

1995

Jill Fairbanks v. Roger R. Fairbanks : Brief of Appellee

Utah Court of Appeals

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Roger R. Fairbanks. Pro Se.

Frederick N. Green; Green and Berry. Attorneys for Appellee.

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IN THE UTAH STATE COURT OF APPEALS

DOCKET NO. 950371-CA

JILL FAIRBANKS,

BRIEF OF APPELLEE

Plaintiff/Appellee,

vs.

Case No. 950371-CA

ROGER R. FAIRBANKS,

Priority No. 15

Defendant/Appellant.

BRIEF OF APPELLEE

APPEAL FROM AN ORDER IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH,
THE HONORABLE MICHAEL R. MURPHY PRESIDING

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FILED

JAN 18 1996

COURT OF APPEALS

IN THE UTAH STATE COURT OF APPEALS

JILL FAIRBANKS,

Plaintiff/Appellee,

vs.

ROGER R. FAIRBANKS,

Defendant/Appellant.

BRIEF OF APPELLEE

Case No. 950371-CA

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IN THE UTAH STATE COURT OF APPEALS

JILL FAIRBANKS,
Plaintiff/Appellee,

BRIEF OF APPELLEE

vs.

ROGER R. FAIRBANKS,
Defendant/Appellant.

Case No. 950371-CA

STATEMENT OF JURISDICTION

Jurisdiction to hear this appeal properly lies with the Utah Court of Appeals pursuant to §78-2a-3(2)(h), Utah Code Ann. (1953 as amended).

STATEMENT OF THE ISSUES

The issue presented is whether the Court erred in determining that the provision of the Decree of Divorce which requires the Defendant to compensate the Plaintiff for her increased income tax liability if he claims the dependency exemptions should be based upon her actual married-joint filing status. The trial court determined that the economic reality of the circumstances included the Plaintiff's filing of a married-joint tax return for the tax year 1993 for which she is jointly

and severally liable and which formed the basis for determining the Plaintiff's tax liability.

STANDARD OF APPELLATE REVIEW

The trial court's decision to enforce the parties' agreement should not be disturbed unless there has been an abuse of discretion. Zions First National Bank v. Barbara Jensen Interiors, 781 P.2d 487 at 479 (Utah App. 1989). Whether the language of the stipulation and decree is ambiguous is a question of law and should be reviewed for correctness. Equitable Life and Casualty Insurance Co. v. Ross, 849 P.2d 1187 at 1192 (Utah App.) cert. denied. 860 P.2d 943 (Utah, 1993).

STATEMENT OF THE CASE

A. NATURE OF PROCEEDING.

The Defendant appeals the Order of the Third Judicial District Court entered May 2, 1995, which, in effect, denies the Defendant's Motion to Compel the refund of tax payments made to the Plaintiff pursuant to the Decree of Divorce. However, an Order of identical content referring to the Defendant's same Motion was entered February 3, 1995 and not appealed from. Additionally, an earlier "Recommendation and Order" which denies the Defendant's Motion to Compel Reimbursement was entered by the court on December 27, 1994, and not appealed.

B. STATEMENT OF FACTS:

1. On August 17, 1992, the parties entered into an oral stipulation, read on the record, before the trial court, to settle the remaining issues of their bifurcated divorce. [R. 610 - 616]

2. The stipulation was read on the record by the Defendant's attorney. [R. 610]

3. The oral stipulation provided, in part, as follows:

. . . Mrs. Fairbanks will provide her tax return to Mr. Fairbanks and he can elect to, within 15 days thereafter, to provide tax returns prepared at his expense. He could then purchase any of the tax exemptions for the parties' minor children by paying the difference between her tax liability by not claiming those particular exemptions. He must pay that amount to her by April 10th of that year. [R. 615 - 616]

4. Based upon the oral stipulation the Defendant's attorney prepared a "Supplemental Decree of Divorce" entered by the court January 19, 1992. [R. 308 - 317]

5. The "Supplemental Decree of Divorce" provides as follows:

16. The Defendant is awarded the right to purchase the tax exemptions for the parties' minor children from Plaintiff. Defendant may exercise this right by paying to Plaintiff any difference in her tax liability resulting from Defendant purchasing the right to claim said tax exemptions.

6. The Plaintiff was awarded alimony which was to terminate upon her remarriage. (Supplemental Decree of Divorce, ¶2, at R. 2)

7. The parties had four children born as issue of the marriage and child support entered in the total base award amount of \$1,187. {R. 2 and R. 309]

8. The child support calculation included the imputation of income to the Plaintiff of \$731 per month. [R. 431]

9. The Findings of Fact are silent as to the relevant incomes of the parties.

10. The Defendant claimed the exemption for the tax year 1992 [R. 379] and acknowledged that, due to the Plaintiff's remarriage, that would be the last year that he would likely claim those exemptions pursuant to the Decree. [R. 379]

11. The Plaintiff remarried February 18, 1993. [R. 359] The Defendant remarried May 17, 1994. [R. 384] The Plaintiff filed a married-joint tax return for the tax year 1993 which reflected earned income by the Plaintiff and her spouse. [R. 380]

12. The Defendant paid the Plaintiff \$3,044.49 pursuant to the Decree and claimed the minor children of the parties as exemptions for tax return purposes. [R. 360] Subsequently, the Defendant brought a Motion "to Compel Plaintiff to refund payment demanded for execution of release of tax exemptions." [R. 363]

13. Following the hearing before the Commissioner, the matter was heard based upon the Plaintiff's objection by the trial judge which resulted in a denial of the Defendant's Motion to compel the refund. [R. 618 - 621]

14. The court's "Recommendation and Order" dealing with the issue of tax exemptions and other matters was signed and entered December 27, 1994 after being served upon the Defendant by mail October 27, 1994. [R. 476 - 481]

15. That Order provides, in part, as follows:

13. The Defendant's Motion to Compel Reimbursement of Sums paid to the Plaintiff represents reimbursement to the Plaintiff for her tax liability from not claiming the

parties' minor children as her dependents for tax purposes is denied consistent with the court's ruling based upon the Plaintiff's objection to the Commissioner's recommendation. [R. 479]

16. In addition, based upon the trial court's ruling, the Plaintiff's counsel prepared an Order which included the court's findings and conclusions. That Order was objected to by the Defendant. At a hearing dated January 9, 1995, the court directed Plaintiff's counsel to submit a new Order which deleted references to the findings and conclusions of the court, which were to be established by way of a transcript of the ruling. That Order was prepared by Plaintiff's counsel, served upon the Defendant by mail, [R. 562] and entered by the court February 3, 1995. [R. 560 - 561] No appeal was taken from that Order or the previous Order, dated December 27, 1995.

17. Subsequently, a third Order was signed and entered by the court identical in every respect to the Order of February 3, 1995 except for the signature of the Defendant approving that Order as to form. That Order was also served upon the Defendant on January 9, 1995. [R. 599 - 601]

18. The Defendant filed a Notice of Appeal on June 1, 1995.

19. the Plaintiff disputes the factual allegations contained in the Appellant's principal brief which are not substantiated by the record including any reference to tax years subsequent to 1993 which were not part of the court's Order, or the Defendant's Motion and have no basis in the record.

20. In denying the Defendant's Motion to Compel Reimbursement, the trial judge noted:

(a) That the child support guidelines for the State of Utah changed as of July, 1994, and the previous guidelines presumed that the custodial parent would enjoy the right to claim the minor child as exemptions (resulting in a reduction of support paid to the custodial parent). [R. 619]

(b) That once remarried, the Plaintiff has the alternative of filing a joint or separate-married return and that her tax liability is based upon her filing status and her liability is joint and several under joint return. [R. 620]

(c) That to sustain the Defendant's Motion would require that the court entertain "hypothetical calculations" and would ignore the economic reality of the parties' circumstances.

(d) Based upon that the court concluded that the Decree of Divorce contemplated the calculation of tax liability based upon the actual tax return filed by the Plaintiff and, therefore, the Defendant's Motion should be denied.

SUMMARY OF ARGUMENT

The Defendant's Notice of Appeal was not timely filed. The content of the Order appealed from is identical in every respect to the court's earlier Order dated February 3, 1995, except the May 2, 1995 Order was approved by the Defendant as to form. The

February 3rd Order was properly served upon the Defendant and submitted to the court pursuant to the Code of Judicial Administration.¹ The mere fact that the Defendant approved that same Order as to form, and apparently submitted the same to the court and it is entered does not extend the time to appeal, especially where the provisions of the two Orders are identical. The Defendant's June 1, 1995 Notice of Appeal is more than thirty (30) days after the February 3, 1995 Order.

The court was correct in interpreting the Decree of Divorce. The Plaintiff's tax liability is the tax liability she has under the tax return she files as a married spouse. In this case, the Plaintiff filed a joint tax return with her husband. She is, thereby, jointly and severally liable for the tax obligation of that return. The parties obviously contemplated that they each would remarry. Both parties have remarried. By virtue of that fact, the Plaintiff no longer is entitled to receive alimony. There is no language altering the Defendant's right to claim the children as tax exemptions upon Plaintiff's remarriage. At best, the Defendant could claim rights to modify the Decree of Divorce by virtue of the Plaintiff's remarriage if he is claiming that it was an unanticipated substantial change. However, otherwise, it would be an anticipated event which was not included as any sort of a limiting factor in the Decree as it provides to tax exemptions.

¹ The January 9th Order was mailed to the Defendant along with a cover letter explaining that the Defendant had five (5) days to object and that the Order was served pursuant to the Rules of Judicial Administration. That letter does not appear of record in this case, but, as a convenience, is included in the Addendum.

The Plaintiff's new spouse is obligated to support his step children, and he does, pursuant to §78-45-4.1. Additionally, "support received from a parent's spouse upon remarriage is treated as having been received from the parent." (I.R.C. §152(e)(5))

The child support that the Plaintiff receives in this case is still governed by the pre-1994 guidelines. Those guidelines included a reduced amount of child support based upon the assumption that the custodial parent would enjoy the right to claim the minor child as exemptions. The law which took place in 1994 (which does not govern the Decree in this case) changes that Rule.

Previous court decisions in this state required that the parties and the court look to the "economic realities of any particular set of circumstances." In this case, the economic realities include the Plaintiff's filing of a married-joint tax return.

ARGUMENT

POINT I.

THE DEFENDANT'S NOTICE OF APPEAL WAS FILED UNTIMELY AND THE COURT LACKS JURISDICTION TO CONSIDER THE APPEAL.

Where a Notice of Appeal is not timely filed the court is without jurisdiction to consider the appeal and the appeal should be dismissed. Neerings v. Utah State Bar, 817 P.2d 320 (Utah 1991). In this case, the first Order which denied the Defendant's Motion to Compel Reimbursement was entered December

27, 1994. That Order was served pursuant to the Code of Judicial Administration on the Defendant October 27, 1994. No appeal was taken. The second Order which was likewise served upon the Defendant pursuant to the Code of Judicial Administration was entered February 3, 1995. No appeal was taken. The third Order which was entered May 2, 1995, is identical to the February 3, 1995 Order except that the May 2nd Order has been approved as to form by the Defendant. It is a duplicate Order at best and does not affect the parties' rights under the Decree.

