, THIS COURT REVIEWS ITS ULTIMATE CONCLUSION FOR CORRECTNESS.

In *Sursa v. Sursa*, 2005 UT App 282, the Court of Appeals ruled:

Common residency is "the sharing of a common abode that both parties consider their principal domicile for more than a temporary or brief period of time." *Haddow v. Haddow*, 707 P.2d 669, 672 (Utah 1985). Utah courts have considered various factors to determine whether a couple shares a common residence. These factors 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 liv [ing] as though they were husband and wife." *Sigg v. Sigg*, 905 P.2d 908, 918 (Utah Ct.App.1995); see also *Pendelton v. Pendelton*, 918 P.2d 159, 160-61 (Utah Ct.App.1996).

In *Haddow v. Haddow*, 707 P.2d 669, 672 (Utah 1985), the Utah Supreme Court held in ruling on the issue of cohabitation for termination of alimony in post divorce proceedings that "common residency" means sharing of common abode that both parties consider their principal domicile for more than a temporary or brief period of time which again is supportive of the findings of the lower court.

The Respondent maintained her home in Brigham City, traveled back home at least once a month during the two to three month period, maintained her Utah drivers license, and registered her vehicle in Utah on one of her trips to Brigham City in March 2000 all of which indicate she considered Utah her domicile. The evidence relating to Robert Andrews also indicates he did not consider Las Vegas his principal domicile for his mother, sister and him were staying in an apartment in Las Vegas and he flew to Texas about every two weeks for five to seven days where he had a construction business.

Neither of the parties were shown by the evidence to have given up their homes or residences in their home states or to have taken any steps to become Nevada residents and the evidence shows that neither considered the Las Vegas apartment a domicile or their

residence. When the Respondent testified she termed herself a visitor which supports the finding of the lower court and her testimony that she was a visitor and as a visitor she did not have a key, did not share in the payment for food or other expenses, had no household personal property on the premises, had only a few clothes with her and kept her makeup and toiletry items under the sink in the bathroom which she shared not with Robert Andrews but with his sister.

The trial court's factual findings are fully supported by the evidence and are not clearly erroneous and should be given deference as should the court's application of correctly applying the law to the facts.

II.

THE COURT COMMITTED NO ERROR IN MODIFYING THE DECREE OF DIVORCE REDUCING THE ALIMONY AWARD FROM \$2150.00 TO \$1500.00 FOR THE TRIAL COURT HAS CONSIDERABLE DISCRETION TO ADJUST AN AWARD OF ALIMONY SHOULD THERE BE A MATERIAL CHANGE IN CIRCUMSTANCES OF THE PARTIES FROM THE TIME THE ORIGINAL DECREE OF DIVORCE WAS ENTERED.

In *Bridenbaugh v. Bridenbaugh*, 786 P.2d 241 (Utah App., 1990) the Utah Court of Appeals addressed the responsibility of the trial court in determining the amount of alimony appropriate in any given case and held the trial courts have considerable discretion in making such awards and the award of the trial court will be upheld unless a clear and prejudicial abuse of discretion is shown.

Further in *Bridenbaugh v. Bridenbaugh*, cited supra, the Utah Court of Appeals held:

A party seeking modification of a prior alimony award bears the burden of establishing that a substantial change of circumstances

has occurred which justifies modification. *Id.* In order to reduce or terminate alimony, the trial court "must be persuaded that appellant will be able to support herself at a standard of living to which she was accustomed during the parties' marriage, or that respondent is no longer able to pay." *Fullmer v. Fullmer*, 761 P.2d 942, 951 (Utah Ct.App.1988). This standard is consistent with the purpose of alimony and the criteria used in determining a proper amount. The fundamental purpose of alimony "is to enable the receiving spouse to maintain as nearly as possible the standard of living enjoyed during the marriage and to prevent the spouse from becoming a public charge." *Paffel*, 732 P.2d at 100.

This is obviously the result sought and obtained by the ruling of the trial court when it entered the reduced order of \$1500.00 alimony after considering the ability to pay and the needs of the Respondent.

