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Bruno D'Aston v. Dorothy D'Aston : Petition for Writ of Certiorari

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BRIEF

IN THE SUPREME COURT

OF THE STATE OF UTAH

BRUNO D'ASTON, :

Plaintiff-Appellee, :

vs. : Case No. 900452

DOROTHY D'ASTON, et al., :

Defendant-Appellant. :

APPELLEE'S PETITION FOR WRIT OF CERTIORARI

APPEAL FROM THE DECREE OF DIVORCE OF THE
FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY,
THE HON. BOYD L. PARK, PRESIDING.

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LESLIE W. SLAUGH, for:
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FILED

SEP 2 8 1990

Clerk, Supreme Court, Utah

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APPELLEE'S PETITION FOR WRIT OF CERTIORARI

QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals' decision conflict with prior Utah cases in holding that a postnuptial property agreement binds a divorce court absent unique and compelling circumstances?

2. Did the Court of Appeals disregard its own opinion by granting appellant relief while she was still in contempt of the trial court and had not complied with the trial court's orders?

3. Did the Court of Appeals unfairly limit the discretion of the trial court on remand by ruling on factual issues which were disputed and not decided by the trial court?

OPINIONS OF COURT OF APPEALS

Two opinions were issued by the Court of Appeals. The most recent, and the one challenged by the instant petition is D'Aston v. D'Aston, 794 P.2d 500, 136 Utah Adv. Rep. 47 (Ct. App. 1990). A copy of that opinion ("D'Aston II") appears in Appendix "B".

An earlier opinion of the Court of Appeals addressed whether the court should consider the appeal while the defendant was in

contempt. D'Aston v. D'Aston, 790 P.2d 590, 132 Utah Adv. Rep. 25 (Ct. App. 1990) ("D'Aston I", copy in Appendix "A").

JURISDICTION

The opinion to be reviewed (D'Aston II) was entered June 14, 1990. Upon motion of Bruno D'Aston ("Husband"), the Court of Appeals extended the time for filing a petition for rehearing through July 12, 1990, and Husband filed a petition on that date.[1] The Petition for Rehearing was denied by Order entered August 29, 1990, and an Amended Order Denying Petition for Rehearing filed August 30, 1990. This Court has jurisdiction pursuant to Utah Code Ann. § 78-2-2(3)(a) (Supp. 1990) and § 78-2a-4 (1987).

CONTROLLING STATUTES

Bruno D'Aston is not aware of any controlling constitutional provisions, statutes, ordinances, or regulations.

STATEMENT OF THE CASE

A. Nature of the Case. This is an action for divorce. The complaint also named the parties' two adult children as defendants and sought an order compelling the defendant wife and the children to return to the plaintiff husband certain personal property alleged to have been stolen from the husband.

B. Course of Proceedings and Disposition Below. Plaintiff ("Husband") filed his complaint for divorce against defendant

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[1]The order of the Court of Appeals denying the Petition for Rehearing states that the Petition was filed July 16, 1990. A copy of the Petition was lodged with the Court of Appeals on July 12, but it did not comply with the applicable rules for format. The Court of Appeals granted a five-day extension to correct the defect. A corrected Petition was filed July 16, 1990.

("Wife") on May 2, 1986. The complaint also named the two adult children of the parties as defendants and sought an order compelling Wife and the children to return certain personal property alleged to have been stolen from Husband. (R. 1-5.) Wife answered and filed a counterclaim for divorce and also sought an award of alimony. (R. 29-33.) At Husband's request, the trial court ordered Wife to pay Husband the sum of $2,500.00 per month as support during the pendency of the action. (R. 244-45.)

The case came on for trial on April 18-21, 1988. (R. 307-32.) The trial court filed a Memorandum Decision on November 17, 1988 (R. 440-53), and filed Findings of Fact and Conclusions of Law (R. 454-66) and a Decree of Divorce (R. 467-538) on December 15, 1988.

Wife served a Motion to Amend Judgment or Grant a New Trial on December 22, 1988. (R. 541-42.) The court denied the motion by ruling entered on January 10, 1989. (R. 556.) A formal Order Denying Defendant Dorothy D'Aston's Rule 59 Motion was entered on January 12, 1989. (R. 562-63.) Wife filed her Notice of Appeal on January 23, 1989. (R. 579-80.)

Subsequent to the filing of the Notice of Appeal, Husband proceeded on his claim against defendant Eric Aston. An Order and Decree substantially in favor of Husband was entered on March 9, 1990. Eric Aston subsequently filed a Notice of Appeal (Case No. 900223-CA), and Husband filed a Notice of Cross Appeal (Case No. 900281-CA). The appeal and cross appeal were consolidated under Case No. 900223-CA by Order entered June 1, 1990.

During the pendency of the instant appeal, the trial court found Wife in contempt of court by reason of her failure to comply with certain provisions of the Decree of Divorce. Husband moved

to dismiss Wife's appeal because of Wife's contempt of court and avoidance of process. The Court of Appeals preliminarily denied the motion and indicated that it would be heard in conjunction with arguments on the merits.

Following oral arguments and on April 9, 1990, the Court of Appeals held that the appeal would be dismissed unless Wife submitted herself to the process of the trial court and offered security to protect the judgment pending appeal. D'Aston v. D'Aston, 790 P.2d 590 (Utah Ct. App. 1990) ("D'Aston I").

On May 4, 1990, Wife filed a Notice of Appearance with the Court of Appeals. (A copy appears in Appendix "F.") The Court of Appeals thereafter entered a second opinion addressing the merits of the appeal and reversing the trial court. D'Aston v. D'Aston, 794 P.2d 500 (Utah Ct. App. 1990) ("D'Aston II").

The Notice of Appearance filed by Wife noted that she remained in contempt of the trial court. On May 22, 1990, the trial court entered an Order (copy attached as Appendix "G"), giving Wife until June 22, 1990, to purge herself of the contempt by depositing with the court the money which she had previously and incorrectly represented to the trial court was in a safety deposit box. Wife remained in contempt of court at the time the opinion of the Court of Appeals was issued on June 14, 1990, and continues to remain in contempt of the trial court.

C. Statement of Facts. Bruno D'Aston ("Husband") and Dorothy D'Aston ("Wife") were married on September 22, 1953, and remained married until the time of this divorce action. Husband owned separate property prior to the marriage, consisting generally

of a coin and stamp collection valued by Husband at $567,700.00, and other valuable items. (R. 686-87; Ex. 8, copy attached to Decree in Appendix "C.") Wife disputed the testimony and asserted that the assets owned by Husband at the time of their marriage consisted of $5,000.00 in cash and a 1952 Oldsmobile. (R. 1402.)

During the course of the marriage the parties acquired substantial property. The property in general consisted of a business real property in City of Industry, California, a residence (Skyline Drive property) in Hacienda Heights, California, and personal property including cash and bank accounts. (R. 687-91.)

In March, 1983, Husband and Wife executed a document entitled "Agreement." (Ex. 21.) Husband testified the document was suggested by his attorney who was also vice president of Husband's corporation. Husband testified they were threatened with two lawsuits and the attorney suggested that they (Husband and Wife) put the factory building and the Skyline property (the valuable home) in Wife's name so the creditors would have a difficult time to attach it if the lawsuits came to fruition. (R. 754.) Husband testified that in a discussion with Wife he told her that they put the property in her name in case something happened with the lawsuit that was threatened, and that Wife agreed to it. (R. 755, 835.) Wife testified that Husband did not tell her anything about pending lawsuits or threats of lawsuits. (R. 1413.)

Husband testified that after the signing of the document there was no change in the handling of their financial affairs. He testified that Wife handled the money and wrote the checks as she had always done before the 1973 agreement, and continued the same way from the early 1960's until April 30, 1986. (R. 1586-87.)

The property given to Wife under the agreement was predominantly the business property, the residence, and cash and bank accounts. The business property was subsequently liquidated for approximately $1,000,000.00. (R. 756, 852.) In March, 1982, the residence property was sold for $1,250,000.00. The proceeds from the sale included a promissory note secured by a trust deed on the property in the sum of $687,788.42. (R. 713-14; Ex. 133.)

In the latter part of April, 1986, Husband returned home from a coin show in Bellevue, Washington. At this time, the parties' property consisted predominately of valuable coins owned by Husband, and cash and real property in Wife's name. (R. 719-20; Ex. 20.) Husband had with him certain coins he had on consignment, as well as coins of his own. These coins he kept in three cases in his vehicle. All three cases were chained and locked. (R. 723-24.)

Husband testified that on April 30, 1986, after he had returned from the coin show, Wife invited him to share coffee with her. While Wife was thus occupying Husband, their son, Eric Aston, broke into Husband's vehicle and removed hundreds of thousands of dollars worth of coins and other valuable assets. Eric then returned and stated to his father, in the presence of his mother, that he, Eric, had removed the coins because "we" could no longer trust Bruno D'Aston. (R. 725.) The items stolen included nearly all of the assets conveyed to Husband under the 1973 agreement. Both Eric Aston and Wife denied they took the coins or that they had possession of them at the time of trial. (R. 1001-06.)

At the hearing on Husband's request for a temporary alimony allowance, Husband testified that Wife was receiving $6,300.00 per month interest payment on the note from the sale of the California

house. (R. 609.) Wife testified and said nothing concerning the payments being received from the note. The trial court ordered Wife to pay Husband $2,500.00 per month out of the $6,304.73 that she received each month. (R. 658.) In fact, prior to January, 1988, Wife had discounted the note and received cash in the sum of $633,000.00. (R. 1500, Ex. 144.) She was at all times under an order not to dispose of any property. (R. 54-56.)

At the trial, Husband testified that his income was only $438.00 per month from Social Security, and that Wife had possession of all the parties' assets except the motor home Husband lived in and the Volkswagen he drove. (R. 758-60.) Wife testified that she had on hand, remaining from the $633,000.00, $300,000.00 cash in a safety deposit box in Far West Bank, $34,000.00 in savings in Far West Bank, $26,000.00 in checking at Far West Bank, and $75,000.00 cash in a safe at home. (R. 1501-03.) She testified she had purchased $86,700.00 in diamonds and $7,600.00 in silver bullion, and that she had spent over $100,000.00 for living expenses from September, 1987, through April, 1988. (R. 1503-04.)

SUMMARY OF ARGUMENT

D'Aston I required Wife to submit to the jurisdiction of the trial court and provide security for payment of the judgment against her, or her appeal would be dismissed. Wife failed to fully comply with that directive. D'Aston II was issued while Wife remained in contempt of the trial court. The Court of Appeals failed to enforce its own order. Wife failed to satisfy the requirements of D'Aston I, and her appeal should be dismissed.

In addressing the merits of the appeal in D'Aston II, the court held the postnuptial property agreement of the parties to be binding on the trial court absent "unique and compelling circumstances." This test is not supported by Utah authority. It conflicts with prior decisions of this Court which hold that "compelling circumstances" are required to modify a property settlement agreement which has been incorporated in a decree of divorce, but that a predivorce property settlement agreement may be modified by a trial court to achieve fairness and equity. Review by writ of certiorari is necessary to correct this decision.

Finally, the opinion in D'Aston II extends too far. The evidence would support a finding of "unique and compelling circumstances." The trial court made no finding on the evidence because the trial court's ruling on the property agreement made such findings unnecessary. D'Aston II can be read as precluding the trial court from now making findings on those issues and fashioning an equitable decree accordingly. D'Aston II should be limited to only holding that the 1973 property agreement was binding between the parties.

ARGUMENT

POINT I

THE COURT OF APPEALS FAILED TO REQUIRE COMPLIANCE WITH ITS OWN ORDER.

In D'Aston v. D'Aston, 790 P.2d 590, 594 (Utah Ct. App. 1990) ("D'Aston I"), the court required Wife to "submit herself to the jurisdiction of the trial court and satisfy that court's concerns before she may exercise that right [to appeal]." 790 P.2d at 594.

Wife failed to comply with that requirement. The Court of Appeals nonetheless granted her the relief she requested on appeal. Husband called Wife's non-compliance to the attention of the Court of Appeals by filing a petition for rehearing. The Court of Appeals denied the petition without opinion.

Wife asserted in her Response to Petition for Rehearing that her mere appearance before the trial court constituted full compliance with the Court of Appeals' order. The order was not so limited. Wife was required to submit herself to the trial court's jurisdiction and "satisfy that court's concerns" before receiving the benefits of her right to appeal. She had "the obligation to come forward and offer a reasonable alternative to the trial court to safeguard her assets from dissipation pending her appeal." Id.

D'Aston I clearly requires Wife to do more than merely appear in court. The censured conduct was not merely her avoidance of process, but included her demonstration that she was "unwilling to respond to a court order with which [s]he disagrees," but which she sought to challenge on appeal. 790 P.2d at 595 (quoting Tobin v. Casaus, 128 Cal. App. 2d 588, 275 P.2d 792, 795 (1954)). The Court of Appeals accordingly required that she "submit" to, i.e., comply with, the jurisdiction of the trial court and its orders:

> We therefore hold that appellant has 30 days from the date of the issuance of this opinion to bring herself within the process of the trial court. If appellant submits herself to the trial court, she should be allowed an opportunity to offer alternatives to the trial court to protect the judgment. Appellant may persuade the court it should hold the disputed judgment amount in trust until a resolution of this appeal on the merits. However, if appellant persists in secreting herself in violation of the trial court's orders, her appeal will

> be dismissed at the expiration of the 30-day period.

590 P.2d at 595 (emphasis added).

The transcript of the hearing before the trial court (copy attached as Appendix "E") clearly show that Wife did not satisfy the trial court's concerns nor fully "submit" to its orders and process. She not only failed to pay the money into court or a trust account, but she either spent the money or gave it away. (See Transcript of hearing May 4, 1990, at pages 4, 11-14.) The trial court viewed her trial testimony concerning the money to be "a flat out lie to this court." (Id. at page 19.) The trial court granted her yet additional time to pay the money into court, but expressly stated that she was still in contempt and "in deep trouble" as far as the trial court was concerned. (Id. at page 5.)

Although she did appear at a hearing, she remained in contempt of the trial court. Wife may and should be punished for her contempt even if the disobeyed order may be incorrect. See In re Contempt of Reeves, 112 Idaho 574, 733 P.2d 795 (Ct. App. 1987).

Wife failed to "satisfy" the trial court's concerns within the time frame previously set by this Court. The Court of Appeals failed to follow its own order. D'Aston II should be vacated and the appeal dismissed as required by D'Aston I.

POINT II

THE "UNIQUE AND COMPELLING CIRCUMSTANCES" TEST IS NOT SUPPORTED BY AND CONFLICTS WITH PRIOR DECISIONS OF THE COURT OF APPEALS AND THE UTAH SUPREME COURT.

D'Aston II held the 1973 property agreement binding on the parties, and rejected Husband's argument that the trial court

should be afforded discretion to divide the parties' property as equity required notwithstanding the terms of the agreement. The court held that "unique and compelling circumstances" must exist to justify varying from a postnuptial agreement, and held that the record did not disclose such compelling circumstances. D'Aston II, 794 P.2d at 504 n. 6. The argument below demonstrates that the "unique and compelling circumstances" test is not supported by and conflicts with prior decisions of this Court and the Court of Appeals. Point III of this Petition establishes that "unique and compelling circumstances" do exist in this case.

Footnote 6 of the opinion in D'Aston II states, in part:

> Husband argues on appeal that even if we find the trial court erred when it found the 1973 agreement was not intended to apply in the event of a divorce, the error was harmless because of the broad equitable powers trial courts possess in domestic matters. See Colman v. Colman, 743 P.2d 782, 789 (Utah Ct. App. 1987). However, even if a trial court has the equitable power to disregard an otherwise enforceable postnuptial property settlement agreement and to distribute the separate property of the spouses, the circumstances must be unique and compelling to justify the application of such an exception. The trial court made no findings to delineate what it found as compelling circumstances to justify such an action and we find none.

D'Aston II, 794 P.2d at 504 n. 6.

The court gives no supporting authority for this "unique and compelling circumstances" test. Prior decisions of this Court and the Court of Appeals have applied a "compelling circumstances" test only to modification of the property division in a final divorce decree. Much less stringent tests apply to prenuptial agreements, or postnuptial agreements made in contemplation of divorce. D'Aston II conflict with these decisions.

A "compelling circumstances" test has been adopted by this Court as applicable to modifications of a property settlement agreement which has been sanctioned by a court and incorporated in a divorce decree. Foulger v. Foulger, 626 P.2d 412, 414 (Utah 1981), Despain v. Despain, 610 P.2d 1303, 1306 (Utah 1980); Land v. Land, 605 P.2d 1248, 1251 (Utah 1980).

A completely different test applies to modification of a property settlement agreement not yet sanctioned by the court. In Colman v. Colman, 743 P.2d 782 (Utah Ct. App. 1987), the court considered the effect to be given a property settlement agreement executed in contemplation of a divorce. The court held as follows:

> [I]t is well recognized that a parties' stipulation as to property rights in a divorce action, although advisory and usually followed unless the court finds it to be unfair or unreasonable, is not necessarily binding on the trial court. It is only a recommendation to be adhered to if the court believes it to be fair and reasonable.

743 P.2d at 789 (citing Pearson v. Pearson, 561 P.2d 1080, 1082 (Utah 1987); Klein v. Klein, 544 P.2d 472, 476 (Utah 1975)).

The opinion in Colman does not state whether the property settlement agreement was executed prior to the commencement of the divorce action or during the pendency of the divorce proceedings. The distinction does not appear critical to that decision.

In the instant action, in contrast, the Court of Appeals held that if a property settlement agreement is executed at some unspecified earlier time, at a time when the parties are not immediately contemplating divorce but at a time when divorce is certainly foreseeable, the agreement becomes not merely advisory if "fair and reasonable," but conclusively binding unless "unique

and compelling" circumstances exist. The Court of Appeals does not cite to any prior case law establishing such a distinction, and Husband is not aware of any.

Husband respectfully submits that no logical basis exists for giving greater effect to a postnuptial agreement (whether executed one year or twenty years before the divorce) than to a predivorce property settlement agreement. Logic dictates that the predivorce (postnuptial) agreement be given less weight, not greater. A predivorce agreement is enforced within a short period of time after execution. There is little likelihood that the parties' circumstances will change prior to the time the agreement is enforced. The postnuptial agreement in this case, in contrast, was executed nearly fifteen years before enforcement was sought. There had been a vast and material change in circumstances subsequent to the execution of the agreement. Husband respectfully submits that there is no legal or logical reason for giving greater effect to a contract which was executed with less knowledge.[2]

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[2]Alternatively, this Court should adopt the standards for enforcement of a prenuptial (or postnuptial) agreement as set forth in Brooks v. Brooks, 733 P.2d 1044 (Alaska 1987). The court held that the following three criteria are generally considered in determining whether to enforce such an agreement:

> 1. Was the agreement obtained through fraud, duress or mistake, or misrepresentation or nondisclosure of material fact?
>
> 2. Was the agreement unconscionable when executed?
>
> 3. Have the facts and circumstances changed since the agreement was executed, so as to make its enforcement unfair and unreasonable?

Brooks, 733 P.2d at 1049 (citing Scherer v. Scherer, 249 Ga. 635, 292 S.E.2d 662, 666 (1982)). The "unfair and unreasonable" test in the third factor is identical to that applied to property settlement agreements by Utah courts. Colman, 743 P.2d at 789.

It is important to emphasize that Husband does not dispute, for purposes of this Point, that the 1973 agreement mandates that the trial court treat the designated properties as separate property. Once the property is properly labeled as either separate or marital, however, the trial court in dividing the property should be granted a latitude of discretion equal or greater to that applicable when dealing with a property settlement agreement.

Once it is determined that the property is separate, the trial court must consider several factors in determining whether it should be divided. Burke v. Burke, 733 P.2d 133, 135 (Utah 1987). The trial court did not have any reason to make findings on those factors in this case, because it had already determined that the 1973 agreement was not enforceable and that all the property was marital property. The trial court should be permitted on remand to exercise its discretion, in accordance with the principles set forth above, to divide the separate property if equity so requires.

POINT III

EVIDENCE OF UNIQUE AND COMPELLING CIRCUMSTANCES EXISTS WHICH WOULD JUSTIFY THE TRIAL COURT IN DIVIDING THE SEPARATE PROPERTY.

Husband testified that on April 30, 1986, after he had returned from a coin show in the State of Washington, Wife invited him to share coffee with her. While Wife thus occupied him, their son, Eric Aston, broke into Husband's vehicle and removed hundreds of thousands of dollars worth of coins and other valuable assets. Eric then returned and stated to Husband, in Wife's presence, that he, Eric, had removed the coins because "we" could no longer trust

Husband. (R. 725.) The items stolen included nearly all of the assets conveyed to Husband under the 1973 agreement.

Wife and Eric disputed Husband's testimony. The trial court determined that it was not necessary to resolve the dispute because the trial court held that the 1973 agreement was not enforceable in any event. The Court of Appeals disagreed and held the 1973 agreement to be enforceable. The Court of Appeals held that postnuptial agreements are enforceable unless "unique and compelling circumstances" exist to justify varying from the agreement. The court did not define what would constitute "unique and compelling circumstances," but stated in footnote that "[t]he trial court made no findings to delineate what it found as compelling circumstances to justify such an action and we find none." 794 P.2d at 504 n. 6.

Point II above shows that the "unique and compelling circumstances" test is not proper. Even if that test applies, however, unique and compelling circumstances exist in this case.

In Noble v. Noble, 761 P.2d 1369 (Utah 1988), for example, the Court held that the trial court properly awarded a portion of the husband's separate property to the wife where the wife had no income or assets and where her present financial needs were the result of the husband's tortious conduct. The Court of Appeals asserts that Noble is distinguishable because it did not involve a prenuptial or postnuptial agreement. The critical issue, however, is that the standard applied in Noble is the same as the Court of Appeals has previously held applies where a property settlement agreement has been made. The Court in Noble held:

> [T]here is no per se ban on awarding one spouse a portion of the premarital assets of another.

> In fact, our cases have consistently held that under appropriate circumstances, achieving a fair, just, and equitable result may require that the trial court exercise its discretion to award one spouse the premarital property of the other.

761 P.2d at 1373 (citations omitted).

This language is remarkably similar to that in Colman v. Colman, 743 P.2d 782 (Utah Ct. App. 1987), a case which did involve a postnuptial agreement (although executed in contemplation of divorce):

> [I]t is well recognized that a parties' stipulation as to property rights in a divorce action, although advisory and usually followed unless the court finds it to be unfair or unreasonable, is not necessarily binding on the trial court. It is only a recommendation to be adhered to if the court believes it to be fair and reasonable.

743 P.2d at 789 (citations omitted).

Theft must certainly be considered to be a compelling circumstance. Evidence exists which would support a finding that Wife stole the coins from Husband. Although the location of the coins was not known at the time this case was tried,[3] some of the coins have subsequently been discovered in Eric Aston's possession. (See Appendix "I".) This corroborates Husband's testimony that Eric and Dorothy D'Aston conspired to steal the coins from Husband.

The Court of Appeals' holding leaves Husband without an effective remedy. Wife assisted in the theft of all of the assets conveyed to Husband under the 1973 agreement, but the Court of

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[3]The trial court held that if the coins were later found in the possession of either party, that party would be considered in contempt of court and punished. (R. 471.)

Appeals nonetheless prohibits the trial court from allowing Husband a share in the assets Wife received under the 1973 agreement.

The trial court should be granted discretion to make whatever orders are necessary and just in this case. The Court of Appeals having held that the trial court was in error in its interpretation of the 1973 agreement, this Court should now remand the case to the trial court to make whatever decree is just and appropriate under the circumstances of the case, yet in harmony with the Court of Appeals' interpretation of the agreement.

POINT IV

THE COURT OF APPEALS ERRED IN HOLDING THAT THE 1973 AGREEMENT OPERATED TO BIND THE DIVORCE COURT.

Husband does not, for the purposes of this Petition for Certiorari, contest the holding in D'Aston II that the parties intended the 1973 agreement to be binding, and that the agreement was unambiguous. Husband respectfully submits, however, that the Court of Appeals has misinterpreted the agreement. The critical portion of the agreement (copy in Appendix "H") states as follows:

> 3. Hereafter, and until this agreement is modified in writing attached hereto, all property, real, personal and mixed, acquired by either party in his or her sole name, from whatever source derived and wherever situated, shall be the sole and separate property of such person, notwithstanding any law, statute, or court decision giving presumptive effect to the status of marriage; and such property shall be free of all claims, demand [sic] or liens of the other, direct or indirect, and however derived.

Defendant's Exhibit 37 (emphasis added).

D'Aston II held that the emphasized portion clearly indicated an intent that the agreement be binding and conclusive on any

divorce court. 794 P.2d at 504. The agreement does not, however, state that it is binding on all court decisions. It is only intended to prevent a court decisions "giving presumptive effect to the status of marriage." In other words, the agreement prohibits the court from presuming, solely by reason of the marriage, that the property was community or marital property. The agreement only determines the status of the property as separate.

This argument is supported by Parkhurst v. Gibson, 573 A.2d 454 (N.H. 1990). The prenuptial agreement at issue in that case stated, among other things, that "[i]t is mutually declared that it is the intention of the parties to this agreement that by virtue of their prospective marriage neither one shall have nor acquire any right, title or claim in and to the real or personal estate of the other party . . . ." 573 A.2d at 456. The agreement did not however, specifically use the words "divorce," "alimony," or "property settlement," but appeared to be directed at determining the status of the parties' property for inheritance purposes. The subject agreement in this case similarly does not specifically refer to divorce or to a property settlement in divorce, and should be read as only determining the status of the property as separate.

Husband does not contest, for the purposes of this Petition for Rehearing, that the 1973 agreement conclusively establishes the status of the property as separate. In Utah, the general rule is that "in appropriate circumstances, equity will require that each party retain the separate property brought to the marriage." Burke v. Burke, 733 P.2d 133, 135 (Utah 1987). By designating the property as separate, therefore, the 1973 agreement created a presumption that the property would remain the property of Wife.

The trial court must treat the property as separate property. As with any separate property, however, the court can order one party to convey portions of his or her separate property to the other in order to achieve equity under the circumstances of the case. Id. Although the agreement mandates that the property be dealt with by a divorce court as separate property, nothing in the agreement can be read as prohibiting the divorce court from otherwise treating the property the same as any other separate property.

CONCLUSION

D'Aston II should be vacated and the appeal dismissed as required by D'Aston I and for the reason that Wife has been and remains in contempt of the orders of the trial court. A person who is openly contemptuous of the trial court should not be entitled to relief in the appellate courts of this state.

D'Aston II should also be vacated as erroneous on the merits. The opinion contradicts prior opinions of this Court and of the Court of Appeals. Prior cases hold that the "unique and compelling" circumstances test applies only where a property settlement agreement has been approved by a court and incorporated in a divorce decree. The trial court has discretion to vary from a property agreement to achieve a result that is fair and reasonable.

The record evidence, and that which has been discovered subsequent to the initial decree, would justify the trial court in dividing the parties' separate property. The trial court made no finding concerning that evidence, because it was not necessary.

D'Aston II should be vacated and the case remanded to the trial court with full discretion to divide the separate property if necessary to fashion an equitable decree.

DATED this 28th day of September, 1990.

S. REX LEWIS and
LESLIE W. SLAUGH, for:
HOWARD, LEWIS & PETERSEN
Attorneys for Respondent

MAILING CERTIFICATE

I hereby certify that four true and correct copies of the foregoing were mailed to the following, postage prepaid, this 28th day of September, 1990.

Brian C. Harrison, for:
HARRIS, CARTER & HARRISON
3325 No. University Avenue
Suite 200
Provo, Utah 84604

Attorneys for Appellant

APPENDIX "A"

D'Aston v. D'Aston,

790 P.2d 590 (Utah Ct. App. 1990)

(D'Aston I)

[5] Further, in viewing all the facts in the light most favorable to Brinkerhoff, we can find no prejudice. *Harris v. Utah Transit Auth.*, 671 P 2d 217, 222-23 (Utah 1983); *Moore v. Burton Lumber & Hardware Co.*, 631 P 2d 865, 868 (Utah 1981). Brinkerhoff neither below nor on appeal articulates how he was prejudiced by DLS's failure to notify him in the notice of hearing that the hearing was going to be informal. It seems clear that no prejudice would ordinarily occur when an informal hearing is held under the UAPA because the litigant has an absolute right to a trial de novo before the district court. In this trial de novo, Brinkerhoff was able to present his entire case before a new tribunal for an independent decision. Based upon the foregoing, we find the trial court erred in revoking the order of suspension on the basis that the notice of hearing sent by DLS did not state whether the administrative hearing was to be formal or informal as required by Utah Code Ann. § 63-46b-3(2)(a)(v) (1989).

REASONS FOR THE DECISION UNDER SECTION 63-46b-5

Brinkerhoff also alleges that DLS violated Utah Code Ann § 63-46b-5(1)(i) (1989) by failing to set forth specific reasons for its suspension of his driving privileges. This statute states, in pertinent part, that "[w]ithin a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing that states the following· (ii) the reasons for the decision."

[6] We dispose of this issue on similar grounds. First, Brinkerhoff failed to raise an objection so as to allow DLS to cure any defect, and second, Brinkerhoff does not claim, let alone demonstrate, that he was prejudiced by any alleged error

The record below shows that Brinkerhoff made no request of DLS to provide him with more specific reasons for the suspension of his license As stated above, a failure to object to an error and allow a tribunal to correct its error precludes an appellant from asserting the issue on appeal. *Lopez v. Schwendiman*, 720 P 2d 778, 781 (Utah 1986); *Condas v. Condas*, 618 P.2d 491, 495 n. 8 (Utah 1980).

Finally, Brinkerhoff does not allege, and cannot show, prejudice because, under the statutory scheme, he was allowed a trial de novo after which the trial court has the responsibility to enter findings of fact and conclusions of law justifying its decision.

In summary, the trial de novo cured any technical procedural errors occurring at the informal DLS hearing. The purpose of allowing an agency to choose an informal hearing procedure would be defeated if technical, non-prejudicial, procedural errors were sufficient to overturn the agency action. The statutory trial de novo is the proper remedy to cure these non-prejudicial errors.

We find that Brinkerhoff failed to object and preserve his alleged errors. Furthermore, we hold that the trial de novo in the district court provided by the UAPA eliminated any prejudice to defendant. We therefore reverse and remand for entry of an order to reinstate DLS's suspension of Brinkerhoff's driving privileges.

DAVIDSON and BENCH, JJ., concur.

Bruno D'ASTON, Plaintiff and Appellee,

v.

Dorothy D'ASTON, et al., Defendants and Appellants.

No. 890050-CA.

Court of Appeals of Utah.

April 9, 1990.

Divorce action was brought. The Fourth District Court, Utah County, Boyd

an opportunity to order a continuance to reme

dy any problem with notice

L. Park, J., entered judgment, and wife appealed. *The Court of Appeals, Billings,* J., held that: (1) service on wife's attorney of order to show cause why wife should not be held in contempt was sufficient where wife secreted herself to prevent service of order, and (2) wife would be given 30 days to bring herself within process of trial court, and if she failed to do so, her appeal would be dismissed.