The confusion, if any, arises for the following reasons. The initial Order prepared by the Plaintiff's attorney included the court's findings and conclusions as well as the court's ruling. This Order was objected to and, after a hearing on January 9th, Plaintiff's counsel was instructed to prepare another Order which simply referred to the court's ruling. The court's findings would be established by the transcript of the ruling which the Defendant was required to obtain. On the same day as the court's decision directing the entry of the court's Order and the transcription of the ruling (of the October 24, 1994 hearing), Plaintiff's counsel prepared the new Order and served it on the Defendant pursuant to the Code of Judicial Administration. It was served upon the Defendant together with a transmitting cover letter which reminded the Defendant that he had five days to object and that the Order would be submitted pursuant to the Code of Judicial Administration. There was no objection. The Order was submitted together with a certificate

of mailing. Because the Defendant had the original Order calling for his approval as to form, another Order was printed by Plaintiff's counsel and submitted to the court for entry. Apparently, sometime thereafter, the Defendant approved the January 9th Order as to form and submitted it to the court and it was entered on May 2, 1995.

Even disregarding the court's Order of December 27, 1994, the February 3, 1995 Order certainly should control the disposition of the Defendant's Motion. The June 1, 1995 Notice of Appeal is untimely and there was no effort to extend the time to file the Notice of Appeal.

POINT II.

**THE TRIAL COURT'S DECISION TO DENY THE
DEFENDANT'S MOTION TO COMPEL REIMBURSEMENT
SHOULD BE SUSTAINED BECAUSE IT IS CONSISTENT
WITH THE ECONOMIC REALITIES OF THE PARTIES'
CIRCUMSTANCES.**

The issue on appeal is not which party should receive the right to claim the tax exemptions associated with their minor children. Rather, the parties agreed that the Plaintiff would have that right unless the Defendant determined that the exemptions were of more "value" to him than to the Plaintiff. The underlying consideration in this agreement was the relative tax benefit to one party or the other and who would save the most in actual taxes paid. This is largely a function of which tax "bracket" or effective date the parties experience. If the parties experience the same federal tax bracket, then presumably, the Defendant would not exercise his right because his payment

would be the same amount that he would save in taxes and there would be no benefit to him. Therefore, the underlying consideration of the parties' stipulation was to avoid the unnecessary payment of taxes. As will be seen hereafter, if the Defendant's interpretation of the Stipulation and Decree is adopted, it will mean the unnecessary payment of additional taxes (when the parties' tax returns are viewed together) and the assumption that the Plaintiff is filing her tax return under a status other than the status she actually utilizes. In every sense of the term, the Defendant's argument ignores the "economic realities" of the parties.

Amended Internal Revenue Code (I.R.C.), §152(e) specifies that the custodial parent is entitled to the dependency exemption absent a waiver. Since that amendment a majority of the state court's considering the issue have ruled that the courts retain jurisdiction to allocate dependency exemptions to non-custodial parents. Serrano v. Serrano, 566 A.2d 413 (Conn. 1989); Motes v. Motes, 786 P.2d 232 (Utah App. 1989).

The primary issue addressed in Motes was whether a state divorce court has the authority to award a tax exemption for supported children to the non-custodial parent. Allred v. Allred, 835 P.2d 974 (Utah App. 1992) (concurring opinion).

In Motes the court held:

State divorce courts must always recognize the financial benefit accompanying dependency exemptions when awarding alimony and child support. Thus, use of the power to order a custodial parent to execute a §152 Declaration should not be used to evenly other otherwise divide the available exemptions without regard to the particular economic realities. Motes v. Motes, supra.

Allred v. Allred, supra, is in agreement with the Motes decision:

First, the tax exemptions should not be awarded to the non-custodial parent without regard to the economic realities' to the particular case. . . In my view, this is the lesson of Motes: The award of the tax exemption for dependents should be based on economic realities and should be supported by adequate findings. Allred v. Allred, supra, (concurring opinion).

In this case the following "economic realities" are not disputed:

1. The Plaintiff has remarried and commenced filing a married-joint federal tax return in 1993.²

2. The Plaintiff has determined that it is to her benefit, to reduce the lawful taxes which are due by filing a married-joint tax return.

3. The parties' children are supported by way of support provided by the Plaintiff and her husband as well as child support paid by the Defendant.

4. The Plaintiff's husband has a statutory duty under §78-45-4.1, Utah Code Ann. (1953 as amended) to support a step child to the same extent that a natural or adoptive parent is required to support a child.

5. Under I.R.C. §6013(d)3), if a couple files a joint return, each spouse becomes jointly and severally liable for

² The Defendant suggests that the allocation of dependency exemptions should be based upon "who provides the greater support". In addition to the fact that that is not the issue before the court on this appeal, there was no evidence introduced upon which the court could base a finding of who provides the greater support, at least when the step-parent's support is included in that comparison.

the full amount of tax due on the couple's combined earnings. (Furthermore, both spouses are also liable for assessments and penalties due to unreported income, disallowed deductions and the like.) I.R.C. §6653(b)(3)

6. The rules for allocating dependency exemptions between divorced or separated parents are provided by the Internal Revenue Code §152(e). For purposes of determining which parent provides more than one-half of the cost to support a child, support received from a parent's spouse upon remarriage is treated as having been received from the parent. I.R.C. §152(e)(5).

No finding can be made as to which party would benefit the most by claiming the exemptions because the Defendant has never indicated the extent of his 1993 income. However, the Defendant did pay the Plaintiff for the increased amount of tax due under her married-joint tax return filing. This is in spite of the fact that the Plaintiff's spouse earns "in excess of \$75,000 per year." (Brief of Appellant on appeal, p. 12) If that is the case, then the parties' stipulation accomplished exactly what was intended: the overall reduction of taxes when the parties' tax returns and overall liability are taken together. The only difference is that the Defendant does not want to pay for the Plaintiff's tax liability under the economic realities of this case which include the fact that the Plaintiff files a married-joint return.

If the Defendant's income tax bracket (including the income of his new spouse) is lower than the Plaintiff's under her married-joint filing then, presumably, the Defendant will not

wish to "purchase" the exemptions. In that event, the parties' stipulation accomplishes the same and legitimate goal that the parties had when they reached their stipulation: the overall reduction in combined and legitimate taxes due.

The Court can also discern the intent of the parties when viewing the stipulation as a whole. In doing so, it should be noted that the Defendant's counsel read the stipulation for the record and prepared the Supplemental Decree of Divorce which responds, essentially, with the stipulation. The stipulation and the Decree provide that in order for the Defendant to claim the children as exemptions, he must pay "to Plaintiff any difference in her tax liability resulting from Defendant purchasing the right to claim said tax exemptions." (Decree of Divorce, ¶16)

The Defendant urges an interpretation which would require the addition of terms to the parties' agreement. This new term would state that for purposes of calculating the Plaintiff's tax liability, the parties would pretend that the Plaintiff was were filing a married-separate return. Aside from ignoring the "economic realities" of the Plaintiff's circumstances, the Decree and the stipulation simply does not provide for that method of calculating the Plaintiff's tax liability.

Obviously, the parties could have agreed to terms which are now urged by the Defendant. The parties agreed for the termination of alimony upon the Plaintiff's remarriage. The parties contemplated that the Plaintiff would remarry at some point. Nevertheless, the stipulation and the Decree do not alter the method of calculating "her tax liability" in the event of remarriage. The rules governing the construction of contracts,

which the Defendant urges this Court to apply to the interpretation of the Decree in this case, would require that the trial court decision be sustained.

The parties' agreement and the Decree of Divorce is consistent with the provisions of the Internal Revenue Code and the laws of the State of Utah. Utah statute imposes upon a step parent the liability to support step children. The I.R.C. acknowledges and economic reality that a step parent will often provide support for step children. In such a case, the support received from a step parent is treated as having been received from the natural parent for purposes of allocating the dependency exemptions between divorced spouses.

In a broader sense, the I.R.C., Utah Code Ann., and the Decree of Divorce acknowledge another very fundamental economic reality. Upon remarriage, the parties frequently if not typically commingle their wherewithal for the support of the family. Under those circumstances, it is equitable and reasonable to view the value of a dependency exemption in the same way that family finances and taxes are viewed: together.

The Defendant has also failed to marshall the evidence in support of the court's decision. The Plaintiff testified by way of her affidavit that after the transfer of dependency exemptions for the tax year 1992, and when the Defendant learned of the


Plaintiff's remarriage plans, he indicated that he would not be "purchasing" the exemptions in the future because the Plaintiff would be filing a joint return and it would not be economical for the Defendant to purchase the exemptions in that event. That Affidavit is unrebutted on the record, as such, it is clear evidence in support of the Plaintiff's interpretation of the terms of the Stipulation and the Decree.

CONCLUSION

The Notice of Appeal is not timely and the court lacks jurisdiction to consider this matter. The court properly construed the stipulation and decree. The Plaintiff's tax liability should be based upon the "economic realities" in this case. One of those realities is that the Plaintiff files a married - joint return. Her tax liability should be consistent with that reality. The Plaintiff was awarded attorney's fees in the divorce action and should be awarded fees for this appeal.

DATED THIS 18th day of January, 1996.


GREEN & BERRY



FREDERICK N. GREEN
Attorney for Plaintiff/Appellee

CERTIFICATE OF SERVICE

I, Frederick N. Green, certify that on the 18th day of January, 1996, I served a copy of the attached Brief of Appellee upon Roger R. Fairbanks, Appellant Pro Se, in this matter by mailing a copy by first class mail with sufficient postage prepaid to the following address: 8543 South Nutwood Circle, Sandy, Utah 89094.



FREDERICK N. GREEN
Attorney for Plaintiff/Appellee
and Cross-Appellant

G-189-90\Brief.1

ADDENDUM

- A. Recommendation and Order, dated October 27, 1994.
- B. Minute Entry, dated January 9, 1995
- C. Order, dated February 3, 1995.
- D. Order, dated May 2, 1995.
- E. Letter of Rick Green to Roger Fairbanks, dated January 9, 1995.
- F. Supplemental Decree of Divorce, dated January 19, 1992.
- G. Transcript of Ruling of Judge Murphy from hearing dated August 17, 1992

ADDENDUM "A"

**COPY OF RECOMMENDATION AND ORDER
DATED OCTOBER 27, 1994**

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FILED DISTRICT COURT
Third Judicial District

DEC 27 1994

SALT LAKE COUNTY
By W. S. Smith
Deputy Clerk

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

JILL FAIRBANKS,
Plaintiff,

vs.

ROGER R. FAIRBANKS,
Defendant.

217845
RECOMMENDATION AND ORDER

Civil No. 914902005DA

Judge Michael R. Murphy
21477107
12/20/94-8091000

The above-entitled matter having come on regularly for hearing before the Honorable Commissioner Michael S. Evans on the 13th day of July, 1994, the Plaintiff and the Defendant appearing in person and the Plaintiff being represented by her attorney of record, and the Defendant representing himself, the Court having entertained the motions of the parties, as well as the evidence and argument of the parties, and good cause otherwise appearing, it is, hereby,

ORDERED, ADJUDGED AND DECREED, as follows:

1. That each party alleges the other party has engaged in inappropriate behavior during the times that the children were exchanged for visitation and, given the ages of the children, an order of "curb side" visitation appears to be in the children's best interests.