Additionally, such modification is entitled to a presumption of validity that will only be altered upon a showing of clear and prejudicial abuse of discretion by the trial court. *Throckmorton v. Throckmorton*, 767 P.2d 121 (Utah App. 1988) and the evidence fully supports the award of the trial court.

III

THE TRIAL COURT ANALYZED THE EVIDENCE AND DETERMINED THAT THE RESPONDENT'S CONDITION WAS WORSE THAN IT WAS AT THE TIME OF THE DIVORCE AND PETITIONER PRESENTED NO EVIDENCE TO REBUT SUCH TESTIMONY OR EVIDENCE.

Interestingly, when Petitioner filed his Petition to Modify, he made no allegation that the Respondent was able to work for he has known of her condition throughout their twenty-five year marriage , knew of it throughout their divorce proceeding which culminated in 1997 and has know of it since their divorce.

The Petitioner viewed first hand the physical and mental difficulties effects arising from

the multiple shock treatments Respondent underwent in the 1980's.

Consequently as the moving party attempting to terminate the alimony award Petitioner based his initial petition solely on his retirement which resulted in a reduction of his employment income while attempting to ignore his substantial social security income as opposed to the Respondent who has no work history throughout her entire life and has no entitlement to any social security benefits

The Petitioner must allege and prove changed conditions arising since entry of original decree and failed to do so and there is no basis for suggesting the trial court committed a clear and prejudicial abuse of discretion which is the standard required in *Bridenbaugh v. Bridenbaugh*, 786 P.2d 241 (Utah App.,1990).

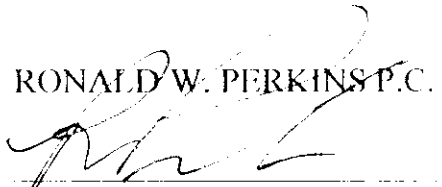
Such modification is entitled to a presumption of validity that will only be altered upon a showing of clear and prejudicial abuse of discretion by the trial court. *Throckmorton v. Throckmorton*, 767 P.2d 121 (Utah App. 1988) .

CONCLUSION

The trial court after conducting a trial reserved ruling at that time and took the matter under advisement to consider fully the facts and the law and then issued a lengthy memorandum decision wherein the facts were considered and the law was applied to those facts citing cases that have been included in both Petitioner and Respondent's briefs and such findings and conclusions are fully supported by the evidence and the law and this court should affirm the ruling of the trial court and should award Respondent attorney fees and costs.

DATED this 12 day of June, 2007.

RONALD W. PERKINS P.C.



RONALD W. PERKINS

Attorney for Respondent/ Appellee

CERTIFICATE OF MAILING

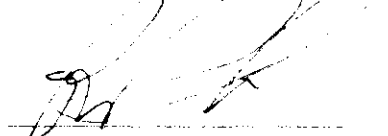
I hereby certify that a true and correct copy of the foregoing BRIEF OF

RESPONDENT / APPELLEE was mailed postage prepaid on this ____ day of June, 2007

to:

LYLE W. HILLYARD
HILLYARD, LOW AND ANDERSON P.C.
Attorney at Law
175 East 1st North
Logan, Utah 84321
(Attorney for Petitioner/ Appellant)

RONALD W. PERKINS P.C.



RONALD W. PERKINS

Attorney for Respondent/ Appellee

ADDENDUM

1. PETITIONERS EXHIBIT..... NO. 3
2. RESPONDENT'S EXHIBIT..... NO. 3
3. RESPONDENT'S EXHIBIT..... NO. 4
4. RESPONDENT'S EXHIBIT..... NO. 5
5. RESPONDENT'S EXHIBIT..... NO. 6