Ordered accordingly.

1. Divorce ⇐269(8)

Service on wife's attorney of order to show cause why wife should not be held in contempt in divorce proceedings was sufficient where wife initially had been served with process in case and appeared by counsel in matter but subsequently secreted herself to prevent service of order to show cause.

2. Divorce ⇐278

Wife, who had secreted herself and refused to submit to process of district court in divorce action, would have 30 days to bring herself within process of trial court if she wished to appeal divorce judgment; however, if wife persisted in secreting herself in violation of trial court orders, her appeal would be subject to dismissal.

Brian C. Harrison (argued), Provo, for defendants-appellants.

S. Rex Lewis (argued), Leslie W. Slaugh, Howard, Lewis & Peterson, Provo, for plaintiff-appellee.

Before BILLINGS, GARFF and ORME, JJ.

OPINION

BILLINGS, Judge:

Appellant, Dorothy D'Aston, filed an appeal from a divorce decree entered by the trial court on December 15, 1988. Appellee, Bruno D'Aston ("Mr. D'Aston"), filed a Motion to Dismiss appellant's appeal on the grounds that she was currently in contempt of the trial court's order and had secreted herself, refusing to submit to the process of the district court. He thus argues that appellant should not be allowed to seek a review of the divorce decree on the merits. We agree with Mr. D'Aston and therefore stay this appeal and allow appellant 30 days from the date of the issuance of this opinion to submit to the process of the trial court and to give this court notice of her actions. If appellant complies with this court's order and gives this court written verification of her compliance within the 30-day period, then we will consider her appeal on the merits. However, if appellant fails to submit to the process of the trial court within the 30-day period, the motion to dismiss her appeal will be granted.

FACTS

We only discuss the facts relevant to this order, not the underlying dispute.

At the time of trial, appellant testified that she had $300,000 in cash in a safe deposit box in Far West Bank and $75,000 in cash in a safe at home. In the divorce decree, the trial court ordered appellant to pay Mr. D'Aston $236,800 "from the $300,000.00 in the safe deposit box." To date, appellant has failed to comply with that order.

The trial court issued a writ of execution directing the constable to execute on the safe deposit box at Far West Bank. The constable discovered that no such safe deposit box under appellant's name existed, nor did she have any substantial assets at Far West Bank.

Mr. D'Aston, on January 11, 1989, filed a Motion to Compel Compliance with Decree of the Court. On January 23, 1989, appellant filed a Motion for Stay and Approval of Supersedeas Bond. The trial court ordered a stay and set the amount of the supersedeas bond, which was to be posted within 30 days. Appellant failed to post a supersedeas bond.

Mr. D'Aston, on March 17, 1989, obtained an Order to Show Cause directing appellant to appear and show cause why she should not be held in contempt for her failure to pay Mr. D'Aston the $236,800 ordered in

the decree or to post a supersedeas bond. The process server could not find appellant in order to serve the Order to Show Cause. However, her counsel was served with a copy of the Order to Show Cause.

On March 22, 1989, the trial court held a hearing on Mr. D'Aston's Motion to Compel Compliance. Appellant's counsel was in court that day and the judge requested his appearance at the hearing. Appellant's counsel stated he was making a special appearance as he had not been given proper notice of the hearing.

On April 7, 1989, the court held an order to show cause hearing. Neither appellant nor her counsel was present. In a minute entry, the court noted that the March 22, 1989, hearing had been continued to April 7, 1989, and that appellant's counsel had been informed of this fact at the March 22, 1989, hearing. In addition, the record reflects that appellant's counsel was served with the Order to Show Cause which listed the April 7, 1989, hearing date.

On April 13, 1989, the court entered findings of fact and conclusions of law holding appellant in contempt of court because she was "purposefully hiding herself from the jurisdiction of the Court and from service," and issued an order of commitment and bench warrant. The court amended its order of commitment on May 26, 1989. Appellant again evaded service. Appellant's counsel, however, was served with the findings of fact and conclusions of law and the order of commitment.

Thereafter, appellant's counsel made a Motion to Strike Findings of Fact, Order of Commitment and Bench Warrant. He asserts that he does not know where appellant is and that his current representation is now limited to this appeal. That motion was denied.

NOTICE

In response to Mr. D'Aston's motion to dismiss her appeal, appellant argues that since she has not been served with the Order to Show Cause, the trial court was without authority to hold her in contempt. Appellant thus contends this court may not dismiss her appeal for failure to comply with the trial court's orders.

[1] Utah courts have acknowledged the importance of actual notice in contempt proceedings. *Powers v. Taylor*, 14 Utah 2d 118, 378 P.2d 519, 520 (1963); *see generally Von Hake v. Thomas*, 759 P.2d 1162, 1171–72 (Utah 1988). However, whether a court can issue a civil order of contempt without personal service where a party purposefully hides to prevent service of the order has not been addressed to date in Utah. Nonetheless, we are in accord with other jurisdictions which have held that where a party initially has been served with process in a case, and has appeared by counsel in the matter, service of an order to show cause why the party should not be held in contempt on the party's attorney is sufficient. *See Kottemann v. Kottemann*, 150 Cal. App.2d 483, 310 P.2d 49, 52 (1957); *Brewer v. Brewer*, 206 Ga. 93, 55 S.E.2d 593, 594 (1949); *State ex rel. Brubaker v. Pritchard*, 236 Ind. 222, 138 N.E.2d 233, 236 (1956); *Caplow v. Eighth Judicial Dist. Court*, 72 Nev. 265, 302 P.2d 755, 756 (1956); *Macdermid v. Macdermid*, 116 Vt. 237, 73 A.2d 315, 318 (1950); *see generally* Annotation, *Sufficiency of notice to, or service upon, contemnor's attorney in civil contempt proceedings*, 60 A.L.R.2d 1244 (1958).

In *Kottemann*, which is factually similar to this case, the plaintiff had left his residence and thus could not be served with a motion for contempt. 310 P.2d at 50. The plaintiff's attorneys were served with the motion. *Id.* at 50–51. The attorneys then asserted they did not know the whereabouts of their client and only had authority to represent him in the appeal. *Id.* at 51. The court rejected the attorneys' attempts to limit their authority and concluded that the service of the order to show cause upon the attorneys was proper. *Id.* at 52.[1]

1. Some jurisdictions have gone so far as to hold that no formal adjudication of contempt is necessary in order to dismiss the appeal for failure to comply with a trial court's order. *See Tobin v. Casaus*, 128 Cal.App.2d 588, 275 P.2d 792, 795 (1954) (party could not be found for service of

The trial court found that appellant was secreting herself to avoid service of process in this matter. Appellant's counsel was served with notice of the Motion to Compel Compliance, the Order to Show Cause regarding contempt, and the court's findings of contempt. Appellant's counsel appeared at the March 22, 1989, hearing on the Motion to Compel Compliance and was given notice of the Order to Show Cause hearing. Because appellant has purposefully hidden to avoid service of process and notice of the contempt proceedings and the court's order was given to appellant's attorney, we find the trial court's order of contempt was properly entered.

CONTEMPT

[2] Likewise, Utah's appellate courts have not considered whether they may dismiss a civil appeal when the appellant is in contempt of a trial court order in the same action. However, in the area of criminal appeals, the Utah Supreme Court has dismissed the appeal of a prisoner after he escaped custody. *State v. Tuttle*, 713 P.2d 703, 704 (Utah 1985); *see also Hardy v. Morris*, 636 P.2d 473, 474 (Utah 1981) (court dismissed an escapee's appeal from a dismissal of a writ of habeas corpus). In *Tuttle*, the Utah Supreme Court refined its position in *Hardy*. The court held that an appellant prisoner's escape is not an abandonment of his right to appeal and that the dismissal of his appeal is not an appropriate punishment for his escape. *Tuttle*, 713 P.2d at 704–05. The court stressed the fundamental right to appellate review of a criminal conviction when reinstating the appeal *after* the prisoner was returned to custody. *Id.* at 705.

Appellate courts from other jurisdictions have dismissed the civil appeals of contumacious parties without allowing the parties an opportunity to bring themselves into compliance with the trial court's order. *Rude v. Rude*, 153 Cal.App.2d 243, 314 P.2d 226, 230 (1957) (failure to pay support and attorney fees); *Kottemann v. Kottemann*, 150 Cal.App.2d 483, 310 P.2d 49, 53 (1957) (failure to pay alimony and attorney fees); *Michael v. Michael*, 253 N.E.2d 261, 263 (Ind.1969) (appellant took child in violation of custody order and fled jurisdiction); *In re Morrell*, 174 Ohio St. 427, 189 N.E.2d 873, 874 (Ohio 1963) (appellant took child in violation of custody order and could not be found); *Huskey v. Huskey*, 284 S.C. 504, 327 S.E.2d 359, 360 (Ct.App.1985) (party left jurisdiction to avoid arrest). Other courts have allowed the party time to comply with the trial court's order before dismissing the appeal. *Stewart v. Stewart*, 91 Ariz. 356, 372 P.2d 697, 700 (1962) (30 days to comply); *Tobin v. Casaus*, 128 Cal.App.2d 588, 275 P.2d 792, 795 (1954) (30 days to comply); *Greenwood v. Greenwood*, 191 Conn. 309, 464 A.2d 771, 774 (1983) (30 days to comply); *Pasin v. Pasin*, 517 So.2d 742, 742 (Fla.Dist.Ct.App.1987) (15 days to comply); *In re Marriage of Marks*, 96 Ill.App.3d 360, 51 Ill.Dec. 626, 629, 420 N.E.2d 1184, 1187 (1981) (30 days to comply); *Henderson v. Henderson*, 329 Mass. 257, 107 N.E.2d 773, 774 (1952) (30 days to comply); *Prevenas v. Prevenas*, 193 Neb. 399, 227 N.W.2d 29, 30 (1975) (20 days to comply); *Hemenway v. Hemenway*, 114 R.I. 718, 339 A.2d 247, 250 (1975) (30 days to comply); *Strange v. Strange*, 464 S.W.2d 216, 219 (Tex.Civ.App.1970) (per curiam) (10 days to comply); *Pike v. Pike*, 24 Wash.2d 735, 167 P.2d 401, 404 (1946) (10 days to comply). These courts justify the dismissal of the appeals on the ground that it violates the principles of justice to allow a party who flaunts the orders of the courts to seek judicial assistance. *See, e.g., Stewart*, 372 P.2d at 700; *Rude*, 314 P.2d at 230; *Greenwood*, 464 A.2d at 773; *Strange*, 464 S.W.2d at 219.

Still another approach is to stay the appeal until the appellant has submitted to the process of the trial court. This approach gives the trial court the flexibility to fashion the terms under which the noncomplying party may purge its contempt rather than necessarily ordering the enforcement of the judgment. In *Closset v. Closset*, 71 Nev. 80, 280 P.2d 290, 291

process); *Pike v. Pike*, 24 Wash.2d 735, 167 P.2d 401, 404 (1946) (party secreted herself and her children to avoid custody order and service of process).

(1955), the appellant had failed to comply with a trial court order in a divorce proceeding and had been found in contempt. The Nevada Supreme Court did not dismiss his appeal for failure to comply with the judgment below, but held that the appeal would be dismissed unless the appellant within 30 days submitted himself to the process of the trial court or posted a supersedeas bond. *Id.* 280 P.2d at 291. The court stated:

> [A]ppellant husband is now a fugitive from process of the trial court. We shall not permit him to avail himself of judicial review *while at the same time* he places himself beyond reach of the process of the trial court in defiance of its attempts to enforce its judgment....
>
> ....
>
> We do but insist that one seeking the aid of the courts of this state should remain throughout the course of such proceeding, amenable to all judicial process of the state which may issue in connection with such proceeding.

Id. at 291 (emphasis added).

The United States Supreme Court considered an appellate court's dismissal of a civil appeal on the basis that the appellant was in contempt of the trial court's order in *National Union of Marine Cooks & Stewards v. Arnold*, 348 U.S. 37, 75 S.Ct. 92, 99 L.Ed. 46 (1954). The Court was asked to decide whether the Washington Supreme Court violated either the equal protection clause or the due process clause of the fourteenth amendment when it dismissed an appeal from a money judgment as a reasonable measure for safeguarding the collectibility of that judgment. The appellant had filed a notice of appeal, but had offered no supersedeas bond and had obtained no stay of the proceedings. *Id.* at 39, 75 S.Ct. at 93–94. The trial court ordered the appellant to deliver certain bonds in its possession to the court's receiver for safekeeping pending disposition of the appeal. *Id.* The appellant refused and was held in contempt. *Id.* As a result, the Washington Supreme Court struck the appeal on the merits, giving the appellant 15 days to purge its contempt by delivering the bonds. *Id.* at 40, 75 S.Ct. at 94. The United States Supreme Court found no constitutional violation, stating that "[w]hile a statutory review is important and must be exercised without discrimination, such a review is not a requirement of due process." *Id.* at 43, 75 S.Ct. at 95. The Court stressed that "[p]etitioner's appeal was not dismissed because of petitioner's failure to satisfy a judgment pending an appeal from it. It was dismissed because of petitioner's failure to comply with the court's order to safeguard petitioner's assets from dissipation pending such appeal." *Id.* at 44, 75 S.Ct. at 96.

We are persuaded that the *Closset* approach is most consistent with the Utah Supreme Court's *Tuttle* decision and the United States Supreme Court's *Arnold* decision. By adopting this approach, we do not deny appellant her right to an appeal under Utah Const. art. VIII, § 5,[2] but rather insist she must submit herself to the jurisdiction of the trial court and satisfy that court's concerns before she may exercise that right. She merely has the obligation to come forward and offer a reasonable alternative to the trial court to safeguard her assets from dissipation pending her appeal.

Appellant was given the opportunity to post a supersedeas bond, but has refused. She has ignored the orders of the trial court and, apart from obtaining a temporary stay which she allowed to lapse for want of a bond, she has provided no reasonable alternative to allow the court to insure that her assets are available to satisfy the judgment pending appeal. By her actions, appellant is frustrating the administration of justice.

Appellant has not claimed that she did not have the ability to comply with the trial court's order. *See Stewart v. Stewart*, 91 Ariz. 356, 372 P.2d 697, 700 (1962). This situation is similar to one faced by a Cali-

2. Utah Const. art VIII, § 5 provides, in pertinent part: "Except for matters filed originally with the supreme court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause."

fornia court, where it found it was "dealing with a litigant who not only has previously failed to appear as ordered, but who up to this very time remains a fugitive from justice. Apparently, he is unwilling to respond to a court order with which he disagrees, but seeks to obtain on appeal" a more favorable result. *Tobin v. Casaus*, 128 Cal.App.2d 588, 275 P.2d 792, 795 (1954).

We therefore hold that appellant has 30 days from the date of the issuance of this opinion to bring herself within the process of the trial court. If appellant submits herself to the trial court, she should be allowed an opportunity to offer alternatives to the trial court to protect the judgment. Appellant may persuade the court it should hold the disputed judgment amount in trust until a resolution of this appeal on the merits. However, if appellant persists in secreting herself in violation of the trial court's orders, her appeal will be dismissed at the expiration of the 30–day period.

GARFF and ORME, JJ., concur.

Lewis DUNCAN, individually and as personal representative of the Estate of Patrick Duncan, deceased; Jason E. Duncan, a minor by and through his Guardian ad Litem; Alice Duncan; Noreen Duncan; Michael Duncan; Tim Duncan; Kevin Duncan; Brian Duncan; Michelle Bowers, individually and as personal representative of the Estate of Jefrey and Nicole Bowers, deceased; Judson Bowers; Florence Hanson; Shelly Bowers; Sherry Bowers; Monica Henwood, individually and as personal representative of the Estate of Ramon Henwood, deceased; Phyllis Henwood; and Owen Henwood, Plaintiffs and Appellants,

v.

UNION PACIFIC RAILROAD COMPANY, a corporation; The State of Utah; Paul Kleinman; and Does 1 through 100, inclusive, Defendants and Respondents.

No. 890291–CA.

Court of Appeals of Utah.

April 12, 1990.

Heirs of victims of train-automobile accident brought action against railroad, Department of Transportation and railroad engineer. The Third District Court, Tooele County, Timothy R. Hanson, J., entered summary judgment dismissing wrongful death action. Heirs appealed. The Court of Appeals, J. Robert Bullock, Senior District Judge, held that: (1) heirs failed to establish that either engineer or railroad were negligent, and (2) Department, having given at least some warning or control at railroad crossing, was governmentally immune in deciding whether to improve means of warning or control at crossing because of fiscal effects of decision.

Affirmed.

Jackson, J., filed a concurring opinion.

1. Railroads ⇐348(1)

Evidence failed to support claim of heirs of accident victims that there was negligence in operation of train or entrusting its operation to engineer who was in charge at time of automobile-train collision.

2. Railroads ⇐348(2)

Evidence did not support claim of heirs of accident victims that railroad negligently maintained railroad right-of-way at crossing with street where train-automobile collision occurred; there was nothing to indicate what could have made railroad's right

APPENDIX "B"

D'Aston v. D'Aston,

794 P.2d 500 (Utah Ct. App. 1990)

(D'Aston II)

judgment or order of the circuit court. They, therefore, reason that this is an exception to the general delegation of appellate jurisdiction over circuit court orders to the Utah Court of Appeals.

Again, we do not disagree with the defendants' argument in the abstract, but cannot decipher how the argument helps them. Defendants still point to no statute giving the district court jurisdiction over appeals from the decisions of a magistrate under Rule 7. In fact, Utah Code Ann. § 78–2a–3(2)(e) (1989) vests "interlocutory appeals from any court of record in criminal cases, except those involving a first degree or capital felony" in the Utah Court of Appeals. Certainly the magistrate was acting as a court of record in a criminal case when it held the preliminary hearing.

Finally, both defendants make a number of policy arguments in favor of giving the district courts jurisdiction over objections to bindover orders alleging insufficiency of the evidence. Although some of their contentions have merit,[8] such arguments must be made to the legislature. It is the legislature which is charged with the task of statutorily delegating appellate jurisdiction and we cannot modify its decisions because we believe policy considerations so dictate.

In conclusion, we affirm the orders of the district courts refusing to exercise jurisdiction.

GARFF and GREENWOOD, JJ., concur.

been committed or that the defendant committed it, the magistrate shall dismiss the information and discharge the defendant. The magistrate may enter findings of fact, conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent prosecution for the same offense.

Bruno D'ASTON, Plaintiff and Appellee,

v.

Dorothy D'ASTON, et al., Defendants and Appellants.

No. 890050–CA.

Court of Appeals of Utah.

June 14, 1990.

Action was brought for divorce. The Fourth District Court, Utah County, Boyd L. Park, J., entered decree of divorce, and wife appealed, challenging property distribution. The Court of Appeals, 790 P.2d 590, ordered wife to submit herself to process of lower court within 30 days or her appeal would be dismissed. After wife gave notice of compliance with order, merits of appeal were addressed. The Court of Appeals, Billings, J., held that: (1) postnuptial agreement not made in contemplation of divorce was enforceable, absent fraud, coercion, or material nondisclosure, and (2) postnuptial agreement unambiguously provided that it would apply to disposition of spouses' property in event of divorce.

Reversed and remanded.

1. Husband and Wife ⇐30

Prenuptial agreements are enforceable as long as there is no fraud, coercion, or material nondisclosure.

2. Husband and Wife ⇐30

Postnuptial agreement not in contemplation of divorce is enforceable absent fraud, coercion, or material nondisclosure.

3. Husband and Wife ⇐31(2)

Normal rules of contract construction would be applied in resolving disagreement

8. Defendants correctly claim that because the decision to allow an interlocutory appeal is discretionary, defendants might be forced to go through an unnecessary trial if the right to file an interlocutory appeal of the bindover order is denied.

between husband and wife regarding scope and meaning of postnuptial agreement.

4. Husband and Wife ⇐31(2)

Core principle in construing postnuptial agreement was to look to four corners of agreement to determine parties' intentions.

5. Appeal and Error ⇐842(8)

Threshold determination of whether writing is ambiguous, such that court may resort to extrinsic evidence of parties' intent, is question of law, and thus trial court's determination is reviewed under correction-of-error standard, according no particular deference to trial court.

6. Evidence ⇐450(5)

Postnuptial agreement between husband and wife unambiguously provided that it would apply to disposition of parties' property in event of divorce and, therefore, extrinsic evidence regarding spouses' intent in event of divorce should not have been considered, where postnuptial agreement, entered into in community property state, provided that spouses' property would be divided and division would control for all purposes, and unambiguously and specifically referred to rebutting presumption that all property acquired during marriage was community property.

7. Divorce ⇐249.2

Any equitable power of trial court to disregard otherwise enforceable postnuptial property settlement agreement and to distribute separate property of spouses at divorce had to be justified by unique and compelling circumstances.

Brian C. Harrison (argued), Harris, Carter & Harrison, Provo, for defendants and appellants.

S. Rex Lewis (argued), Leslie W. Slaugh, Howard, Lewis & Peterson, Provo, for plaintiff and appellee.

OPINION

Before BILLINGS, GARFF and ORME, JJ.

BILLINGS, Judge:

Appellant, Dorothy D'Aston ("Wife"), appeals from a divorce decree entered by the district court, principally claiming the court erred in failing to distribute the parties' property pursuant to a postnuptial agreement.

On appeal, Bruno D'Aston ("Husband") responded that since Wife was in contempt of the trial court and was avoiding court process, this court should not consider her appeal on the merits. We agreed with Husband and ordered Wife to submit herself to the process of the trial court within 30 days or we would dismiss her appeal. *See D'Aston v. D'Aston*, 790 P.2d 590 (Ct. App.1990). Wife gave us notice of her compliance with our order on May 4, 1990, and therefore we address the merits of her appeal in this opinion.

We agree with Wife's contention that the trial court erred in failing to distribute the parties' property pursuant to their postnuptial agreement and therefore reverse and remand.

Husband and Wife divorced on December 15, 1988, after a 35-year marriage. In 1973, Husband asked Wife to enter into a written property agreement, which had been prepared by his attorney. The agreement was executed by both parties in 1973, then notarized and recorded in the State of California in 1975.

Under the 1973 agreement, Wife received two parcels of real estate and cash. Husband received all real property outside the United States; personal property in his possession, which included $1 million in coins and a collection of antique cars; and all domestic and foreign patents and patent rights. The agreement also provided that all property acquired by either party in his/her own name would be the separate property of that person. Finally, the agreement provided that the parties would execute documents to implement the agreement, and that each had the advice of counsel, had read the agreement, and had not signed the agreement under duress, fraud or undue influence. Shortly after the agreement was signed, the parties con-

veyed the property as provided in the agreement.

On May 2, 1986, Husband filed for divorce. Husband claimed that much of the tangible personal property given to him under the 1973 agreement had been stolen on April 30, 1986, the day Wife had asked him to leave their home. On July 31, 1986, Husband's California attorney, who had drafted the 1973 agreement, sent a letter to Wife's Utah attorney which stated the 1973 agreement was in full force and effect.

Both parties at trial acknowledged they executed the 1973 agreement voluntarily and did not execute it under duress, fraud or undue influence. However, at trial, Husband claimed the 1973 agreement should not control the disposition of the parties' property in this divorce action because the agreement was entered into only to protect the couple's assets from possible creditors in pending litigation, not to distribute property in the event of divorce. Wife at trial claimed she had no knowledge of the alleged pending litigation and assumed the 1973 agreement was to control for all purposes, including the possibility of divorce.

The trial court held the 1973 agreement was not intended to control in the event of divorce, and thus, equitably divided all of the parties' property and awarded no alimony to either party. Wife appeals, claiming that (1) the trial court erred in dividing the parties' separate property in this divorce action contrary to the terms of the 1973 agreement, (2) the trial court erred in denying Wife alimony, and (3) the conduct of the trial judge constituted judicial bias.

VALIDITY OF POSTNUPTIAL AGREEMENTS

[1, 2] In Utah, prenuptial agreements are enforceable as long as there is no fraud, coercion or material nondisclosure.[1] Utah's courts have not yet considered the enforceability of postnuptial agreements not in contemplation of divorce. However, other jurisdictions review postnuptial property agreements under the same standards as those applied to prenuptial agreements.[2]

We agree with the majority of our neighboring jurisdictions and thus hold that a postnuptial agreement is enforceable in Utah absent fraud, coercion, or material nondisclosure.[3]

1. *See Huck v. Huck*, 734 P.2d 417, 419 (Utah 1986) ("it should be noted that in general, prenuptial agreements concerning the disposition of property owned by the parties at the time of their marriage are valid so long as there is no fraud, coercion or material nondisclosure"); *Berman v. Berman*, 749 P.2d 1271, 1273 (Utah Ct.App.1988).

2. *See In re Estate of Harber*, 104 Ariz. 79, 449 P.2d 7, 16 (1969) (en banc) ("[M]arital partners may in Arizona validly divide their property presently and prospectively by a post-nuptial agreement, even without its being incident to a contemplated separation or divorce," provided it is fair and equitable and is free from fraud, coercion or undue influence and that "wife acted with full knowledge of the property involved and her rights therein."); *In re Estate of Lewin*, 42 Colo.App. 129, 595 P.2d 1055, 1057 (1979) ("Nuptial agreements, whether executed before or after the marriage, are enforceable in Colorado [and a] nuptial agreement will be upheld unless the person attacking it proves fraud, concealment, or failure to disclose material information."). *See also In re Estate of Loughmiller*, 229 Kan. 584, 629 P.2d 156, 162 (1981) (postnuptial agreements, fairly and understandingly made, are enforceable); *In re Estate of Gab*, 364 N.W.2d 924, 925–26 (S.D.1985) (postnuptial agreement to protect inheritance rights valid if property fairly disclosed and spouse enters into freely and for good consideration); *Button v. Button*, 131 Wis.2d 84, 388 N.W.2d 546, 550–51 (1986) (postnuptial agreement must meet requirements of fair and reasonable disclosure, entered into voluntarily and freely, and substantive provisions fair to each spouse). *But cf. Ching v. Ching*, 751 P.2d 93, 97 (Haw.Ct.App. 1988) (general rule that property agreements should be enforced absent fraud or unconscionability applies to prenuptial, but not to postnuptial, agreements).

3. This postnuptial agreement was entered into in California. Under California law, married couples may contract to change the separate or community status of their property. Cal. Civil Code § 5103 (1990); *In re Marriage of Dawley*, 17 Cal.3d 342, 551 P.2d 323, 328 n. 6, 131 Cal. Rptr. 3 (1976). Further, married couples may enter into contracts with each other concerning their property rights as though unmarried, subject to rules controlling actions of persons occupying confidential relations with each other. *Haseltine v. Haseltine*, 203 Cal.App.2d 48, 21 Cal.Rptr. 238, 244 (1962); *In re Estate of Marsh*, 151 Cal.App.2d 356, 311 P.2d 596, 599 (1957). California law is in harmony with Utah law on the issue of the enforceability and interpretation

Neither Husband nor Wife assert that the 1973 property agreement was entered into as a result of fraud or coercion nor do they contend that there was material nondisclosure of the parties' assets. Thus, this postnuptial agreement should be enforced pursuant to its terms.

Our conclusion, however, does not resolve this controversy as Husband and Wife disagree as to the meaning and scope of the 1973 postnuptial property agreement. Wife contends the agreement by its unambiguous terms applies in the event of divorce. Husband argues that it was executed merely to protect the parties' property from creditors and was not intended to control a distribution of the parties' property in the event of divorce. Thus, we must determine what the parties intended when they entered into this 1973 agreement.

Utah courts have applied general contract principles when interpreting prenuptial agreements. *See Berman v. Berman*, 749 P.2d 1271, 1273 (Utah Ct.App.1988) (A prenuptial agreement should be treated like any other contract. "In interpreting contracts, the principal concern is to determine what the parties intended by what they said."). This approach is consistent with other jurisdictions' treatment of postnuptial agreements.[4]

[3, 4] Thus, in order to resolve Husband and Wife's disagreement as to the scope and meaning of this postnuptial agreement, we apply normal rules of contract construction. The core principle is that in construing this contract, we first look to the four corners of the agreement to determine the parties' intentions. *See Neilson v. Neilson*, 780 P.2d 1264, 1267 (Utah Ct.App. 1989); *see also Ron Case Roofing & Asphalt Paving Co. v. Blomquist*, 773 P.2d 1382, 1385 (Utah 1989); *LDS Hosp. v. Capitol Life Ins. Co.*, 765 P.2d 857, 858 (Utah 1988); *Buehner Block Co. v. UWC Assocs.*, 752 P.2d 892, 895 (Utah 1988).

[5–7] The relevant provisions of the 1973 agreement denoting its scope and application state, with our emphasis:

> 1. The husband does transfer, bargain, convey and quitclaim to the wife all of his right, title and interest, if any there be, in and to the following:
>
> (a) The real property at 14211 Skyline Drive, Hacienda Heights, California and in and to all buildings, appurtenances and fixtures thereon.
>
> (b) The real property at 230 South Ninth Avenue, City of Industry, California, including all buildings, appurtenances and fixtures thereon, and any and all oil and mineral rights thereto.
>
> (c) Any and all cash in bank accounts located in the State of California.
>
> 2. The wife transfers, bargains, conveys and quitclaims to the husband all of her right, title and interest in and to real property located outside of the United States of America, and in and to all personal property in the possession of the husband, or subject to his control in the United States, Europe or elsewhere in the world, and in and to all patents or patent rights under the laws of the United States, United Kingdom or any commonwealth thereof, Switzerland, Japan or other countries. The provisions of this paragraph apply to all property described herein, whether presently owned

of postnuptial agreements and thus we need not resolve the issue of which state's law should apply.

4. *See Matlock v. Matlock*, 223 Kan. 679, 576 P.2d 629, 633 (1978) ("[C]ontracts, made either before or after marriage, the purpose of which is to fix property rights between a husband and wife, are to be liberally interpreted to carry out the intentions of the makers and to uphold such contracts where they are fairly and understandably made, are just and equitable in their provisions, and are not obtained by fraud or overreaching."); *Roberts v. Roberts*, 381 So.2d 1333, 1335 (Miss.1980) ("The rules applicable to the construction of written contracts in general are to be applied in construing a postnuptial agreement."); *Bosone v. Bosone*, 53 Wash.App. 614, 768 P.2d 1022, 1024–25 (1989) ("a community property agreement is a contract, and effect should be given to the clearly expressed intent of the parties").

or in existence or to be acquired or created in the future.

3. Hereafter, and until this agreement is modified in writing attached hereto, all property, real, personal and mixed, acquired by either party in his or her sole name, from whatever source derived and wherever situated, shall be the sole and separate property of such person, *notwithstanding any law, statute or court decision giving presumptive effect to the status of marriage;* and such property shall be free of all claims, demand or liens of the other, direct or indirect, and however derived.