2. That the parties dispute whether Defendant has substantially complied with the court's order of visitation in accordance with the standard schedule, which identifies a Friday 6:00 p.m. starting date for visitation periods. It appears to be in the children's best interests that Defendant arrive no later than 7:00 p.m. on the date set for visitation and, in the event he should fail to do so, that Plaintiff be free to make other arrangements for the children.

3. The Decree of Divorce specifically provides, in paragraph 4, Defendant's obligation to obtain life insurance, which life insurance Defendant has failed to obtain simply alleging that he cannot afford to so do.

4. That it appears that Defendant was provided with Plaintiff's request for reimbursement regarding the children's medical bills, if not earlier then by way of pleadings submitted in support of Plaintiff's present motion, and it is reasonable that judgment be entered against Defendant in the amount of \$755.00 as prayed.

5. That the parties disagree with the interpretation of the Decree of Divorce as it relates to the award of attorney's fees to Plaintiff. The Decree of Divorce in paragraph 15 orders Defendant to pay to Plaintiff the sum of \$3,000 as a contribution to Plaintiff's attorney's fees and sets forth a payment schedule. The final sentence of paragraph 15, which is the disputed language provides, "In the event the Defendant becomes more than thirty days delinquent in payment of said obligation for

attorney's fees and costs, then Plaintiff shall be entitled to obtain a judgment against Defendant for the unpaid balance owing" Plaintiff argues that any thirty day delinquency in any of the payments pursuant to schedule allows her to seek a judgment for any unpaid balance of the original \$3,000 award, while Defendant argues that only those payments which were due according to the schedule of payments may be reduced to judgment. The Commissioner finds that the Decree is appropriately interpreted to require that any unpaid balance owing of the \$3,000 attorney's fees awarded at the time of a thirty day delinquency, which has in fact occurred, is the appropriate interpretation of the Decree.

6. That the parties shall be restrained from having any contact with one another or in any way coming about the person or premises of one another or harassing each other during times the children are exchanged for periods of visitation and the Defendant shall arrive at Plaintiff's home at the appointed time, in no event later than 7:00 p.m. when the visitation is to commence at 6:00 p.m., and remain in his vehicle while the Plaintiff sends the children out, with the process to be repeated at the end of any visitation period.

7. In the event that the Defendant arrives more than one hour past the scheduled time for visitation, the Plaintiff shall be free to make other arrangements for the children.

8. The issue of the Defendant's contempt for failure to obtain life insurance as ordered by the Decree is certified for further hearing before the above-entitled Court.

9. The Defendant may purge himself of any finding of contempt in this regard by forthwith obtaining life insurance consistent with the Decree.

10. The Plaintiff shall be awarded judgment against the Defendant in the amount of \$755 representing one-half of the children's uninsured medical expenses and the issue of the Defendant's contempt in this regard is reserved pending his future performance.

11. That the Defendant is admonished to abide by the terms of the Decree of Divorce in promptly making all payments of child support on the date due. The issue of the Defendant's contempt in this regard is reserved pending his future performance.

12. That the Plaintiff is awarded judgment against the Defendant in the amount of \$3,000 together with the judgment rate of interest, representing attorney's fees due and owing but unpaid pursuant to the Decree of Divorce.

13. That the Defendant's Motion to Compel reimbursement of sums paid to the Plaintiff representing reimbursement to the Plaintiff for her tax liability from not claiming the parties minor children as her dependents for tax purposes is denied consistent with the Court's ruling based upon the Plaintiff's Objection to the Commissioner's recommendation.

91403005

14. That each party shall bear and pay their own attorneys fees and costs for this matter.


DATED THIS 27 day of Dec, 1994.

BY THE COURT:


HONORABLE MICHAEL R. MURPHY
DISTRICT COURT JUDGE

DATED THIS 21 day of December, 1994.

BY THE COURT:


COMMISSIONER MICHAEL S. EVANS
DISTRICT COURT COMMISSIONER

CERTIFICATE OF MAILING

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

Audree D. Askee, being duly sworn, says:

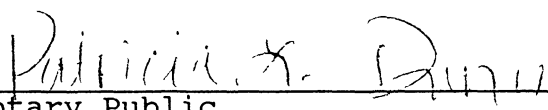
That she is employed in the offices of GREEN & BERRY,
attorneys for Plaintiff herein, that she served the attached
RECOMMENDATION AND ORDER upon the following parties by placing a
true and correct copy thereof in an envelope addressed to:

Roger R. Fairbanks, Esq.
Defendant Pro Se
8543 South 890 East
Sandy, Utah 84094

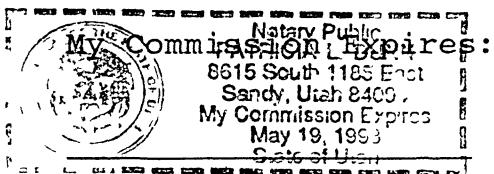
and depositing the same, sealed, with first class postage prepaid
thereon, in the United States Mail at Salt Lake City, Utah on the
27th day of October, 1994.



SUBSCRIBED AND SWORN to before me this 27th day of October,
1994.



Notary Public
Residing in Salt Lake
County, State of Utah



F-169-90\RecOrder.Pld

ADDENDUM "B"

COPY OF MINUTE ENTRY

DATED JANUARY 9, 1995

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

FAIRBANKS, JILL	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 914902005 DA
	:	DATE 01/09/95
VS	:	HONORABLE MICHAEL R MURPHY
	:	COURT REPORTER KATHY MORGAN
FAIRBANKS, ROGER R	:	COURT CLERK MGS
DEFENDANT	:	

TYPE OF HEARING: HEARING
PRESENT:

P. ATTY. GREEN, FREDERICK N
D. ATTY. FAIRBANKS, ROGER R

THIS BEING THE TIME SET FOR HEARING ON THE OBJECTIONS TO
PROPOSED ORDER.

THERE BEING AN ERROR IN THE MINUTE ENTRY DATED 10/24/94, THE
COURT NOW CLARIFIES THE ORDER, THE OBJECTIONS ARE SUSTAINED FOR
REASONS SET FORTH ON THE RECORD ON THE HEARING DATED 10/24/94.

MR GREEN WILL SUBMIT THE NEW ORDER. MR FAIRBANKS IS TO ORDER
THE TRANSCRIPT FOR THE HEARING ON 10/24/94 OF THE RULING FOR
FILING.

ADDENDUM "C"

COPY OF ORDER

DATED FEBRUARY 3, 1995

GREEN & BERRY
FREDERICK N. GREEN (1240)
SUSAN C. BRADFORD (5377)
Attorneys for Plaintiff
622 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 363-5650

3250 DISTRICT COURT
Third Judicial District

FEB 3 1995

SALT LAKE COUNTY

Deputy Clerk

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

JILL FAIRBANKS,
Plaintiff,

vs.

ROGER R. FAIRBANKS,
Defendant.

O R D E R

Civil No. 914902005DA

Judge Michael R. Murphy

The above-entitled matter came on regularly for hearing on the 24th day of October, 1994, before the Honorable Judge Michael R. Murphy, Presiding, based upon the Plaintiff's Objection to Commissioner's Recommendation, the Plaintiff appearing in person and through her attorney of record, and the Defendant appearing in person and as his own attorney, the matter having been submitted to the Court pursuant to Rule 4-501 and Rule 6-401 of the Code of Judicial Administration, and the Court having granted oral argument and considered the evidence and argument of the parties, and good cause otherwise appearing, it is, hereby

ORDERED, ADJUDGED AND DECREED, as follows:


1. That the Plaintiff's objection to the Commissioner's recommendation is, and is hereby, sustained.
2. That the Defendant's Motion to Compel is denied.

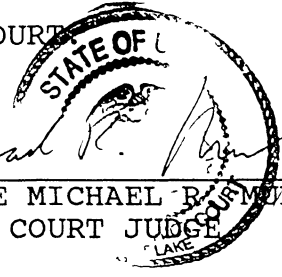
3. That in all other respects the Commissioner's recommendation is affirmed insofar as no other portions thereof have been objected to.

4. That the basis for this Order was articulated by the Court at the time of the ruling. The Defendant shall, as soon as possible, obtain a transcript of the ruling at the Defendant's expense which shall be made a part of this record and incorporated herein by this reference.

DATED THIS 7 day of July, 1995.

BY THE COURT


HONORABLE MICHAEL R. MURPHY
DISTRICT COURT JUDGE



CERTIFICATE OF MAILING

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

Audree D. Askee, being duly sworn, says:

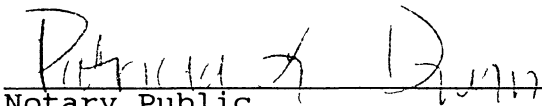
That she is employed in the offices of GREEN & BERRY,
attorneys for Plaintiff herein, that she served the attached
ORDER upon the following parties by placing a true and correct
copy thereof in an envelope addressed to:

Roger R. Fairbanks, Esq.
Defendant Pro Se
261 East 300 South, #300
Salt Lake City, Utah 84111

and depositing the same, sealed, with first class postage prepaid
thereon, in the United States Mail at Salt Lake City, Utah on the
9th, day of January, 1995.

_____

SUBSCRIBED AND SWORN to before me this 9th day of January,
1995.

_____
Notary Public
Residing in Salt Lake
County, State of Utah

My Commission Expires:

F-169-90\Order.P12

ADDENDUM "D"

COPY OF ORDER

DATED MAY 2, 1995

GREEN & BERRY
FREDERICK N. GREEN (1240)
SUSAN C. BRADFORD (5377)
Attorneys for Plaintiff
622 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 363-5650

FILED DISTRICT COURT
Third Judicial District

MAY 2 1995

SALT LAKE COUNTY
By 
Deputy Clerk

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

JILL FAIRBANKS,

Plaintiff,

vs.

ROGER R. FAIRBANKS,

Defendant.

O R D E R

Civil No. 914902005DA

Judge Michael R. Murphy

The above-entitled matter came on regularly for hearing on the 24th day of October, 1994, before the Honorable Judge Michael R. Murphy, Presiding, based upon the Plaintiff's Objection to Commissioner's Recommendation, the Plaintiff appearing in person and through her attorney of record, and the Defendant appearing in person and as his own attorney, the matter having been submitted to the Court pursuant to Rule 4-501 and Rule 6-401 of the Code of Judicial Administration, and the Court having granted oral argument and considered the evidence and argument of the parties, and good cause otherwise appearing, it is, hereby

ORDERED, ADJUDGED AND DECREED, as follows:

1. That the Plaintiff's objection to the Commissioner's recommendation is, and is hereby, sustained.
2. That the Defendant's Motion to Compel is denied.

3. That in all other respects the Commissioner's recommendation is affirmed insofar as no other portions thereof have been objected to.

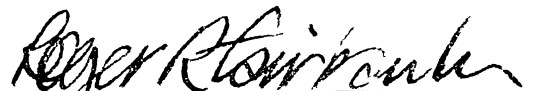
4. That the basis for this Order was articulated by the Court at the time of the ruling. The Defendant shall, as soon as possible, obtain a transcript of the ruling at the Defendant's expense which shall be made a part of this record and incorporated herein by this reference.