1

163

JERALD JENSEN MONTHLY EXPENSES

| | |
|------------------------|-------------|
| PLAINTIFF'S EXHIBIT | |
| EXHIBIT NO. | PLA003 |
| CASE NO. | 96410013 |
| DATE REC'D IN EVIDENCE | 4/12/06 |
| CLERK | (Signature) |

| | |
|--|------------------|
| Rent or mortgage payments (residence) | \$ 150.00 |
| Real property taxes (residence) | 48.00 |
| Real property insurance (residence) | 31.00 |
| Maintenance (residence) prorated | 100.00 |
| Food | 350.00 |
| Household supplies | 100.00 |
| Incidentals (grooming, tobacco, alcohol, gifts) | 50.00 |
| Utilities including water, electricity, gas and heat | 123.00 |
| Cable/Satellite TV | 48.00 |
| Telephone | 80.00 |
| Laundry and cleaning | 150.00 |
| Clothing | 100.00 |
| Medical (excluding insurance) | 554.00 |
| Dental (excluding insurance) | 50.00 |
| Life insurance | 20.00 |
| Health insurance | 106.00 |
| Pet care | 40.00 |
| Entertainment | 150.00 |
| Donations | 20.00 |
| Auto payments (gas, oil repairs) | 300.00 |
| Auto insurance | 101.00 |
| Installment payments | 78.00 |
| Other expenses (including income tax, preparation) | <u>700.00</u> |
| TOTAL | \$3449.00 |

Because of serious health problems, I have retired at a time in my life that I feel that I can travel and do the other things that I put off because of my work. These plans are still being formed so it is difficult for me to project the cost that this will entail to finally be able to enjoy life while my health will allow me to do that.

2

| | |
|---------------------------|----------|
| DEFENDANT'S EXHIBIT | |
| EXHIBIT NO. | DEF003 |
| CASE NO. | 96410113 |
| DATE REC'D IN EVIDENCE | 4/2/06 |
| CLERK | (13) |

EXHIBIT

3

MONTHLY EXPENSES

In listing total monthly expenses, relate them to your current family income not to what you wish they could be. *(Specify which party is the custodial parent and list name and relationship of all members of the household whose expenses are included.)

| | |
|---|-------------------|
| Rent or mortgage payments (residence) | \$ 150.00 |
| Real property taxes (residence) prorated | \$ 48.00 |
| Real property insurance (residence) prorated | \$ 31.00 |
| Maintenance (residence) prorated | \$ 100.00 |
| Food | \$ 350.00 |
| Household supplies | \$ 100.00 |
| Incidentals (grooming, tobacco, alcohol, gifts) | \$ 40.00 |
| Utilities including water, electricity, and gas and heat | \$ 123.00 |
| Cable/Satellite TV | \$ 42.00 |
| Telephone | \$ 80.00 |
| Laundry and cleaning | \$ 150.00 |
| Clothing | \$ 100.00 |
| Medical (excluding insurance) | \$ 140.00 |
| Dental (excluding insurance) | \$ 50.00 |
| Life insurance | \$ 20.00 |
| Health insurance | \$ 75.00 |
| Dental insurance | \$ |
| Pet care | \$ 40.00 |
| Payment of child/spousal support re prior marriage | \$ |
| School (for self only) | \$ |
| Entertainment | \$ 150.00 |
| Donations | \$ 20.00 |
| Auto payments | \$ |
| Auto expenses (gas, oil, repairs) | \$ 300.00 |
| Auto insurance | \$ 63.00 |
| Installment payment(s) (Insert total from monthly expenses) | \$ 78.00 |
| Other expenses (including income tax) | \$ 700.00 |
| TOTAL EXPENSES | \$2,950.00 |

Because of serious health problems, I have retired at a time in my life that I feel that I can travel and do the other things that I put off because of my work. These plans are still being formed so it is difficult for me to project the cost that this will entail to finally be able to enjoy life while my health will allow me to do that.

3

| | |
|---------------------------|-----------|
| DEFENDANT'S EXHIBIT | |
| EXHIBIT NO. | DEF 004 |
| CASE NO. | 964100113 |
| DATE REC'D IN EVIDENCE | 1/12/06 |
| CLERK | (B) |