This postnuptial agreement provides that Husband and Wife's property will be divided and the division will control for all purposes. The agreement was entered into in a community property state and the contractual language unambiguously and specifically refers to rebutting the presumption that all property acquired during the marriage is community property.

The trial court did not expressly conclude that the 1973 property agreement was ambiguous, but nevertheless proceeded to take extrinsic evidence [5] as to the parties' intentions and, based upon this controverted extrinsic evidence, concluded that the parties did not intend the 1973 agreement to apply in the event of divorce.

The threshold determination of whether a writing is ambiguous is a question of law, *Buehner Block Co.*, 752 P.2d at 895; *Faulkner v. Farnsworth*, 665 P.2d 1292, 1293 (Utah 1983); *Whitehouse v. Whitehouse*, 790 P.2d 57, 60–61 (Ct.App.1990), and thus we review a trial court's determination under a correction-of-error standard, according no particular deference to the trial court. *Id.; see also Seashores Inc. v. Hancey*, 738 P.2d 645, 647 (Utah Ct.App. 1987).

We find this postnuptial agreement unambiguously provides that it will apply to a disposition of the parties' property in the event of divorce.[6] Thus, we reverse the trial court's contrary ruling which was based upon extrinsic evidence as to what Husband and Wife intended by their 1973 agreement.

In summary, we reverse the trial court's property distribution and remand for enforcement of the 1973 postnuptial property agreement and then the division of the remaining property, if any, not controlled by it. Because we reverse and remand the property division, we also reverse and remand on the issue of alimony. We believe our decision necessitates the reconsideration of whether either Husband or Wife

5. "Resort to extrinsic evidence of the parties' intent is permissible only if the contract document appears to express the parties' agreement incompletely or if it is ambiguous in expressing that agreement." *Neilson*, 780 P.2d at 1267; *see also Anderson v. Gardner*, 647 P.2d 3, 4 (Utah 1982) (only when an ambiguity exists which cannot be reconciled by an objective and reasonable interpretation of the agreement as a whole should the court resort to evidence beyond the four corners of the agreement).

6. Husband argues on appeal that even if we find the trial court erred when it found the 1973 agreement was not intended to apply in the event of a divorce, the error was harmless because of the broad equitable powers trial courts possess in domestic matters. *See Colman v. Colman*, 743 P.2d 782, 789 (Utah Ct.App.1987). However, even if a trial court has the equitable power to disregard an otherwise enforceable postnuptial property settlement agreement and to distribute the separate property of the spouses, the circumstances must be unique and compelling to justify the application of such an exception. The trial court made no findings to delineate what it found as compelling circumstances to justify such an action and we find none.

In support of his argument, Husband claims that Utah courts have distributed premarital, gift or inheritance property of one spouse to the other spouse. *See Noble v. Noble*, 761 P.2d 1369, 1373 (Utah 1988); *Burke v. Burke*, 733 P.2d 133, 135 (Utah 1987); *Naranjo v. Naranjo*, 751 P.2d 1144, 1147–48 (Utah Ct.App.1988); *Peterson v. Peterson*, 748 P.2d 593, 595–96 (Utah Ct.App. 1988). We find these cases clearly distinguishable as they do not involve an otherwise enforceable prenuptial or postnuptial agreement.

Husband also argues that Utah courts may refuse to apply property settlement agreements in a divorce action. *See Klein v. Klein*, 544 P.2d 472, 476 (Utah 1975); *Colman v. Colman*, 743 P.2d 782, 789 (Utah Ct.App.1987). Again, these cases do not deal with postnuptial property settlement agreements not in contemplation of divorce and are otherwise factually distinguishable.

should receive alimony.[7]

GARFF and ORME, JJ., concur.

JACOBSEN, MORRIN & ROBBINS CONSTRUCTION COMPANY, Plaintiff and Appellee,

v.

ST. JOSEPH HIGH SCHOOL BOARD OF FINANCIAL TRUSTEES, Defendant and Appellant.

No. 890468-CA.

Court of Appeals of Utah.

June 28, 1990.

General contractor brought suit against high school board for balance due on a construction contact. The Second District Court, Weber County, John F. Wahlquist, J., awarded, inter alia, judgment to the contractor and denied the board's counterclaim seeking recovery premised on alleged fact that construction "deadlines" were not met. Board appealed. The Court of Appeals, Bench, J., held that the board's appeal was moot due to the board's paying of judgment and mailing of satisfaction of judgment to contractor, and fact that appeal did not involve claims separate and distinct from those involved in satisfaction of judgment.

Appeal dismissed.

Appeal and Error ⇐781(7)

School board's appeal of judgment entered in favor of general contractor on a construction contract with board was "moot" due to board's payment of judgment and mailing satisfaction of judgment to contractor for execution which did not evidence an intent to appeal, where appeal did not involve a claim separate and distinct from those involved in satisfaction of judgment, and board's counterclaim seeking recovery for alleged breach of contractor's duties under contract was not a separate and distinct controversy.

See publication Words and Phrases for other judicial constructions and definitions.

Edward J. McDonough, Salt Lake City, for defendant and appellant.

Michael Wilkins and Kendall S. Peterson, Tibbals, Howell, Moxley & Wilkins, Salt Lake City, for plaintiff and appellee.

Before BENCH, GARFF, *and* JACKSON, JJ.

OPINION

BENCH, Judge:

Plaintiff general contractor sued defendant high school board for the balance due on a construction contract. The district court awarded judgment to plaintiff and denied defendant's counterclaim. We dismiss defendant's appeal as moot.

In July 1984, defendant St. Joseph High School Board of Financial Trustees ("high school") executed a written contract with plaintiff Jacobsen, Morrin & Robbins Construction Company ("contractor")[1] for construction work on St. Joseph High School in Ogden, Utah. Two separate projects were encompassed by the contract—the remodeling of a gymnasium and locker rooms, and the addition of a classroom and library.

Using a standard form contract published by the American Institute of Architects, high school agreed to pay contractor the total cost of construction plus a five-percent supervision fee. No firm costs were established in the contract, although "bud-

7. We need not consider the issue of whether the trial court was biased against Wife as we have reversed the trial court's property distribution on other grounds.

1. Now doing business as Jacobsen-Robbins Construction Company.

APPENDIX "C"

Decree of Divorce

1988 DEC 15 PM 1:25

S. REX LEWIS (1953), for:
HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 East 300 North Street
P.O. Box 778
Provo, Utah 84603
Telephone: (801) 373-6345

Our File No. 17,603

Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

BRUNO D'ASTON,	:	
Plaintiff,	:	DECREE OF DIVORCE
vs.	:	
DOROTHY D'ASTON,	:	Civil No. CV 86 1124
Defendant.	:	
LISA ASTON and ERIC ASTON,	:	Judge Boyd L. Park
Co-defendants.	:	

This matter came on duly and regularly for trial before the above-entitled Court sitting without a jury, on April 18, 1988, through April 21, 1988. The plaintiff appeared in person and was represented by his counsel, S. Rex Lewis of Howard, Lewis & Petersen. The defendant and the co-defendants appeared in person and were represented by their counsel, Brian C. Harrison and Don Mullen. The parties were sworn and testified, other witnesses for the parties were sworn and testified, and the Court received in evidence Exhibit Nos. 1 through 31, 32b-k, 35 to 41, 43 to 45, 47 to 51, 53, 55 to 83, 85 to 88, 91, 92, 94 to 98, 101 to 108a, 109a, 109b, 110 to 128, 129,

129a, 130, 130a, 131 to 146, 147, 147a, 148 to 149a, 150 to 159, 161 to 163, 165 to 177. The Court having heard the evidence, examined the exhibits, having subsequently met with counsel, and having ruled on subsequent motions and having made its Findings of Fact and Conclusions of Law herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The plaintiff, Bruno D'Aston, is awarded a Decree of Divorce from the defendant, Dorothy D'Aston, to become final on the signing and entry of the Decree.

2. The defendant, Dorothy D'Aston, is awarded a Decree of Divorce from the plaintiff, Bruno D'Aston, to become final on the signing and entry of the Decree.

3. The agreement entered into between Bruno D'Aston and Dorothy D'Aston in March of 1973 is null and void and is not a binding agreement for estate distribution between the parties.

4. The defendant, Dorothy D'Aston, is awarded as her sole and separate property the following:

a. The residence of the parties situated in Provo, Utah County, State of Utah, and described as follows:

> All of Lots 40 and 41, Plat "C" Evening Glow Subdivision, Provo, Utah County, Utah according to the official plat on file in the office of the Recorder, Utah County, Utah.

Together with the improvements thereon and all built-in appliances.

b. One-half of the furniture, furnishings, appliances (not built-in) and one-half of all art objects, silverware, bedding, etc. to be agreed upon by the parties or in the event of no agreement, then two lists will be made of equal value by the plaintiff and the defendant, Dorothy D'Aston, will have the right to choose which

list of property she wants. (A copy of exhibit 11 is attached hereto and make a part hereof by reference as though it were fully herein set forth).

c. Jewelry as listed on exhibit no. 17.

d. Cash as follows:

Cash put aside for payment of judgment	$ 75,000.00
Savings account	34,000.00
Checking account	26,000.00
Diamonds	86,000.00
Silver bullion	7,600.00
Cash from the $300,000 in savings box in the sum of	63,200.00
Total cash, diamonds and silver bullion, excluding $75,000.00 for payment of judgment	$236,800.00

e. 1985 Mercury automobile.

f. One-half of all jewelry, stamps, books, silver and paintings (which are not a part of the household art objects described in exhibit no. 14. A copy of exhibit 14 is attached hereto and made a part hereof by reference as though it were fully herein set forth).

g. 125 - $20.00 gold St. Gaudens and $62,099.00 of the cash from exhibit 17 when this property is located. A copy of exhibit 17 is attached hereto and by reference made a part hereof as though it were fully herein set forth.

h. 30% of value of all coins alleged to have been stolen and listed in exhibit nos. 22 and 23. Copies of exhibit nos. 22 and 23 are attached hereto and by reference made a part hereof as though they were fully herein set forth.

5. The plaintiff, Bruno D'Aston, is awarded the following described property:

a. Vacant lot situated in Provo, Utah County, State of Utah, described as follows:

> Lot 17, Sec. A, Oak Cliff Planned Dwelling Group Subdivision, Provo, Utah County, Utah, according to the official plat recorded in the office of the Utah County Recorder, Utah County, Utah.

b. One-half of all the furniture, furnishings and appliances (not built-in) and one-half of all art objects, silverware, utensils, bedding, etc. to be divided as provided in the above paragraph 4b.

c. Cash in the sum of $236,800.00 from the $300,000.00 in the safe deposit box which the defendant Dorothy D'Aston is ordered to forthwith deliver to the Clerk of the Court for delivery to the plaintiff or the plaintiff's attorney.

d. Motor home and Volkswagen automobile.

e. All of the property acquired by the plaintiff prior to the marriage as described in exhibit no. 8. A copy of exhibit no. 8 is attached hereto and made a part hereof by reference as though it were fully herein set forth.

f. All optical equipment as described on exhibit nos. 12 and 13. Copies of exhibit nos. 12 and 13 are attached hereto and made a part hereof by reference as though they were fully herein set forth.

g. One-half of all jewelry, stamps, books, silver and paintings (which are not part of the household art objects), all of which are described in exhibit no. 14.

h. All the consigned coins described in exhibit no. 24. Plaintiff is obligated for the debt of the consignment. A copy of exhibit no. 24 is attached hereto and made a part hereof by reference as though it were fully herein set forth.

i. 125 - $20.00 gold St. Gaudens and $62,099.00 of the cash from exhibit no. 17, when this property is located.

j. All patents and patent rights.

k. 70% of value of all coins alleged to have been stolen as listed in exhibit nos. 22 and 23.

6. In the event the alleged stolen coins (exhibit nos. 22, 23 and 24) are found to be in the possession of the defendants, Dorothy D'Aston and/or Eric Aston, it should be considered as a contempt of court and punished as such.

In the event the alleged stolen coins (exhibit nos. 22, 23 and 24) are found to be in the possession of the plaintiff, it should be considered as a contempt of court and punished as such.

7. The co-defendant Eric Aston is awarded the gun that is being held by Utah County Constable, Anthony R. Fernlund.

8. The defendant, Dorothy D'Aston, is not awarded any alimony from the plaintiff.

9. The plaintiff, Bruno D'Aston, is not awarded any alimony from the defendant, Dorothy D'Aston.

10. Each party is ordered to pay their own attorney's fees and court costs.

DATED this 15 day of December, 1988.

BY THE COURT

BOYD L. PARK
DISTRICT COURT JUDGE

APPROVED AS TO FORM:

S. REX LEWIS, ESQ.
Attorney for Plaintiff

BRIAN C. HARRISON, ESQ.
Attorney for Defendant, Dorothy D'Aston,
and Co-defendants, Eric Aston and Lisa Aston

CERTIFICATE OF HAND DELIVERY

I hereby certify that a true and correct copy of the foregoing was hand delivered to the following this _____ day of _____, 1988.

Brian C. Harrison, Esq.
Attorney for Defendant
3325 North University Avenue
Suite 200, Jamestown Square
Provo, Utah 84604

PERSONAL PROPERTY OWNED BEFORE MARRIAGE

TWO	ORIGINAL L.E. WATERMAN PATENTS 1880-1882 IN GOLDLEAF FRAMES	——
400 +	GOLD & SILVER FOUNTAIN PEN COLLECTION 1842 — 1950	25.000
TWO	CASES PERSONAL PHOTOS, SLIDES 35 MM FILM — 16 MM FILM	——
COLLECTION	EARLY AIRMAIL G STAMPS (Rec From Dad in 1939) See LIST	C
COLLECTION	OF EARLY-STILL-MOTION-PLATE CAMERAS — 50-60 UNITS	5.000
	MECHANICAL, ENGINEERING, OPTICAL AND DIE MAKERS TOOLS	5.000
COLLECTION	TYPE U.S. COINS — See List	T
COLLECTION	CARSON CITY SILVER DOLLARS - See	CC
COLLECTION	EARLY NATIONAL GEOGRAPHIC MAGAZINES 1888 TO 1890s	5.000
COLLECTION	EARLY NUMISMATIST MAGAZINES 1894 TO 1901	1.000
	GOLD CUFFLINGS W MOTHER PHOTOS	~~~
COLLECTION	EARLY RECORDS 1900-1930	5.000
GEM SET	COINS OF THE GOLDEN WEST IN ORIGINAL COPPER FRAME	25.000
		71.000

"C"

Acct No. 1 STAMP COLLECTION

1987 - PRICES

FOUR	C-1 - @ $425 ea	$ 1.700-
ONE	C-1 - BLOCK OF 4	1.000-
ONE	C-1 - BLOCK OF 6	1.200-
ONE	C-2	160-
ONE	C-3	160-
ONE	C-4	45-
ONE	C-5	160-
ONE	C-6 BLOCK OF 6	4.250-
ONE	C-18 BLOCK OF 4	800-
ONE	C-18 BLOCK OF 6	1.050-
TWO	C-13 @ $400 ea	800-
ONE	C-13 BLOCK OF 4	2.000-
ONE	C-13 BLOCK OF 6	3.000-
TWO	C-14 @ $1.000 ea	2.000-
ONE	C-14 BLOCK OF 4	6.500-
ONE	C-14 BLOCK OF 6	8.000-
TWO	C-15 @ 1.700 ea	3.400-
ONE	C-15 BLOCK OF 4	10.000-
ONE	C-15 BLOCK OF 6	13.000-
ONE	GEM COLUMBIAH SET 230-245	15.000-
TWO	C-21 SHEETS @ $2500 ea	5.000-
		(79,225)

TYPE COIN COLLECTIC
GEM MINT STATE

		1986 PRICES $
ONE	1914-D - GEM CENT	5.000 -
ONE	1916 - 5¢ PROOF	3.200 -
40 ~~EB~~ F.B.	1916 - GEM 10¢ @ $500 =	20.000 -
ONE	1916-D-10¢	8.000 -
ONE	1876 - 20¢ PROOF	5.300 -
ONE	1835 - 25¢	8.800 -
ONE	1853 25¢ W-RAYS	5.000 -
ONE	1873 25¢ PROOF ANA E 7157-A	3.100 -
ONE	1916 25¢ F.H. ANA E 9496-B	10.000 -
ONE	1835 - 50¢	5.000 -
ONE	1929-D - 50¢	1.800 -
ONE	1934 - 50¢	525 -
3	1936 - 50¢ @ $350 =	1.050 -
ONE	1937 - PROOF 50¢	2.500 -
ONE	1938 - 50¢	550 -
ONE	1938-D 50¢	1.400 -
ONE	1795 - SILVER DOLLAR XF 40	3.250 -
ONE	1799/98 " " 4 "	2.200 -
ONE	1801 - " " MS-60	8.900 -
ONE	1884-S-MS 65PL SILVER DOLLAR	30.000 -
ONE	1892-S-MS 65-ANA E9030 A Silver Dollar	41.000 -
ONE	1893-S-MS 65 SILVER DOLLAR	78.500 -
ONE	1903-S-MS 65-70 SILVER DOLLAR	20.000 -
ONE	1854-S-20 (FK) ANA E0166B	45.000 -
ONE	1907-HIGH RELIEF SAINT Gaudius $20 gold piece. 47% Gold Piece.	28.000 -
		338.075

SILVER DOLLAR COLLECTION
THE FINEST KNOWN
ONE OF EACH – 13 COINS

	1986 PRICES
1878-CC	2.400
1879-CC	12.000
1880-CC	3.200
1881-CC	2.900
1882-CC	2.100
1883-CC	2.100
1884-CC	2.100
1885-CC	3.000
1889-CC	26.000
1890-CC	3.400
1891-CC	3.200
1892-CC	3.000
1893-CC	15.000
	77.400
Total	$567,700

(1)

1171 NO. OAKMONT LN. PROVO, UTAH.
TWO STORY - 2. KITCHENS, 14 ROOMS

Ex 11

MAIN FLOOR

		COST
EHTRY	ROUND INLAID ANTIQUE TABLE	1.250-
LIVING ROOM	TWO, 8' WHITE & GOLD COUCHES	2.400-
	8' DIA - ATLAS CONE GLASS TABLE	1.500-
	2' X 8' WALNUT CREDENZA	1.000-
	WALNUT HI-FI, S.W. 6' MUSIC CENTER	3.000-
	TWO HIGH BACK ARM CHAIRS	2.000-
	TWO 4' X 8' X 1' WALNUN BOOK CASES	5.000-
	TWO WALNUT END TABLES	800-
	TWO ANTIQUE GOLD LAMPS	2.000-
	12' DIA PERSIAN RUG	1.500-
	8 OIL PAINTINGS	800-
DINING ROOM	4' X 8' X 1" GLASS TOP & WALNUT TABLE	2.800-
	12 DINING ROOM CHAIRS @ 150 -	1.800-
	2' X 8' WALNUT CREDENZA	1.000-
	4' W 7' H GLASS & WALNUT DISPLAY CAB (HEISEN)	3.000-
	INLAID ANTIQUE CART	500-
	FLOWER CARPET	1.000-
	FOUR OIL PAINTINGS	400-
STUDIO	TWO HIGH BACK ARM CHAIRS	1.500-

(2)

		COST
BREAKFAST ROOM / KITCHEN	OVAL DINING TABLE – 4 CHAIRS	4.000
	GE REFRIGIRATOR-FREZER	1.500
	GE COOKING CEATER - ROTISSERIE & B.BQ	1.500
	JEN AIR	500
	DISH WASHER	500
	TV	300
BEDROOM ①	BED	500
	TWO HIGHT STANDS	400–
	TWO LAMPS	200–
	TWO CHESTS	2.000-
	FOUR OIL PAINTINGS	400–
	TV	300-
BEDROOM ②	ANTIQUE BED	2.000
	TWO ANTIQUE TABLES	1.000-
	TWO ANTIQUE LAMPS	1.000–
	ONE WHITE & GOLD CHEST	500–
BEDROOM ③	COUCH / BED	1.000
	RECLINING CHAIR	500
	GLASS TOP BLACK TABLE	1.000
	LAMP	500–
	TWO OIL PAINTINGS (Coat Society & Ship)	2.000
	TV	300
SEWING ROOM	Janes Sewing Machine & Equipment-	

(5)

DOWNSTAIRS

		COST
OFFICE	U shape Desk (From my N.Y. Office)	5.000-
	3 Black leather chairs	1.500-
	Walnut Leaf Table	2.000-
	GRUNDIG Short Wave Receiver	2.500-
	TWO 4'X7'X1" Walnut Book Cases. (Red Books)	5.000-
	4'X7'X1" Glass-Walnut Display Cases (Medals)	2.500-
	Ten 4 Drawer Filing Cabinets @ 325 ea	3.250-
	1'X4' Walnut Cabinet	1.000
	TWO NIRMAN OIL PAINTINGS	10.000
	SILVER PLAQUE BY PAUL WINTZE "DONAIDES" 34	10.000
	ONE GARY 4'X4'X5' SAFE	2.500
	ONE GARY 1'X1'X1' SAFE	500
	ONE. IBM TYPEWRITER/STAND & CHAIR	1.500
	APPROX 20 WALL DISPLAYS OF COINS, STAMPS, PATENTS	2.000
PLAY ROOM	BEAM COMM BOTTLE COLLECTION (FULL)	
	1950 TO 1980 APROX 500 @ 25.00 ea	12.500-
	1" GLASS SHELVES FOR ABOVE	2.500-
	ANTIQUE CAR/BOTTLE COLLECTION	2.500-
	POOL TABLE	2.000-
	ROUND TABLE WITH 4 CHAIRS	2.000-
	TWO WALNUT BAR STOOLS	200-
	UPRIGHT FREEZER GREEN	500-
	WURLITZER PIANO	2.000-
BEDROOM (4)	BED	500-
	TWO TABLES - LAMPS	500-
	MUSIC CENTER - TV	1.000-
	GLASS DISPLAY CASE	1.000-
	DANISH WALNUT DESK & CHAIR	4.000-

(4)

		COST
LIBRARY		
	COUCH	1.500
	WALNUT □ CABINET-TABLE	500
	RED LAMP	500-
	KIDNEY SHAPE GLASS-WALNUT TABLE	1.250-
	WALNUT BOOK CASE	750-
	SWISS CARPET	500-
	APPROX 2500 BOOKS	~~~
BEDROOM (5)		
	EXERCISE EQUIPMENT	
BEDROOM (6)		
STORAGE STRONG ROOM	TWO 4 DRAWER FILING CABINETS	650-
	EXTRA FURNITURE, CHANDELIERS, GUN STORAGE, ETC!	2.500
STORAGE ROOM	DEEP FREEZER	1.000-
	DRY & CAN FOODS	
	DRAFTING TABLE W INSTRUMENTS	2.500-
4 CAR GARAGE WORKSHOP		
	FOUR 2' X 4' X 8' Metal Storage Cabinets	750-
	TWO 1' X 4' X 4' 30 DRAWER Storage Cabinets	800-
	TWO OAK WORK BENCHES	300-
	5 HP Ingersol Rand Compressor	5.000-
	Mechanical & Engineering Tools & Items	10.000-
	48 - Metal-Fold Foot Lockers @ 20" ea	960-
	total	#165,060.

MYERS OPTICAL EQUIPMENT

Ex 12

INV-8-3-78	Leveeflex 16 mm Tele Lens	800.30
INV-816-78	LEITZ # 2772981 Lens	373.86
INV-4150	Leica R3 Body, Lens, Motor & Case	2.038.33
INV-4368	Leica R-3, BL - Leica R-3, MOT With Lenses +	6.726.00
INV. 4369	Leica Support Eqpt	640.36
INV. 4370	Leica Support Eqpt	228.96
INV. 4393	Leica, Lenses & Equip	1.509.44
		$ 12.317.25

Todays Replacement
approx DOUBLE

P. 8-24-78
#561

MYERS PHOTO
7013 South Greenleaf
WHITTIER, CA 90601
(213) 698-8318

CUSTOMER'S ORDER NO. | PHONE | DATE 8-16 19 78

NAME B. Aston

ADDRESS

CASH	C.O.D.	CHARGE	ON ACCT.	MDSE. RET'D	PAID OUT	

1 Leitz 135/2.8 #2772981 — 345 00
2 film KR135-36 — 7 70
352 70
Tax — 21 16
373 86

TAX

SOLD | RECEIVED BY | TOTAL

All claims and returned goods MUST be accompanied by this bill

Thank You

0927

SERIES 609

MYERS PHOTO
7013 South Greenleaf
WHITTIER, CA 90601
(213) 698-8318

CUSTOMER'S ORDER NO. | PHONE | DATE 8-7 19 78

NAME Bruce Curtis

ADDRESS

CASH | CHARGE | ON ACCT. | PAID OUT

1 Freestyle 75 5
16 min
for 1 45 30

TAX

SOLD BY | RECEIVED BY | TOTAL 60 30

...and returned goods MUST be ...accompanied by this bill

Thank You

57

SERIES 60

MYERS PHOTO
7013 Greenleaf Avenue
WHITTIER, CALIFORNIA 90601

(213) 698-8318

№ 4150

INVOICE DATE	SALESMAN
SHIP TO	

TO Actin

5-15-79

YOUR ORDER NO	DATE SHIPPED	SHIPPED VIA	F.O.B POINT	TERMS
	5-2-79	Lucky Cal		

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1	Leica R3 Matt Body only	1197 00	890 00
1	Leitz R3 motor	447 00	345 00
1	Leica 35/2.0 lens	921 00	655 00
2	KR135-36 film	8 30	6 70
1	55 mm UV filter	9 75	6 50
1	Dust off	18 50	14 95
6	1A Batteries	6 00	4 80
	Paid Cash		1922 95
	Tax		115 38
			2038.33

ORIGINAL

Thank You

Exhibit 12 - Page 4 of 8

MYERS PHOTO
7013 Greenleaf Avenue
WHITTIER, CALIFORNIA 90601

(213) 698-8318

№ 4368

INVOICE DATE	SALESMAN
SHIP TO	

TO

YOUR ORDER NO	DATE SHIPPED	SHIPPED VIA	F O B POINT	TERMS

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1	R-3 BL w/2.0		1,033 00
1	R-3 Mot BL B.C.		950 00
1	Mxtr Winder R-3		364
1	19mm Lens		730 00
1	28-2.8 Lens		730 00
1	90-2.8 Lens		596 00
1	250-4.0 Lens		638 00
1	560-6.8 w/ Grip		1,685 00
1	R-3 Hand Strip		

ORIGINAL

Thank You

6,726.00

Exhibit 12 - Page 5 of 8

MYERS PHOTO
7013 Greenleaf Avenue
WHITTIER, CALIFORNIA 90601

(213) 698-8318

№ 4369

INVOICE DATE	SALESMAN

SHIP TO

TO

YOUR ORDER NO	DATE SHIPPED	SHIPPED VIA	F O B POINT	TERMS

6,726.00

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1	Flash		90 00
1	Filter + diffusion + Extra Battery Holder		40 00
2	Sets Batteries		6 40
1	Cone for A-3		87 00
			6,949 40
		1 of	416 96
			7,366 36
		—	6.726 00
			= 640 36

ORIGINAL

Thanks Now

Exhibit 12 - Page 6 of 8

MYERS PHOTO
7013 Greenleaf Avenue
WHITTIER, CALIFORNIA 90601

(213) 698-8318

№ 4370

INVOICE DATE	SALESMAN
SHIP TO	

TO

YOUR ORDER NO	DATE SHIPPED	SHIPPED VIA	F O B POINT	TERMS

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
2	Hobberlon Case 172. list	100 —	200 —
1	Insert		16 —
			216 —
			12 96
			228 96
			3-66 36
			7595 32

ORIGINAL

Thank You

MYERS PHOTO
701 Bee leaf Avenue
WHITTIER, CALIFORNIA 90601

(213) 698-8318

INVOICE

No 4393

INVOICE DATE	SALESMAN

SHIP TO

TO

B. Oil Co

YOUR ORDER NO.	DATE SHIPPED	SHIPPED VIA	F.O.B. POINT	TERMS

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
	Filter w Bracket		25 —
	Super Flow		" —
	25 2-8		577 —
	40 2-4		577 —
			1154
1		1	85 00
			1569 44

TRIPLICATE

Thank You

Exhibit 12 - Page 8 of 8

[illegible] OFFICE EQUIPMENT EXH 7

INV B. 30028 — LEITZ, HASELBLAD MICROSCOPE, LENSES

	LENSES & SUPPORT EQP —	$3,986.06
INV B 30590	50MM F2 —	159.76
INV B 30142	40MM DISTAGON & EQP,	1,061.61
INV B 30141	Leica Summicron	289.80
INV B 30327	Super Angulon 21 XH	424.36
INV B 30228	Support Equip,	426.03
INV B 30485	Graphic View #132750H with eqp —	524.32
INV B 33241	903B-3B Complete	181.60
INV B 30956	Hasselblad 119474 with scope	431.09
INV B 32175	Bellows & Shade	254.51
INV B 32231	(2) Leica with Lenses	1,001.77
INV B 32243	Support Eqp —	173.88
INV B 32702	Microscope & 250 MM Lenses	411.61
INV B 33116	Leica M5 / Eqp —	677.04
INV B 32693	Hasselblad 500 / Eqp —	885.71
INV B 32699	Hasselblad 150-F / Eqp —	500.40
INV B 32411	Hasselblad 9997 / Eqp —	948.81
INV B 44046	Polaroid SX 70 / Eqp —	233.21
INV B 33891	Leica M-4	437.46
INV _ 13030	50 MM Elmar	83.79
INV B 31096	ZEISS Star Koli & Tri	750.00
INV B 34646	Case & Adapter	116.97
INV B 34699	Leica 3G / 50MM Elmar	289.38
INV B 35383	Support Equipment	152.78
INV B 35260	Leica Eqp —	81.24
INV B 35797	Support Equipment	910.09
INV B 46482	Rolleiflex	308.34
		$15,601.12

TODAYS REPLACEMENT
VALUE APPROX DOUBLE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

Invoice B30142 Customer's Order Aston Date 4-5-72

SOLD TO
Aston Laboratories
230 So. 9th Ave.
City of Industry, Calif.

SHIP TO

DATE SHIPPED	SHIPPED VIA	TERMS		
4-5-72		Net 30	Rudy Runge	

1	1	40mm Distagon f.4 lens #4970779		817.60
1	1	Luna Pro. Meter #566103		72.00
1	1	Lens shade 40		24.96
1	1	Linhof Nuline 2 Tripod		92.00
1	1	Minox Case & cord used		4.50
				1,011.06
			Tax	50.55
				$1,061.61

Rediform
75 730

[redacted]
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

No. B 30141 Customer's Order Date 4-5-72

SOLD TO
Aston Laboratories
230 So. 9th Ave.
City of Industry, Calif.