DATED THIS 2 day of May, 1995.

BY THE COURT:


HONORABLE MICHAEL R. MURPHY
DISTRICT COURT JUDGE

Approved as to Form:

 4/24/95
ROGER R. FAIRBANKS, ESQ.
Defendant Pro Se

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

That she is employed in the offices of GREEN & BERRY, attorneys for Plaintiff herein, that she served the attached ORDER upon the following parties by placing a true and correct copy thereof in an envelope addressed to:

and depositing the same, sealed, with first class postage prepaid thereon, in the United States Mail at Salt Lake City, Utah on the 9 day of ~~October~~ ^{January}, 1995.

before me this 9 day of October, 1977

Patricia G. Dunn
Public

F-169-90 Order 912 of 100
 May 19, 1961
 My Commission Expires
 Notary Public
 CO15
 Sec + 1

ADDENDUM "E"

**COPY OF LETTER OF FREDERICK N. GREEN TO
ROGER FAIRBANKS**

GREEN & BERRY

ATTORNEYS AT LAW
622 NEWHOUSE BUILDING
10 EXCHANGE PLACE
SALT LAKE CITY, UTAH 84111
TELEPHONE (801) 363-5650
FAX (801) 363-5658

FREDERICK N GREEN
RAYMOND SCOTT BERRY
JULIE V LUND
SUSAN C BRADFORD

January 9, 1995

Roger R. Fairbanks
261 East 300 South, #300
Salt Lake City, Utah 84111

RE: Fairbanks v. Fairbanks

Dear Roger:

Pursuant to Rule 4-501 of the Rules of Judicial Administration, please find the enclosed Order. Please sign the Order and return it our office so that we may file it with the court.

Notice of objection, if any, must be submitted to the court, and the undersigned, within five (5) days of service.

Sincerely,

GREEN & BERRY

Rick Green/aa
Frederick N. Green

FNG/aa

Enclosure

cc: Jill Eyring

ADDENDUM "F"

COPY OF SUPPLEMENTAL DECREE OF DIVORCE

DATED JANUARY 19, 1992

PHILLIP W. DYER (4315)
Attorney for Defendant
318 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101
(801) 363-5000

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

JILL FAIRBANKS,)	
)	
Plaintiff,)	SUPPLEMENTAL DECREE OF
)	DIVORCE
vs.)	
)	
ROGER R. FAIRBANKS,)	Civil No. 91-4902005 DA
)	
Defendant.)	Judge Michael Murphy
)	

The above-entitled matter came on for an in-Court conference before the Honorable Michael Murphy, District Court Judge, on the 17th day of August, 1992, at the hour of 1:15 p.m., the plaintiff appearing in person with her counsel, Frederick N. Green, the defendant appearing in person with his counsel, Phillip W. Dyer. The parties had previously stipulated to a bifurcation of the proceedings such that the marital relationship was terminated and all other issues were reserved for trial. Thereupon, the parties having advised the Court that they had entered into a Stipulation resolving all

remaining issues, which Stipulation was read into the record and acknowledged by the parties in open Court to be his/her voluntary agreement. The Court then approved the Stipulation, the Court having made and entered its Supplemental Findings of Fact and Supplemental Conclusions of Law, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The defendant is ordered to pay to the plaintiff, as and for base child support, the sum of \$1,387.00 per month, less \$200.00 per month as and for health insurance premiums, for a total base child support award of \$1,187.00 per month. Said base child support shall be paid one-half (1/2) on the 5th of each month and one-half (1/2) on the 20th of each month. The defendant shall, forthwith, provide plaintiff with evidence of his health insurance premium as set forth above.

2. The defendant is ordered to pay to the plaintiff, as and for alimony, the sum of \$400.00 per month. Said alimony shall terminate upon the occurrence of the first of the following events: plaintiff remarries, plaintiff dies, plaintiff resides with an adult person of the opposite sex or until further order of this Court. Said alimony shall be paid one-half (1/2) on the 5th of each month and one-half (1/2) on the 20th of each month.

3. The defendant is ordered to maintain in effect the health insurance coverage through his employment for the benefit of the parties' minor children. The plaintiff may purchase additional/substitute health insurance coverage for the benefit of the parties' minor children if she so desires, and the credit against base child support given to defendant (in paragraph 1 hereinabove) shall abate upon plaintiff giving defendant written notice of such substitution of insurance. Further, in the event plaintiff purchases substitute health insurance coverage, plaintiff is ordered to assume and pay, and indemnify and hold defendant harmless thereon, all medical expenses not covered by said substitute health insurance as the result of pre-existing conditions which are not covered by said substitute insurance, provided those expenses would have been covered by the defendant's insurance. Furthermore, the parties are ordered to each pay one-half (1/2) of any other medical, dental, orthodontic and optical expenses reasonably and necessarily incurred for the benefit of the parties' minor children, including deductible amounts which are not covered by defendant's insurance or the substitute insurance and which are not governed by the provision hereinabove concerning substitute insurance and pre-existing conditions. In the event any of the parties' minor children reasonably and

necessarily requires orthodontia care, the plaintiff is ordered to provide defendant with forty-five (45) days advance notice of the orthodontic work to be performed so that defendant can make appropriate financial arrangements with the health care provider.

4. The defendant is ordered to purchase, within three (3) months after the entry of the Supplemental Decree herein, and to pay the premiums thereon and maintain in effect during the children's minorities, a life insurance policy with a death benefit of \$250,000.00, which names the parties' minor children as the sole and irrevocable beneficiaries thereon. Defendant shall have the discretion and authority to reduce (pro rata) the death benefit, without further Court order, as his child support obligation decreases upon each of the parties' minor children attaining her age of majority. The defendant shall provide plaintiff with evidence of the insurance when procured.

5. The defendant is ordered to cooperate in assisting the plaintiff to obtain dental insurance under the provisions of C.O.B.R.A., if possible. Plaintiff shall pay all expenses for said dental insurance including, but not limited to, the purchase thereon.

6. The personal property of the parties is awarded as

the parties have already divided it, except that defendant is ordered to deliver, forthwith, to the plaintiff the oak filing cabinet currently in his possession and pick up and exchange therefor the nightstand purchased by at Mervyn's by the defendant which is currently in the possession of the plaintiff. Otherwise, the parties' personal property is awarded to the party in possession of the same, free and clear of any claim of the other party.

7. The defendant is ordered to pay to plaintiff the sum of \$340.00, which represents medical bills paid by plaintiff during the pendency of these proceedings.

8. The plaintiff is awarded the sole care, custody and control of the parties' minor children, to-wit: Keri Fairbanks, born July 12, 1979; Amy Fairbanks, born September 5, 1981; Heidi Fairbanks, born January 8, 1983; and Holly Fairbanks, born December 19, 1985. The defendant is awarded reasonable rights of visitation with the parties' minor children, in accordance with the standard visitation schedule adopted by the Third Judicial District Court, a copy of which is attached hereto and incorporated herein by this reference. The defendant is ordered to provide plaintiff with twenty-four (24) hours advance notice of his intent to not exercise any visitation. Further, the defendant's base child support

obligation shall abate by fifty percent (50%) when he exercises continuous visitation for twenty-five (25) of thirty (30) days.

9. The plaintiff is awarded, free and clear of any claim of defendant, the parties' marital residence and real property, subject to the requirement that she assume and pay, and indemnify and hold defendant harmless thereon, the outstanding mortgage obligation(s) on said marital residence and real property. The defendant shall execute a Quit-claim Deed, forthwith, conveying his interest in the marital home to the plaintiff.

10. The defendant is awarded, free and clear of any claim of plaintiff, his partnership interest in the law firm of Christensen, Jensen & Powell. The plaintiff is awarded, free and clear of any claim of defendant, her stock in U-Rent.

11. The defendant is ordered to assume and pay, and indemnify and hold plaintiff harmless thereon, the Mastercard debt, the Promissory Note to First Security Bank, any tax liabilities resulting from said Promissory Note being defaulted and any debts incurred by defendant since the date of the parties' separation. The plaintiff is ordered to assume and pay, and indemnify and hold defendant harmless thereon, the debts for the Vanagon, for the bedroom set, the

debt to plaintiff's father for the marital residence and the debt to Sears for the washer and dryer, and any debts incurred by plaintiff since the date of the parties' separation.

12. With respect to each and every debt and obligation of the parties set forth or described in this Supplemental Decree of Divorce, the parties' agreement to assume and pay, and indemnify the other, is in the nature of a support obligation and is intended to be non-dischargeable in bankruptcy.

13. The plaintiff is deemed to have waived any claim for child support and alimony arrearages accruing prior to August of 1992 and defendant is deemed to have waived any claim for equity in the marital residence arising out of payment of the second mortgage.

14. A qualified domestic relations order shall issue to the Administrator of defendant's retirement plans such that one-half (1/2) of all vested retirement benefits accruing up until the signing of this Supplemental Decree of Divorce shall be awarded to plaintiff pursuant to law. Said Order shall provide, however, that the sum of \$9,335.48 shall be first deducted from the total of all accounts before any division of said retirement benefits occurs for the benefit of plaintiff.

15. The defendant is ordered to pay to plaintiff the sum

of \$3,000.00 as and for a contribution to plaintiff's attorney's fees and costs incurred herein, as follows: \$50.00 per month for the first year after entry of the parties' Amended Decree of Divorce; \$100.00 per month during the second year after entry of the Amended Decree of Divorce; and, commencing in the third year after entry of the Amended Decree of Divorce, and continuing thereafter until said sum is paid in full, \$150.00 per month; provided, however, that in the event defendant's obligation to pay alimony to plaintiff shall terminate, then defendant is ordered to increase the monthly payments listed hereinabove as follows: \$100.00 per month for the first year after entry of the parties' Amended Decree of Divorce; \$175.00 per month during the second year after entry of the Amended Decree of Divorce; and, commencing in the third year after entry of the Amended Decree of Divorce, and continuing thereafter until said sum is paid in full, \$250.00 per month. The increase in monthly payments shall commence in the respective year alimony terminates and shall not be applied retroactively to increase the amount of any payments already paid to plaintiff. The plaintiff is awarded interest on the unpaid balance of said attorney's fees at the rate of twelve percent (12%) but shall not be entitled to seek a judgment against the defendant for said attorney's fees and

costs unless defendant becomes thirty (30) days delinquent in the monthly payments set forth hereinabove. In the event defendant becomes more than thirty (30) days delinquent in payment of said obligation for attorney's fees and costs, then plaintiff shall be entitled to obtain a judgment against defendant for the unpaid balance owing, without further hearing, by giving defendant written notice of default.