EXHIBIT 4

ACCOUNT 476

| | | |
|---------------------|---|---|
| 01-23-04 - 02-20-04 | Doesn't show direct deposit | Withdrawals \$2,019.00 |
| 02-21-04 - 03-18-04 | Deposit \$1,585.00 Transferred \$3400.00 | Withdrawals \$880.85 |
| 03-19-04 - 04-20-04 | Deposit \$1,519.00 | Withdrawals \$1,732.00 |
| 04-21-04 - 05-20-04 | Deposit \$1,519.00 | Withdrawals \$1,475.00 |
| 05-21-04 - 06-18-04 | Deposit \$1,519.00 (\$906.00 ATK Tho) | Withdrawals \$1,735.00 (\$1,100.00 transfer) |
| 06-19-04 - 07-21-04 | Deposit \$1,519.00 (Social security) | Withdrawals \$1,235.00 |
| 07-22-04 - 08-19-04 | Deposit \$1,519.00 | Withdrawals \$1,218.50 (\$2,500.00 transfer) |

ACCOUNT 386

| | | |
|---------------------|--|--|
| 01-21-04 - 02-18-04 | No Deposit | No Withdrawal |
| 02-19-04 - 03-16-04 | Deposit \$5,817.00 Transferred \$3200.00 | Withdrawals \$0 |
| 03-17-04 - 04-16-04 | Deposit \$1,654.00 (Pension) Deposit \$19,473.00 | Withdrawals \$0 |
| 04-17-04 - 05-18-04 | Deposit \$1,843.89 (Pension) | Withdrawals \$42291.02 Other withdrawals \$0 |
| 05-19-04 - 06-16-04 | Deposit \$1,738.45 (Pension) | Withdrawals \$0 (\$1,100.00 transfer) |
| 06-17-04 - 07-19-04 | Deposit \$1,554.37 (Pension) | Withdrawals \$ 0 |
| 07-20-04 - 08-17-04 | Deposit \$1,554.37 | (1) Withdrawals \$0 \$2,500.00 Other withdrawals \$0 |

Withdrawals/Checks

| | | | |
|---------------------|-----|-------------------------------------|-----------------------------------|
| 01-21-04 - 02-18-04 | 476 | Withdrawals/Checks | \$2,019.00 |
| 01-23-04 - 02-20-04 | 386 | Withdrawals/Checks | \$0 |
| 02-21-04 - 03-16-04 | 476 | Withdrawals/Checks | \$881.00 Transfer \$3,400.00 |
| 02-19-04 - 03-18-04 | 386 | Withdrawals/Checks | \$0 |
| 03-19-04 - 04-20-04 | 476 | Withdrawals/Checks | \$1,732.00 |
| 03-17-04 - 04-16-04 | 386 | Withdrawals/Checks | \$0 |
| 04-21-04 - 05-20-04 | 476 | Withdrawals/Checks | \$1,475.00 |
| 04-17-04 - 05-18-04 | 386 | Withdrawals \$42,291.00 - 1 payment | |
| 05-21-04 - 06-18-04 | 476 | Withdrawals/Checks | \$1,735.00 Transfer \$1,100.00 |
| 05-19-04 - 06-16-04 | 386 | Withdrawals/Checks | \$0 |
| 06-19-04 - 07-21-04 | 476 | Withdrawals/Checks | \$1,235.00 |
| 06-17-04 - 07-19-04 | 386 | Withdrawals/Checks | \$0 |
| 07-22-04 - 08-19-04 | 476 | Withdrawals/Checks | \$1,218.50 Transfer \$2,500.00 |
| 07-20-04 - 08-17-04 | 386 | Withdrawals/Checks | \$2,500.00 - 1 payment |

Average Monthly Withdrawals/Checks \$10,295.50 divided by 7 months

\$1,470 per month

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DEFENDANT'S EXHIBIT
EXHIBIT NO. PEF 05
CASE NO. 96-410013
DATE REC'D
IN EVIDENCE 4/12/86
CLERK (13)

EXHIBIT 5

MONTHLY EXPENSES

In listing Total monthly expenses, relate them to your current family income not to what you wish they could be. *(Specify which party is the custodial parent and list name and relationship of all members of the household whose expenses are included).