SHIPPED TO

DATE SHIPPED	SHIPPED VIA	TERMS	F O B	SALESMAN			
4-5-72		Net 30		Rudy Runge			
1	Leica Sumilux lens #2418231						256.80
1	Lens Cap						2.40
1	Lens Ser. 8 filter						16.80
							276.00
				Tax			13.80
							$289.80

Form 730

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

Invoice B 30327 Customer's Order Date 4-18-72

SOLD TO
Aston Laboratories Inc.
230 9th Ave.
City of Industry, Calif. 91746

SHIPPED TO

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
4-18-72		Net 30		Rudy Runge

1	1	Super Angulon 21mm f 3.2 #2473283		316.80
1	1	21mm Finder		76.80
1	1	Lens Case		9.60
				403.20
			Tax	20.16
				$423.36
			UPS	1.00
				$424.36

Rediform
7S 730

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

B 30228 Customer's Order Mr. Aston Date 4-7-72

SOLD TO
Aston Laboratories
230 9th Ave.
City of Industry, Calif. 91746

SHIPPED TO

E SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN		
'-72	UPS	Net 30		Rudy Runge		

1	Prism. Finder HC-1			221.60
1	Hassel. Tripod Coupline			14.72
1	Hassel. 21 Ex. Tube			44.32
1	Minox Right angle finder			6.20
1	Color film			2.95
6	TX film 120			3.84
20	EX 120			21.60
20	EX 120			20.00
1	Hassel. & Lash holder			10.08
1	Safe lock copy stand st			22.00
10	Minox TX			26.50
1	Linhof Cable			10.50
1	Leica Book (paid)			n/c
				404.31
		UPS		1.50
				$405.81
				20.22
				#426.03

M
O

INVOICE

.5% TAX

C 5-3 72
24/8

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

Invoice B 30485 Customer's Order Date 4-24-72

SOLD TO
Aston Laboratories
230 9th Ave.
City of Industry, CA. 91746

SHIPPED TO

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
4-24-72		Net 30		Rudy Runge

1	1	Graphic View #7327504			455.00
1	1	Cable release			4.50
6	6	Graflex Holders			24.00
1	1	4x5 Tx 4164 Film			3.65
1	1	Kodak Focusing cloth			4.25
1	1	Carrying Bag			7.95
					499.35
			Tax		24.97
					$524.32

Rediform
7S 730

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

oice B 30950 Customer's Order Date 5-9-72

SOLD TO
Aston Laboratories
230 West 9th Ave.
City of Industry, CA.

SHIPPED TO

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
5-9-72		Net 30		Rudy Runge

1	1	Swift Zoom Spotting Scope			179.95
1	1	Hasselblad Body only #119484			331.00
1	1	Back cover			2.25
					513.20
			Less		102.64
					410.56
			Tax		20.53
					$431.09
1	1	55 Tube exchange at no charge.			

liform
730

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

voice B 32175 Customer's Order Mr. Aston Date 5-25-72

SOLD TO
Aston Laboratories
230 9th Avenue
City of Industry, CA. 91746

SHIPPED TO

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
5-25-72	UPS	Net 30		Rudy Runge

1	40223 Bellows Extension			191.20
1	50504 Shade for Bellows extension			50.52
				241.72
		Tax		12.09
				$253.81
		UPS		.70
				$254.51

Paid 5-31-72
Check # 2482

diform
5 730

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

:e B 32231 Customer's Order Date 5-30-72

SOLD TO
· Aston Laboratories
230 So. 9th Ave.
City of Industry, CA.

SHIPPED TO

ATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
-72		Net 30		Rudy Runge

1	60mm Distagon used #2679051			250.00
1	Ex 130			1.07
1	Leica M3 used #1155019			249.50
1	50mm Sumicron #1568527			135.50
1	Used Camera Case			20.00
1	Leica M3 Used #807246			262.00
1	Used meter			24.00
1	Used case			12.00
				954.07
		5% Tax		47.70
				$1,001.77

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30

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

ice B 32243 Customer's Order Date 5-30-72

SOLD TO
Aston Laboratories
230 9th Ave.
City of Industry, CA.

SHIPPED TO

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
5-30-72		Net 30		Rudy Runge

1	1	Tripod 14100			12.00
1	1	14x119 tripod head			12.20
1	1	14x168 tripod head			21.60
20	20	K-11 36 exp.	2.39		47.80
20	20	EX 36 exp.	2.64		52.80
2	2	39E filters			19.20
					165.60
			Tax		8.28
					$173.88

diform
730

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

)ice B 32702 Customer's Order Date 6-16-72

SOLD TO
Aston Laboratories Inc.
230 9th Ave.
City of Industry, CA. 91746

SHIPPED TO

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
6-16-72		Net 30		Rudy Runge

1	1	Microscope adapter			40.00
1	1	250mm f.1 Sonnar #589723			295.00
1	1	Knob ring			3.85
1	1	Film cutter			5.00
1	1	Film screen adapter			25.00
1	1	Hasselblad lent film adapter			23.16
					392.01
			Tax		19.60
					$411.61

ifprm 730

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

voice B 33116 Customer's Order Date 6-28-72

SOLD TO
Aston Laboratories Inc.
230 9th Ave.
City of Industry, CA. 91746

SHIPPED TO

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
6-28-72		Net 30		Rudy Runge

1	1	Leica M5 #1291385		501.60
1	1	M5 Case #14541		27.60
1	1	Roll studio paper		10.00
1	1	Mayflower skope		92.00
1	1	Viewer		13.60
				644.80
			Tax	32.24
				$677.04

Rediform
7S 730

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

ice B32693 Customer's Order Date 6-15-72

SOLD TO
Aston Laboratories Inc.
230 9th Ave.
City of Industry, CA. 91748

SHIPPED TO
.

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
6-15-72	UPS	Net 30		Rudy Runge

1	1	Hasselblad 500 EL -M body # 16099 w/70mm magazine # 304462			694.00
1	1	Magnifier hood			72.60
3	3	Sets of film magazines			24.00
2	2	Mask for SWC finder			14.56
2	2	59021 70mm negative files			35.52
1	1	35mm conversion kit for prints projector			n/c
					840.68
			Tax		42.03
					$882.71
			UPS		3.00
					$885.71

form 730

INVOICE

ERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

B 32699 Customer's Order Date 6-16-72

SOLD TO
·Aston Laboratories Inc.
230 9th Ave.
City of Industry, CA. 91746

SHIPPED TO
.

TE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
·16-72	UPS	Net 30		Rudy Runge

1	Minox tripod			26.00
1	Flash			18.00
6	Dozenbbubes			5.94
1	Minon B camera used # 651117			119.95
6	Minox color 36 exposures			14.58
6	TX 135-36 exposures		1.10	6.60
1	Hasselblad 100f camera # CT22836 magazine #CT31352 80mm Tessar # 1837962			280.00
1	Ser. 7 filter			5.50
				476.57
		Tax		23.83
				$500.40

ifprm 730

INVOICE

Paid 6-8-72
2526

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

ce B 32411 Customer's Order Date 6-5-72

SOLD TO
Aston Laboratories
230 Ninth Ave.
City of Industry, CA.

SHIPPED TO

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
5-72	UPS	Net 30		Rudy Runge

1	Professional lens shade			61.20
1	Exacta case (used)			9.00
1	Hasselblad SWC complete with view finder			832.00
				902.20
	Camera #9997	Tax		45.11
	Lens #4958345	Ups		1.50
	magazine #178049			$948.81

prm
730

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

B 33291 Customer's Order Date 7-5-72

SOLD TO
Aston Laboratories Inc.
230 9th Ave.
City of Industry, CA.

SHIPPED TO

ATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN				
-5-72	UPS	Net 30		Rudy Runge				
	1	K31B SB Complete outfit w/barn doors			215.00		172.00	
					Tax		8.60	
							180.60	
					Ups		1.00	
							$181.60	

diform
5 730

INVOICE

A: .ICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

B 44046 Customer's Order Date 7-2-73

SOLD TO
Aston Laboratories Inc.
230 So. 9th Ave.
City of Industry, CA. 91746

SHIPPED TO

TE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
2-73	UPS	Net 30		Rudy Runge

1	Polarold SX 70		180.00
1	SX 70 Case		13.95
1	Close up attachment		7.95
1	Acces. shoe		5.95
1	Tripod mount		6.95
5	Color film	6.90	34.50
5	Flash bars	2.77	13.85
1	Lens shade		2.95
1	Shutter cord		5.95
			272.05
		Less	54.40
			217.65
		Tax	13.06
		UPS	2.50
			$233.21

rm

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

voice B 33891 Customer's Order Date 7-21-72

SOLD TO
Aston Laboratories Inc.
230 9th Ave.
City of Industry, CA.

SHIPPED TO

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
7-21-72	UPS	Net 30		Rudy Runge

1	1	Leica M4 camera # 1267792			360.00
1	1	MR4 Meter #28135			55.20
					415.20
			Tax		20.76
					$435.96
			UPS		1.50
					$437.46

Rediform
7S 730

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

13030 Customer's Order

Date August 4, 1975

SOLD TO
Dr. Brunna D. Aston
14211 Skyline Drive
Hacienda Heights, Calif. 91745
Aston Laboratory, Inc.

SHIPPED TO

TE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN			
		Net.30		Rudy			

1	50mm Elmar Lens #905301 F3.5				69.95
1	Lens Cap				4.60
1	Case				4.50
					79.05
		6% Sales Tax			4.74
					83.79

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30
ak (50 sets) 7P730

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

Invoice B 35383 Customer's Order Date 8-11-72

SOLD TO
Aston Laboratories
230 9th Ave.
City of Industry, CA.

SHIPPED TO

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
8-11-72		Net 30		Rudy Runge

1	1	Real cord for 500EL camera			34.50
1	1	Haneblad 1000F combination case			53.50
1	1	New York B&W print			47.50
					145.50
			Tax		7.28
					$152.78

Rediform 7S 730

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

oice B 34646 Customer's Order Date 8-16-72

SOLD TO
· Aston Laboratories Inc.
230 9th Ave.
City of Industry, CA.

SHIPPED TO

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
16-72		Net 30		Rudy Runge

2	14823 Cases			86.	40
1	AC Adapter			25.	00
				111.	40
		Tax		5.	57
				$116.	97

diform
S 730

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

Invoice B 34649 Customer's Order Date 8-16-72

SOLD TO
Aston Laboratories Inc.
230 9th Ave.
City of Industry, CA.

SHIPPED TO .

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
8-16-72		Net 30		Rudy Runge

1	1	Leica 3G Camera #948254			260.00
1	1	Elmar 50mm f 2.8 #1575322			
1	1	Case			10.00
2	2	Chains	2.80		5.60
					275.60
			Tax		13.78
					$289.38

Rediform 7S 730

INVOICE

FINE PHOTOGRAPHIC EQUIPMENT

B 31096

AMERICAN CAMERA EXCHANGE

MEMORANDUM

615 SOUTH SPRING STREET
LOS ANGELES, CALIF. 90014
PHONE 627-5678

"LOOK FOR THE BIG "A" ON SPRING STREET"

NAME Olson Lab. DATE 8-16-72

STREET CUSTOMER PHONE

CITY STATE HOW SHIPPED

SOLD BY	CASH	C.O.D	CHARGE	ON ACCT	WILL CALL	MDSE. RETD	CUST. ORDER #

QUAN.	DESCRIPTION	PRICE	AMOUNT
1	Star model 1570		
	Cord Term		
1	Tripod.		$7.50
	+ Tax.		

Title to the above described Equipment shall not pass from American Camera Exchange to the Purchaser and American Camera Exchange retains a security interest therein until the entire indebtedness evidenced by this agreement is paid in full.

NOTICE See reverse side and accompanying statement for important information. In consideration of the extension of credit for purchases made by me and in warranty that any goods described herein are to be used primarily for personal, family and household purposes unless otherwise specified here, I agree to the terms above and on the reverse hereof.

CUSTOMER'S SIGNATURE

Thank You

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

Invoice B 35797 Customer's Order Date 9-26-72

SOLD TO
Aston Laboratories Inc.
230 9th Ave.
City of Industry, CA. 91746

SHIPPED TO

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
9-26-72		Net 30		Rudy Runge

1	1	Studiomatic I Stand #105-133		829.35
2	2	Camera Mt. Brkt. #105136		
1	1	Med. Ctrwgt. #105-138		
1	1	Prec. Tilttop II #105357		
			Tax	41.47
				870.82
		Shipping charge from Germany		39.27
				$910.09

Rediform 7S 730

INVOICE

AMERICAN CINEMA LABORATORY
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5676

Invoice B 46482 Customer's Order Date 9-7-73

SOLD TO
Aston Laboratories Inc.
230 S. 8th Ave.
City of Industry, CA. 91746

SHIPPED TO

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN
9-7-73		Net 30		Rudy Runce

1	1	Used Rolleiflex 2.8 camera #1623515		325.00
X	X	Camera Case		XXX
6	6	CX 120		5.94
				330.94
			tax	19.86
				350.80
		Trade-In film		42.46
				$308.34

iform
730
Pak (50 sets) 7P730

INVOICE

AMERICAN CAMERA EXCHANGE
615 South Spring Street
Los Angeles, CA 90014
Tel. 627-5678

Invoice B 35260 Customer's Order Date 9-7-72

SOLD TO
Aston Laboratories Inc.
230 9th Ave.
City of Industry, CA.

SHIPPED TO .

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN	
9-7-72	UPS	Net 30		Rudy Runge	

1	1	Leica 50mm finder			31. 20
1	1	Leica 35mm finder			45. 60
					76. 80
			Tax		3. 84
			UPS		. 60
					$81. 24

Rediform
7S 730

INVOICE

Person's Property after Death of [illegible] (A)

JEWELRY, STAMPS, BOOKS, SILVER, PAINTINGS

Ex 14

ONE	¾ WIDE 14K GOLD NUGGET BRACELET	1.000-
ONE	1" " 18K " " "	1.750-
ONE	1½" 14K " " " with WATCH	3.000-
ONE	¾" 18K CHAIN LINK "	1.250-
ONE	HANS RING 14K - with $1. U.S. GOLD	750-
ONE	" " 14K - with $2½ " "	950-
ONE	" " 14K - with $3. " "	2.500
ONE	WHITE & YELLOW 18K with 1-K DIAMOND P.M. RING	5.000
ONE	SILVER PLAQUE "DIANAIDES 34" P. WINTZE (4FT)	5.000
TWO	CANDELABRAS - BUCHERON - PARIS (See Photo)	25.000
COLLECTION ~100 pieces	GOLD, SILVER, TURQUOISE BUCKLES, BOLOS, JEWELRY	20.000
TWO	HIRMANN OIL PAINTINGS	10.000
COLLECTION	- 50 - ANTIQUE GUNS, RIFLES, SHOTGUNS	10.000
COLLECTION	MORMON PAPER MONEY, SIGNED BY JOSEPH SMITH	10.000
COLLECTION	500 ARGENTEUS SILVER MEDALS	5.000
COLLECTION	WORLD RARE STAMPS	17.500
COLLECTION	U.S. STAMPS - SHEETS - 1950 to 1980	25.000
COLLECTION	NUMISMATIC RED BOOKS 1947 - TO 1986	5.000
COLLECTION	NATIONAL GEOGRAPHIC 1888 TO PRESENT - MANY DUPLICATES	25.000
COLLECTION	NUMISMATIST Magazine 1894 TO PRESENT	5.000
COLLECTION	RARE FIRST EDITIONS - Books	5.000
COLLECTION	MEISEN PORCELAIN	10.000
COLLECTION	BAVARIA PORCELAIN	5.000
COLLECTION	MASONIC BOOKS 1812 TO 1909	—
	PERSONAL CLOTHES	—
	PERSONAL DOCUMENTS, PAPERS, FILES	—
	BUSINESS PAPERS, TAX PAPERS	—
	BRIEFCASES, SHOWCASES, SAMPLE CASES	—
COMPLETE COLLECTION	FRIEDBERG - PAPER MONEY	5.000
	SILVER SERVICE	12.500
		214.200

Exhibit 14

SOUTHWESTERN GOLD COs

COPY EX 17

CITY CENTRE BUILDING
6400 UPTOWN BOULEVARD, SUITE 403-E
ALBUQUERQUE, NEW MEXICO 87110

TELEPHONES: (505) 881-3636 • 1-800-545-6575

MAILING ADDRESS: P.O. BOX 9083 A.M.F., ALBUQUERQUE, NM 87119

Rare Coin ☑ S/sm K
Bullion ☐ Date 9/
Date Delivered 9/23/83

BILL TO:

Bruno D'Astan
Customer Name
P.O. Box 1812
Address
Provo, Utah 84603
City State Zip
(801) 374-1655
Phone

☑ SALE
☐ PURCHASE

TERMS

Show ☐ Office ☑

QUANTITY Ordered	QUANTITY Shipped	Inventory Number	DESCRIPTION	GRADE	Unit Price	TOTAL AMOUNT
~~[illegible]~~	~~[illegible]~~		~~$20 St. Gaudens~~		~~179.00~~	~~[illegible]~~
250	250					$1822.50
			239 Coins Delivered 9/23/83 DK			
			11 Coins to Be Mailed			
			11 Coins Mailed 10/5/83 DK			
			Pd. by CK # 005385			
			# 005384			
			# 00757			

SPECIAL INSTRUCTIONS

DEPOSITION EXHIBIT 7

SUB TOTAL
TAX
[illegible]

TITLE DOES NOT PASS UNTIL MERCHANDISE IS PAID FOR IN FU[illegible]

Copy of Adding Machine Receipt which was attached to 1440ri

```
                =
          250.  x
          729.  =
   182250.00
                *
```

Coins Sold

```
   300000.00  +
     6304.73  +
     2750.00  +
003
   309054.73  *
```

← Total CKs Received For Payment

```
   309054.73  +
   182250.00  -
     2606.00  -
999
   124198.73  *
                *
```

← Coins Purchased
← Jewelry Purchased
← Cash Received from S.W. Gold

DALEWOOD DOWNS APARTMENTS

HENSEL INVESTMENT, INC.

111 W. POMONA BLVD. — MONTEREY PARK, CALIF. 91754 — (213) 728-2100

SIMMONS APARTMENTS

THIS CHECK IS PAYMENT OF ITEMS LISTED BELOW	VENDOR NO.	NAME OF VENDOR		DATE	CHECK NO.
		Dorothy D'Aston	Dalewood	9/9/83	

INVOICE DATE	INVOICE NO.	ITEM REFERENCE AND MEMO	$ AMOUNT	DISCOUNT	BALANCE
		Note 3rd Trust Deed	300,000.00		

Recip

Exhibit 17 - Page 3 of 4

HENSEL INVESTMENT, INC.

111 W. POMONA BLVD. — MONTEREY PARK, CALIF. 91754

PHONE — (213) 728-2100

Count on Us LIVING IS GREAT

DALEWOOD DOWNS APARTMENTS
SIMMONS APARTMENTS

DATE 9/9/83 CHECK NO. 00257

CALIFORNIA FIRST BANK
MONTEBELLO OFFICE
850 North Wilcox Avenue, Montebello, California 90640 16-49/1220

PAY EXACTLY Three Hundred Thousand —— DOLLARS AND —— CENTS $ 300000.00

PAY TO THE ORDER OF

Dorothy D'Aston

HENSEL INVESTMENT, INC

George R. Hensel

GEORGE R. HENSEL - PRESIDENT

⑈00025⑈ ⑆122200490⑆ 16 49⑈0055⑈

DEPOSITION EXHIBIT

518

		Dorothy D'Aston	HP		9/6/83
DATE	INVOICE NO.	ITEM REFERENCE AND MEMO	AMOUNT	DISCOUNT	BALANCE
		Interest Only	2,750 00		
		Rec'd 9/14/83			

CALIFORNIA INVESTMENTS
GARDEN APARTMENTS
(213) 725-6978
TON HEIGHTS APARTMENTS
(714) 440-1240

EXECUTIVE OFFICES

CALIFORNIA SAFETY CENTER, INC.

111 W. POMONA BLVD. — MONTEREY PARK, CALIF. 91754
EXECUTIVE PHONE - (213) 728-2100 — BOOKKEEPER - (213) 728-4330

FLORIDA INVESTMENT
TROPICAL GARDEN APART
(813) 971-7570
SAN MORA APARTMEN
(813) 971-8348

CHECK IS MENT OF LISTED LOW.	POSTED	NAME OF VENDOR		DATE	CHE
		Dorothy D'Aston	HP	9/6/83	
DATE	INVOICE NO.	ITEM REFERENCE AND MEMO	AMOUNT	DISCOUNT	BALANCE
		Interest Only	6304.73		
		Rec'd 9/9/83			

LEWOOD DOWNS
APARTMENTS

HENSEL INVESTMENT, INC.

111 W. POMONA BLVD. — MONTEREY PARK, CALIF. 91754 — (213) 728-2100

		Dorothy D'Aston	Dalewood	9/9/83
		NOTE 3RD TRUST Deed	300,000.00	
		Rec'd 9-14-83		

DEPOSITI
EXHIBI
6
D. D'A

HENSEL INVESTMENT, INC.
111 W. POMONA BLVD. — MONTEREY PARK, CALIF. 91754 — (213) 728-2100

COINS REMOVED FROM CAR 4-30-1986

	U.S. GOLD DOLLARS	1986 VALUE
ONE	1849 - AU Ex 2-2	250 -
"	1851 - AU	250 -
"	1851 - C - AU	750 -
"	1852 - AU	250 -
TWO	1853 - AU @ 250 - cool	500 -
ONE	1857 - C AU	750
"	1862 - AU - AHAC	250
"	1884 - PROOF	15.000 -
	U.S $2½ DOLLAR GOLD	
ONE	1905 - UNC	1.000
"	1912 - AU	200 -
"	1915 - AU	200 -
"	1929 - AU	200 -
"	1911 - D - MS70 - See INVOICE	15.000 -
	U.S $5 DOLLAR GOLD	
ONE	1907 over 7 - GEM - AHAC	7.500.
"	1914 - GEM	7.500.
	U.S. $10 DOLLAR GOLD	
ONE	1901 - S - UNC	1.000
"	1910 - D - UNC	1.000
"	1915 - UNC	1.000
"	1926 - GEM - AHAC	3.000
"	1932 - GEM - AHAC	3.000
		58.100

U.S. $20 DOLLAR GOLD

		1986 PRICES
ONE	1850 - UNC	6.500
" O	1853 - U.S. ASSAY - ANAC	4.500
" O	1854 - KELLOG - UNC	12.000
" *	1854 - S - GEM - ANAC	45.000
"	1856	750
"	1869	750
"	1871	750
"	1897 - BU	5000
" *	1907 - HIGH RELIEF FLAT EDGE - GEM	28.000
" O	1911 - D	2.000
" O	1914 - S	2.000
" O	1923	2.000
" O	1924	2.000
" O	1925	2.000
" O	1926	2.000
"	1927	2.000
"	1928	2.000

U. S. TYPE

ONE	1914 - D - CENT. GEM	5.000
"	1916 - 5¢ PROOF	3.200
40	1916 - 10¢ F.B. GEMS @ $500 ea	20000
ONE	1916 - D - 10¢ F.B. AU - GEM	8.000
"	1876 - 20¢ PROOF	5.300
"	1835 - 25¢ GEM	8.800
"	1853 - 25¢ ARROWS - GEM	5.000
"	1916 - 25¢ F.H. GEM ANAC	10.000
"	1835 - 50¢ BU	5.000
"	1929 - D - 50¢ BU	1.800
"	1934 - P - 50¢ BU	525
3	1936 - P - 50¢ " @ 350 -	1.050
ONE	1937 - PROOF 50¢	2.500
ONE	1938 - D - 50¢ BU	550
ONE	1938 - D - 50¢ BU	1.400
ONE	1795 - SILVER DOLLAR XF 40	3.250
ONE	1799 " " " "	2.200
ONE	1801 " " MS - 60	8900
		92.475

MISC GOLD BULLION

55	1/10 oz K	@ $38.75 each	2131
50	1-oz K	437 "	17.350
26	1/10-oz M	40 "	1040
50	1-oz M	359 "	17.950
18	MEX - 2-PESO	@ # 18 each	324
27	" - 2½ "	22 "	594
12	" 5 "	44 "	528
12	" 10 "	88 "	1056
12	" 20 "	170 "	2040
2	" 1921 - 50 PESO	1.250 "	2500
2	" 1931 - 50-PESO	1.000 "	2000
4	" 1947 - 50-PESO	430 "	1.720
ONE	SET - COINS OF THE GOLDEN WEST		25.000
			69.233

U.S. GEM PROOF

SILVER DOLLARS

ONE		1872 - GEM - AHAC		
"	o	1876 - TRADE PROOF		7,500
"	o	1878 - PROOF - T.T.F.		7,500
"	o	1878 - " - 8.T.F		4.200
"	o	1878 - " - METRIC PATTERN		12,500
"	o	1879 - TRADE PROOF		5.500
"	o	1880 - PROOF		12,000
"	o	1881 - "		5,100
"	o	1882 - "		5.600
"	c	1892 - GEM PROOF	20.000	[redacted]
"	c	1893 - " "		20.000
"	o	1896 - PROOF		12,000
"	~~S~~	1879 - S - BRANCH MINT PROOF		30.000
"	~~S~~	1881 - O - " " "		30.000
"	~~S~~	1881 - S - GEM		3.000
"	~~S~~	1882 - S - "		3.000
"	~~S~~	1883 - S - "		4.000
*	"	~~S~~	1884 - S - "	30.000
"	~~S~~	1885 - S - "		5.000
"		1886 - S - "		5 000
"		1886 - O - "		5.000
"		1888 - O - "		2.500
*	"	1892 - S - " AHAC - E9030A		41.000
*	"	1893 - S - MS 65 +		78.500-
"		1893 - CC - GEM		15.000
"		1895 - O - "		40.000
"		1896 - O - "		25.000
"		1901 - P - "		30.000
*	l	1903 - S - "		20.000
				598.150

GEM - ANADA DOLLARS

			$	1986 PRICES
33	1935 - BU	@	120 Each	3.300
5	1936 "		120	600
5	1937 "		125	625
1	1937 - PROOF			3.750
7	1938 - BU		325	2.275
32	1939 "		35	1.120
6	1945 "		600	3.600
5	1946 "		300	1.500
2	1947 - POINTED 7		1000	2.000
2	1947 - BLUNT 7		400	800
3	1947 - MAPLE LEAF		800	2.400
2	1948 - BU		2.500	5.000
14	1949 - "		70	980
14	1950 - "		50	700
5	1950 - " ARM		200	1.000
6	1951 - BU		40	240
5	1951 - ARM		300	1.500
26	1952 -		55	1.430
12	1952 - BU - NWL		55	660
20	1953 - BU - FB		30	1.200
20	1953 - " - WE		30	1.200
20	1954 - "		35	700
20	1955 - "		35	700
8	1955 - BU - ARM		300	2.400
20	1956 -		55	1.100
20	1957 - "		25	500
120	1958 - "		20	2140
120	1959 - "		16	1.920
120	1960 - "		16	1.920
120	1961 - "		16	1.920
120	1962 - "		16	1.920
120	1963 - "		16	1.920
120	1964 - "		16	1.920

40	1965 - BV-TYPE	1	16		64
40	1965 - " "	2	16		64
40	1965 - " "	3	25		1.00
40	1965 - " "	4	16		64
40	1965 - " "	5	16		64
ONE	1966 SHALLBEADS - GEM				2.50
120	1966 - BV		16		1.92
ONE	1967 - TRIPPLE STRUCK - GEM				2.50
120	1967 - BV		20		2.40
ONE	1967 - D.B. 45° GEM				1.25
					67.19

Total 67.19

Ex 23

COINS & ITEM REMOVED FROM MY MOTOR HOME BEFORE 4-30-1986

SAFE	26 ROLLS (520 COINS) BU SILVER DOLLARS @ $750 - ROLL	19500
	22 ROLLS (440 COINS) CIRC - SILVER DOLLARS @ $240 / ROLL	5.280
FILE CABINET	10 - 1967 CANADA PROOF SETS W GOLD @ $475 per set	4.750
	480 - CANADA 1984 PROOF DOLLARS IN CASES @ $25 each	12.000
	20 - CANADA 1985 - PROOF DOLLARS IN CASES @ $20 each	400
	ONE SET 25¢ 1932 TO 1964 GEM WITH MANY RARE DUPLICATES	$10,000
	ONE SET 50¢ 1941 - 1947 GEM	2.500
STEEL TRUNK	3.611 - OZ SILVER BARS 1 TO 100 OZ @ $8.32 / OZ (1985)	30.043
	200 1982 - 1-OZ LIBERTAD @ $15 - ea	3.000
	200 1983 " " 14 "	2.800
	400 1984 " " 12 "	4.800
	400 1985 " " 10 "	4.000
FILE CABINET	ONE ARGENTEUS, 24-K, 10-OZ KENNEDY - 1963 - MEDAL PROOF	5.000
		(104.073)

U.S. PAPER MONEY - LARGE SIZE
GEM CRISP

					1986 PRICES
ONE	FRIEDBERG	221		$	750
"	"	224			650
"	"	225			700
"	"	247			2,100
"	"	248			3,300
"	"	270			3,300
"	"	259			2,500
"	"	260			2,500
"	"	261			2,500
"	"	262			2,500
"	"	263			2,500
"	"	265			2,500
"	"	268			3,300
"	"	269			3,300
"	"	270			3,300
"	"	276			650
"	"	282			900
"	"	751			450
"	"	754			450
"	"	822			2,000
"	"	824	*		2,000
4	"	1167	@ $ 375 -		1,500
2	"	1168	375 -		750
4	"	1169	375 -		1,500
1	"	1170			375
1	"	1171			375
1	"	1172			375
4	"	1173	275		1,100
1	"	1177			1,300
1	"	1180			4,700
4	"	1186	450		1,800
1	"	1194			2,300
1	"	1199			1,700
1	"	1215			1,350
					61,275

IN FILE CABINET

U.S. PAPER MONEY - SMALL SIZE
GEM CRISP

5	FRED BERG	Z400	@	#180	each	900
5	"	Z400 - STAR		250	"	1.250
5	"	Z402		200	"	1.000
5	"	Z402 STAR		300	"	1.500
2	"	Z404 STAR		450	"	900
4	"	Z405		750	"	3.000
4	"	Z405 STAR		1.500	"	6.000
1	"	Z407 (375 PLISSED)				5000
						19.550

MISC:

84'S GRAM - ALASKA GOLD NUGGET — 1.500

COLT - GOLD INLAY
SERIAL 18397
PRESENTATION
(REGISTERED) — 250.000

STORAGE
WINCHESTER 94
CONNECTICUT 2
SERIAL 238.6012 — 12.000

263.500

CONSIGNMENTS — Ex 24

REMOVED FROM CAR 4-30-86
AND ~~MOTOR HOME BEFORE~~ 4-30-86

REMOVED FROM CAR

1841 CORP, INV 25673
LOT CANADA DOLLARS
1986 COST $67.170

1841 – INV 25672
LOT GOLD BULION
1986 COST $32.775

1841 – INV 25691
U.S. GOLD LOT
1986 COST $36.000

REMOVED FROM MOTOR HOME

OREGON MINT – 7-12-85
3,611 oz SILVER BARS @ $8.32/oz
$30.043 ±

OREGON MINT 4-25-86

200 – 1982 LIBERTAD	@ $15 ea		3.000
200 – 1983	"	@ 14 "	2.800
400 – 1984	"	@ 12 "	4.800
400 – 1985	"	@ 10 "	4.000

A. SCHAFER
GEM & PROOF DOLLARS
REMOVED FROM CAR
$143.650

TOTAL CONSIGMENT
$324.238

143

181 Consigned

''1841'' Page 1

A Professional Corporation (3-Pages)

Michael A. Graham
P.O. Box 997
Sisters, OR 97759
(503) 548-4428
(503) 923-0244 Private
COIN NET OR11

INVOICE NO. 25673

DATE 4-18-86

TERMS Consignment

INVOICE

Bruno Osten
Box 1812 — (801) 373-6088
Provo Utah 84603

QTY.	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
		The 1841 Corp Consigns to Bruno Osten the following Set of Confederate Paper Dollars to be sold @ Fixed price @ 5% of Sale Commission		
33		1935-BU		
5		1936-BU		
5		1937-BB		
1		1937 Presentation Proof		

PLEASE PAY FROM THIS INVOICE — TOTAL

''1841'' Page 11

A Professional Corporation

Michael A. Graham
P.O. Box 997
Sisters, OR 97759
(503) 548-4428
(503) 923-0244 Private
COIN NET OR11

INVOICE NO.
DATE
TERMS

INVOICE

32		1939 - BU
6		1945 - BU
5		1946 - BU

QTY.	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
14		1949 - BU		
2		1948 - BU - PL		
14		1950 - BU		
5		1950 - ALU - BU		
6		1951 - BU		
5		1951 - ALU - BU		
26		1952 - BU		
12		1952 - HWL - BU		
20		1953 - FB - BU		
20		1953 - WE - BJ		
20		1954 - BU		

PLEASE PAY FROM THIS INVOICE — TOTAL

''1841''

Page 111

A Professional Corporation

Michael A. Graham
P.O. Box 997
Sisters, OR 97759
(503) 548-4428
(503) 923-0244 Private
COIN NET OR11

INVOICE NO.
DATE
TERMS

INVOICE

20		1955 - BU
8		1955 - ALN - BU
20		1956 - BU

QTY.	UNIT	DESCRIPTION	QTY	UNIT PRICE	AMOUNT
20		1957 - BU	40	1965 TY-4-BU	
120		1958 - BU	40	1965-TY-5-BU	
120		1959 - BU	1	1966-SMALL BEARS-BU	
120		1960 - BU	120	1966 - LB. BU	
120		1961 - BU	1	1967-D.B.45° BU	
120		1962 - BU	120	1967 - BU	
120		1963 - BU	1	1967-TRSTR BU	
120		1964 - BU			
40		1965-TY-1-BU			
40		1965-TY-2-BU			
40		1965-TY-3-BU			

PLEASE PAY FROM THIS INVOICE — TOTAL

1986 PRICE $67.170

THE OREGON MINT

POST OFFICE BOX 89
UMPQUA, OREGON 97486
(503) 672-0157

CONSIGNMENT FORM

The Oregon Mint hereby authorizes Bill Ton
_____ to sell the following merchandise:

ITEM	DESCRIPTION	PRICE DESIRED
	3 (11) OUNCES OF	
	999 SILVER BARS	
	(11) POUNDS OF	
	CURRENT MARKET	
	- 5% COMMISSION	Best

The Oregon Mint hereby indemnifies and holds harmless the above named for any merchandise lost due to fire, theft, Act of God, or any causes beyond their control.