16. The defendant is awarded the right to purchase the tax exemptions for the parties' minor children from plaintiff. Defendant may exercise this right by paying to plaintiff any difference in her tax liability resulting from defendant purchasing the right to claim said tax exemptions. In order to implement this provision, the parties are ordered as follows: Each party shall exchange W-2 forms for the previous tax year no later than the end of February of the following year. Plaintiff is ordered to prepare her tax return and provide defendant with a copy by the end of February as required for the W-2 exchange herein. Defendant shall then have fifteen (15) days in which to elect to purchase any or all of the tax exemptions for the parties' minor children. Defendant is ordered to notify plaintiff by March 15th of his intent to purchase any of said exemptions and shall pay the expense plaintiff incurs to have her tax return recalculated

as the result of defendant's election to purchase any or all of said exemptions. Plaintiff is ordered to execute all necessary forms/documents so as to implement the provisions of this paragraph. Further, defendant is ordered to pay plaintiff the sums owing to plaintiff as the result of his purchase of any or all tax exemptions no later than April 10th of each year.

17. The parties are awarded, equally, the 1991 income tax refund after deducting \$300.00 as payment toward the second mortgage. Defendant is therefore ordered to pay to the Plaintiff the sum of \$271.50 as and for her one-half (1/2) of said income tax refund.

18. All provisions in the prior Order Bifurcating Proceedings shall remain in full force and effect, except as modified herein.

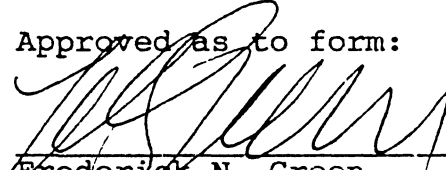
19. This Decree of Divorce shall be effective, and entered, as of the date of hearing of this matter, which was August 17, 1992.

DATED this 14th day of Jan, 1992.

BY THE COURT:

121
HONORABLE MICHAEL MURPHY
District Court Judge

Approved as to form:



Frederick N. Green
Attorney for Plaintiff

4-Jan-97
Date

k/mi/Fairbanks.dec/DIV1D

CERTIFICATE OF MAILING

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

Kathleen J. Gillman being duly sworn, deposes and says:

That she served **SUPPLEMENTAL DECREE OF DIVORCE** upon
the following parties by placing a true and correct copy
thereof in an envelope addressed to:

FREDERICK N. GREEN, ESQ.
GREEN & BERRY
528 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111

and depositing the same, sealed, with first class postage
prepaid thereon, in the United States Mail at Salt Lake City,
Utah, on the 19 day of January, 1993.

Kathleen J. Gillman

SUBSCRIBED AND SWORN to before me this 19 day of
January, 1993.

[Signature]
Notary Public

My Commission expires 2-14-96

Residing at:

Salt Lake County, Utah



Notary Public
PHILIP DYER
136 South Main Street
Salt Lake City, Utah 84101
My Commission Expires
February 14, 1996
State of Utah

CERTIFICATE OF MAILING

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

Kathleen J. Gillman, being duly sworn, deposes and says:

That she served NOTICE OF ENTRY OF SUPPLEMENTAL DECREE
OF DIVORCE upon the following parties by placing a true
and correct copy thereof in an envelope addressed to:

FREDERICK N. GREEN, ESQ.
GREEN & BERRY
528 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111

and depositing the same, sealed, with first class postage
prepaid thereon, in the United States Mail at Salt Lake City,
Utah, on the 20 day of January, 1993.

Kathleen J. Gillman

SUBSCRIBED AND SWORN to before me this 20 day of
January, 1993.

[Signature]
Notary Public

My Commission expires:

Residing at:

Salt Lake County, Utah

21496

ADDENDUM "G"

**COPY OF TRANSCRIPT OF RULING OF JUDGE MURPHY
FROM HEARING DATED AUGUST 17, 1992**

ORIGINAL

FILED DISTRICT COURT
Third Judicial District

IN THE THIRD JUDICIAL DISTRICT COURT

OCT 15 1992

SALT LAKE COUNTY, STATE OF UTAH

By FD Deputy Clerk

JILL FAIRBANKS.

PLAINTIFF.

VS.

ROGER R. FAIRBANKS.

DEFENDANT.

CIVIL NO. 914902005 DA

REPORTER'S TRANSCRIPT

HEARING OF AUGUST 17, 1992

BEFORE THE HONORABLE MICHAEL R. MURPHY

JUDGE OF THE THIRD JUDICIAL DISTRICT COURT

A P P E A R A N C E S

FOR THE PLAINTIFF:

FREDERICK N. GREEN, ESQ.

ATTORNEY AT LAW
622 NEWHOUSE BUILDING
10 EXCHANGE PLACE
SALT LAKE CITY, UTAH 84111

FOR THE DEFENDANT:

PHILLIP W. DYER, ESQ.
ATTORNEY AT LAW
318 KEARNS BUILDING
136 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84101

REPORTED BY: GAYLE B. CAMPBELL, C.S.P.

000610

1 AUGUST 17, 1992 2:00 P.M. SALT LAKE CITY, UTAH

2 THE COURT: ALL RIGHT. THIS IS THE MATTER OF
3 FAIRBANKS VS. FAIRBANKS. I DON'T HAVE A NUMBER IN FRONT
4 OF ME. MR. FREDERICK GREEN IS HERE ON BEHALF OF MR.
5 FAIRBANKS. MR. DYER HERE ON BEHALF OF MR. FAIRBANKS.
6 BOTH PARTIES ARE PRESENT.

7 AS I UNDERSTAND IT -- FIRST OF ALL, THIS MATTER
8 IS SET FOR TRIAL ON THURSDAY. THE PARTIES HAVE REACHED A
9 STIPULATION, I BELIEVE. IF THAT'S THE CASE, WOULD ONE OF
10 THE COUNSEL RECITE THAT STIPULATION. MR. FAIRBANKS AND
11 MRS. FAIRBANKS, YOU NEED TO LISTEN CLOSELY, BECAUSE I
12 INTEND TO ASK YOU, AFTER IT'S RECITED ON THE RECORD,
13 WHETHER OR NOT THAT STIPULATION IS ACCEPTABLE TO YOU.

14 MR. DYER: MY NAME IS PHILLIP DYER. AND I
15 REPRESENT THE DEFENDANT. I ALSO HAVE A CASE NUMBER IF
16 THE COURT WOULD --

17 THE COURT: GO AHEAD.

18 MR. DYER: 91490205.

19 THE COURT: THANK YOU.

20 MR. DYER: YOUR HONOR, IN THIS MATTER THE
21 PARTIES HAVE AGREED THERE WILL BE AMENDED FINDINGS AND
22 DECREE TO PROVIDE AS FOLLOWS: THE BASE CHILD SUPPORT
23 WILL BE AMENDED TO \$1,387 DOLLARS LESS A \$200 CREDIT FOR
24 HEALTH INSURANCE PREMIUMS PAID FOR THE BENEFIT OF THE
25 MINOR CHILDREN UPON SHOWING OF SUFFICIENT PROOF THAT THAT

1 EXPENSE IS IN FACT BEING INCURRED.

2 THERE WILL BE PERMANENT ALIMONY IN THE SUM OF
3 \$400 PER MONTH. THAT ALIMONY OBVIOUSLY WOULD TERMINATE
4 UPON REMARRIAGE, DEATH, OR RESIDING WITH A PERSON OF THE
5 OPPOSITE SEX BY THE PLAINTIFF IN THIS PARTICULAR MATTER.

6 IN ADDITION, THOSE PAYMENTS WOULD BE MADE
7 ONE-HALF ON THE FIRST AND ONE-HALF ON THE 20TH, PURSUANT
8 TO STATUTE. UNTIL SUCH TIME AS PLAINTIFF MRS. FAIRBANKS
9 DECIDES TO SUBSTITUTE OR CHANGE HEALTH INSURANCE, MR.
10 FAIRBANKS IS TO KEEP THE HEALTH INSURANCE IN EFFECT HE
11 CURRENTLY HAS.

12 SHE WOULD HAVE THE RIGHT TO SUBSTITUTE THAT
13 INSURANCE AND IN THE EVENT SHE DOES SO, SHE WOULD PAY THE
14 PREMIUM AND THE \$200 CREDIT WOULD BE DISCONTINUED AND THE
15 \$1,300 WOULD BE THE CORRECT SUM.

16 SHE WOULD AGREE TO HOLD MR. FAIRBANKS HARMLESS
17 FROM ANY INCREASED EXPENSES THAT RESULT FROM HER THE
18 SUBSTITUTING THAT HEALTH INSURANCE.

19 THE PARTIES HAVE AGREED THAT EACH PARTY WOULD
20 PAY ONE-HALF OFF ALL THE DENTAL OR ORTHODONTIC EXPENSES
21 NECESSARILY INCURRED. ON ORTHODONTIC EXPENSES, MRS.
22 FAIRBANKS WOULD PROVIDE 45 DAYS ADVANCE NOTICE TO MY
23 CLIENT SO THAT HE CAN MAKE PROPER ARRANGEMENTS WITH THE
24 HEALTH CARE PROVIDER.

25 WITH RESPECT TO LIFE INSURANCE, MR. FAIRBANKS

1 WOULD RETAIN A \$250,000 LIFE INSURANCE POLICY WITH THE
2 CHILDREN AS PRIMARY BENEFICIARIES. HE MAY HAVE THE
3 OPTION TO DECREASE THAT DEATH BENEFIT AS THE CHILD
4 SUPPORT DECREASES OVER TIME.

5 HE WOULD BE REQUIRED TO OBTAIN THAT COVERAGE
6 WITHIN THREE MONTHS OF THE DECREE, AND WOULD USE HIS BEST
7 EFFORTS IN THAT REGARD.

8 MR. FAIRBANKS WOULD ALSO AGREE TO COOPERATE
9 WITH MRS. FAIRBANKS IN HELPING HER OBTAIN DENTAL
10 INSURANCE AT HER OWN EXPENSE THROUGH HIS LAW FIRM IF
11 THAT'S AVAILABLE UNDER THE PROVISIONS OF THE COBRA.

12 PERSONAL PROPERBY WOULD BE AS DIVIDED, EXCEPT
13 THAT THE PARTIES WOULD EXCHANGE THE OAK FILING CABINET IN
14 EXCHANGE FOR A NIGHT STAND THAT'S IN THE POSSESSION OF
15 MRS. FAIRBANKS.

16 MR. FAIRBANKS WOULD GIVE HER THE OAK FILING
17 CABINET. ON THE OUTSTANDING MEDICAL BILLS, MR. FAIRBANKS
18 AGREES TO MAKE ARRANGEMENTS TO PAY \$340 IN OUTSTANDING
19 MEDICAL BILLS UPON RECEIPT OF STATEMENTS FROM MRS.
20 FAIRBANKS.

21 VISITATION RIGHTS, MR. FAIRBANKS WILL RECEIVE
22 STANDARD VISITATION RIGHTS THAT ARE STANDARD VISITATION
23 RIGHTS OF THIS COURT, AS WELL AS HE WOULD GIVE 24 HOURS
24 ADVANCE NOTICE OF INTENT NOT TO EXERCISE THAT VISITATION.

25 THE HOME EQUITY, THERE WOULD BE NO CLAIM AS THE

1 HOME EQUITY BY MR. FAIRBANKS, AND MRS. FAIRBANKS WOULD
2 RECEIVE ALL OF THAT EQUITY SUBJECT TO ASSUMING THAT DEBT,
3 INDEMNIFYING AND HOLDING MR. FAIRBANKS HARMLESS ON THAT
4 DEBT. MR. FAIRBANKS WOULD RECEIVE ALL OF HIS INTEREST IN
5 HIS PRACTICE. MRS. FAIRBANKS WOULD RECEIVE ALL OF HER
6 INTEREST IN U-RENT STOCK.