| | |
|--|----------------|
| Rent or mortgage payments (residence) | \$ 710.34 |
| Real property taxes (residence) prorated | \$ on mortgage |
| Real Property insurance (residence) prorated | \$ 44.83 |
| Maintenance (residence) prorated | \$ 100.00 |
| Food | \$ 250.00 |
| Household supplies | \$ 50.00 |
| Incidentals (grooming, tobacco, alcohol, gifts) | \$ 80.00 |
| Utilities including water, electricity, gas and heat | \$ 174.85 |
| Cable/Satellite Television | \$ 0 |
| Telephone | \$ 72.00 |
| Laundry and cleaning | \$ 25.00 |
| Clothing | \$ 80.00 |
| Medical (excluding insurance) | \$ 120.00 |
| Dental (excluding insurance) | \$ 0 |
| Life Insurance | \$ 0 |
| Health Insurance (Cannot afford) | \$ 0 |
| Dental Insurance | \$ 0 |
| Child care | \$ 0 |
| Payment of child/spousal support re: prior marriage | \$ 0 |
| School (for self only) | \$ 0 |
| Entertainment | \$ 40.00 |
| Donations | \$ 0 |
| Auto payments | \$ |
| Auto expense (gas, oil, repair) | \$ 95.00 |
| Auto Insurance | \$ 51.94 |
| Installment payment(s). (Insert total from monthly expenses) | \$ 0 |
| Other expenses | \$ 70.00 |

SUBTOTAL EXPENSES

\$1963.96

Total Prescription Costs: (Needed prescriptions) \$898.73
Total Prescription she is obtaining \$535.37
Additional needed for necessary prescriptions \$363.36

\$ 363.36

GRAND TOTAL EXPENSES

\$2327.32

MEDICATION LIST

| | | |
|---|-------------------------------------|-------------------------|
| X | IMITRINX | \$144.00 (for 12 pills) |
| X | NAPROXIN | \$ 26.99 |
| X | MIGRAZONE | \$ 15.99 |
| X | PAXIL | \$ 65.09 |
| X | CYCLOBENZAPRIN | \$20.59 |
| | LUNESTA | \$109.39 |
| | PROMETHAZINE | \$18.99 |
| | ZANAFLEX | \$35.89 |
| | TOFRANIL PM | \$199.09 |
| X | ESTERIFIED ESTROGEN (Hormones) | \$159.99 |
| X | VERAPAMIL (for headaches) | \$ 21.70 |
| X | CLORNAZEPAM (for seizures & nerves) | \$ 21.36 |
| X | PHRENILIN ACETAMINE (headaches) | \$ 47.37 |
| X | AMITRIPTYLINE | \$ 12.29 |

X - Medications she is taking now. The others she can't afford and the prices listed are the costs without insurance.

Statement of Income, Expenses, Assets and Liabilities

Gross monthly income from:

| | |
|---|------------------|
| a. Primary job | \$ <u>0*</u> |
| (Salary and wages, including commissions, bonuses, allowances and overtime) | |
| (Pay period - i.e. weekly, bi-weekly, 2X/month or monthly) | \$ <u>0</u> |
| b. Second job | \$ <u>0</u> |
| c. Pensions and retirement | \$ <u>0</u> |
| d. Social Security | \$ <u>0</u> |
| e. Disability and unemployment insurance | \$ <u>0</u> |
| f. Public Assistance (welfare, AFDC payments, etc.) | \$ <u>0</u> |
| g. Child support from any prior marriage | \$ <u>0</u> |
| h. Dividends and interest | \$ <u>0</u> |
| i. Rents | \$ <u>0</u> |
| j. All other sources (specify) Pension | \$ <u>676.89</u> |
| TOTAL MONTHLY INCOME | \$ <u>676.89</u> |

DEBTS AND OBLIGATIONS

| Creditor's Name | Purpose of Loan | Balance |
|-----------------|--------------------|-----------------|
| Capital One | Visa | \$545.63 |
| Aspire | Credit Card | \$480.82 |
| Q Card | Credit Card | \$400.00 |
| Brigham Heating | | <u>\$176.25</u> |
| | TOTAL DEBTS | \$1602.70 |

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| | |
|---------------------------|----------|
| DEFENDANT'S EXHIBIT | |
| EXHIBIT NO. | DE-F006 |
| CASE NO. | 9641X113 |
| DATE REC'D IN EVIDENCE | 4/12/00 |
| CLERK | (TS) |

EXHIBIT 6

Prevent identity theft—protect your Social Security number

1604 copy



Your Social Security Statement

Prepared especially for Lujean Jensen

September 10, 2004

See inside for your personal information →

a0541 000127774 01 AV 0.278

LUJEAN JENSEN
25 W 700 N
BRIGHAM CITY UT 84302-1437



What's inside ...