Date 7-12-85 Signature _____

ADDRESS: Box 191

CITY: Elkton OR 97436 PHONE NO. 379-6082 - 891

THE OREGON MINT

POST OFFICE BOX 89
UMPQUA, OREGON 97486
(503) 672-0157

CONSIGNMENT FORM

The Oregon Mint hereby authorizes B. Ford
to sell the ~~following~~ merchandise:

ITEM	DESCRIPTION	PRICE DESIRED
200	1982. LIBERTADS	
200	1983 /	
400	1984 /	
400	1985 U	
	Sell at Trade	
	5% Comm	

The Oregon Mint hereby indemnifies and holds harmless the above named for any merchandise lost due to fire, theft, Act of God, or any causes beyond their control.

Date 4-25-86 Signature

ADDRESS: Box 1872

CITY: [illegible] UT 84403 PHONE NO. 373-6085 - 801

''1841''

A Professional Corporation

Michael A. Graham
P.O. Box 997
Sisters, OR 97759
(503) 548-4428
(503) 923-0244 Private
COIN NET OR11

INVOICE NO.	25672
DATE	4-18-86
TERMS	Consignment

INVOICE

Bruce Acton
Box 1312
Provo, Utah 84603

QTY.	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
		The 1841 Corp consigns		
		to Bruce Acton the following		
		gold to be sold @ market		
		price ($345.00 ea.) less a		
		15% commission.		
50	ea	1 oz gold Krugerrands		17250.00
50	ea	1 oz gold Can. maple leaves		17250.00
				34500.00
		less 10%		1725.00
		13.00		

PLEASE PAY FROM THIS INVOICE — TOTAL 32775.00

X [signature]

''1841''

A Professional Corporation

Michael A. Graham
P.O. Box 997
Sisters, OR 97759
(503) 548-4428
(503) 923-0244 Private
COIN NET OR11

INVOICE NO. 25691
DATE 4-18-86
TERMS Prepayment

INVOICE

Bruce Osborn
Box 1812 - (801) 373-6088
Provo, Utah 84603

QTY.	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
1	#20	1850 - 20 Gold Unc	3.750 -	
1	#20	1853 - V. SACSAY (AHAC)	4.750 -	
1	#20	1854 - KELLOG - F.R.	12.500 -	
1	#20	1911 - D - BU	2.500 -	
1	#20	1914 - S - BU	2.500 -	
1	#20	1923 - BU	2.500 -	
1	#20	1924 - BU	2.500 -	
1	#20	1925 - BU	2.500 -	
1	#20	1926 - BU	2.500 -	
		DUE	$	36.000
		for 5% Comm		
PLEASE PAY FROM THIS INVOICE			TOTAL	

May 7, 1986

Bruno Aston
P.O. Box 1543
Provo, Utah 84603

Dear Bruno:

With the Long Beach Show coming up, I would like the return of some of my dollars you have on consignment - namely:

1876	Trade Proof	$ 7,500.00
1878	7 T-Feather Proof	7,500.00
1878	8 T-Feather	4,200.00
1878-9	Metric Pattern Proof	12,500.00
1879	Trade Proof	5,500.00
1880	Gem Proof	12,000.00
1881	Proof	5,100.00
1882	Proof	5,600.00
1883	Proof	3,250.00
1883	Proof	4,500.00
1892	Proof	20,000.00
1893	Proof	20,000.00
1896	Proof	12,000.00
1903	S-MS65 +	25,000.00

Have several people interested. What doesn't move, I will give back to you to show at other shows.

Thanks for the ones you moved for me in the past.

Sincerely,

Al Schafer
11043 Candor St.
Cerritos, Cal. 90701

APPENDIX "D"

Findings of Fact and Conclusions of Law

1988 DEC 15 PM 1:25

S. REX LEWIS (1953), for:
HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 East 300 North Street
P.O. Box 778
Provo, Utah 84603
Telephone: (801) 373-6345

Our File No. 17,603

Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

BRUNO D'ASTON,	:	
Plaintiff,	:	
vs.	:	FINDINGS OF FACT AND CONCLUSIONS OF LAW
DOROTHY D'ASTON,	:	Civil No. CV 86 1124
Defendant.	:	
LISA ASTON and ERIC ASTON,	:	Judge Boyd L. Park
Co-defendants.	:	

This matter came on duly and regularly for trial before the above-entitled Court sitting without a jury, on April 18, 1988, through April 21, 1988. The plaintiff appeared in person and was represented by his counsel, S. Rex Lewis of Howard, Lewis & Petersen. The defendant and the co-defendants appeared in person and were represented by their counsel, Brian C. Harrison and Don Mullen. The parties were sworn and testified, other witnesses for the parties were sworn and testified, and the Court received in evidence Exhibit Nos. 1 through 31, 32b-k, 35 to 41, 43 to 45, 47 to 51, 53, 55 to 83, 85 to 88, 91, 92, 94 to 98, 101 to 108a, 109a, 109b, 110 to 128, 129,

129a, 130, 130a, 131 to 146, 147, 147a, 148 to 149a, 150 to 159, 161 to 163, 165 to 177. The Court having heard the evidence, examined the exhibits, having subsequently met with counsel, and having ruled on subsequent motions and being fully advised in the premises, now makes the following:

FINDINGS OF FACT

1. The plaintiff and defendant, Dorothy D'Aston, were both residents of Utah County, State of Utah, for more than three months prior to the filing of the action for divorce herein.

2. The plaintiff and defendant, Dorothy D'Aston, were married September 22, 1953 in New York City, New York, and have since that time been husband and wife. There have been two children born as issue of that marriage, to-wit: Lisa Aston and Eric Aston, both of whom are adults.

3. On April 30, 1986, the defendant, Dorothy D'Aston, directed the plaintiff to leave the home of the parties from which home the plaintiff has been excluded since that date, all of which treatment was cruel to the plaintiff causing him great mental distress. The plaintiff is entitled to a decree of divorce from defendant, Dorothy D'Aston, on the grounds of mental cruelty, the divorce to become final on the signing and entry of the decree.

4. The plaintiff has treated the defendant, Dorothy D'Aston, cruelly during the course of the marriage by continued physical and mental abuse, all of which caused said defendant great mental distress. The defendant is entitled to a decree of divorce from the plaintiff on the grounds of mental cruelty, the divorce to become final on the signing and entry of the decree.

5. The plaintiff and defendant, Dorothy D'Aston, have acquired substantial property during the course of their marriage from the efforts of both parties. The plaintiff having worked for others and also established his own businesses, and the defendant working in the businesses of the plaintiff's from time to time. The plaintiff brought into the marriage coin and stamp collections and other miscellaneous items which he has listed in Exhibit No. 8 as having a current fair market value of $567,700.00. The defendant contends the plaintiff brought into the marriage items having an approximate value of $5,000.00. Because this is a thirty-five year marriage, and because there is substantial conflicting testimony as to the whereabouts, value and current existence of this property, the Court will not consider this property separate and apart from the marital assets.

6. In March of 1973, the plaintiff and defendant, Dorothy D'Aston, entered into a Property Settlement Agreement in the State of California. There is substantial conflicting testimony and evidence regarding the purpose of said agreement. Subsequent to the date of the agreement, the parties continued their married lives together, and bought and sold property as though the agreement did not really exist, except that certain real properties were changed to the name of defendant, Dorothy D'Aston. The Court finds the said agreement was entered into for the purpose of avoiding possible creditors claims due to threatened litigation, and was not intended to be a binding agreement for estate distribution between the married parties.

7. The defendant, Dorothy D'Aston, transferred title to the residence and one adjoining lot of the parties to defendant Lisa Aston (daughter of the married parties) (exhibit no. 148). The plaintiff had not concurred in the gift of said premises

to Lisa Aston, and Lisa Aston should be ordered to transfer the property back to Dorothy D'Aston to be dealt with by the Court as marital property.

8. The plaintiff alleges that he owned a collection of coins, silver and gold bullion and other valuable items located in his brief cases in his automobile, which were secured to the automobile by chains and locks, on the morning of April 30, 1986 (exhibit no. 22). The plaintiff also alleges he owned and stored in his motor home parked at the residence of the married parties in Provo, Utah an inventory of coins, stamps, gold and silver bullion, and other valuable items (exhibit no. 23). Plaintiff alleges that he further had a consignment from other coin dealers certain coin collections and gold and silver bullion valued at $324,238.00 (Exhibit no. 24), which was located in his motor home and in his automobile.

Plaintiff alleges that defendants, Dorothy D'Aston and his son Eric Aston, acting concertedly, broke into the motor home on or before April 30, 1986 and took possession of all the coins, stamps, gold and silver bullion, and other valuable items (exhibit nos. 23, 24). Plaintiff alleges that Eric Aston, acting in concert with Dorothy D'Aston, cut the chains and locks on the brief cases in his automobile on April 30, 1986 and took the coin collection and other valuable items from the brief cases (exhibit nos. 22, 24). Plaintiff further alleges that Dorothy D'Aston and Eric Aston still have in their possession the contents allegedly taken from the motor home break-in and the contents from the automobile and brief case break-in. Plaintiff reported the alleged theft to the Provo City Police but refused to follow through with the complaint testifying he could not do this because it was his family.

9. Defendants, Dorothy D'Aston and Eric Aston, admit that plaintiff had a collection of coins, stamps, silver and gold bullion, and other valuable items, the total value of which they do not know. Defendants, Dorothy D'Aston and Eric Aston, deny any knowledge of any consigned merchandise to the plaintiff. Defendants, Dorothy D'Aston and Eric Aston, deny they broke into the motor home or the automobile at any time, and deny they are in possession of the coins, stamps, silver and gold bullion and other valuable items that plaintiff alleges were stolen. Said defendants further allege that the plaintiff is still in possession of these items.

10. Witnesses for the plaintiff testify that they have seen some of the coins alleged to have been stolen on or about April 30, 1986 in possession of defendants, Dorothy D'Aston and Eric Aston, and offered for sale by them at coin shows subsequent to April 30, 1986.

11. Witnesses for defendants testify they have seen some of the coins alleged to have been stolen on or about April 30, 1986 in possession of the plaintiff and offered by him for sale at coin shows subsequent to April 30, 1986.

12. The plaintiff and defendant, Dorothy D'Aston, allege they have acquired during the course of their marriage the following assets, to-wit: (Dollar amounts rounded off)

Ex. #	Property	Pltf's Value	Defs' Value	Possession
22	(1) Coins stolen from auto 4/30/86 (alleged by pltf)	$1,009,978	Don't know	Unknown to the Court
23	(2) Coins stolen from motor home on			

	or before 4/30/86 (alleged by pltf)	$448,398	Don't know	Unknown to the Court
24	(3) Coin consignment stolen from auto and motor home on or about 4/30/86 (alleged by pltf)	$324,238	Don't know	Unknown to the Court
8	(4) List of property prior to marriage owned by pltf	$565,700	$5,000 at time of marriage	Pltf contends this property was left in the home occupied by D. D'Aston. D. D'Aston contends the property is not in the home and does not know where the property is.
12 13	(5) Optical equipment	$27,918.87	Don't know	Same as above
11	(6) Household furnishings, furniture and appliances	$165,060	$5,000	Dorothy D'Aston
17	(7) Property purchased from payment of $300,000 on sale of Calif. home (payment of 3rd trust deed note) and interest checks of $2,750 and $6,304 to-wit: 250 - $20.00 gold St. Gaudens @ $729 each Jewelry Cash Total	 $182,250 2,606 124,198 $309,054	 $182,250 2,606 124,198 $309,054	Pltf contends def D. D'Aston has this property - Def D. D'Aston contends pltf has this property, except for jewelry given to her. The Court does not know where this property is located.
14	(8) Jewelry, stamps, books	$214,200	Does not know	Pltf contends this property is

	silver, paintings, ($10,000 of paintings included in exhibit 11)		Does not believe they exist except for some paintings.	in the home occupied by def. Def contends not in home except for some paintings.
144	(9) 2nd trust deed from sale of Calif home in the amount of $687,788.42 was discounted by def and she received $633,000; from that amount she has the following property:			
	Cash - safe deposit box		$300,000	D. D'Aston
	Cash - put aside for judgment taken against defendant		75,000	D. D'Aston
	Savings account		34,000	D. D'Aston
	Checking account		26,000	D. D'Aston
	Diamonds		86,000	D. D'Aston
	Silver Bullion		7,600	D. D'Aston
19	(10) Vehicles			
	Motor home	$20,000		Plaintiff
	VW GTI	6,000		Plaintiff
	1985 Mercury		$ 8,500	D. D'Aston
	(11) Patents	No value	No value	Plaintiff
9	(12) Provo home 1171 N. Oakmont lots 40 & 41 - Plat "C" Evening Glow Subdivision - Purchased 3/80 -			
	Cost	$184,722		D. D'Aston
	Remodeling (1980 cost)	37,596		D. D'Aston
	Remodeling (1982 cost)	40,284		D. D'Aston
		$262,602		

98			Did not value
10	(13) Vacant lot #17 - Sec A. Oak Cliff Planned Dwelling Group - Cost	$ 18,000	D. D'Aston

13. The plaintiff alleges that there were certain automobiles at the residence of the parties when he left the residence on or about April 30, 1986 (see exhibit no. 19). Defendants contend the only automobile at the residence of the parties consisted of the motor home, Volkswagen and Mercury. That the Cadillac belonged to defendant Eric Aston. Plaintiff further contends that the vehicles as listed in defendants' Exhibit No. 31 and Defendants' Exhibit No. 32(a-k) were sold and the money spent prior to the divorce action. The Court finds the only vehicles which it can order distributed are the motor home, Volkswagen and Mercury.

14. Plaintiff and defendant, Eric Aston, testified regarding a purported gun collection and the sale of guns. The Court finds there was no gun collection of any significance at the time of the divorce proceedings and the only gun that the Court knows the whereabouts of is the gun held by the Provo Police Department, which belongs to defendant Eric Aston. The Court makes no award between the married parties or to the purported gun collection.

15. The parties had no outstanding debts as of the time of the filing of the complaint herein, except the alleged obligation of the plaintiff as to consigned merchandise as hereinabove mentioned.

16. The plaintiff's income at the present time is social security in the sum of $438.00 per month. The defendant, Dorothy D'Aston, has no monthly earned or retirement income.

17. The property of the parties should be awarded as follows:

a. To the defendant, Dorothy D'Aston:

(1) Residence of the parties: Lots 40 and 41, Evening Glow Subdivision, together with the improvements thereon and all built-in appliances.

(2) One-half of the furniture, furnishings, appliances (not built-in) and one-half of all art objects, silverware, bedding, etc., to be agreed upon by the parties or in the event of no agreement, then two lists be made of equal value by the plaintiff and the defendant, Dorothy D'Aston, having the right to chose which list of property she wants.

(3) Jewelry listed in paragraph no. 12, item 7.

(4) Cash as follows:

Cash put aside for payment of judgment	$ 75,000.00
Savings account	34,000.00
Checking account	26,000.00
Diamonds	86,000.00
Silver bullion	7,600.00
Cash from the $300,000 in savings box in the sum of	63,200.00
Total cash, diamonds and silver bullion, excluding $75,000.00 for payment of judgment	$236,800.00

(5) 1985 Mercury automobile.

(6) One-half of all jewelry, stamps, books, silver and paintings (which are not a part of the household art objects) described in exhibit no. 14.

(7) 125 - $20.00 gold St. Gaudens and $62,099.00 of the cash from exhibit no. 17, when this property is located.

(8) 30% of value of all coins alleged to have been stolen as listed in ex. nos. 22 and 23.

b. To the plaintiff, Bruno D'Aston:

(1) Vacant lot - 17, Sec. A, Oak Cliff Planned Dwelling Group.

(2) One-half of all furniture, furnishings and appliances (not built-in) and one-half of all art objects, silverware, utensils, bedding, etc. to be divided as provided in paragraph 17a(2).

(3) Cash in the sum of $236,800.00 from the $300,000.00 in the safe deposit box.

(4) Motor home and Volkswagen automobile.

(5) Property acquired by the plaintiff prior to the marriage (exhibit no. 8).

(6) Optical equipment (exhibit nos. 12 and 13).

(7) One-half of all jewelry, stamps and books, silver and paintings (which are not part of the household art objects) (described in exhibit no. 14).

(8) All of the consigned coins described in exhibit no. 24. Plaintiff should be obligated for the debt of the consignment.

(9) 125 - $20.00 gold St. Gaudens and $62,099.00 of the cash from exhibit no. 17, when this property is located.

(10) All patents and patent rights.

(11) 70% of value of all coins alleged to have been stolen as listed in ex. nos. 22 and 23.

18. The Court is not convinced that the value attributable to the alleged stolen coins by the plaintiff is a realistic value, and that the value is excessive; that other values assigned by the plaintiff to other property were cost values or replacement values and not current fair market values. Therefore, the Court has not attempted to make the division of the marital property an absolute division of one-half each based on values assigned by the plaintiff.

19. The Court believes that the above distribution of property is fair and equitable under the totality of the existing circumstances and testimony.

20. In the event the alleged stolen coins (exhibit nos. 22, 23 and 24) are found to be in the possession of the defendants, Dorothy D'Aston or Eric Aston, it should be considered as contempt of court and punished as such.

In the event the alleged stolen coins (exhibit nos. 22, 23 and 24) are found to be in the possession of the plaintiff, it should be considered as contempt of court and punished as such.

21. The Court makes no award of alimony for either party as there should be sufficient assets on which to live. The defendant, Dorothy D'Aston, should be able to draw social security at age 62.

22. Each party should pay their own attorney fees.

From the foregoing Findings of Fact, the Court now makes the following:

CONCLUSIONS OF LAW

1. The plaintiff is entitled to a Decree of Divorce from the defendant, which Decree should become final upon the signing and entry of the Decree.

2. The defendant, Dorothy D'Aston, is entitled to a Decree of Divorce from the plaintiff, which Decree should become final upon the signing and entry of the Decree.

3. The agreement entered into between the plaintiff, Bruno D'Aston, and the defendant, Dorothy D'Aston, in March of 1973, should not be a binding agreement for estate distribution between the parties.

4. The plaintiff, Bruno D'Aston, and the defendant, Dorothy D'Aston, should each be awarded the property together with other conditions concerning the property as more particularly set forth in the Findings of Fact.

5. The defendant, Dorothy D'Aston, should be entitled to no sum of money as alimony.

6. The plaintiff, Bruno D'Aston, should be entitled to no sum of money as alimony.

7. Each party should pay their own attorney's fees incurred herein and each should pay their own costs.

Let a Decree be entered accordingly.

DATED this 15 day of December, 1988.

BY ~~THE~~ COURT

BOYD L. PARK
DISTRICT COURT JUDGE

APPROVED AS TO FORM:

S. REX LEWIS, ESQ.
Attorney for Plaintiff

BRIAN C. HARRISON, ESQ.
Attorney for Defendant, Dorothy D'Aston,
and Co-defendants, Eric Aston and Lisa Aston

CERTIFICATE OF HAND DELIVERY

I hereby certify that a true and correct copy of the foregoing was hand delivered to the following this _____ day of _____, 1988.

Brian C. Harrison, Esq.
Attorney for Defendant
3325 North University Avenue
Suite 200, Jamestown Square
Provo, Utah 84604

APPENDIX "E"

Transcript of Hearing, May 4, 1990

IN THE FOURTH JUDICIAL DISTRICT COURT FOR UTAH COUNTY

STATE OF UTAH

* * *

BRUNO D'ASTON

Plaintiff,

vs.

DOROTHY D' ASTON

Defendant.

Civil No. CV-86-1124

HEARING TRANSCRIPT

BE IT REMEMBERED that on Friday, the 4th day of May, 1990, the HEARING in the above-entitled matter was taken by Richard C. Tatton, a Certified Shorthand Reporter and Notary Public in and for the State of Utah before the Honorable Boyd L. Park, at the Utah County Courthouse, Provo, Utah 84601

A P P E A R A N C E S

For the Defendant: Mr. Brian Harrison
Attorney at Law
Provo, Utah

&

Mr. Don Mullin
Attorney at Law
Provo, Utah

For the Plaintiff: Mr. Rex Lewis
Attorney at Law
Provo, Utah 84601

P R O C E E D I N G S

THE COURT: This is the case of Bruno D'Aston Plaintiff, vs.Dorothy D'Aston et.al. This matter is before the court concerning the Court's Findings and Conclusions of Law dated the 13th day of April, 1989 and order of commitment regarding Dorothy D'Aston and also I suspect seeking to come into compliance with the holding of the Appellate Court regarding the appeal in this matter. Am I correct Mr. Harrison?

MR. HARRISON: Yes that is correct.

THE COURT: All right, this court has heretofore signed an order of commitment ordering that Dorothy D'Aston be held in custody until such time as she complies with the order of this court of December 15, 1988. Do you want to speak to that Mr. Harrison?

MR. HARRISON: I would like to make a brief statement. I think Mr. Lewis may want to ask some questions or make a statement.

I would note that Mrs. D'Aston is in court today. Did the court note that on the record she is here?

THE COURT: I did not but I will note that she is here.

MR. HARRISON: I have tried to look carefully at the Court of Appeal's opinion as well as other documents in this case and I have the following comments that I think may be pertinent to the court.

One of the concerns, I believe is the existence of a safety deposit box which was set forth on Mrs. D'Aston's financial declaration during about January of 1988. It was subsequently testified to during the trial in April of 1988.

I would indicate to the court that Mrs. D'Aston will testify if she is asked that the safety deposit box was box number 866 and that it was located at First Security Bank in Orem

not at Farwest Bank, she made a mistake. That bank is at 1175 South State in Orem.

She will produce a letter for the court today from First Security Bank that shows that box was opened in September of 1987 and continued to be opened until sometime in September of 1989 about a year and a half after the trial in this case.

She would further testify that she of the money that she had in there she withdrew that at a certain point. That she used about $160,000.00 on living expenses. She had no other income source whatsoever. She used that for herself going back and forth to her parent's home in Californi for witness fees and other costs.

She gave the sum of $127,000.00 to Lisa, her daughter. She did that in October of 1988. She also had $75,000.00 which was at her home in cash plus some diamonds and Silver. She gave $75,000.00 plus diamonds and Silver to Lisa in October of 1988.

She has not seen Lisa or talked with Lisa since that time. The court set, pursuant to our motion to set a Supersedeas Bond and set the bond amount at $312,000.00. That was done in January of 1989.

Once that bond was set, as you can note from what I have indicated, she had already used some of the money for expenses and she gave a substantial sum almost $280,000.00 in

Lisa in October of 1988. She was not able to come up with that bond amount.

So shortly thereafter as the court will recall the court awarded the house, the home of the parties, to her. She received a offer to sell the home for approximately $210,000.00. I then prepared a stipulation and submitted to Mr. Lewis, Mr. D'Aston's attorney, suggesting that the proceeds from the sale of the home be held as part of the security in this case if they would release the lis pendens which they had filed against the property in which was preventing the sale.

Mr. Lewis talked with me and told me that his client had rejected that proposal. And the consequence of that rejection was that this sale failed.

Sometime later in March of 1989, Dorothy D' Aston in approximately March 15, quit claimed any interest that she may of had to Eric although she never did show up as a record title owner on that property.

THE COURT: She initially showed up as a record title owner.

MR. HARRISON: I think it was in Lisa's name.

THE COURT: Purchased in Lisa's name.

MR. DOROTHY D' ASTON: t was given to Lisa.

THE COURT: You gave it to her.

MR. HARRISON: You are right. I think originally

it was in her name then it got conveyed to the daughter Lisa some two or three years I think before our court appearance.

THE COURT: I don't know if it was that soon or not. At least that is what happened.

MR. HARRISON: Apparently from looking at the settlement statements of the title company it appears that when Lisa executed a quit claim deed to Eric, Eric then executed documents of sale to Mr. and Mrs. Engle. That sale instead of being $210,000.00 was for $125,000.00. So the settlement statements shows that home was sold for $125,000.00. Of that amount $116,000.00 was the net proceeds that went to the seller in this case Eric.

Mrs. D'Aston would further testify that Eric then told her that he gave $116,000.00 to Lisa. That Lisa received those funds. At that point, after March of 1989, Mrs. D' Aston went to California. She went there to care for her mother and father. Her mother at the time was 77 years of age, and her father was 82. Her mother died in Novmeber of 1989. She has cared for her father continuously since she went down there.

Her present address in California is 1322 South Delmar in San Gabriel, California, that is the home of her parents.

She would further state that her reasons for leaving this jurisdiction were because of death threats made to

her by Bruno. She doesn't say this by way of excusing not complying with the court's orders but she would say that she was fearful because he had threatened to kill her. He had also threatened Lisa.And he in fact in another case that this court may or may not have knowledge of, he pulled a gun and threatened Eric in the case that was heard by Judge Harding.

THE COURT: Well is that a matter of findings on the part of Judge Harding or is that a disputed statement?

MR. HARRISON: I don't think that is a disputed statement.

MR. LEWIS: It is completely disputed.

MR. HARRISON: My information on that is that it is contained in the police incident report and beyond that I was not involved in the trial so I couldn't address that issue.

That had to do with a coin operation that Eric tried to establish in Salt Lake and that is all I can say about that because I am not involved in that.

With respect to Lisa's status the last contact that Mrs. D'Aston had with Lisa was in April of 1989. She has not talked with her since that time. She has not met with her since that time. She has no idea of where she works or where she lives. I would indicate to the court that I asked Mrs. D'Aston to give me a little bit of background

on that. She tells me that following the divorce her relationship with Lisa became strained. She was upset because of the loss of the Provo House which had been promised to her by her father and mother.

Dorothy indicated that she believed that was a correct representation and promised her that she would still try and keep the promise if she could.

Dorothy tells me that Lisa is bright and well educated and that Dorothy had no hesitation entrusting the proceeds of the house and these other funds to her.

Dorothy would further indicate to the court that she has no income now whatsoever. Nor has she ever had any incom except for the assets that were acquired during the marriage.

She has been unable to support herself. She presently has no assets except for those for the small assistance of her father. He allows her to live at his home and from his Social Security income buys the food or lets her buy the food and pays for the living expenses in that home.

He has a Social Security income and a small pension and that is his only source of income.

I would indicate further to the court that Dorothy's father is here today. He came with her. He suffers from Cancer of the bone. She dresses him, bathes him, feeds him, and is with him 24 hours a day.

I would further indicate to the court that she would

state that going back and forth to California became a very difficult task for her. She asked for her son's assistance with regard to the real estate which she believed the court had awarded to her. She thought that she could intrust the funds to Lisa because she received a threat from Bruno that he could get into any safety deposit box in the country regardless of whose name it was in.

Again I am not suggesting that by way of justification merely to let you know what her state of mind was at the time these events occurred.

Shortly after that apparently Mr. D'Aston called and wanted some of the personal property that the court had awarded. Mrs. D'Aston would testify that she agreed that they came to the house and took possession of sofas, dressers, pictures and lamps. She did not inventory that material and just assumed that he was taking the things he was entitled to.

She believes that Mr. D'Aston knows where Lisa is but she has no factual basis for that. She has continued to receive threats from him at Post Office Boxes and through other means has had some of the witnesses in this case.

She does not know where Lisa is. She would say that her attempts to locate Lisa has been in vain. She loves her very much and she hopes that some day Lisa will realize that and try and regain contact.