7 AS TO THE DEBTS, MR. FAIRBANKS WILL PAY ON THE
8 MASTERCARD, ANY DEBTS AFTER SEPARATION, AS WELL AS THE
9 PROMISSORY** NOTE TO FIRST SECURITY BANK IN THE SUM OF
10 \$16,200. HE WILL ALSO PAY ANY TAX LIABILITIES THAT
11 RESULT FROM THAT NOTE BEING DEFAULTED.

12 MRS. FAIRBANKS IS TO PAY THE VANAGON, THE
13 BEDROOM SET TO HER FATHER, FOR THE HOME, AND TO SEARS ON
14 THE WASHER AND DRYER, AS WELL AS ANY OTHER DEBTS THAT SHE
15 MIGHT HAVE INCURRED SINCE THE SEPARATION.

16 THE PARTIES AGREE TO ASSUME AND PAY THOSE DEBTS
17 AND HOLD THE OTHER HARMLESS, AND THEY AGREE TO
18 INDEMNIFICATION PROVISIONS WITH RESPECT TO THE CHILD
19 SUPPORT OBLIGATION, BOTH WAYS.

20 AS TO MR. FAIRBANKS' CLAIM FOR BENEFITS FROM
21 THE SECOND MORGAGE THAT WAS PAID OFF DURING THE PENDENCY
22 OF THESE PROCEEDINGS, HE WOULD WAIVE ANY CLAIM AS TO ANY
23 BENEFIT FROM THAT, IN CONSIDERATION OF MRS. FAIRBANKS
24 WAIVING THE CLAIM IN TERMS OF SUPPORT ARREARAGES, WHICH
25 IS A DISPUTED CLAIM.

1 WITH RESPECT TO THE RETIREMENT ACCOUNTS, THE
2 QUALIFIED DOMESTIC RELATIONS ACT WOULD REQUIRE THE
3 ADMINISTRATOR TO CALCULATE THE PARTIES' INTEREST, DEDUCT
4 THE SUM OF \$9,349 FROM THE ACCOUNTS, THEN DIVIDING THE
5 BALANCE EQUALLY.

6 WITH RESPECT TO ATTORNEYS FEES, MR. FAIRBANKS
7 WOULD AGREE TO CONTRIBUTE TOWARD MRS. FAIRBANKS
8 ATTORNEY'S FEES IN THE SUM OF \$3,000. PAYABLE AS FOLLOWS:
9 \$50 PER MONTH FOR THE FIRST YEAR AFTER THE ENTRY OF
10 DIVORCE, \$100 PER MONTH THE SECOND YEAR, AND \$150 PER
11 MONTH THE THIRD YEAR, PROVIDED, HOWEVER, THAT SHOULD
12 ALIMONY TERMINATE, THEN THAT WOULD BE REPECTIVELY
13 INCREASED BY THE SUMS OF \$50, \$75, AND \$100 PER YEAR IN
14 EACH OF THOSE RESPECTIVE YEARS.

15 THAT SUM WOULD BEAR INTEREST OF 12 PERCENT, BUT
16 NO JUDGEMENT WOULD BE ENTERED UNLESS OR UNTILL MR.
17 FAIRBANKS BECAME 30 DAYS DELINQUENT, AT WHICH TIME MRS.
18 FAIRBANKS WOULD BE ENTITLED TO JUDGEMENT WITHOUT A
19 HEARING, UPON GIVING WRITTEN NOTICE OF DEFAULT.

20 WITH RESPECT TO THE 1991 TAX REFUND, THE
21 PARTIES HAVE AGREED THAT THAT SUM WILL BE SPLIT, WITH MR.
22 FAIRBANKS ORDERED TO PAY THE SUM OF \$270.50.

23 WITH RESPECT TO THE TAX EXEMPTIONS, THE PARTIES
24 HAVE AGREED THAT THEY WILL EACH EXCHANGE W-2 FORMS BY THE
25 END OF FEBRUARY OF EACH YEAR. ADDITIONALLY, MRS.

1 FAIRBANKS WILL PROVIDE HER TAX RETURN TO MR. FAIRBANKS.
2 AND HE CAN ELECT TO, WITHIN FIFTEEN DAYS THEREAFTER, TO
3 PROVIDE TAX RETURNS PREPARED AT HIS EXPENSE. HE COULD
4 THEN PURCHASE ANY OF THE TAX EXEMPTIONS FOR THE PARTIES'
5 MINOR CHILDREN BY PAYING THE DIFFERENCE BETWEEN HER TAX
6 LIABILITY BY NOT CLAIMING THOSE PARTICULAR EXEMPTIONS.
7 HE MUST PAY THAT AMOUNT TO HER BY APRIL 10TH OF THAT
8 YEAR.

9 I BELIEVE I HAVE COVERED IT ALL.

10 THE COURT: IS THAT CORRECT, MR. GREEN?

11 MR. GREEN: I BELIEVE SO, YOUR HONOR.

12 THE COURT: MRS. FAIRBANKS, YOU HAVE HEARD THE
13 RESOLUTION AS RECITED BY MR. DYER. IS THAT ACCEPTABLE TO
14 YOU?

15 MRS. FAIRBANKS: YES, IT IS.

16 THE COURT: MR. FAIRBANKS?

17 MR. FAIRBANKS: YES, IT IS.

18 THE COURT: WHO IS GOING TO PREPARE THE
19 PAPERS?

20 MR. DYER: I'LL PREPARE THEM, YOUR HONOR.

21 THE COURT: ALL RIGHT. SEND THEM TO ME. AND
22 YOU WILL SIGN OFF ON THOSE, AND THEY'LL BE ENTERED.

23 MR. GREEN: YES.

24 (WHEREUPON, THE PROCEEDINGS WERE COMPLETED)

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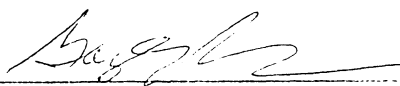
REPORTER'S CERTIFICATE

I, GAYLE B. CAMPBELL, DO HEREBY CERTIFY THAT I
AM A CERTIFIED SHORTHAND REPORTER AND OFFICIAL COURT
REPORTER IN AND FOR THE THIRD JUDICIAL DISTRICT, STATE OF
UTAH.

THAT AS SUCH I ATTENDED THE HEARING TRANSCRIBED
HEREIN AND REPORTED THE SAME VERBATIM IN STENOGRAPHY, AND
THEREAFTER CAUSED THE SAME TO BE TRANSCRIBED USING
COMPUTER-AIDED-TRANSCRIPTION.

THAT THE TRANSCRIPT IS TRUE AND CORRECT TO THE
BEST OF MY ABILITY.

SIGNED THIS 13TH DAY OF OCTOBER, 1992 IN SALT
LAKE CITY, UTAH.


GAYLE B. CAMPBELL, C.S.R.

GREEN & BERRY
FREDERICK N. GREEN (1240)
Attorneys for Plaintiff
622 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 365-5650

DISTRICT COURT
MAY 13 4 25 PM '94
BY *Michael R. Murphy*
JUDGE

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

JILL (FAIRBANKS) EYRING,
Plaintiff,

PLAINTIFF'S AFFIDAVIT

vs.

Civil No. 914902005DA

ROGER R. FAIRBANKS,
Defendant.

Judge Michael R. Murphy

STATE OF UTAH)
 :ss
COUNTY OF SALT LAKE)

Jill (Fairbanks) Eyring, being first duly sworn upon her oath, deposes and states as follows:

1. That she is the Plaintiff above-named and fully competent to make and execute this Affidavit.
2. That this Affidavit is submitted in opposition to the Defendant's Motion and in support of the Plaintiff's Order to Show Cause.
3. That the parties were divorced by Decree of Divorce which was supplemented on or about August 17, 1992, and provided for, among other things, the following:
 - (a) That each party exchange tax forms, including the Plaintiff's tax return, after which the Defendant would have 15 days to elect to purchase any or all of the tax

exemptions by paying to the Plaintiff any difference in her tax liability resulting from the Defendant's claiming of the children as tax exemptions;

(b) The Defendant was ordered to pay child support in equal installments on the 5th and 20th of each month;

(c) The parties were ordered to pay one-half each of any medical, dental, orthodontic or optical expenses reasonably and necessarily incurred for the benefit of the minor children, including deductible amounts (except for pre-existing conditions and in the event that the Plaintiff purchased an alternative source of medical and health insurance);

(d) The Defendant was ordered to purchase within three months of the entry of the supplemental Decree at \$250,000 life insurance policy naming the minor children of the parties as the sole and irrevocable beneficiaries thereon.

4. That the Defendant was awarded standard visitation and is required to give 24 hours notice of his intention not to exercise any standard visitation.

5. That the Defendant was ordered to pay attorney's fees in installments and in the event of a thirty day delinquency for judgment to enter together with interest.

6. That the Defendant has never exchanged his W-2 form as required by the Decree.

7. That after waiting for and demanding the Defendant's W-2 form, the Plaintiff volunteered her W-2 form and tax returns before April 10, 1994.

8. That in 1993, when the Defendant exercised his right to claim the exemptions relating to the children, the Defendant stated that he was aware that this would be the only year he would exercise that right because of the marriage of the Plaintiff and her husband and the fact that they would be filing a joint return which would save the Plaintiff and her husband more than the Defendant.

9. That in February, 1994, the Plaintiff attempted to discuss the subject of taxes with the Defendant, but the Defendant hung up on the Plaintiff.

10. That based upon the earlier statements of the Defendant, and the efforts of the Plaintiff to discuss the subject of taxes, the Plaintiff concluded that the Defendant would not be exercising any right to purchase the exemptions.

11. In the first week of April, 1994, the Defendant contacted the Plaintiff's husband, asking for a copy of the return, which was not ready to be filed at that time, but which was prepared and submitted to the Defendant.

12. That during one of the conversations with the Defendant, the Defendant stated, "I'm not going to buy them [the exemptions], I am going to take them, and Jill better sign the paper or I'll take her to court and see if she can afford to fight against me because I can represent myself."

13. That by the time the Defendant prepared his letter dated April 13, 1994, he had already received the information he was demanding.

14. That in fact, the Plaintiff was employed in 1993, and her income is reflected on the tax return, which is a joint tax return with her husband.

15. That Plaintiff, as a joint tax return filer, will be jointly liable for any taxes relating to the tax year 1993 which are related to the 1993 tax return.

16. That the Defendant is attempting to ignore the fact that the Plaintiff files a joint tax return with her husband, that the Plaintiff is equally responsible for any taxes under that return, or future taxes, and that the Plaintiff's tax return is in fact the joint tax return filed with her husband for the tax year 1993.

17. That the Defendant is habitually and continually late in making his child support payments. Of the last 42 child support payments made since the entry of the Decree, only two have been made on time.

18. The Defendant's tardiness creates significant financial problems and burdens for the Plaintiff and her children.

19. The Defendant refuses to pay his portion of any medical expenses related to the children.

20. That in January, 1993, the Plaintiff was required to make demands for medical bills through the Defendant's attorney.