- ▼ Your Estimated Benefits 2
- ▼ Your Earnings Record 3
- ▼ Some Facts About Social Security 4
- ▼ If You Need More Information 4
- To Request This *Statement* In Spanish 4
- (*Para Solicitar Una Declaración en Español*)

What Social Security Means to You

This *Social Security Statement* will help you understand what Social Security means to you and your family. This *Statement* can help you better plan for your financial future. It gives you estimates of your Social Security benefits under current law. Each year, we will send you an updated *Statement* including your latest reported earnings.

Be sure to read this *Statement* carefully. If you think there may be a mistake, please let us know. That's important because your benefits will be based on our record of your lifetime earnings. We recommend you keep a copy of this *Statement* with your financial records.

Social Security is for people of all ages ...

It can help you whether you're young or old, male or female, single or with a family. It's there for you when you retire, but it's more than a retirement program. Social Security also can provide benefits if you become disabled and help support your family when you die.

Work to build a secure future ...

Social Security is the largest source of income for most elderly Americans today. It is very important to remember that Social Security was never intended to be your only source of income when you retire. Social Security can't do it all. You also will need other savings, investments, pensions or retirement accounts to make sure you have enough money to live comfortably when you retire.

About Social Security's future ...

Social Security is a compact between generations. For more than 60 years, America has kept the promise of security for its workers and their families. But now, the Social Security system is facing serious future financial problems, and action is needed soon to make sure that the system is sound when today's younger workers are

Today there are almost 36 million Americans age 65 or older. Their Social Security retirement benefits are funded by today's workers and their employers who jointly pay Social Security taxes -- just as the money they paid into Social Security was used to pay benefits to those who retired before them. Unless action is taken soon to strengthen Social Security, in just 14 years we will begin paying more in benefits than we collect in taxes. Without changes, by 2042 the Social Security Trust Fund will be exhausted.* By then, the number of Americans 65 or older is expected to have doubled. There won't be enough younger people working to pay all of the benefits owed to those who are retiring. At that point, there will be enough money to pay only about 73 cents for each dollar of scheduled benefits. We will need to resolve these issues soon to make sure Social Security continues to provide a foundation of protection for future generations as it has done in the past.

Social Security On The Net ...

Visit www.socialsecurity.gov on the Internet to learn more about Social Security. You can read our publications, use the *Social Security Benefit Calculators* to calculate future benefits, apply for retirement, spouse's or disability benefits, or subscribe to *eNews* for up-to-date information about Social Security.

Jo Anne B. Barnhart

Jo Anne B. Barnhart
Commissioner

* These estimates of the future financial status of the Social Security program were produced by the actuaries at the Social Security Administration based on the intermediate assumptions from the Social Security Trustees' Annual

▼ Your Estimated Benefits

To qualify for benefits, you earn "credits" through your work — up to four each year. This year, for example, you earn one credit for each \$900 of wages or self-employment income. When you've earned \$3,600, you've earned your four credits for the year. Most people need 40 credits, earned over their working lifetime, to receive retirement benefits. For disability and survivors benefits, young people need fewer credits to be eligible.

We checked your records to see whether you have earned enough credits to qualify for benefits. If you haven't earned enough yet to qualify for any type of benefit, we can't give you a benefit estimate now. If you continue to work, we'll give you a benefit estimate when you do qualify.

What we assumed — If you have enough work credits, we estimated your benefit amounts using your average earnings over your working lifetime. For 2004 and later (up to retirement age), we assumed you'll continue to work and make about the same as you did in 2002 or 2003. We also included credits we assumed you earned last year and this year.

We can't provide your actual benefit amount until you apply for benefits. **And that amount may differ from the estimates stated below because:**

(1) Your earnings may increase or decrease in the future.
 (2) Your estimated benefits are based on current law.