That would basically be her factual statement. I would like to ask if the court would indulge me I would like to ask Dorothy's father just to make a one or two sentence statement by his need for Dorothy in caring for him if the court would allow that?

THE COURT: Well I don't know if that is material thing.

MR. HARRISON: I am not sure it would be material but I think it is background that is important.

THE COURT: I don't see that it is material with my order and I don't see it is material with the holding of the Appellate Court.

MR. HARRISON: I don't think it is material, Your Honor, but I think it is important background. Dorothy's father would want to let the court know that in fact what I have told you is correct that he has no one to care for him except her.

THE COURT: Well I would suspect that is true and I don't have, that may or may not be true, I don't know.

MR. HARRISON: I would merely say that is what he would say.

THE COURT. Well I don't hold that as any kind of justification for what is happening?

MR. HARRISON: I don't either. I just wanted the

court to know that. If the court would like her to take the witness stand?

THE COURT: I would leave that up to Mr. Lewis.

MR. LEWIS: Well I think the orders speaks for itself, Your Honor, order her committed until she pays the money. She had the money. She was ordered not to dispose of it and ordered to pay it over. The court has made findings. She had the ability. The law is clear that someone that has the ability and then voluntarily gets rid of that ability why that is no excuse. The case exactly contradicts substantially all of the alleged statements of fact that were made we just contradict them all including any threats or anything that they said. The gun thing, Eric pulled a gun on Bruno. It is not significant here but that happened. He hasn't threatened her. He has never been to the house and never got any assets from the house. He just hasn't had anything. He hasn't had any contact with her actually since the trial.

We are asking the court to just enforce the court's order and have her pay the money which she proffered she could do.

MR. HARRISON: The procedural posture as I see it I think the most recent order of the court is that as the court will recall that Dorothy was not served with the order to show cause but I was in court that day and eventually the court told me about what it was considering doing based

upon no appearance or testimony by any party counsel for Mr. D'Aston prepared the findings relative to the ability of compliance and so forth and so on.

The point is that based upon that, the court issued an order of commitment and then modified it to say that she was ordered committed and set a bail amount in the sum of $10,000.00. I think that is the most recent document that now is before the court. It is not as Mr. Lewis characterized that she is required to pay.

THE COURT: The $10,000.00 is simply to keep her out of jail until the court makes a determination as to what to do.

The Appellate Court has simply indicated that the trial court may want to have some flexibility to fashion some terms under which the non-complying party may purge herself of a contempt. You tell me how she is going to do that? How do you spend a $160,000.00 for support in less than a year. To me this is absolutely ludicrous absolutely. All four of the parties were here in court. All four of the parties knew what the court's orders were. There was ample money to sustain everybody in this action. The appeal could have gone on if she just simply had put the money there. I find no reason whatsoever to believe that she was confused as to where the bank box was. That is absolutely ludicrous. $300,000.00 and she stands up here and

testifies. Lisa stands up here and testifies. Eric stands up here and testifies and when that is going on she has already given all of this money away and not one word to the court about where it has gone.

MR. HARRISON: I think the court misunderstands that. This is the letter from First Security Bank I think.

THE COURT: Well you have already told me and if I misunderstood you that she gave $127,000.00 to Lisa. She gave $75,000.00 to Lisa and this was in September and October of 1988. The court's ruling was in December.

MR. HARRISON: Right the trial was in April.

THE COURT: Well then she gave it away after.

MR. HARRISON: Before the court's ruling before the court's decision but after the trial had been completed, I think that is correct.

THE COURT: All right that may be so. But nevertheless she knew that was funds out there that belonged to her estate and to Mr. D'Aston's estate and what gave her the idea she had total liberty with these things to give them away?

MR. HARRISON: I think if you would ask her that question and she has told me what her answer to that that she understood that she continued to use that money for her living expenses as she had done before . That is what she did.

I think the court will recall that the - -

THE COURT: I said that she could live on but who is anticipating $160,000.00 and who is anticipating making gifts of excess of $200,000.00. I don't buy that at all.

MR. HARRISON: I don't, Your Honor, believe her intent was to make a gift. I think her intent was to merely entrust this money to Lisa until it was decided and after the court reached its decision in December , she was never able again to talk with Lisa and has not been able to.

THE COURT: I don't buy that story. I just can't believe that story.

MR. HARRISON: Perhaps the court would want her put under oath and have Mr. Lewis or the court ask her questions. I have represented to the court the best of my ability what I think she would say. I think that is an important inquiry.

THE COURT: Well I find it very difficult to believe I just can't buy that kind of a story. In effect if I let her get away with this I am going to let her get away with an absolute disregard for justice in this matter , the order of the court or the power of the court. She can get out the back door by coming and making a lot of excuses now that wouldn't let her get out the front door on initially.

MR. HARRSION: Your Honor, I think as I looked at the some of the cases cited by the Court of Appeals one of the distinquishing factors was that the case they particular cite on, I think it was the one involving the transfer of bonds. In that case the party that was required to do something never stated that he just didn't have those things. He said that he had them and always had them and had them all the way up through the contempt proceedings but just didn't want to give them to the other party.

I think you have got a little bit different situation here and that is that before the court made its decision on the case which was in December of 1988, but after the trial which was held in April of 1988, she transferred this property,the cash, to Lisa. The only thing that she hadn't done was to sell the house. The house was then sold in March of 1989 and those funds again given to Lisa.

She would indicate to the court that she will answer any questions relative to bank accounts historically produce bank statements, keep the court advised.

THE COURT: What good is that going to do?

MR. HARRISON: The point is to both parties it is important it seems to me to be able to locate Lisa to both parties. There may be something in those documents that may be helpful to either party.

THE COURT: It may be important to them but why does

this burden fall upon Mr. D'Aston when your client is the one, your clients, all three of them, are the one that put this thing in this kind of a posture.

MR. HARRISON: Well - -

THE COURT: Why should she come in here now and say that it is all Mr. D'Aston's fault?

MR. HARRISON: I didn't say that.

THE COURT: Basically you are saying that because of some alleged threats, some alleged problems.

MR. HARRISON: No, I am only telling you that to let you know her state of mind. I am not excusing her behavior because of that. I just give you that by way of state of mind. I think that what we have is , we have a civil case where the court has rendered a judgment. I think in a certain point Mrs. D'Aston had to say , okay am I going to stay there and force the proceedings by posting a bond or are they entitled to go ahead and try and execute and do anything else they want. She made a good faith effort to comply with part of the bond requirement which was rejected by Mr. D'Aston. After that happened she wasn't able to produce the bond so what that did was to leave her open for any kind of enforcement action that they wanted to take and she still open and she has nothing she can do about that. I think if the court moves the other direction then what the court is saying is that well you know

we have a judgment and that has not been paid and so we are going to create a debtor's prison situation. If the court says that okay I think she ought to go to jail , she will never come out of there. The only way she could possible come out of there if all of a sudden Lisa would come forward and say that yes here is this money and I will go ahead and deposit it with the court. She had no control over Lisa at all.

THE COURT: Well she was awarded the house. She sold the house after, sold it at a fire sale, disappeared and took all the money and let Eric give it to Lisa.

MR. HARRISON: That is correct.

THE COURT: I have a hard time making that wash.

Mr. HARRISON: Your Honor, the only two people that she had, well four people left in her life were the two children and her parents. She went back and forth to try and take care of her parents. She thought she could trust Lisa to hold this stuff. She was afraid about what he might do.

THE COURT: Why don't we have this during this whole period of time? She never told you that at least if she did she never represented it to the court. Your only representation to this court is I don't know how to get a hold of her. I don't know where she is. I don't know what she is doing. She can call me .

MR. HARRISON: That is correct.

THE COURT: But I never got any explanation of any kind. Now that things get down to push and shove whether she gets to go forward with her appeal or not, we all of a sudden have an appearance and the appearance says that I don't have any money I am stone broke, what am I going to do about it? What am I going to do about it to uphold the integrity of this court's order?

MR. HARRISON: Well, Your Honor, you know I have thought aobut that because it is a difficult problem because I think that she, I mean it is not exactly like a Motion for Supplemental Proceedings where you just are trying to identify and execute on it. The assets have previously been identified and listed.

THE COURT: Not only identified and listed but lied to as to where they were so there was no opportunity and Mr. Lewis immediately went out to get those funds. We couldn locate them. You knew within a short period of time that he couldn't locate them but there was never any effort to come forward at that time and say that golly gee whiz they are over in First Security Bank.

MR. HARRISON: I didn't know.

THE COURT: I know you didn't know and I am not blaming you but I am saying that your client had that opportunity and didn't. Surely you were telling her that

those funds had been awarded. She had a copy of this court's order. Now all of a sudden she has got this miraculous memory of where the thing was. I have real problems. I think it is a flat out lie to this court.

MR. HARRISON: Well I asked her to talk with both banks that she had an account in Farwest and First Security and get any records they had of any accounts or safety deposit boxes and that is how I discovered . I was out at First Security Bank getting that letter. (indicating)

THE COURT: All I can say is if your client legitimately doesn't know where $300,000.00 is then you ought to have her tested for competency and let's get her to the State Hospital where she belongs. I don't know of any other human being that I have ever been associated with that doesn't know where $300,000.00 is of their assets. To sit through a five day trial and not ever have that disturbed her memory is beyond me.

MR. HARRISON: I understand that.

THE COURT: Now to have two children here who also, I am sorry Mr. Harrison it just appears to me this is a conspiracy on the part of her and the two kids. That is what it smacks to me as. It has already smacked to me earlier with regard to Eric and that is the reason I am not hearing his case. He thinks I am prejudice and I guess you get that way after hearing people lie for five days.

MR. HARRISON: Well, Your Honor, does the court believe that at the time of trial that Lisa was not honest with the court and Eric was not honest with the court?

THE COURT: I absolutely do.

MR. HARRISON: Does the court believe that both parties were not honest or just Mrs. D'Aston?

THE COURT: I find like Judge Harding there was an awful lot of lies in this trial.

MR. HARRISON: On both sides of the case?

THE COURT: I don't know who was lying. I think my findings of fact will indicate that, that I didn't know who was lying but somebody obviously had to be lying and now from every step forward from this point forward, it appears or from the point forward the trial that it appears that it is Mrs. D'Aston and the two children because of everything that has gone on.

Now you tell me from an objective standpoint why I shouldn't feel that way?

MR. HARRISON: Well, if I knew of some way to I think Lisa is the key to this thing. If I knew of some way to loca here either through employment or residence or boyfriends or anything.

THE COURT: You know the thing that disturbs me when we find her I would almost beat a steak dinner and she i going to come up and say that I didn't get any of this money,

Eric got it or Mrs. D'Aston had got it or Bruno took it from me. I bet she doesn't have it. The testimony will be that she doesn't have it. That is what I would think because that is the way this ball has revolved every since the date of the trial. Whoever happens to be in front of the court they don't have it somebody else has it. The dilemma is what to do? There is obviously no way she can purge herself from the contempt.

MR. HARRISON: I agree.

THE COURT: Do you want to see her sit in jail for about six months Mr. D'Aston is that what you want?

MR. BRUNO D'ASTON: Your Honor, it is up to the court, I am beyond reason to say anything.

THE COURT: Well it is a real aggravation to the court.

MR. LEWIS: What to do, and obviously the question is they haven't paid the money to the court. We believe strongly that she has the ability to pay and she has the money and you are going to say that she is going to sit in jail for six months I suspect that maybe if she were there the money might appear is my feeling. Also I think that such a short time that someone has got to report back to the Appellate Court by March 9th and I assume that it excuse me May 9th. If she is still in contempt of court then simply the appeal would be dismissed and that is the way I read the

court's decision.

MR. HARRISON: I disagree with Mr. Lewis' interpretation. I think that her responsibility under the Court of Appeals is to appear for further proceedings as this court may determine appropriate. This is not a case where - -

THE COURT: Well - -

MR.HARRISON: That the court is saying you must pay a judgment as a condition of the appeal.

THE COURT: Let me read what they say and then you can argue this with them but this is what they say. Still another approach is to stay the appeal until the appellate has submitted herself to the process of the trial court. This approach gives the trial court the flexibility to fashion the terms under which the non-complying party may purge the contempt rather than necessarily ordering the enforcement of the judgment. They go on over here and say that - -

MR. HARRISON: At the bottom of Page 6 there is important language, the petitioner's appeal is not dismissed because of the failure to satisfy a judgment but it was dismissed because of the failure to comply with the court order to safeguard so forth and so on.

THE COURT: On top of Page 7?

MR. HARRISON: Top of Page 7.

MR. HARRISON: It seems to me, Your Honor, that when you look at this case on the two extremes as far as fashioning something, you have either got a case where she could say that well you pay $236,000.00 into court and if you don't do that you don't satisfy me with respect to anything.

THE COURT: Well,the thing of it is she is in contempt.

MR. HARRISON: There is no question about that.

THE COURT: I have already held that she is in contempt. Now the question is am I going to allow her to purge herself on what conditions?

MR. HARRISON: I think at that point you get into this issue of does she have the ability to purge herself or not.

THE COURT: Mr. Lewis believes it is and maybe I am misquoting you but it is all a pack of lies and she has got the money. If she would be put in jail the money would come forward.

MR. HARRISON: Your Honor, if he is wrong then she stays there for what 30 days, 60 days, 90 days, a year, five years?

THE COURT: Well, what if he is not wrong?

MR. HARRISON: Well, if he is not wrong then that would be a great relief to me and the court and to counsel. I happen to believe that she has told me about having no

assets. I have talked with her father. He would tell the court the same thing that he has provided everything for her since she has came down to take care of him because she had nothing.

THE COURT: Where did $160,000.00 go in living expenses?

MR. HARRISON: I think she early on I could just tell you generally that she had medical expenses, she had living expenses, she had travel she had witness' expenses and she had to pay for all of these people to fly from wherever they were. One guy came from Oregon and another came, two people came from California for the original trial that we had in this case. She had trial related expenses of about $40,000.00 to $50,000.00. Most of that a large part of that had to do with witnesses and paying their lost earnings from their jobs because they were away and so on and so forth. Then she had this period of time where before that she was living on $6,000.00 or $7,000.00 a month as the court will recall. That was the interest that was accruing on a note. So she was spending at the level of $6,000.00 or $7,000.00 before we even came to trial. Then after trial - -

THE COURT: Why sell the house at a fire sale for a $100,000.00 less than its value? Why do that?

MR. HARRISON: What I know about that is that the

house had been listed for sale even before the trial and they had no offers on it and all of a sudden - -

THE COURT: One offer out there.

MR. HARRISON: All of a sudden we got the one offer of $210,000.00 about in January of 1989 and that is why I was personally convinced that this is great because we don't have the ability to pay this $300,000.00 but we could pledge the $210,000.00 because it was a mortgage free house. We could pledge that and Bruno informed his lawyer that he rejected that. At that point that sale failed because they filed a lis pendens.

THE COURT: Well it didn't stop the sale a lis pendens is still there.

MR. HARRISON: Apparently what happened is about a year later or several months later they found they had another offer. Those people were willing to buy it subject to I guess, whatever the lis pendens was and I think they are involved in a lawsuit right now. I think Mr. D'Aston has sued them.

THE COURT; I suspect anyone that bought it with a lis pendens on it whether they paid $220,000.00 or $120,000.00.

MR. HARRISON: I think they are involved in a lawsuit right now on that.

You know her ability to lease, and at one time the court said that well if she didn't have the ability to post the

$312,000.00 and if you had come back in and told me about that maybe we would have modified that order to some extent. The court made that comment at the time we came in and complained a little bit about the fact that we couldn't stay the action anymore because we couldn't post that bond and the thing we tried to do is offer the proceeds of the sale and that had been rejected . I prepared the documents and sent them to Mr. Lewis. Then he called me and said that his client wouldn't accept it. They knew that they could interrupt that sale and did interrupt that sale. So then the thing sort of got given to Eric and the court knows the history of that.

THE COURT: As I recall during the time of the trial the allegations were that she was receiving this interest every month and it wasn't until the last day of the trial we found out that she had already discounted the note and had the money.

MR. HARRISON: Your Honor, Mr. Lewis' representation on that were wrong. I think the court's impression is wrong. What happened was at the time that she had given a financial declaraction, she indicated on there what her assets were at that time. The record will reflect and they have been transcribed - -

THE COURT: There wasn't any indication of anbody to correct this impression then because that certainly was th

idea that I had from the very beginning and that never even surfaced until the last day of trial.

M.R HARRISON: Your Honor, I expected Mr. Lewis to cross examine relative to that financial declaration. You remember that was submitted when they came in and asked for alimony . The court awarded Mr. D'Aston alimony of $2500.00 a month. It was based upon - -

THE COURT: It wasn't alimony, it was just the division of some of the assets.

MR. HARRISON: It was temporary support from whatever source that was. It was phrased that way . It was phrased as alimony . But the court awarded that $2500.00 to him on the basis of her financial declaration submitted in about January of that year.

Now nobody asked any further questions about it. I made no statements to the court about it. What happened was Mr. Lewis comes in to trial and all of a sudden he is questioning her and she says that she has discounted the note and so forth. We were complaining because he had transferred all of his assets to this California attorney Mr. Sidney Troxell and then had filed a lawsuit against her in California in violation of a previous court order. So the court said that well, you transferred your assets and Mrs. D'Aston discounted it I am going to hold those things as equal and not worry about either one . But Mr. Lewis made some big

argument about the fact that somehow he was deceived. He was not deceived. He never asked any questions about it until the trial. At the trial it came out that had been discounted that is all. Now if the court had this impression that somehow it was not the case. It had nothing to do with the evidence presented or arguments of counsel had to do.

THE COURT: I would expect that somebody would enlighten the court as to what the true facts where somewhere along the case instend of go on the assumption which you knew that the assumption that the court had. Somebody has that obligation.

MR. HARRISON: I think at the time of trial that we brought forward a financial declaration that had been used before. She testified at trial about what the differences were between that time and trial. You know one of the frustrations that she had Judge, was that Mr. D'Aston never did do a financial declaration. You don't have in your record right now the fact that he owns an RV and he has all this stuff that is attached to it.

THE COURT: Well I did too, I knew that all the way through.

MR. HARRISON: On a financial declaration . I asked him questions at various times in trial but there has never been a financial declaration given by him. That is not to say - -

THE COURT: It doesn't matter about the financial declaration. The concern is that I wasn't fully apprised as to what the situation was and the status was.

MR. HARRISON: I understand.

THE COURT: Now your client's position is that Lisa has all of a sudden disappeared and nobody knows where she is at and she has got all the money?

MR.HARRISON: Not all of a sudden. She hasn't seen her since October of 1988 which was about two months before the court made its decision in this case.

THE COURT: Well somebody has seen her if they transferred the whole ball of wax from the sale of the house to her?

MR. HARRISON: The only person that has seen her is Eric. Eric saw her in March of 1989. Eric was subpoenaed and he is outside. I don't know if the court wants to ask him anything about it?

THE COURT: It is not my lawsuit.

MR. HARRISON: I agree but my information is through my client that Eric saw her and gave her the $116,000.00 in March of 1989.

THE COURT: Well, Mr. Lewis do you have anything further?

MR. LEWIS: Well, I certainly don't want to retry the case. I think the orders of the court, the court has made

the findings. I don't think we can go back on them.

MR. HARRISON: Let me just respond to that briefly. It seems to me when the court is talking about a situation which is a very serious one that where you have got a default. findings of fact and order that it is particularly - -

THE COURT: That has been held and I am not going to rehash that.

MR. HARRISON: I understand that but it is particula important to note.

MRS. D'ASTON: Can I take my father out and lay him down ?

THE COURT: You take him out Mr. Mullin I want Ms. D'Aston to stay in here.

MR. MULLIN: Your Honor,I don't know how to care for him .

THE COURT: The only care right now is to just wheel him out in his wheelchair.

MRS. D'ASTON: I need to lay him down on the bench.

THE COURT: All right you take him out and lay him down and you come back.

(WHEREUPON, a brief break was taken to take Mrs. D'Aston's father out to lay him on the bench)

THE COURT: Back on the record. If my arithmetic is accurate Lisa has $318,000.00?

MR. HARRISON: Plus - -

THE COURT: That doesn't belong to her.

MR. HARRISON: Plus the financial declaration in January of 1988 showed diamonds and Silver Bullion worth about my recollection was about $80,000.00.

THE COURT: $75,000.00. If this is accurate you told me that she gave a $127,000.00 in cash to Lisa, $75,000.00 which was the value of the diamonds - -

MR. HARRISON: $75,000.00 was the cash that she had in her home.

THE COURT: All right, you add those to together yo get $202,000.00 .

MR. HARRISON: Right.

THE COURT: Then she got a $116,000.00 out of the sale of the home.

MR. HARRISON: Plus the diamonds and Silver Bullion which at that time were valued at approximately I think $87,000.00.

THE COURT: She has those as well?

MR. HARRISON: Yes those were given to her at the same time.

THE COURT: That is $405,000.00.

MR. HARRISON: That is right.

THE COURT: Well, the only thing I can see is to give Mrs. D'Aston 30 days in which to deposit $236,800.00 with this court or in somebody's trust account. That will give her 30

30 days to locate Lisa . If that has not happened in 30 days I am going to sentence her to 60 days in jail then we will see where we are at after that.

MRS. D'ASTON: My father will die without my care. He can't even bathe himself. I don't have the money. I swear to God I don't. I don't have anything.

THE COURT: Why did you give it all away?

MRS. D'ASTON: She was supposed to hold it for me. I suspect Bruno got a hold of her and he has got the money from her.

THE COURT: I don't know why you even felt like that was necessary?

MRS. D'ASTON: Because I had to run. My mother died in November. I have her death certificate. I have been with them for over a year taking care of their needs.

THE COURT: Why didn't you make some appearance in this court?

MRS. D'ASTON: I couldn't leave them.

THE COURT: You could have told your attorney where you were at. You could have explained to this court why you were away. This court is not without some sympathy.

MRS. D'ASTON: Your Honor, I made a bad choice. I made a bad decision. I should have dealt with it differentl My life has been unbelievable horrible and whether you believ me or not this man (indicating) he has been sending death

threats to my parents when I was living with them with a tape from a newspaper to tell them to drop dead that he would get them. My life has been hell for the last few years. Now I am bankrupt. I cannot come up with that money, Your Honor. If I don't take care of my father he will die. He will die because he literally cannot take care of himself. I am sure you could see that? He is dying of Bone Cancer. I am all he has got left in the world and you are letting this man destroy our whole family. He had destroyed my children. He had destroyed my parents and he has destroyed his own family. My father knows about that. He needs a Psychiatrist and he lies and everybody believes him. I am sorry , Your Honor.

THE COURT: You could have solved this problem very easily by just keeping in contact with your attorney?

MRS. D'ASTON: You are right, Your Honor, I should have done something sooner but when you are caring for your two dying parents you really don't think about anything else. I just figured I would just take care of them. I didn't know what to do. I made stupid choices. As far as the bank thing, I did not lie. I swear to you I didn't lie. I just made a mistake. I thought it was in the other bank. I was under a lot of stress . I did not do that deliberately.

THE COURT: I will be perfectly honest with you it is awfully hard for me to believe that.

MRS. D'ASTON: I can see that. I did make some bad decisions. I am bankrupt. I have no money. I am literally living with my father in California. I had to bring him here because there is just no one to care for him. He was frightened. He said that just put me in the backseat of the car and drive me with you. We had to keep stopping at motels. This is the dearest sweetest man in the world and I won't let him die without me caring for him. I won't turn him over to a stranger. How do you live with yourself Bruno? Ifyou would let my father testify, he would tell you how he used to hit me and abuse me mentally and physically . He made my life hell. Now he should go to jail. He is a convicted felon. I never even got a traffic ticket. I was a good wife and a good mother. I was good to my parents and I never hurt anybody my whole life.

THE COURT: Why do you account for the fact that Lisa won't even speak to you?

MRS. D'ASTON: I don't know. I love her with all my heart. I don't know. I don't know whether he got to her or what happened. Maybe she saw all that money and just wanted no part of this whole chaos anymore. I don't know.

THE COURT: Probably not if she has got all the mone it certainly puts her in a advantageous position.

MRS. D'ASTON: She is my child and I still love her

If the money means that much to her then let her have it.

THE COURT: Your share you certainly have a right to give away anyway you want to but it is your husband's share that is creating the problem.

MRS. D'ASTON: He has his assets hidden. I know that people bought coins from him in the last year. He is lying about that too.

THE COURT: There is a big dispute going on between him and Eric in Judge Harding's courtroom over that but I am not a party to that right now.

MRS. D'ASTON: He is a pathological lier, Your Honor. He lies about anything and everything.

THE COURT: Well I am sympathetic with what you are saying Mrs. D'Aston but I don't know how to maintain the integrity of this court.

MRS. D'ASTON: I have not lied to you.

THE COURT: Somebody just flaunted the order of this court.

MRS. D'ASTON: I didn't intend to flaunt it. I made stupid decisions.

THE COURT: Didn't your counsel tell you how serious this was?

MRS. D'ASTON: I only called him up on a few occasions.

THE COURT: Why didn't he tell you, why didn't he

tell you how serious this was?

MRS. D'ASTON: I got so wrapped up in caring for my parents that frankly I was so emotional distraught this whole last year that is all I could think about. I know he has money to take care of himself. He wasn't starving.

THE COURT: I don't think he is starving either. That is not the question. The question before the court is the contempt of this court. I don't understand why you would even have to be in contempt of this court.

MRS. D'ASTON: I would ask the court to forgive me for my stupid actions. I never meant to do anything wrong because I have never done anything wrong in my life. I have always tried to be nice and fair and honest in dealing with people that way.

THE COURT: That is not the impression you left the court with when you deed the house away, when you deed the extra lot away. When Eric comes along and sells the house and the lot that I awarded directly to him.After the order of the court you give all this money to Lisa and now Lisa is not to be found anywhere.

I mean if you put yourself in my shoes what you are asking me to do is put myself in your shoes, you put yourself in the court's shoes and say that why do I have one bit of reaso for believing you? I understand what you are saying. I don'

disbelieve that this is obviously your father and he is in bad shape and he needs some help. How old is he?

MRS. D'ASTON: He is 82.

THE COURT: Does your client know where Lisa is?

MR. BRUNDO D'ASTON: No.

THE COURT: Have you had any contact with her at all?

MR. BRUNO D'ASTON: None whatsoever. I never did since she was in court here and then she wasn't speaking to me.

Your Honor, the only party that has all those assets is Dorothy. Lisa doesn't have them . She has over a million dollars in cash before any sale in California property or anything else. She has it.

THE COURT: Lisa just up and moved?

MR. HARRISON: She was employed and the fellow that cam in and testified . You remember that there was a young man that came in and testified that he went to a show and bought some Gold from Bruno during the time that Bruno claimed that he wasn't to be transacting business. That was one of the items of evidence. He was her boyfriend. She had taken him to this trade show. I think it was in Long Beach and made that purchase in the anticipation for the court trial. So they were both down in Los Angeles

some place. That is the last connection that I found with her.

THE COURT: Does Eric know where she is at?

MR. HARRISON: He tells me no but I have no problem in having him step up here on the witness stand and ask that question to him?

THE COURT: Well it wouldn't be beyond his power to tell me no.

MR. HARRISON: That is right.

THE COURT: Because of all that he has gone through I don't think an oath means anything to him.

Well this is a real mess.

MR. HARISON: Another thing I was going to suggest, Your Honor, that one of the things is important that Dorothy do obviously would be to be available at any time the court wants her here or whenever Mr. Lewis wants to serve her with anything else.

THE COURT: I don't think that is even important and if what you represent is true what difference does it make?

MR. HARRISON: Well I don't know. I think there is a chance that Lisa might come forward. I don't know her well enough to know if she is sensitive to difficulties created in the situation ? I have no idea.

At the time I spoke with her before trial I was impressed to the fact that she seemed intelligent. She is a college

graduate and she seemed to be responsible in the sense of living her own life and had a job and so forth. That is all I know about her.

Mrs. D'Aston had indicated where exactly - -

THE COURT: How are you going to get in touch with her? You are saying that there is just a chance she is going to show . If she has absented herself all this time, I am sure the only time she is going to surface is when she is going to come back and she is going to say that she is bankrupt my boyfriend has took it all or I lost it in business dealings. This is going to be as absent as the million dollars worth of coins is absent. Nobody knows where they went. Everybody acknowledges that they were there but nobody knows where they went. You have two sides of that story.

MR. HARRISON: I know the court believes that Bruno is truthful on key issues and believes that Mrs. D' Aston is not truthful?

THE COURT: That is not necessarily so. In the beginning I felt like I was getting stories from both sides. But all I can say is what I have said before is what has happened since indicates that to this court that Mr. D'Aston is probably more truthful than the other three defendants.

MR. HARRISON: All I can say is I think in general that the court has felt that he was more truthful than she

was. And a lot of these orders reflect that. I think if the court considers that a chance exists that in fact Mrs. D'Aston has been truthful about these things and what I have stated to you as to what I proffered as her testimony today is the truth and you still have his position saying that is fine let her go to jail. Let her father have whatever health problems he has. He doesn't care.

THE COURT: Why don't we have Eric take care of his grand dad?

MR. HARRISON: Well do you want my personal opinion?

THE COURT: Why don't we have Eric come in and tell us and ask him why he don't come in and take care of his grandfather while his mother goes to jail. Bring him in.

(WHEREUPON, Mr. Eric D'Aston is brought into the courtroom)

MR. HARRISON: As I indicated he is here pursuant to a subpoena.

THE COURT: This court is about to send your mother to jail and you go by Aston I guess now?

MR. ERIC ASTON: Yes.

THE COURT: We want to know why you can't take care of your grandfather while your mother is serving jail time?

MR. ERIC ASTON: I am running a business.

THE COURT: Which is more important?

MR. ERIC ASTON: Feeding myself. Because of this

whole court thing and my lying father and he knows he is lying. I hope you enjoy what you are doing? (indicating)

THE COURT: Never mind making those representations just answer the court's question?

MR. ERIC ASTON: I have my own family now. To be quite frankly honest this whole situation has literally destroyed my life in the past five years from taking coins that I brought into court and you saw me bring them in to having them taken from me to not being able to run a business.

THE COURT: Well that is not in this court. That is up in Judge Harding's court.

MR. ERIC ASTON: I don't have room. I have a wife and a kid and a small condo.

THE COURT: Do you know where your sister is at?

MR. ERIC ASTON: No I don't. I wish I did.

THE COURT: Do you know why she would want allegedly she has in her possession some $405,000.00 that belongs to your mother and your father?

MR. ERIC ASTON: Your Honor, in my opinion my father has that money right now and he knows it all right. You are dealing with a professional lier and someone that is very good at what they do.

THE COURT: Well there is no evidence to that effect. The only evidence I have is representation from Mr. Harrison

today that Lisa has all that money.

MR. ERIC ASTON: I can't prove it but I know my father and don't sit there and cry because he turns his emotions on like that you know. He made us look like the bad people. He is running around the country with his motorhome. He is going to shows. He is spending a lot of money.