21. When the Plaintiff gives the Defendant the medical bills, he tears them up on the Plaintiff's front lawn, and, by way of foul and abusive language, informs her that he will not pay the bills and the kids do not need to go to the dentist.

22. That the following is a list of medical expenses, which represents the Defendant's share thereof, all of which have been delivered to the Defendant and all of which he has failed to pay.

<u>Provider</u>	<u>Amount</u>	<u>Explanation</u>
Shopko Optical	\$105.00	Keri's contact lenses and eye exam
Dr. Bladens	400.00	Dental
Dental	30.00	Children's Sears dental bill
Doctor visits	110.00	Children's visits to Dr. Stahl and Assoc., Dr. Meads and Dr. Stevens, Dr. Rogers, Dr. Speakman and Holy Cross Instacare
Prescriptions	<u>\$110.00</u>	Twenty-two prescriptions at \$5.00 each and half of a \$10.00 co-pay
<u>TOTAL:</u>	<u>\$755.00</u>	

23. That the Plaintiff has frequently demanded that the Plaintiff provide evidence of the life insurance specified in the Decree. At first, the Defendant stated that he forgot the company name and finally Defendant stated, "I never really had a policy and I don't plan on getting one." And, "I will never get a policy. Take me to court and throw me in jail."

24. That the Defendant is usually tardy in the exercise of his visitation. The Defendant being late and absent not only confuses the children, who prepare for his visits, but makes meal preparation and the Plaintiff's other planning very difficult.

25. That the Defendant has never called to say that he would not exercise visitation, and he has never called to say that he would be late.

26. That when the Defendant does exercise visitation, he is verbally abusive, loud, and has come in the Plaintiff's home without invitation or permission.

27. That on one occasion the Defendant while exercising visitation left the children in the care of their sister, Keri, age 14, while he left to spend the night with his girlfriend, but did not provide Keri with the address or phone number in the event of an emergency.

28. That the Defendant has consistently refused to keep the Plaintiff informed as to the children's whereabouts during periods of visitation.

29. That the Plaintiff has paid nothing towards attorney's fees and the full sum, together with 12% interest, should enter as judgment.

30. That the Plaintiff has been required to retain counsel to represent her in regards to the above-matters.

31. That the Plaintiff requests the following relief of the Court:

(a) that the Defendant be held in contempt of court for his willful and malicious violation of the Court's Decree in regards to procuring life insurance, the payment of medical bills, the timely payment of child support, and the timely exercise of visitation (barring notice);

(b) that judgment enter against the Defendant for \$3,000 together with 12% interest;

(c) that all visitation be limited to "curb-side" pick-up and drop-off;

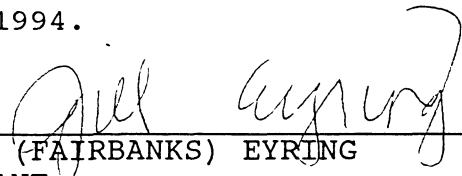
(d) that judgment enter for accrued and unpaid medical bills in the amount of \$755;

(e) that any untimely child support payments be assessed a \$5.00 per day late fee;

(f) that the Court order that in the event the Defendant is late for the exercise of his visitation by more than 30 minutes that the visitation be forfeited at the option of the Plaintiff so that other plans and arrangements may be made for the care of the children;

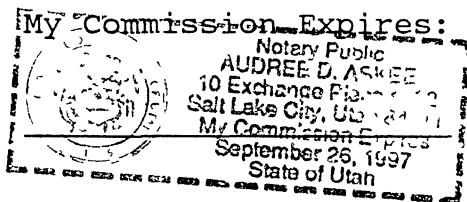
(g) that the Plaintiff be awarded her attorney's fees and costs associated with the Order to Show Cause.

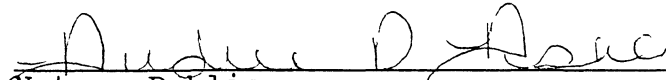
DATED THIS _____ day of May, 1994.



JILL (FAIRBANKS) EYRING
AFFIANT

SUBSCRIBED AND SWORN to before me this 16 day of May, 1994.





Notary Public
Residing in Salt Lake
County, State of Utah

Jill Fairbanks, Plaintiff,	:	MINUTE ENTRY
vs.	:	CASE NO: 914902005 DA
Roger R. Fairbanks, Defendant.	:	COMMISSIONER: Michael S. Evans

FINDS:

- 010305

3. The Decree of Divorce specifically provides, in paragraph 4, defendant's obligation to obtain life insurance, which life insurance defendant has failed to obtain simply alleging that he cannot afford to do so.

4. It appears that defendant was provided with plaintiff's request for reimbursement regarding the children's medical bills, if not early then by way of pleadings submitted in support of plaintiff's present motion, and it is reasonable that judgment be entered against defendant in the amount of attorney's fees as prayed.

5. It does not appear as though defendant has been delinquent in the payments of child support in an amount equal to support owing for a thirty day period and within the meaning of the statute and it is inappropriate to find such a delinquency has occurred and to enter an order to withhold and deliver child support.

¶ 6. The parties disagree with the interpretation of the Decree of Divorce as it relates to the award of attorney's fees to plaintiff. The Decree of Divorce in paragraph 15 orders defendant to pay to plaintiff the sum of \$3,000.00 as a contribution to plaintiff's attorney's fees and sets forth a payment schedule. The final sentence of paragraph 15, which is the disputed language provides, "In the event the defendant becomes more than thirty days delinquent in payment of said obligation for attorney's fees and costs, then plaintiff shall be entitled to obtain a judgment against defendant for the unpaid balance owing . . .". Plaintiff argues that any thirty day delinquency in any of the payments pursuant to schedule allows her to seek a judgment for any unpaid balance of the original \$3,000.00 award, while defendant argues that only those payments which were due according to the schedule of payments may be reduced to

judgment. The Commissioner finds that the Decree is appropriately interpreted to require that any unpaid balance owing of the \$3,000.00 attorney's fees awarded at the time of a thirty day delinquency, which has in fact occurred, is the appropriate interpretation of the Decree.

7. The parties also dispute the language of paragraph 16 of the Decree of Divorce regarding the right to claim the parties' minor children as dependents for tax purposes. Paragraph 16 provides, in pertinent part, "The defendant is awarded the right to purchase the tax exemptions for the parties' minor children from plaintiff. Defendant may exercise this right by paying to plaintiff any difference in her tax liability resulting from defendant purchasing the right to claim said tax exemptions."

The parties' dispute in this regard stems from plaintiff's remarriage and her argument that, although she remains substantially unemployed and generating minimal income for herself, that the tax liability resulting from her present husband's income is her shared liability and that only by defendant repaying all of the additional tax liability resulting from plaintiff and her present husband not claiming the children as their dependents are the terms of the Decree of Divorce fulfilled. Defendant argues, conversely, that it is only any tax liability plaintiff in her own name and as a result of her own earnings that he is required to reimburse.

8. The child support award entered in this matter was entered pursuant to Utah's Child Support Guidelines attributing no income to plaintiff and requiring that defendant pay one hundred percent of the guideline amount of support.

9. Since the Decree of Divorce was entered in this matter the Child Support Guidelines with respect to the award of the children as dependents for tax purposes has been amended and provides some further direction to the court. Section 78-45-7.21(2) provides, "In awarding the exemption, the court or administrative agency shall consider: (a) as the primary factor, the relative contribution of each parent to the cost of raising the child; and (b) among other factors, the relative tax benefit to each parent." (emphasis added)

The appropriate interpretation of the disputed language as contained in the Decree of Divorce is as the defendant argues: that only the tax liability of these parents is to be considered in determining the amount, if any, defendant is to reimburse plaintiff for the right to claim the children as his dependents. Only if plaintiff's present husband's income is included in determining defendant's child support obligation would it be fair and consistent with the intent of the guidelines to allow the court to consider plaintiff's husband's tax liability in the award of the children as dependent's for tax purposes.

RECOMMENDS:

1. The parties be restrained from having any contact with one another during times the children are exchanged for periods of visitation and that defendant arrive at plaintiff's home at the appointed time, in no event later than 7:00 p.m. when the visitation is to commence at 6:00 p.m., and remain in his vehicle while plaintiff sends the children out, with the process to be repeated at the end of any visitation period.

2. In the event defendant arrives more than one hour past the scheduled time for visitation, plaintiff be free to make other arrangements for the children.

3. The issue of defendant's contempt for failure to obtain life insurance as ordered in the Decree of Divorce be certified for further hearing before the assigned judge. Defendant may purge himself of any finding of contempt in this regard by his forthwith obtaining life insurance consistent with the Decree of Divorce.

4. Plaintiff be awarded judgment against defendant in the sum of \$755.00 representing one half of the children's uninsured medical expense. The issue of defendant's contempt in this regard be reserved pending his future performance.

5. Defendant be admonished to abide by the terms of the Decree of Divorce in promptly make all payments of child support on the date due. The issue of defendant's contempt in this regard should be reserved pending his future performance.

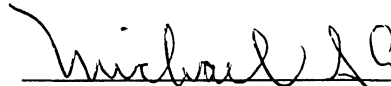
6. Plaintiff be awarded judgment against defendant in the sum of \$3,000.00, together with judgment rate of interest, representing attorney's fees due, owing but unpaid pursuant to the Decree of Divorce.

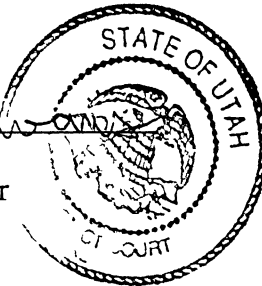
7. Defendant's Motion to Compel Reimbursement of sums paid to plaintiff representing reimbursement to plaintiff for her tax liability resulting from not claiming the parties' minor children as her dependents for tax purposes be granted and plaintiff return, forthwith, that portion of the sums defendant previously paid which represent additional tax liability attributable to plaintiff's present husband. In the event plaintiff herself incurred any additional tax liability on her earnings as a result of not claiming the children as her

dependents for tax purposes, said sum should not be repaid to defendant.

8. Each party bear their own attorney's fees and costs for this hearing.
9. Plaintiff's Counsel is to prepare an order consistent with this recommendation.

Dated this 16 day of August, 1994.


Michael S. Evans
District Court Commissioner

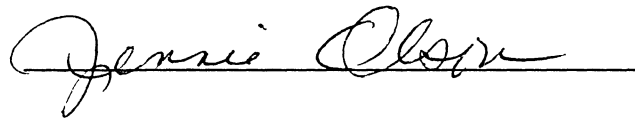
The seal is circular with a double-lined border. The outer ring contains the text "STATE OF UTAH" at the top and "DISTRICT COURT" at the bottom. The center of the seal features a detailed illustration of a mountain landscape with a river and a small building.

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry,
postage prepaid, to the following this 16 day of August, 1994.

Frederick N. Green
GREEN & BERRY
Attorney for Plaintiff
622 Newhouse Building
10 Exchange Place
Salt Lake City, UT 84111

Roger R. Fairbanks
Defendant
594 West Murray Boulevard, Apt. 1-K
Murray, UT 84123

A handwritten signature in cursive script, reading "Jennie Olson", is written over a horizontal line.