The law governing benefit amounts may change.*

(3) Your benefit amount may be affected by **military service, railroad employment or pensions earned through work on which you did not pay Social Security tax. Visit www.socialsecurity.gov/mystatement to see whether your Social Security benefit amount will be affected.**

Generally, estimates for older workers are more accurate than those for younger workers because they're based on a longer earnings history with fewer uncertainties such as earnings fluctuations and future law changes.

These estimates are in today's dollars. After you start receiving benefits, they will be adjusted for cost-of-living increases.

▼ ***Retirement** To get retirement benefits, you need 40 credits of work. Your record shows you have at least 15 credits at this time, including assumed credits for last year and this year if you continue to work.

▼ ***Disability** To get benefits if you become disabled right now, you need 32 credits of work. Your record shows you have at least 15 credits at this time.

▼ ***Family** If you get retirement or disability benefits, your spouse and children also may qualify for benefits.

▼ ***Survivors** For your family to get survivor benefits if you die this year, you must have 32 credits of work. Your record shows you have at least 15 credits at this time.

▼ **Medicare** To get Medicare benefits at age 65, you need 40 credits. At this time, you don't have enough credits to qualify for Medicare. However, if you don't have enough credits when you reach age 65, you may contact a local Social Security office to learn whether you're eligible to buy Medicare coverage.

***Your estimated benefits are based on current law. Congress has made changes to the law in the past and can do so at any time. The law governing benefit amounts may change because, by 2042, the payroll taxes collected will be enough to pay only about 73 percent of scheduled benefits.**

We based your benefit estimates on these facts:

Your name Lujean Jensen
 Your date of birth December 26, 1950
 Your estimated taxable earnings \$3,600

▼ Help Us Keep Your Earnings Record Accurate

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

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

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

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

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

▼ **There's a limit on the amount of earnings on which you pay Social Security taxes each year.** The limit increases yearly. Earnings above the limit will not appear on your earnings chart as Social Security earnings. (For Medicare taxes, the maximum earnings amount began rising in 1991. Since 1994, all of your earnings are taxed for Medicare.)

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

Your Earnings Record at a Glance

| Years You Worked | Your Taxed Social Security Earnings | Your Taxed Medicare Earnings | Years You Worked | Your Taxed Social Security Earnings | Your Taxed Medicare Earnings |
|------------------|-------------------------------------|------------------------------|------------------|-------------------------------------|------------------------------|
| 1966 | \$ 203 | \$ 203 | 1990 | \$ 0 | \$ 0 |
| 1967 | 767 | 767 | 1991 | 0 | 0 |
| 1968 | 927 | 927 | 1992 | 0 | 0 |
| 1969 | 298 | 298 | 1993 | 0 | 0 |
| 1970 | 490 | 490 | 1994 | 0 | 0 |
| 1971 | 0 | 0 | 1995 | 44 | 44 |
| 1972 | 0 | 0 | 1996 | 0 | 0 |
| 1973 | 0 | 0 | 1997 | 0 | 0 |
| 1974 | 0 | 0 | 1998 | 0 | 0 |
| 1975 | 0 | 0 | 1999 | 0 | 0 |
| 1976 | 656 | 656 | 2000 | 0 | 0 |
| 1977 | 0 | 0 | 2001 | 0 | 0 |
| 1978 | 0 | 0 | 2002 | 0 | 0 |
| 1979 | 0 | 0 | 2003 | Not yet recorded - | |
| 1980 | 0 | 0 | | | |
| 1981 | 0 | 0 | | | |
| 1982 | 0 | 0 | | | |
| 1983 | 0 | 0 | | | |
| 1984 | 0 | 0 | | | |
| 1985 | 0 | 0 | | | |
| 1986 | 0 | 0 | | | |
| 1987 | 106 | 106 | | | |
| 1988 | 104 | 104 | | | |
| 1989 | 0 | 0 | | | |

Total Social Security and Medicare taxes paid over your working career through the last year reported on the chart above:

| | |
|---|------------------------------------|
| Estimated taxes paid for Social Security: | Estimated taxes paid for Medicare: |
| You paid: \$149 | You paid: \$18 |
| Your employers paid: \$149 | Your employers paid: \$18 |

Note: You currently pay 6.2 percent of your salary, up to \$87,900, in Social Security taxes and 1.45 percent in Medicare

Some Facts About Social Security

About Social Security and Medicare ...