THE COURT: He didn't make you look like the bad people because after the decision of this court it could have very adequately handled if you hadn't of sold the property which you had no business in selling No. 1 after this court order.

No. 2 , your mother had the money if she would have just simply put it in trust or whatever the money that I awarded to your father none of this would have happened. So I don't see where you are getting off your like the Mr. Clean in this thing.

MR. ERIC ASTON: In selling the house I read a paper from you giving the house to my mother. My mother stated for me to sell it and give my sister the money so I did that. I mean I have started my own business.

THE COURT: Not only that but you sold the lot that I awarded to Mr. D'Aston.

MR. ERIC ASTON: I just signed the papers that they told me to sign.

THE COURT: You are a very intelligent man. I don't buy that for five seconds that you don't understand what is going on. Well okay, do you have any questions of Mr. Eric Aston?

MR. LEWIS: No.

THE COURT: You may step back out of the courtroom. You are not a party to this.

(WHEREUPON, Mr. Eric Aston goes back out in the hall)

MR. HARRISON: It is obvious if Eric would step forward and say that let me take care of my grandfather that would be one thing but I think what you have heard is exactly what I predicted he would say. He just doesn't care about him.

THE COURT: The only milk of human kindness I see in the family is Mrs. D'Aston taking care of her father and I just hope it is not an excuse.

MR. HARRISON: I think that is genuine Judge.

THE COURT: I feel like there has been so many opportunities or at least not opportunities but there has been so many occasions where they tried to pull the wool over the court's eyes that I don't know what I can trust and what I can't trust.

MR. HARRISON: You have got Eric who doesn't care if his grandfather dies. You have got Mr. D'Aston who doesn't care if she goes to jail for 10 years and the

father dies. You have got Lisa who doesn't care if she goes to jail because she has got the money and couldn't come forward with it. I think I agree.

THE COURT: All in the name of dollars and cents. Mrs. D'Aston you are still in contempt of this court bad decisions or otherwise. It is no different from the criminal who commits a crime and comes in here and says that please forgive me I didn't know what I was doing. I made a bad choice and there is always an accountability for that.

I don't know what is the prognosis for your father do you know?

MRS. D'ASTON: No he has Bone Cancer.

THE COURT: I understand. Has the Doctor said anything about his life span?

MRS. D'ASTON: He hasn't give us any time.

THE COURT: Heck of a place to be playing that out in the courtroom in talking about somebody's life in that fashion but.

MR. HARRISON: When I talked to him briefly he tells me that he has Prostate Cancer and Bone Cancer and there is no prognosis for recovery and beyond that that is all he told me.

THE COURT: What I am going to do . . .

(WHEREUPON, the rest of the hearing was previously transcribe

and this concludes the other portion of the hearing)

C E R T I F I C A T E

STATE OF UTAH)
: ss.
COUNTY OF WASATCH)

THIS IS TO CERTIFY that the HEARING was reported by me in Stenotype, and thereafter caused by me to be transcribed into typewriting by Richard C. Tatton and that a full, true and correct transcription of id HEARING was so taken.

I FURTHER CERTIFY that I am not of kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the event thereof.

WITNESS my hand and official seal at Midway, Utah, this 16th day of July, 1990

Richard C. Tatton

RICHARD C. TATTON, CSR

My commission expires:

June 15, 1993

Notary Public
RICHARD C. TATTON
53 North 100 East
Midway, Utah 84049
My Commission Expires
June 15, 1993

APPENDIX "F"

Notice of Appearance

FILED
MAY 8 1990
900SC-CA
Clerk of the Court
Utah Court of Appeals

HARRIS, CARTER & HARRISON
Brian C. Harrison
Attorney for Defendant
3325 North University Avenue, #200
Provo, Utah 84604
Telephone: 375-9801
Utah State Bar #1388

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

BRUNO D'ASTON,	
Plaintiff,	NOTICE OF APPEARANCE
-vs-	
DOROTHY D'ASTON	
Defendant.	Civil No. CV-86-1124
	Judge Boyd L. Park

TO THE UTAH COURT OF APPEALS:

You will hereby take notice that the Defendant, Dorothy D'Aston, appeared before me on the 4th day of May, 1990 for further Court proceedings as required by your opinion in Case

Number 890050-CA filed April 9, 1990.

The Defendant is still in contempt of Court, but has been granted 45 days in which to purge her contempt. Additional proceedings have been scheduled for June 22, 1990 to review this matter.

DATED this 7 day of May, 1990.

BY THE COURT:

Honorable Boyd L. Park

APPROVED AS TO FORM:

S. Rex Lewis

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I personally mailed a true and correct copy of the foregoing Notice of Compliance on this 7 day of May, ~~1989~~ 1990, by first-class, U.S. Mail, postage prepaid to the following:

S. Rex Lewis
120 East 300 North
Provo, Utah 84601

The Utah Court of Appeals
230 South 500 East, #400
Salt Lake City, Utah 84102

Secretary

APPENDIX "G"

Order, May 22, 1990

FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

MAY 22 9 58 AM '90

S. REX LEWIS (1953), for:
HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 East 300 North Street
P.O. Box 778
Provo, Utah 84603
Telephone: (801) 373-6345
Facsimile: (801) 377-4991

Attorneys for Plaintiff

k:aston-or.lo
Our File No. 17,603

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

BRUNO D'ASTON,	:	
Plaintiff,	:	**ORDER**
vs.	:	
DOROTHY D'ASTON,	:	Civil No. CV 86 1124
Defendant.	:	Judge Boyd L. Park

The defendant Dorothy D'Aston personally appeared before the Court on the 4th day of May, 1990, in person and was represented by her counsel, Brian C. Harrison. Plaintiff appeared in person and by his counsel, S. Rex Lewis of Howard, Lewis & Petersen. The Court considered its Amended Order of Commitment dated the 26th day of May, 1989, together with its Findings of Fact and Conclusions of Law dated April 13, 1989, and having heard representations made by defendant's counsel, as well as by the defendant, and the defendant having previously been found in contempt of an order of this Court,

IT IS HEREBY ORDERED as follows:

1. Defendant may purge herself of the contempt order of this Court by depositing with the Court the sum of $236,800.00. The defendant is given ~~45~~ 49 days from May 4, 1990 to purge herself of her contempt.

2. In the event the defendant fails to make the aforesaid deposit, the defendant is ordered committed to jail for a period of sixty (60) days.

3. Unless previously modified by an Order of this Court, the Court will review the Commitment Order on June 22, 1990, at the hour of 1:30 p.m. at which time the defendant is ordered to appear in person before the Court. The Court will make its review on that date prior to committing the defendant to jail.

4. The Bench Warrant previously entered herein on the 13th day of April, 1989 is hereby withdrawn.

DATED this 22 day of May, 1990.

BY THE COURT

BOYD L. PARK
DISTRICT COURT JUDGE

MAILING CERTIFICATE

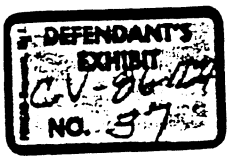
I hereby certify that a true and correct copy of the foregoing was mailed to the following, postage prepaid, this _____ day of May, 1990.

Brian C. Harrison, Esq.
3325 No. University Avenue
Suite 200
Provo, Utah 84604

Emily Haskell
SECRETARY

APPENDIX "H"

Agreement



AGREEMENT

RECORDED IN OFFICIAL RECORDS
OF LOS ANGELES COUNTY, CA
MAR 7 1975 AT 8 A.M.
Recorder's Office

This agreement is made by and between BRUNO D'ASTON, husband, and DOROTHY D'ASTON, wife, at Hacienda Heights, California, on the first day of March, 1973, with respect to the following facts:

FEE
$5
3C

1. The parties own property which is held in joint tenancy, community property or in their separate names; and

2. They wish to make this agreement to state their actual intention with respect to said property and the status thereof and with respect to property to be acquired hereafter.

Now, therefore, in consideration of mutual covenants herein it is agreed as follows:

1. The husband does transfer, bargain, convey and quitclaim to the wife all of his right, title and interest, if any there be, in and to the following:

(a) The real property at 14211 Skyline Drive, Hacienda Heights, California and in and to all buildings, appurtenances and fixtures thereon.

(b) The real property at 230 South Ninth Avenue, City of Industry, California, including all buildings, appurtenances and fixtures thereon, and any and all oil and mineral rights thereto.

(c) Any and all cash in bank accounts located in the State of California.

2. The wife transfers, bargains, conveys and quitclaims to the husband all of her right, title and interest in and to real property located outside of the United States of America, and in and to all personal property in the possession of the husband, or subject to his control in the United States, Europe or elsewhere in the world, and in and to all patents or patent rights under the laws of the United States, United Kingdom or

DOCUMENTARY TRANSFER TAX $ none
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED,
OR COMPUTED ON FULL VALUE LESS LIENS AND
ENCUMBRANCES REMAINING THEREON AT TIME OF SALE.
S. McKinnon T I

MAIL TAX STATEMENTS TO Dorothy D'aston -1-
14211 Skyline Dr.
Hacienda Hts Calif 91745

any commonwealth thereof, Switzerland, Japan or other countries. The provisions of this paragraph apply to all property described herein, whether presently owned or in existence or to be acquired or created in the future.

3. Hereafter, and until this agreement is modified in writing attached hereto, all property, real, personal and mixed, acquired by either party in his or her sole name, from whatever source derived and wherever situated, shall be the sole and separate property of such person, notwithstanding any law, statute or court decision giving presumptive effect to the status of marriage; and such property shall be free of all claims, demand or liens of the other, direct or indirect, and however derived.

4. Nothing herein applies to the earnings, from whatever source derived, of either party, which shall be community property under the laws of the State of California. Nor shall anything herein be construed to derogate from the rights and privileges of either party or both of them, under the tax laws of any state or nation of the world.

5. Each party agrees to execute documents necessary to implement this agreement.

6. This agreement may be, but need not be, recorded in any office for recording documents in California or elsewhere.

7. Both parties have read and understood this agreement, have been advised by counsel, and do state that it has not been made under duress, fraud or undue influence.

Executed in triplicate on the date hereof.

Bruno D'Aston

Dorothy D'Aston

147 CA (4-73)
dividual)

TITLE INSURANCE AND TRUST
A TICOR COMPANY

BK D6578 PG 895

\TE OF CALIFORNIA }
UNTY OF Los Angeles } SS.

February 28, 1975 before me, the undersigned, a Notary Public in and for said
e. personally appeared Bruno D'Aston and Dorothy D'Aston

known to me
e the person s whose name s are subscribed
he within in ament and acknowledged that they
uted the same.
TNESS my hand and official seal.

OFFICIAL SEAL
CORINNE H. YOUNG
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires December 14, 1977

ature

Name (Typed or Printed)

(This area for official notarial seal)

APPENDIX "I"

Findings of Fact and Conclusions of Law

(Eric Aston)

Fourth Judicial District Court of
Utah County, State of Utah.
March 9, 1990
CARMA B. SMITH, Clerk
SP
Deputy

S. REX LEWIS (1953) and
KEVIN J. SUTTERFIELD (3872), for:
HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 East 300 North Street
P.O. Box 778
Provo, Utah 84603
Telephone: (801) 373-6345

K:Astn-fof.lo
Our File No. 17,603

Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

BRUNO D'ASTON,	:	
Plaintiff,	:	
vs.	:	FINDINGS OF FACT AND CONCLUSIONS OF LAW
DOROTHY D'ASTON,	:	
Defendant.	:	
LISA ASTON and ERIC ASTON,	:	Civil No. CV 86 1124
Co-defendants.	:	Judge Ray M. Harding

Plaintiff's Orders to Show Cause against co-defendant Eric Aston and plaintiff's Motion for an Order directing the delivery of certain personal property to plaintiff came on regularly for hearing before the Hon. Ray M. Harding of the above-entitled Court on January 8, 9 and 22, 1990. The plaintiff was present and represented by his counsel, S. Rex Lewis and Kevin J. Sutterfield, co-defendant Eric Aston was present and represented by his counsel,

Keith W. Meade. The Court, having received evidence and heard testimony of the parties and other witnesses, considered the memoranda of the parties, heard argument of counsel, having issued its Memorandum Decision dated January 31, 1990, being fully advised in the premises, and good cause appearing therefor, now makes and enters the following:

FINDINGS OF FACT

1. The Court herein entered a Decree of Divorce on or about December 15, 1988, whereby it awarded various personal property to the plaintiff, including various items which plaintiff alleges were removed from his car and his motor home on or prior to April 30, 1986.

2. The divorce decree also awarded to plaintiff a one-half interest in various personal property located at the marital home of 1171 No. Oakmont, Provo, Utah ("marital home").

3. The Decree of Divorce awarded the marital home to defendant Dorothy D'Aston.

4. The Decree of Divorce also awarded to the plaintiff other personal items, including cameras, lenses, carrying cases, and other optical equipment.

5. Prior to the separation of plaintiff and defendant Dorothy D'Aston, plaintiff was involved for numerous years in the buying, selling, and collecting of coins, rare coins, and other similar items.

6. On many of plaintiff's rare coins, he stamped the rim above the head with the letter "A."

7. Shortly after the plaintiff's personal property disappeared in April, 1986, plaintiff was able to make a detailed list for the police department from his memory of many

of the missing items. Some of those items, while not exceptionally rare, would not be expected to appear in an average coin shop.

8. On March 15, 1989, Eric Aston made and executed a Bill of Sale to Lloyd Ross Engle and Jan Chapman Engle to various items of personal property located in the marital home. Eric Aston assisted in the sale of the real property and accepted a quit claim deed from defendant Dorothy D'Aston aka Dorothy Aston on March 14, 1989. On the same date, Eric Aston executed a warranty deed to the Engles for the sale of the marital home. At the closing of the sale of the property on March 14, 1989, Eric Aston received two trust account checks from Provo Land Title Company, one for the sum of $58,144.44, and one for the sum of $58,144.48, for a total cash receipt of $116,288.92.

9. On April 14, 1989, this Court issued its Writ of Execution and Assistance. Pursuant to that Writ, John Sindt, a constable of Salt Lake County, took various items into his possession on April 29, 1989, from co-defendant Eric Aston.

10. The various property identified as Exhibit 7 at the hearing hereof obtained by Constable Sindt, was previously located at co-defendant Eric Aston's business known as The Gold Connection at approximately 21st South 700 East, Salt Lake City, Utah.

11. Many coins identical to plaintiff's missing coins, even those which were unusual, unexplainably appeared in Eric Aston's coin shop. Several of the coins reported missing by plaintiff were stamped with an "A." Identical coins bearing an "A" were found among the coins in co-defendant Eric Aston's inventory.

12. Though given an opportunity, co-defendant Eric Aston has not adequately explained why he had so many coins identical to plaintiff's missing coins.

13. Within the past several months, co-defendant Eric Aston has made significant purchases, including inventory for his coin shop, several automobiles, and two separate condominiums. Co-defendant Eric Aston has not plausibly explained the manner and source of the funds sufficient to purchase the inventory for his coin shop, the automobiles, and property he has recently acquired.

14. The Court finds and reasonably infers that much of the capital for co-defendant Eric Aston's recent purchases came from the sale of plaintiff's coins, many of which are still missing.

15. The Court also finds and reasonably infers that co-defendant Eric Aston had several coins in his possession identical to plaintiff's missing coins because those coins were actually taken by co-defendant Eric Aston.

16. The parties have stipulated that co-defendant Eric Aston claims no interest in the cameras, lenses, cases, and optical equipment found in co-defendant Eric Aston's store, and that the Court can enter an order awarding the same to plaintiff, which items were received by plaintiff at the time of the hearing herein.

17. The parties have also stipulated that plaintiff makes no claim to various dimes, pennies, nickels, quarters, one-half dollars, dollars, and panda bullion which can be awarded to co-defendant Eric Aston and were received by him at the time of the hearing herein.

18. Plaintiff has met his burden of proving ownership to many of the items entered as evidence herein. Plaintiff is the owner of all coins which bear an "A" stamp, including all of the coins now held by the Court which bear an "A" stamp. A list of the "A" stamped coins held by the Court is as follows:

1892 P	Morgan Silver Dollar
1890	Carson City Silver Dollar
1879	Metric Proof U. S. Dollar
1871 S	U. S. $20 Gold Coin - Liberty
1914 S	U. S. $20 Gold Coin - St. Gaudins
	1 set Diving Goose Canadian Dollar
1881 O	Morgan Silver Dollar
1890 CC	Morgan Silver Dollar
1922 D	Peace Dollar
1923 S	Peace Dollar
1924 S	Peace Dollar
1934 D	Peace Dollar
1896 S	U. S. $20 Gold Coin - Liberty
1904 S	U. S. $20 Gold Coin - Liberty

19. Plaintiff is also the owner of the items held by the Court which match those items listed on plaintiff's first list of stolen property which was given to the police. These items on plaintiff's first list of stolen property are as follows:

Complete set of coins of The Golden West (36 coins in set plus 2 Calif. coins).

U. S. Gold Dollars

1	1849 - AU
2	1853 - AU

$2 1/2 U. S. Gold

1	1905 - UNC
1	1915 - AU
1	1911 - D

$10 U. S. Gold

1	1910 - D - UNC
1	1915 - UNC

$20 U. S. Gold

1	1871 - AU
1	1897 - BU

1 1914 - S - BU
1 1925 - BU
1 18.5 gram Alaska gold nugget

2,013 oz. silver bullion (1-oz. rounds; 5-oz. bars; 10-oz. bars; 100-oz. bars)

187 Libertads (1982, 1983, 1984, 1985)

Canada Dollars

13 1958 - BU
20 1962 - BU
45 1963 - BU
120 1964 - BU
137 1965 - Type 1, BU, Type 2 BU, Type 3 BU, Type 4 BU and Type 5 BU
60 1966 - LB - BU
1 1967 - D.G. 45° - BU
120 1967 - BU
6 1967 - Canada proof sets with $20 Gold
470 1984 - proof dollars and case

U. S. Proof & Gem Silver Dollars

1 1879 - Metric proof

5 coins of 13 coin Gem set MS - 65 - CC - dollars consisting of 1-1879; 1-1882; 1-1883; 1-1884; and 1-1890.

84 Common dates BU - dollars
60 Common dates CIRC - dollars

Miscellaneous Gold

6 1-oz. - K - Krugeran.
1 1-oz. - M - Mapleleaf.
3 Mex - 2 Peso
3 Mex - 2 1/2 Peso
2 Mex - 1947 - 50 Peso - BU

Stamps - one book.

20. Plaintiff's later inventories do not appear to have the same reliability as the original list of stolen property.

21. Plaintiff is the owner and should receive any items held by the Court which match the list of consignment items as awarded to plaintiff in the divorce decree, as listed on Exhibit 24 thereof and which are a part of Exhibit 7 and also described in Exhibit 57. The bullion which was a part of Exhibit 7 is also a part of the bullion described in Exhibit 57 at the trial and all of these items are to be returned to plaintiff.

22. Co-defendant Eric Aston is the owner of the items not included in the above listing and any furniture which is now in his possession at his store.

23. Plaintiff has incurred costs of court and is entitled to be awarded them from the co-defendant Eric Aston.

The Court having made and entered its Findings of Fact, now makes and enters the following:

CONCLUSIONS OF LAW

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

2. The Court should approve the stipulations of the parties made at the hearing regarding ownership of cameras, lenses, cases, and optical equipment to plaintiff and various coins to the co-defendant Eric Aston.

3. Plaintiff should be awarded all coins which bear an "A" stamp, including all of the coins now held by the Court which bear an "A" stamp, and all items held by the Court which match those items listed on plaintiff's first list of stolen property which was given to the police.

4. Plaintiff should also receive any items held by the Court which match the list of consignment items as awarded to plaintiff in the divorce decree, as listed on Exhibit 24 thereof and which are a part of Exhibit 7 and also described in Exhibit 57.

5. Plaintiff should be awarded all of the bullion which was a part of Exhibit 7 herein, and which was described in Exhibit 57 herein.

6. All of the above-described items should be ordered returned to the plaintiff.

7. Co-defendant Eric Aston should be awarded any items not included in the above listing and any furniture which is now in his possession at the store.

8. Plaintiff should be awarded costs of court.

9. Co-defendant Eric Aston should not be held in contempt for his actions in assisting in the sale of the marital home and executing the bill of sale on the various personal property contained therein.

DATED this 9 day of ~~February~~ March, 1990.

BY THE COURT

RAY M. HARDING
DISTRICT COURT JUDGE

APPROVED AS TO FORM:

KEITH W. MEADE, ESQ.
Attorney for Co-defendant Eric Aston

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was faxed to the following, this 8 day of February, 1990.

Keith W. Meade, Esq.
525 East 100 South
Fifth Floor
P.O. Box 11008
Salt Lake City, Utah 84147-0008

Emily Laskell
SECRETARY

APPENDIX "J"

Colman v. Colman, 743 P.2d 782 (Utah Ct. App. 1987)

Phyllis E. COLMAN, Plaintiff and Respondent,

v.

William J. COLMAN, Defendant and Appellant.

No. 860325–CA.

Court of Appeals of Utah.

Oct. 2, 1987.

Husband appealed from order of the Third District Court, Salt Lake County, David B. Dee, J., which divided property in connection with divorce. The Court of Appeals, Garff, J., held that: (1) evidence sustained trial court's determination to pierce corporate veil of husband's corporations, and (2) distribution was proper.

Affirmed.

1. Pleading ⇐427

If theory of recovery is fully tried by the parties, court may base its decision on that theory and deem the pleadings amended, even if the theory was not originally pleaded or set forth in the pleadings or the pretrial order; that the issue has, in fact, been tried and that the procedure has been authorized by the express or implied consent of the parties must be evident from the record.

2. Divorce ⇐203

Although alter ego issue was not specifically raised in pleadings, where entire trial testimony concerned husband's control over assets in question, the issue was tried by the consent of the parties and trial court properly based its decision on that issue.

3. Divorce ⇐253(2)

Finding that corporation was husband's alter ego was supported by evidence that husband ignored corporate formalities, that he referred to the corporation's checking account as his personal account, that he dealt with corporate assets without suggesting that he was acting on behalf of anyone other than himself, that the officers and directors played little or no role in the operation of the corporate entity, that corporate records were not kept, and that the husband used the corporation and other corporate shells as a facade for his personal business operations.

4. Corporations ⇐1.6(10)

Corporate veil which protects stockholders from individual liability will be pierced only reluctantly and cautiously.

5. Corporations ⇐1.4(4)

To disregard corporate entity under alter ego doctrine, there must be shown such a unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, and it must be shown that, if the corporate form were observed, it would sanction a fraud, promote injustice, or result in an inequity; it is not necessary that plaintiff prove actual fraud but he must show that a failure to pierce the corporation veil would result in an injustice.

6. Corporations ⇐1.4(1)

Factors which are significant in determining whether corporate veil should be pierced are undercapitalization of a one-man corporation, failure to observe corporate formalities, nonpayment of dividends, siphoning of corporate funds by dominant stockholder, nonfunctioning of other officers or directors, absence of corporate records, use of corporation as a facade or operations of the dominant shareholder, and use of the corporate entity in promoting injustice or fraud.

7. Corporations ⇐1.4(1)

Failure to observe corporate formalities, which may justify piercing corporate veil, includes such activities as commencement of business without the issuance of shares, lack of shareholders at directors meetings, lack of signing of consents, and making of decisions by shareholders as if they were partners.

8. Corporations ⇐1.4(1)

Rationale used by courts in permitting corporate veil to be pierced is that, if principal shareholder or owner conducts his private and corporate business on an interchangeable or joint basis as if they were

one, he is without standing to complain when an injured party does the same.

9. Divorce ⇐252.3(3)

Former spouses attempting to shield assets from a court-ordered property distribution by using a corporate form are especially looked upon with judicial disfavor.

10. Divorce ⇐252.2

Fact that property distribution may not have been mathematically equal is not sufficient grounds to constitute an abuse of discretion, as fair and equitable property distribution is not necessarily an equal distribution.

11. Divorce ⇐252.3(3)

Trial court did not abuse its discretion in dividing property after piercing corporate veil on the grounds that the corporation was the husband's alter ego.

12. Divorce ⇐252.3(5)

Trial court did not abuse its discretion in requiring husband to pay an amount representing a percentage of the price of proceeds from sale of ranch where he found that husband held an interest in the ranch.

13. Estoppel ⇐52(4)

Estoppel arises when there is a false representation or concealment of material facts made with knowledge, actual or constructive, of the facts to a party who is without knowledge or the means of knowledge of the real facts and made with an intention that the representation be acted upon, and the party to whom the representation was made relies or acts upon it to his prejudice.

14. Estoppel ⇐54

Estoppel cannot be inferred from facts of which party to be estopped had no knowledge.

15. Husband and Wife ⇐279(1)

Wife was not estopped from denying that husband had furnished adequate accounting as required by their divorce agreement even though wife's attorney had returned certain stock certificates which he had turned over to them.

Frank J. Allen, Salt Lake City, for defendant and appellant.

Bryce Roe, Albert Colton, Salt Lake City, for plaintiff and respondent.

Before BILLINGS, GARFF and JACKSON.

OPINION

GARFF, Judge:

Defendant/appellant William J. Colman appeals from a property settlement judgment in favor of plaintiff/respondent Phyllis E. Colman stemming from their 1977 divorce. He seeks reversal of the judgment.

The parties were divorced after a twenty-four year childless marriage during which they acquired substantial property. On August 2, 1977, in anticipation of divorce, they executed a written property settlement agreement. Because questions had not been resolved as to which assets controlled by defendant were part of the marital estate, this agreement required him to provide plaintiff with a "complete accounting of all stocks currently owned by him or in which he [had] any interest," and a "complete accounting of all royalty interests currently owned by him or in which he [had] any interest" within one year of the agreement. Once the extent of defendant's holdings was determined, plaintiff was to receive one-half of defendant's interest in any stocks "held in ... [his] name or in which he [had] any interest," and one-half of the sales proceeds of the Anderson Ranch, jointly owned property located in Cache County, Utah.

Much of the dispute between the parties centered around defendant's relationship to Owanah Oil Corporation [Owanah], a closely held corporation which defendant and Francois de Gunsberg had founded in 1952 to engage in oil and gas exploration. Defendant had served as Owanah's president during much of the parties' marriage. In 1959, Owanah was restructured to generate outside capital. As a consequence, defendant and plaintiff held approximately

twenty percent of Owanah's outstanding shares.

At the time of the divorce, defendant also controlled stock, originally issued in various names, in other closely held corporations: Western Oil Shale Corporation, Cayman Corporation, and Royalty Investment Company. Defendant claimed that most of this stock belonged to Owanah, was not part of the marital estate, and, therefore, was not subject to the property division agreement.

The Western Oil Shale Company stock was issued in 1964 in consideration for Owanah's interest in several oil shale leases. Although defendant alleged that none of the parties' personal funds were expended to acquire these leases, he introduced no evidence beyond his testimony to that effect. He also explained that the stock was issued in names other than Owanah's so that Owanah could sell it more easily by avoiding normal corporate formalities. At the time of trial, he held at least 28,200 Western Oil Shale shares under his personal control, but admitted ownership of only 2,256 of them.

Cayman stock had been issued by Cayman Corporation as consideration for stock in another closely held corporation, National Oil Shale Corporation, and for an oil and gas lease with a producing oil well. Defendant testified that both the National Oil Shale and Cayman shares were issued in his name for ease in sale and handling, but that he held them in trust for third parties. However, he introduced no evidence other than his testimony that there was an actual trust relationship between himself and others. Part of the reason for his failure to introduce evidence was the lack of Cayman and National Oil Shale corporate records. At the time of trial, defendant held at least 48,000 shares of Cayman stock in his name.

At the time of the property settlement agreement, Royalty Investment Company owned, as its only major asset, the Anderson Ranch. At trial, defendant testified that Owanah and two other parties had made installment payments on the ranch and, thus, were entitled to 62½% of Royalty's outstanding stock. However, defendant's earlier deposition contradicted this testimony, stating that he and plaintiff owned 62½% of the Royalty stock. Defendant, in his personal financial statements, valued the ranch at between $250,000 and $1,000,000.

In January 1982, Royalty sold the Anderson ranch for $250,000 and authorized Owanah to use the proceeds. The only consideration which Royalty received for the proceeds was its choice between an interest-bearing loan and a 4% overriding royalty interest in Owanah.

Defendant also claims that he made an oral accounting pursuant to the property settlement agreement with the law firm Roe and Fowler, and turned over to Roe and Fowler all stock certificates in the parties' safe deposit box. Because plaintiff was not satisfied that there had been an adequate accounting under the terms of the property settlement agreement, she finally brought this action on May 29, 1980, to compel the accounting and judgment for any damages caused by defendant's delay in submitting the accounting. The purpose of the accounting was to identify the amount to which plaintiff was entitled as her share of the marital estate.

The trial court agreed that defendant had not made an adequate accounting, finding that Owanah was defendant's alter ego even though this issue was not explicitly raised in the pleadings. The court also found that the assets subject to the accounting were, in fact, owned by defendant, and, pursuant to the terms of the settlement agreement, that plaintiff was entitled to one-half of those assets. However, because most of the assets had been sold by defendant, the court established a monetary value for the liquidated assets and included that amount as part of the marital estate to be distributed between the parties. Although this was an accounting action, the court appropriately disposed of the assets according to the terms of the stipulated property settlement agreement without objection by either party.

Defendant raises the following issues on appeal: (1) Was the alter ego issue properly before the trial court? (2) If the alter

ego issue was properly before the court, was there sufficient evidence to sustain the court's finding that Owanah was defendant's alter ego? (3) Does applying the alter ego doctrine effect a property distribution contrary to the parties' property distribution agreement? (4) Did the evidence, findings, and conclusions support the order requiring defendant to pay plaintiff an amount representing a percentage of the Anderson Ranch sale proceeds? (5) Is plaintiff estopped from denying that defendant furnished a satisfactory accounting?

I

Under Rule 15(b) of the Utah Rules of Civil Procedure, issues not raised by the pleadings may be tried by the express or implied consent of the parties.[1] The Utah Supreme Court has observed that issues tried by express or implied consent shall be treated as if raised in the pleadings. Therefore, "even failure to amend the pleadings does not affect the result of the trial of these issues." *General Ins. Co. of Am. v. Carnicero Dynasty Corp.*, 545 P.2d 502, 506 (Utah 1976).

[1] If a theory of recovery is fully tried by the parties, the court may base its decision on that theory and deem the pleadings amended, even if the theory was not originally pleaded or set forth in the pleadings or the pretrial order. *MBI Motor Co. v. Lotus/East, Inc.*, 506 F.2d 709, 711 (6th Cir.1974). However, that the issue has, in fact, been tried, and that this procedure has been authorized by express or implied consent of the parties must be evident from the record. *Wirtz v. F.M. Sloan, Inc.*, 285 F.Supp. 669, 675 (W.D.Pa.1968). "A trial court may not base its decision on an issue that was tried inadvertently." *MBI Motor Co.*, 506 F.2d at 711.