GREEN & BERRY
FREDERICK N. GREEN (1240)
SUSAN C. BRADFORD (5377)
Attorneys for Plaintiff
622 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 363-5650



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JILL FAIRBANKS,

Plaintiff,

vs.

ROGER R. FAIRBANKS,

Defendant.

**PLAINTIFF'S RESPONSIVE
MEMORANDUM IN SUPPORT OF ITS
OBJECTION TO COMMISSIONER'S
RECOMMENDATION**

Civil No. 91-4902005 DA

Judge Michael Murphy

The Plaintiff files the following responsive memorandum pursuant to Rule 4-501 of the Code of Judicial Administration in support of its motion objecting to the recommendation of the Commissioner.

INTRODUCTION

At the time of the divorce, the parties stipulated that the Plaintiff would be awarded the exemptions associated with the minor children subject to the Defendant's right to "purchase" the exemptions by reimbursing the Plaintiff for the increased taxes associated with the loss of the exemptions. The issue is whether or not the calculation of increased taxes would be based upon the Plaintiff's joint income tax return filed with her husband, or the estimated or speculative tax consequence if the Plaintiff were to have filed a married/separate income tax return.

Commissioner Evans has recommended that the tax consequences be based upon only the Plaintiff's tax liability, if she were to have filed a married/separate return, and excluding her husband's income.¹

FACTS

1. The parties were divorced December 20, 1991.
2. The divorce was by stipulation and contained the following provision:

The Defendant is awarded the right to purchase the tax exemptions for the parties' minor children from Plaintiff. Defendant may exercise this right by paying to Plaintiff any difference in her tax liability resulting from Defendant purchasing the right to claim said tax exemptions. In order to implement this provision, the parties are ordered as follows: Each party shall exchange W-2 forms for the previous tax year no later than the end of February of the following year. Plaintiff is ordered to prepare her tax return and provide Defendant with a copy by the end of February as required for the W-2 exchange herein. Defendant shall then have fifteen (15) days in which to elect to purchase any or all of the tax exemptions for the parties' minor children. Defendant is ordered to notify Plaintiff by March 15th of his intent to purchase any of said exemptions and shall pay the expense Plaintiff incurs to have her tax return recalculated as a result of defendant's election to purchase any or all of said exemptions. Plaintiff is ordered to execute all necessary forms/documents so as to implement the provisions of this paragraph. Further, Defendant is ordered to pay Plaintiff the sums owing to Plaintiff as the result of his purchase of any or all exemptions no later than April 10th of each year.

¹ This matter was taken under advisement. In so doing, the Commissioner acknowledged that it was a case of first impression for the Commissioner.

3. The Plaintiff has remarried.
4. The Plaintiff has filed a married/joint tax return.
5. The Plaintiff is and was substantially unemployed during the year 1993.
6. The Plaintiff's husband has assisted the Plaintiff in caring for her children and his step-children, rather than requiring the Defendant to work.
7. Child support is based upon the imputation of income to the Plaintiff at \$731 per month in spite of her actual work status.
8. The Plaintiff and her husband have determined that there will be significant tax savings if they file a married/joint return, rather than the parties each filing a married/separate return.
9. There has been no determination and no evidence provided by either party as to the relative contribution between the Defendant, or the Plaintiff's household, for the cost of raising the minor children.
10. Child support was stipulated to and has been paid pursuant to the child support guidelines in existence prior to July 1, 1994.²
11. The Plaintiff and her current husband acknowledge that they are bound by the provisions of §78-45-4.1, Utah Code Ann. (1953 as amended), as follows:

² It appears that the Commissioner has based his recommendation in large part upon the policies of the child support guidelines which were amended July 1, 1994 as they relate to the award of exemptions.

A step-parent shall support a step child to the same extent that a natural or adoptive parent is required to support a child.
(emphasis added)

ARGUMENT

POINT I.

THE DEFENDANT'S SUGGESTION, AND THE COMMISSIONER'S RECOMMENDATION, WHICH WOULD IGNORE THE CONTRIBUTION OF A STEP-PARENT, IS CONTRARY TO THE LAW OF THIS STATE, THE INTERNAL REVENUE CODE, AND EQUITY.

The Defendant's position, as well as the recommendation of the Commissioner, rests upon one pivotal, but flawed argument, to-wit: "Plaintiff . . . does not contribute financially to the cost of raising the parties four minor children." See Defendant's pro se Reply Memorandum, page 4.

The Internal Revenue Code allocates dependency exemptions between divorced or separated parents in §152(c) I.R.C. The requirements are: (1) that one or both parents provided more than half the cost to support the child; (2) the parents must be divorced or legally separated; and, (3) one or both parents must have custody of the children more than half of the year.

I.R.C. §152(e)(5) states that for purposes of requirement (1), above, support received from a parent's spouse upon remarriage is treated as having been received from the parent.

The general rule is that the custodial parent is entitled to the exemption. Temp. Reg. §1.152-4 T(a)(26 C.F.R.), Q-1; I.R.C. §152(e)(1).

Section 78-45-4.1, Utah Code Ann. (1953 as amended) places upon the step-parent the "same duty as a natural parent" to support step-children. The Eyrings (the Plaintiff and her current spouse, who is the step-parent of the four minor children of these parties) have elected, for their personal reasons, to have the step-parent satisfy his statutory obligation and for the Plaintiff to essentially be unemployed. In keeping with the I.R.C. §152(e)(5) and §78-45-4.1, Utah Code Ann. (1953 as amended), this court should view contributions to the support of the minor children based upon the contributions of a household, or the combination of the Plaintiff and her husband. The Defendant fails to acknowledge the tax treatment of contributions made by a step-parent, as well as the requirements of Utah law, in fashioning a strained and overly technical argument.

POINT III.

THE COMMISSIONER'S RECOMMENDATION DOES NOT
DEAL WITH THE TAX TREATMENT OF CONTRIBUTIONS
OF A STEP-PARENT, OR THE REQUIREMENTS OF UTAH
LAW AT ALL.

Very simply, in the eyes of the Internal Revenue Service, according to the law of Utah, and reasonable expectation of these parties, the reference in the Decree to "parent" for purposes of tax exemptions, must include the parent and the step-parent, at least where the step-parent is obviously contributing to the support of the step children (in light of the unemployment of the natural parent).

Consistent with the Internal Revenue Code and the laws of this state and the reasonable expectation of the parties, the Plaintiff files a joint tax return with her husband. This is "her tax return under the Decree." The Plaintiff is jointly and severally liable for taxes due, penalties, and the like. If there is a tax obligation (due to the loss of the exemptions), the Plaintiff is liable for that change and increased tax. A married/joint return has been determined to be advantageous to the Plaintiff and her husband. The filing status of married/joint is, in fact, what the Plaintiff and her husband do. This should all be compared with the fiction that the Defendant engages in when suggesting that the tax liability of the "parent" be based upon the pretend filing of a married/separate return which would disadvantage the Plaintiff and her husband, indeed the family.

The Defendant's argument, incredibly, must assume that the parties contemplated that neither of them would become married in the future. Such an assumption, in addition to being incorrect, is unrealistic. The Defendant has remarried. If the court were to adopt the Defendant's argument, then any tax advantage that he would gain by claiming the exemptions would also have to be based upon a married/separate return, rather than the likely married/joint return that he would want to file at that time.

If the aim of this provision and like provisions in other decrees is to maximize the available income to the parties, the application of the Defendant's argument, in reality, does not

accomplish that. Furthermore, if the Defendant truly believes that the remarriage of the Plaintiff was not contemplated in the Decree, then it would certainly constitute a substantial and material change in circumstance which would require the modification of the Decree. Judicial economy and equity would suggest that such a course is unnecessary.

The Commissioner's recommendation suggests that including the step-parent's income in determining the tax consequence of claiming or not claiming the exemptions would require the inclusion of step-parent income for child support determination. This is not so. In cases of imputed income, and similar language, the court does not suggest that the imputed income be the basis for estimating taxes and tax consequences. Rather, in this case, the basis of the Commissioner's recommendation assumes that the Plaintiff's income is zero (which is reality), rather than the imputed amount (which is fiction). The Defendant's position then takes the best of both worlds for his benefit regardless of reality and regardless of how such an argument impacts the four minor children.

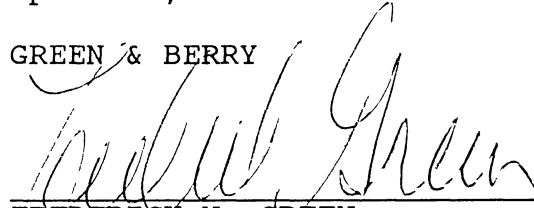
CONCLUSION

In light of I.R.C. §152(e)(5) and §78-45-4.1, Utah Code Ann. (1953 as amended), the court should calculate the Plaintiff's tax consequences based upon her joint return. The joint return is a joint and several obligation. Any taxes due or consequences flowing from the filing of a joint tax return are the Plaintiff's. The Defendant ought not to prevail on an

inequitable and internally inconsistent argument. The Defendant's argument is, at least, overly technical and does not reflect the reality of the parties' experience. Finally, the Defendant's argument does not consider the best interests of the children because it does not maximize the tax savings available to the parties.

DATED THIS 7 day of September, 1994.

GREEN & BERRY



FREDERICK N. GREEN
Attorney for Plaintiff

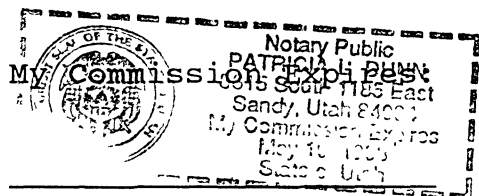
STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

That she is employed in the offices of GREEN & BERRY, attorneys for Plaintiff herein, that she served the attached PLAINTIFF'S RESPONSIVE MEMORANDUM IN SUPPORT OF ITS OBJECTION TO COMMISSIONER'S RECOMMENDATION upon the following parties by placing a true and correct copy thereof in an envelope addressed to:

and depositing the same, sealed, with first class postage prepaid thereon, in the United States Mail at Salt Lake City, Utah on the 7 day of September, 1994.

Antonio B. B.

Patricia A. Dunn
Notary Public
Residing in Salt Lake
County, State of Utah



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

FAIRBANKS, JILL	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 914902005 DA
	:	DATE 10/24/94
VS	:	HONORABLE MICHAEL R MURPHY
	:	COURT REPORTER GAYLE CAMPBELL
FAIRBANKS, ROGER R	:	COURT CLERK MGS
DEFENDANT	:	

TYPE OF HEARING: OBJ. TO COM. RULING
PRESENT: PLAINTIFF DEFENDANT

P. ATTY. GREEN, FREDERICK N
D. ATTY. FAIRBANKS, ROGER (PRO SE)

THIS BEING THE TIME SET FOR HEARING ON THE OBJECTION'S TO THE
COMMISSIONER'S RECOMMENDATIONS.

BASED ON THE ARGUMENTS OF COUNSEL AND PARTIES, THE COURT
ORDERS THE OBJECTIONS ARE OVERRULED. FREDERICK GREEN IS TO
PREPARE THE ORDER.