Social Security pays retirement, disability, family and survivors benefits. Medicare, a separate program run by the Centers for Medicare and Medicaid Services, helps pay for inpatient hospital care, nursing care, doctors' fees and other medical services and supplies to people age 65 and older, or to people who have been receiving Social Security disability benefits for two years **or more**. Your Social Security covered earnings qualify you for both programs.

Here are some facts about Social Security benefits:

- ▼ **Retirement** — If you were born before 1938, your full retirement age is 65. Because of a 1983 change in the law, the full retirement age will increase gradually to 67 for people born in 1960 or later. Some people retire before their full retirement age. You can retire as early as age 62 and take your benefits at a reduced rate. If you continue working after your full retirement age, you can receive higher benefits because of additional earnings and special credits for delayed retirement.
- ▼ **Disability** — If you become disabled before full retirement age, you can receive disability benefits after six months if you have:
 - enough credits from earnings (depending on your age, you must have earned six to 20 of your credits in the three to 10 years before you became disabled); and
 - a physical or mental impairment that's expected to prevent you from doing "substantial" work for a year or more or result in death.
- ▼ **Family** — If you're eligible for disability or retirement benefits, your current or divorced spouse, minor children or adult children disabled before age 22 also may receive benefits. Each may qualify for up to about 50 percent of your benefit amount. The total amount depends on how many family members qualify.
- ▼ **Survivors** — When you die, certain members of your family may be eligible for benefits:
 - your spouse age 60 or older (50 or older if disabled, or any age if caring for your children younger than age 16); and
 - your children if unmarried and younger than age 18, still in school and younger than 19 years old, or adult children disabled before age 22.If you are divorced, your ex-spouse could be eligible for a widow's or widower's benefit on your record when you die.

Receive benefits and still work ...

You can continue to work and still get retirement or survivors benefits. If you're younger than your full retirement age, there are limits on how much you can earn without affecting your benefit amount. The limits change each year. When you apply for benefits, we'll tell you what the limits are at that time and whether work would affect your monthly benefits. When you reach full retirement age, the earnings limits no longer apply.

Before you decide to retire ...

Think about your benefits for the long term. Everyone's situation is different. For example, be sure to consider the advantages and disadvantages of early retirement. If you choose to receive benefits before you reach full retirement age, your benefits will be permanently reduced. However, you'll receive benefits for a longer period of time.

To help you decide when is the best time for you to retire, we offer a free booklet, *Social Security — Retirement Benefits* (Publication No. 05-10035), that provides specific information about retirement. You can calculate future retirement benefits on our website at www.socialsecurity.gov by using the *Social Security Benefit Calculators*. There are other free publications that you may find helpful, including:

- ▼ *Understanding The Benefits* (No. 05-10024) — a general explanation of all Social Security benefits;
- ▼ *How Your Retirement Benefit Is Figured* (No. 05-10070) — an explanation of how you can calculate your benefit;
- ▼ *The Windfall Elimination Provision* (No. 05-10045) — how it affects your retirement or disability benefits;
- ▼ *Government Pension Offset* (No. 05-10007) — explanation of a law that affects spouse's or widow(er)'s benefits; and
- ▼ *Identity Theft And Your Social Security Number* (No. 05-10064) — what to do if you're a victim of identity theft.

We also have other leaflets and fact sheets with information about specific topics such as military service, self-employment or foreign employment. You can request Social Security publications at www.socialsecurity.gov or by calling us at **1-800-772-1213**.

If you need more information— Visit www.socialsecurity.gov/mystatement on the Internet, contact any Social Security office call **1-800-772-1213** or write to Social Security Administration, Office of Earnings Operations, P.O. Box 33026, Baltimore, MD 21290-3026. If you're deaf or hard of hearing, call **TTY 1-800-325-0778**. If you have questions about your personal information, you must provide your complete Social Security number. If your address is incorrect on this *Statement*, ask the Internal Revenue Service to send you a Form 8999.