Implied consent to try an issue may be found "where one party raises an issue material to the other party's case or where evidence is introduced without objection," *General Ins. Co. of Am.*, 545 P.2d at 505–06, where it "appear[s] that the parties understood the evidence [was] to be aimed at the unpleaded issue." *MBI Motor Co.*, 506 F.2d at 711. *See First Security Bank of Utah v. Colonial Ford, Inc.*, 597 P.2d 859, 861 (Utah 1979).

Thus, the test for determining whether pleadings should be deemed amended under Utah R.Civ.P. 15(b) is "whether the opposing party had a fair opportunity to defend and whether it could offer additional evidence if the case were retried on a different theory." *R.A. Pohl Const. Co. v. Marshall*, 640 F.2d 266, 267 (10th Cir.1981). *See also Cheney v. Rucker*, 14 Utah 2d 205, 381 P.2d 86, 91 (1963); *Buehner Block Co. v. Glezos*, 6 Utah 2d 226, 310 P.2d 517, 519–20 (1957).

[2] In the present case, even though the alter ego issue was not specifically raised in the pleadings, either initially or by amendment, the entire trial testimony concerned defendant's control over the assets in question. During trial, evidence concerning every element of the alter ego issue was introduced without objection. Further, the basic question raised in an alter ego case is whether the principal had personal control over assets which he claimed to belong to the corporation. Since this question is the essential issue presented by this accounting action, we find that the parties received adequate notice of the alter ego issue and an opportunity to meet it.

1. Utah R.Civ.P. 15(b) (1977) reads as follows:
When issues not raised by the pleading are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court shall grant a continuance, if necessary, to enable the objecting party to meet such evidence.

There was no indication in the record that defendant ever represented to the court that he was taken by surprise or was otherwise disadvantaged in meeting the alter ego issue. *See Cheney v. Rucker*, 381 P.2d at 91. We find, therefore, that the alter ego issue was properly before the court.

II

[3, 4] There is sufficient evidence to sustain the trial court's finding that Owanah was defendant's alter ego. "Ordinarily, a corporation is regarded as a separate and distinct legal entity from its stockholders." *Dockstader v. Walker*, 29 Utah 2d 370, 510 P.2d 526, 528 (1973). This is true whether the corporation has many stockholders or only one. *Ramsey v. Adams*, 4 Kan. App.2d 184, 603 P.2d 1025, 1027 (1979); *Kline v. Kline*, 104 Mich.App. 700, 305 N.W.2d 297, 298 (1981). Consequently, the corporate veil which protects stockholders from individual liability will only be pierced reluctantly and cautiously. *Ramsey v. Adams*, 603 P.2d at 1027; *William B. Roberts, Inc. v. McDrilling, Co.*, 579 S.W.2d 335, 345 (Tex.Civ.App.1979).

[5] To disregard the corporate entity under the equitable alter ego doctrine, two circumstances must be shown: (1) Such a unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, but the corporation is, instead, the alter ego of one or a few individuals; and (2) if observed, the corporate form would sanction a fraud, promote injustice, or result in an inequity. *Norman v. Murray First Thrift & Loan Co.*, 596 P.2d 1028, 1030 (Utah 1979). *Accord United States v. Healthwin-Midtown Convalescent Hosp. and Rehabilitation Center, Inc.*, 511 F.Supp. 416 (C.D.Calif. 1981). *See also Centurian Corp. v. Fiberchem, Inc.*, 562 P.2d 1252, 1253 (Utah 1977); *Dockstader v. Walker*, 29 Utah 2d 370, 510 P.2d 526, 528 (1973); *Geary v. Cain*, 79 Utah 268, 9 P.2d 396, 398 (1932). It is not necessary that the plaintiff prove actual fraud, but must only show that failure to pierce the corporate veil would result in an injustice. *Healthwin-Midtown Convalescent Hosp.*, 511 F.Supp. at 420.

[6, 7] Certain factors which are deemed significant, although not conclusive, in determining whether this test has been met include: (1) undercapitalization of a one-man corporation; (2) failure to observe corporate formalities; [2] (3) nonpayment of dividends; (4) siphoning of corporate funds by the dominant stockholder; (5) nonfunctioning of other officers or directors; (6) absence of corporate records; (7) the use of the corporation as a facade for operations of the dominant stockholder or stockholders; [3] and (8) the use of the corporate entity in promoting injustice or fraud. *Ramsey v. Adams*, 603 P.2d at 1028; *Amoco Chemicals Corp. v. Bach*, 222 Kan. 589, 567 P.2d 1337, 1341–42 (1977). *See also Ramirez v. United States*, 514 F.Supp. 759, 763–64 (D.Puerto Rico 1981); *Healthwin-Midtown Convalescent Hosp.*, 511 F.Supp. at 418–19; *Dillman v. Nobles*, 351 So.2d 210, 213–14 (La.App.1977).

[8] The rationale used by courts in permitting the corporate veil to be pierced is that if a principal shareholder or owner conducts his private and corporate business on an interchangeable or joint basis as if they were one, he is without standing to complain when an injured party does the same. *Bone Constr. Co. v. Lewis*, 148 Ga.App. 61, 250 S.E.2d 851, 853 (1978). In *Lyons v. Lyons*, 340 So.2d 450, 451 (Ala. Civ.App.1976), the court stated that "[a] court of equity looks through form to substance and has often disregarded the corporate form when it was fiction in fact and deed and was merely serving the personal use and convenience of the owner." The

2. Failure to observe corporate formalities includes such activities as commencement of business without the issuance of shares, lack of shareholders' or directors' meetings, lack of signing of consents, and the making of decisions by shareholders as if they were partners. *Roylex, Inc. v. Langson Bros. Constr. Co.*, 585 S.W.2d 768, 772 (Tex.Civ.App.1979).

3. Failure to distinguish between corporate and personal property, the use of corporate funds to pay personal expenses without proper accounting, and failure to maintain complete corporate and financial records are looked upon with extreme disfavor. *Roylex*, 585 S.W.2d at 772.

Lyons court found a corporation to be a shareholder's alter ego, even though he owned only one share of stock, because he commingled corporate funds with his own, kept no regular corporate records, meetings, or minutes aside from a bank account, and did not file corporate income tax returns. *See Standage v. Standage*, 147 Ariz.App. 473, 711 P.2d 612, 614–15 (1985).

[9] Former spouses attempting to shield assets from a court-ordered property distribution by using a corporate form are especially looked upon with judicial disfavor. *See Standage v. Standage*, 147 Ariz. App. 473, 711 P.2d 612 (1985); *Colandrea v. Colandrea*, 401 A.2d 480 (Md.Ct.Spec. App.1979).

In the present case, the trial court considered the evidence in the light of this test, finding that Owanah was defendant's alter ego on the grounds that (1) "[t]here exists such a unity of ownership and interest between defendant and Owanah Oil Corporation that the separate personalities of the corporation and the individual no longer exist," and (2) to recognize such separate personalities "would promote injustice and an inequitable result."

For purposes of appellate review, the trial court's decision to pierce the corporate veil will be upheld if there is substantial evidence in favor of the judgment. *Standage*, 711 P.2d at 614–16. An examination of the present trial record indicates that there was substantial evidence supporting the trial court's finding that the separate personalities of Owanah and defendant no longer existed.

First, defendant ignored corporate formalities. He stated that he preferred to conduct corporate business personally, rather than in the corporate name, because it was more convenient than observing appropriate corporate procedures, and repeatedly did so.

Second, defendant failed to distinguish between corporate and personal property in his business dealings.

In correspondence with First Security Bank, defendant continually referred to the Owanah checking account as his personal account. Although he stated that this occurred because the bank initially preferred to deal personally with the principals because of Owanah's small net worth, he also continued this practice well after Owanah acquired substantial assets, because, as he stated, adjustments in loans and sales of stock could be made without time-consuming corporate resolutions.

On September 17, 1976, defendant pledged 50,820 shares of Western Oil Shale stock and 48,000 shares of Cayman stock to First Security Bank as collateral for loans to Owanah. He testified that this stock had originally been issued in his, his brother's, and his broker's names, rather than in Owanah's name, so that corporate formalities could be avoided in selling the stock. Between September 17, 1978, and February 23, 1979, he held as many as 93,298 shares of Western Oil Shale stock and 48,000 shares of Cayman stock in his personal bank and brokerage accounts. All transactions dealing with these shares were authorized by his signature without any suggestion that he was acting on behalf of anyone else.

First Security Bank released the 48,000 shares of Cayman stock and 47,820 shares of the Western Oil Shale stock to defendant on July 9, 1979. The bank recognized this stock as being defendant's personal property in that it required defendant to sign an indemnity agreement to protect the bank from any claim raised by plaintiff against the shares.

Defendant testified that this stock, valued by the trial court at $14.25 per share, was later sold to fund one of Owanah's projects, and that the proceeds from this sale were deposited in Owanah's account. However, payments for defendant's residential mortgage, light and utility bills were also made directly from Owanah's account, as were numerous cash payments to defendant, totalling $22,695.25 within a twelve month period. To help finance Owanah's activities, defendant also mortgaged the parties' Park City residence for $60,000, applied part of the proceeds to a reduction of Owanah's debt, and deposited the remainder in Owanah's account. Defend-

ant explains the mortgage payments made on his behalf by Owanah as repayment by Owanah of this mortgage. Further, defendant presented no evidence at trial that he maintained any personal checking account apart from Owanah's. Personal and corporate affairs appear to be inextricably interwoven.

Third, the other officers and directors played little, if any, role in the operation of defendant's corporate entities. Defendant produced no evidence at trial, other than his testimony, to indicate that others had any interest in Owanah, although the trial judge requested such evidence on several occasions during the trial and the trial was recessed for defendant to provide it.

Fourth, there was an almost complete failure to keep and maintain corporate records. There was no evidence that shareholder records were kept for Cayman Corporation, even though such records were repeatedly requested by plaintiff's counsel and the trial judge, and defendant was even given an opportunity by the court to find and present them. Defendant was similarly unable to produce any records which showed shareholders, bylaws, or financial status of Royalty Investment Corporation. Defendant claimed that Owanah owned Cayman stock as well as proceeds from the sale of the Anderson Ranch, which was owned by Royalty Investment Corporation.

Fifth, there is evidence that Owanah and the other corporate shells were used as a facade for defendant's personal business operations. The most significant evidence was the method in which the Anderson Ranch sale was consummated. After the property settlement agreement had been entered, Royalty Investment Corporation sold the ranch, using no corporate formalities, and then deposited the sale proceeds in Owanah's bank account for a 4% overriding royalty interest in the Owanah project. Plaintiff alleged that this was no consideration at all. Although the transaction was ratified by Royalty on the advice of counsel eleven months after the sale and three days before trial, such a ratification does not invest this transaction with legitimacy. Since defendant did not proffer testimony at trial of anyone other than himself, purporting to have an interest in Royalty, Owanah, or the Anderson Ranch, it is difficult to view this transaction as anything but a personal transaction done under a corporate aegis. Thus, defendant's equivocal testimony regarding the ownership of the Anderson Ranch, coupled with the lack of substantial evidence that Owanah gave valuable consideration for the proceeds of the Anderson Ranch sale, supports a finding that the corporate shells were used as a facade for the transfer of property from a corporate shell that plaintiff had some interest in to one in which she had less interest.

Further, defendant's use of Owanah to receive the proceeds from the sale of the Cayman and Western Oil Company stock, coupled with his use of Owanah's account to pay his personal living expenses, suggest that defendant was using Owanah as a facade for his personal affairs.

Finally, the use of the corporate entity in this circumstance would result in injustice. If viewed as legitimate corporate transactions, plaintiff's post-settlement agreement business transactions would convert substantial assets, which otherwise would be regarded as marital property, to corporate assets in which plaintiff had no interest. Such shielding of assets would result in a great injustice to plaintiff.

Therefore, we find that there was substantial evidence before the trial court to support its finding that defendant's corporations were actually his alter ego.

III

Because application of the alter ego doctrine is justified, we reach the issue of whether the property division by the trial court is in harmony with the parties' property settlement agreement. Defendant argues that the property division resulting from the alter ego finding is contrary to the intent of the property settlement agreement because it awards plaintiff more than half of the marital estate, and, thus, is an abuse of judicial discretion.

[10] In the division of marital property, the trial court has wide discretion, and, while the appellate court is not necessarily bound by its findings, *Thompson v. Thompson*, 709 P.2d 360, 361–62 (Utah 1985), the findings are presumed valid and will not be disturbed unless the record indicates such a manifest injustice or inequity as to indicate a clear abuse of discretion. *Eames v. Eames*, 735 P.2d 395, 397 (Utah Ct.App.1987); *Petersen v. Petersen*, 737 P.2d 237, 239 (Utah Ct.App.1987). Regarding challenges to property distributions, the Utah Supreme Court has stated that:

> a party seeking reversal of the trial court must prove a misunderstanding or misapplication of the law resulting in substantial and prejudicial error, or that the evidence clearly preponderated against the findings, or that such a serious inequity resulted from the order as to constitute an abuse of the trial court's discretion.

McCrary v. McCrary, 599 P.2d 1248, 1250 (Utah 1979). That the property distribution may not have been mathematically equal is not sufficient grounds to constitute an abuse of discretion, since a fair and equitable property distribution is not necessarily an equal distribution. *See Fletcher v. Fletcher*, 615 P.2d 1218, 1223–24 (Utah 1980).

Further, it is well recognized that a parties' stipulation as to property rights in a divorce action, although advisory and usually followed unless the court finds it to be unfair or unreasonable, is not necessarily binding on the trial court. It is only a recommendation to be adhered to if the court believes it to be fair and reasonable. *Pearson v. Pearson*, 561 P.2d 1080, 1082 (Utah 1977); *Klein v. Klein*, 544 P.2d 472, 476 (Utah 1975). Thus, even if the trial court does not exactly follow the parties' agreement, such a decree is still within the trial court's reasonable discretion.

The Utah Supreme Court has previously upheld a trial court's property division under somewhat similar circumstances. In *Pusey v. Pusey*, 728 P.2d 117 (Utah 1986), the defendant husband appealed from the portion of a divorce decree awarding the plaintiff wife one-half of the value of a corporation formed during their marriage. He alleged that a corporation which the trial court had determined to be his personal, premarital property had loaned $69,000 to a corporation which he and his wife formed during the marriage. Because he "utterly failed to prove that the loan did indeed exist," in that he could produce no papers documenting the loan, any terms, conditions of repayment, or interest, and because the trial court expressly found that he had commingled corporate and personal funds throughout the marriage so that it could not trace any assets to any source, the court found that he had failed to carry his burden of proof. *Id.* at 119.

[11] Similarly, the present defendant has failed to carry his burden of proof that the disputed assets are corporate rather than personal property, so we find no abuse of discretion in the trial court's property division resulting from application of the alter ego theory.

IV

Defendant further argues that the trial court's order requiring him to pay plaintiff an amount representing a percentage of the price of the Anderson Ranch sale proceeds is without support in the findings, conclusions, or evidence. We reiterate that the trial judge has wide discretion in the division of marital property, and his findings will not be disturbed by an appellate court unless the record shows a clear abuse of discretion. The Utah Supreme Court has stated, in *Pearson v. Pearson*, 561 P.2d at 1082, that:

> in regard to the matter of the sufficiency of findings of fact, a substantial compliance with Rule 52, Utah Rules of Civil Procedure, is sufficient, and findings of fact and conclusions of law will support a judgment, though they are very general, where they in most respects follow the allegation of the pleadings. Findings should be limited to the ultimate facts and if they ascertain ultimate facts, and sufficiently conform to the pleadings and the evidence to support the judgment, they will be regarded as sufficient,

though not as full and as complete as might be desired.

However, "to determine if equity was done, we must have before us specific findings of fact pertinent to that issue." *Jones v. Jones*, 700 P.2d 1072, 1074 (Utah 1985); *Boyle v. Boyle*, 735 P.2d 669, 671 (Utah Ct.App.1987).

[12] In the present case, the trial court specifically found that "[a]t the time of the parties' agreement, and until the property was sold in January 1982, defendant held title to 62½% interest in the ranch through Royalty Investment Company. The ranch was sold for $250,000.00 in January 1982, and the accounting shows that defendant is indebted to plaintiff in the amount of $78,-125.00, which is 31.25% of $250,000.00." It is the trial judge's prerogative, not an abuse of discretion, to choose to disbelieve defendant's explanation of this property interest. There was evidence in the record to support such a finding, which is sufficient to come within the guidelines outlined by *Pearson* and *Jones*.

Therefore, we affirm the trial court's award with respect to the Anderson Ranch property.

V

Defendant's final issue raised on appeal is whether plaintiff was estopped from denying that he furnished an adequate accounting. He alleges that he made an oral accounting to the law firm of Roe and Fowler and turned over to Roe and Fowler all the stock certificates in the parties' safe deposit box. Roe and Fowler later returned some of these certificates to defendant. Defendant argues that he acted in reasonable reliance upon express or implied representations that the accounting was satisfactory because defendant made no further demand for an accounting after this event. However, the document which defendant received from Roe and Fowler when it returned the certificates was only an acknowledgement that the shares were delivered into his control as president of Owanah, rather than a release or exclusion of the shares from an eventual accounting. Further, plaintiff alleges that she was in continual contact with defendant concerning his failure to make the accounting and had brought a prior lawsuit against defendant to enforce the divorce decree and agreement. Finally, plaintiff stated that she was totally without knowledge of the business affairs concerning the disputed assets.

[13, 14] Estoppel arises when there is (1) a false representation or concealment of material facts; (2) made with knowledge, actual or constructive, of the facts; (3) made to a party who is without knowledge or the means of knowledge of the real facts; (4) made with the intention that the representation be acted upon; and (5) the party to whom the representation was made relied or acted upon it to his prejudice. *Kelly v. Richards*, 95 Utah 560, 83 P.2d 731, 734 (1938); *Morgan v. Board of State Lands*, 549 P.2d 695, 697 (Utah 1976). *See also City of Mercer Island v. Steinmann*, 9 Wash.App. 479, 513 P.2d 80, 82 (1973). If any of these elements are missing, there can be no estoppel. *Kelly v. Richards*, 83 P.2d at 734. Further, estoppel cannot be inferred from facts of which the party to be estopped had no knowledge. *Grover v. Garn*, 23 Utah 2d 441, 464 P.2d 598, 602 (1970).

[15] Estoppel is not applicable under the present facts.

The judgment of the trial court is affirmed. Costs to plaintiff.

BILLINGS and JACKSON, JJ., concur.

APPENDIX "K"

Foulger v. Foulger, 626 P.2d 412 (Utah 1981)

evidence to support the trial court's finding that the defendants as partners received the benefit of the money loaned by the plaintiff and that they are each liable for its repayment.[5] In conformity with the statement in the comment just quoted above, the fact that defendant Morgan signed a note acknowledging his obligation does not relieve the defendant Green of his obligation.

[3] The final matter to be addressed is the assertion of plaintiffs in their respondents' brief that they are entitled to the full $3,700 face amount of the promissory note, plus interest, without deduction for the amounts paid by the defendants by the checks above referred to. Their argument is that the defendants failed to plead the defense of payment and that the issue was thus not properly before the trial court. The argument is without merit. Under our modernized rules of procedure, Rule 54(c), U.R.C.P., provides that the court shall render the judgment to which the evidence shows the parties are entitled, even if not so requested in the pleadings.

What has just been said sufficiently disposes of the plaintiff's contention. But in supplement thereto, we further observe that the defendant did not comply with the requirements of Rule 74(b), U.R.C.P., relating to cross appeals.[6] The judgment of the trial court is affirmed in its entirety, the parties to bear their own costs.

HALL and HOWE, JJ., and CALVIN GOULD, District Judge, concur.

STEWART, J., concurs in the result.

MAUGHAN, C. J., does not participate herein; GOULD, District Judge, sat.

5. That this Court will affirm the trial court on any proper ground apparent from the record, see *Edwards v. Iron County*, Utah, 531 P.2d 476 (1975); *Allphin Realty, Inc. v. Sine*, Utah, 595 P.2d 860 (1979).

Heidemarie G. FOULGER, Plaintiff and Respondent,

v.

John C. FOUGLER, Defendant and Appellant.

No. 16909.

Supreme Court of Utah.

Feb. 4, 1981.

Former husband appealed from order of the Fourth District Court, Utah County, David Sam, J., granting former wife's motion for modification of decree of divorce. The Supreme Court, Hall, J., held that no compelling reasons were shown by former wife which would warrant modification of property disposition portion of divorce decree.

Reversed and remanded.

Stewart, J., concurred in the result.

Maughan, C. J., concurred in result and filed a statement.

1. Divorce ⇐164

Trial court sitting in divorce matter retains continuing jurisdiction to make such modifications in initial decree of divorce as it deems just and equitable, but where no appeal is taken from original decree, change of circumstances must be shown to justify later modification. U.C.A.1953, 30–3–5.

2. Divorce ⇐254(2)

Court should be reluctant to grant modification of provisions of divorce decree which dispose of real property, and grant such modifications only upon showing of compelling reasons arising from substantial and material change in circumstances.

6. See *Terry v. Zions Co-op Mercantile Inst.*, Utah, 617 P.2d 700, 701 (1980).

3. Divorce ⇐254(2)

Where property disposition is product of agreement and stipulation between the parties, and sanctioned by trial court, trial court should subsequently modify such provisions only with great reluctance and based upon compelling reasons.

4. Divorce ⇐254(2)

At time of making of stipulated property settlement, adopted by trial court in original divorce decree, which awarded former marital residence to wife, facts that wife would be solely responsible for maintenance and upkeep on residence, would make payments on residence, together with taxes and insurance payments, and could make substantial improvements to property, all without benefit of financial help or assistance from former husband, were within contemplation of parties, and were not compelling reasons to warrant later modification of decree.

Noall T. Wootton of Wootton & Wootton, American Fork, for defendant and appellant.

Craig M. Snyder, Provo, for plaintiff and respondent.

HALL, Justice:

Defendant John C. Foulger takes this appeal from an order by the trial court granting plaintiff Heidemarie Foulger's motion for modification of a decree of divorce.

On October 29, 1975, the lower court granted the plaintiff a decree of divorce, dissolving the parties' marriage of nine years. The parties entered into an agreement of settlement, which was adopted by the trial court. Pursuant to that agreement, and the decree based thereon, plaintiff was awarded custody and care of the couple's three minor children, alimony and child support payments, and a certain portion of the marital property, including possession of the family residence on conditions which led to the instant dispute. Paragraph 5 of the decree of divorce, taken from the couple's settlement agreement, states the following:

> 5. That plaintiff is hereby awarded all right, title and interest in and to the real property and residence at 195 North 7th East, . . . Subject, however, to a lien on said premises in behalf of the defendant equal to fifty percent (50%) of the amount received from any sale in excess of $17,000.00 which is the purchase price of said residence. Defendant is further awarded a first option to purchase said residence in the event of sale and apply his equity upon said purchase price. Plaintiff is hereby granted the right to reside in said residence as long as she so desires, but in the event of sale, the above formula shall apply.

On November 21, 1979, defendant was served with an order to show cause why the original decree of divorce should not be modified with regard to those provisions dealing with child support and defendant's lien on the family residence. The trial court heard the matter on December 18, 1979, at which time plaintiff asserted that there had been a substantial change of circumstance justifying modification of the original divorce decree relating to defendant's lien on the family residence.[1] In justification of this assertion, plaintiff pointed out that she had been making payments on the residence, together with tax and insurance payments thereon, since the time of the divorce without benefit of financial help or assistance from defendant; that she had been solely responsible for maintenance and upkeep on the residence since the decree of divorce was issued; that she had made substantial improvements to the property since the divorce, and contemplated further improvements, the effect of which would be to increase substantially the value of the property; and that she no longer contemplated returning to her native land of Germany with the three minor children, allegedly defendant's motive for imposing the lien condition in the agreement.

1. The trial court also granted plaintiff's motion for an increase in child support payments, from which ruling defendant takes no appeal.

The court found that paragraph 5 of the original decree of divorce was "inherently unfair" and that, the motive for the insertion thereof having been obviated, it should be modified to grant to defendant a lien on the family residence in an amount equal to one-half the appreciated value of the home, over and above its purchase price as of the time of divorce. The purchase price of the residence having been $17,000, and valuation thereof at the time of the divorce having been $37,000, the modification gave defendant a lien in the amount of $10,000.

On appeal, defendant asserts that the modification of the decree was improper, in that (1) plaintiff failed to show a sufficient change in circumstances to justify modification of the decree, and (2) the property disposition in the original decree constituted a court-approved stipulation drafted by the parties dealing at arm's length without duress or undue influence. We agree, and reverse the trial court's ruling.

[1] Under Utah law, a trial court sitting in a divorce matter retains continuing jurisdiction to make such modifications in the initial decree of divorce as it deems just and equitable.[2] Where no appeal is taken from the original divorce decree, however, a change of circumstances must be shown in order to justify a later modification of such decree.[3] Absent such a requirement, a decree of divorce would be subject to *ad infinitum* appellate review and readjustment according to the concepts of equity held by succeeding trial judges.

[2] The change in circumstance required to justify a modification of the decree of divorce varies with the type of modification contemplated. Provisions in the original decree of divorce granting alimony, child support, and the like must be readily susceptible to alteration at a later date, as the needs which such provisions were designed to fill are subject to rapid and unpredictable change. Where a disposition of real property is in question, however, courts should properly be more reluctant to grant a modification. In the interest of securing stability in titles, modifications in a decree of divorce making disposition of real property are to be granted only upon a showing of compelling reasons arising from a substantial and material change in circumstances.[4]

[3] The above holds true *a fortiori* where the property disposition is the product of an agreement and stipulation between the parties, and sanctioned by the trial court. Such a provision is the product of an agreement bargained for by the parties. As such, a trial court should subsequently modify such a provision only with great reluctance, and based upon compelling reasons.[5]

[4] In the instant case, no such compelling reasons have been shown to exist which warrant the modification granted. Matters such as payments on the home, and maintenance and upkeep thereof, certainly must have been within plaintiff's contemplation at the time she agreed to the disposition set forth in the original divorce decree. In regard to permanent improvements, defendant concedes that he is not entitled to share in any increase in value resulting therefrom, but only in the enhancement in any increase by an accelerated economy. The matter of plaintiff's possible departure to Germany was, by her own admission, never anything more than a remote possibility. The fact that she is now more established as a resident of the United States, while it further diminishes the likelihood of her departure, constitutes no change of circumstances sufficiently radical to justify the trial court's action.

Reversed and remanded to the trial court for further proceedings consistent with this

2. U.C.A., 1953, 30-3-5, as amended.

3. *Anderson v. Anderson*, 13 Utah 2d 36, 368 P.2d 264 (1962).

4. *Callister v. Callister*, 1 Utah 2d 34, 261 P.2d 944 (1953), and cases referred to therein.

5. *Despain v. Despain*, Utah, 610 P.2d 1303 (1980); *Land v. Land*, Utah, 605 P.2d 1248 (1980).

opinion. Plaintiff's prayer for attorney's fees is denied, and the parties are to bear their own costs.

CROCKETT,* and HOWE, JJ., concur.

STEWART, J., concurs in the result.

MAUGHAN, Chief Justice (concurring in the result and dissenting):

I concur in the result, but refer to my dissenting opinions in *Despain v. Despain*, Utah, 610 P.2d 1303, 1307 (1980) and *Christensen v. Christensen*, Utah, 619 P.2d 1372 (1980).

Ray PLEDGER, Plaintiff and Appellant,

v.

S. Tony COX, Director, Drivers License Division, Defendant and Respondent.

No. 16987.

Supreme Court of Utah.

Feb. 4, 1981.

The Third District Court, Salt Lake County, Maurice D. Jones, J. pro tem., upheld revocation of driver's license, and appeal was taken. The Supreme Court, Oaks, J., held that statutory "trial de novo" provided to review administrative revocation of driver's license for refusal to submit to blood test for alcohol content is a complete retrial upon all the evidence, and upon such complete retrial, the Drivers License Division should have the burden of proof and the burden of going forward with the evidence.

Reversed and remanded for new trial.

* CROCKETT, J., concurred in this case prior to his retirement.

1. Administrative Law and Procedure ⇐744

"De novo" means literally "anew, afresh, a second time," and has at least two possible interpretations when applied to judicial review of administrative action: (1) a complete retrial upon new evidence, and (2) a trial upon the record made before the lower tribunal, and the meaning of "trial de novo" in each statute is dictated by the wording and context of the statute in which it appears and by the nature of the administrative body, decision and procedure being reviewed.

See publication Words and Phrases for other judicial constructions and definitions.

2. *Automobiles* ⇐144.2(4)

Statutory "trial de novo" provided to review administrative revocation of driver's license for refusal to submit to blood test for alcohol content is a complete retrial upon all the evidence, and upon such complete retrial, the Drivers License Division should have the burden of proof and the burden of going forward with the evidence. U.C.A.1953, 41-2-19, 41-2-20, 41-6-44.-10(b).

3. Automobiles ⇐144.2(4)

Where review of administrative revocation of driver's license for refusal to submit to blood test for alcohol content was faulted by erroneous ground rule about the sequence and burden of proof, Supreme Court would not speculate about whether the error was prejudicial but would reverse and remand the case to district court for a new trial.

Jo Carol Nesset-Sale, of Salt Lake Legal Defenders Association, Salt Lake City, for plaintiff and appellant.

Robert B. Hansen, Atty. Gen., Bruce M. Hale, Asst. Atty. Gen., Salt Lake City, for defendant and respondent.

FILED

AUG 30 1990

Clerk of the Court
Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

----ooOoo----

Bruno D'Aston, Plaintiff and Appellee, v. Dorothy D'Aston, et al. Defendant and Appellant.	)	AMENDED ORDER DENYING PETITION FOR REHEARING Case No. 890050-CA

THIS MATTER having come before the Court upon Appellee's Petition for Rehearing, and Appellant's Response to Petition for Rehearing,

IT IS HEREBY ORDERED that the Appellee's Petition for Rehearing is denied.

Dated this 30th day of August, 1990.

FOR THE COURT

Mary T. Noonan, Clerk

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SEP 07 1990

HOWARD, LEWIS & PETERSEN

FILED

AUG 29 1990

Mary T. Noonan
Clerk of the Court
Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

----ooOoo----

Bruno D'Aston, Plaintiff and Appellee, v. Dorothy D'Aston, et al. Defendant and Appellant.	)	ORDER DENYING PETITION FOR REHEARING Case No. 890050-CA

RECEIVED

AUG 31 1990

HOWARD, LEWIS & PETERSEN

THIS MATTER having come before the Court upon Appellant's Petition for Rehearing, filed July 16, 1990, and Appellee's Response to Petition for Rehearing filed Aug. 20, 1990.

IT IS HEREBY ORDERED that the Appellant's Petition for Rehearing is denied.

Dated this 29th day of August, 1990.

FOR THE COURT

Mary T. Noonan, Clerk