

1986

Wiscombe v. Wiscombe : Brief of Respondent

Utah Supreme Court

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STATE COURT OF APPEALS
BRIEF

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DOCKET NO. 860081-CA

IN THE SUPREME COURT OF THE STATE OF UTAH

RoseMary Wiscombe, :
 :
 Plaintiff-Respondent, :
 : Case No. 20333
 vs. : *860081-CA*
 :
 J. William Wiscombe, :
 :
 Defendant-Appellant. :

BRIEF OF RESPONDENT

Appeal from the Third Judicial District Court
of Salt Lake County, State of Utah
Honorable J. Dennis Frederick, District Judge

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FILED

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

The only issue in this appeal is whether defendant-appellant, J. William Wiscombe, is bound by the recommendations of the Domestic Relations Commissioner regarding property settlement payments to plaintiff-respondent, RoseMary Wiscombe, because Mr. Wiscombe failed to make an objection or request for further hearing within five days of the entry of the Commissioner's recommendations, as required by Rule 8 (d), Rules of the Third Judicial District Court.

DETERMINATIVE RULES

This appeal involves interpretation of Rule 8, Rules of the Third Judicial District Court, which provides as follows:

Rule 8 Domestic Relations Commissioner

(a) A Domestic Relations Commissioner may be appointed for the purpose of assisting the court in domestic relations matters as directed by the court.

(b) All domestic relations matters, including orders to show cause, pretrial conferences, petitions for modification of a divorce decree, scheduling conferences, and all other applications for relief, except ex parte motions, shall be referred to the Domestic Relations Commissioner before any hearing may be scheduled before the assigned District Court Judge, unless otherwise ordered by the assigned judge.

(c) The Commissioner shall, after hearing any motion or other application for relief, recommend entry of an order thereon, and shall further make a written recommendation as to each matter heard. Should the parties not consent to the recommended order, the matter shall be referred for further disposition by the assigned judge.

(d) Any party objecting to the recommended order or seeking further hearing before the assigned judge shall, within five (5) days of

the entry of the Commissioner's recommendations provide notice to the Commissioner's office and opposing counsel that the recommended order is not acceptable or that further hearing is desired. The Commissioner shall then refer the matter to the assigned judge for further hearing, conference or trial. If no objection or request for further hearing is made within five (5) days, said party shall be deemed to have consented to entry of an order in conformance with the Commissioner's recommendation.

(e) All recommendations of the Commissioner accepted by the parties shall be presented to the court and opposing counsel pursuant to Rule 4 of these Rules. All proposed judgments, orders and decrees must be approved as to form by the signature of the Commissioner before presentation to the assigned judge in the case.

(f) Any party obtaining a temporary restraining order or other temporary order pending a hearing shall be responsible for obtaining from the assigned judge any extension thereof before the expiration date as may be necessary pending hearing before the Commissioner of the assigned judge.

STATEMENT OF THE CASE

Nature of the Case

This is an appeal from a Judgment of the District Court requiring defendant-appellant, J. William Wiscombe (hereinafter "William") to pay back payments of a property settlement to plaintiff-respondent, RoseMary Wiscombe (hereinafter "RoseMary"), pursuant to a decree of divorce. William is asking this Court to reverse the Judgment.

Course of Proceedings

The order to show cause why William should not be required to pay back payments of a property settlement was first heard before the Third Judicial District Court Domestic Relations Commissioner, Sandra Peuler, on August 9, 1984. The Commissioner recommended that

William be ordered to pay all unpaid property settlement payments required by the decree of divorce and to do what the divorce decree required him to do.

The matter was again heard before District Judge J. Dennis Frederick on October 1, 1984. Judge Frederick found that William did not provide notice to the Commissioner's office and opposing counsel that Commissioner Peuler's recommendations were not acceptable within five (5) days of entry of the recommendations and, therefore, that William was deemed to have accepted the Commissioner's recommendation, pursuant to Rule 8 (d) Rules of the Third Judicial District Court.

Disposition

Judge Frederick entered judgment, pursuant to the recommendation of Commissioner Peuler, awarding RoseMary the unpaid property settlement payments, requiring William to give RoseMary a mortgage on certain property to assure payment of the property settlement and awarding RoseMary \$150 in attorneys' fees.

William filed objections to the proposed Judgment which were heard before Judge Frederick and were overruled and denied.

Statement of Facts

The brief of defendant-appellant, J. William Wiscombe, misrepresents the facts with no support in the record and introduces material for the first time on appeal which was not a part of any record before the trial court. The true facts, as supported by the record, are as follows:

A divorce decree was entered on June 23, 1981 (R. 115-120). At

the time of the divorce, the parties owned real property having a value of \$780,200, based on estimates and appraisals provided by William (R. 85-91). The property consisted of a twenty-four unit apartment complex in Midvale, Utah, an eight unit apartment complex in Evanston, Wyoming, and the parties' residence in Holladay, Utah (Id., R. 100-101). In order to provide William with the necessary income to make child support payments, RoseMary agreed to take only the residence of the parties, having a value of approximately \$110,000, and to give William all of the rental properties (R. 100-101). Pursuant to the stipulation of the parties, the decree of divorce awarded the rental properties to William and the residence to RoseMary (R. 116-117). The decree required that William pay the first mortgage on the residence, having a balance of approximately \$52,800 and monthly payments of approximately \$578 (R. 116). The decree specifically stated that this was a property settlement and that RoseMary would be entitled to only \$1 per year as alimony (R. 118).

After the divorce decree was entered, RoseMary sold the residence in Holladay on contract (Plaintiff's Answers to Interrogatories attached to Appellant's Brief, addendum 3-6, and R. 231). The contract provided for a small down payment and for the buyers to make payments to RoseMary (Id.). The buyers did not assume the mortgage on the property and RoseMary is still liable for those payments (Id.).

With the down payment from the sale of the residence in Holladay, RoseMary purchased a condominium in St. George, Utah, on May 15, 1982 (Id.). She used the payments from the property in Holladay to

make payments on the condominium (Id.). William continued to make the property settlement payments to RoseMary for over one year after she moved to St. George but he refused to continue the payments after RoseMary remarried in 1983 (R. 132 and 232). As a result of William's refusal to make the property settlement payments, RoseMary was unable to make the payments on her condominium and she was forced to lose the property (Plaintiff's Answers to Interrogatories attached to Appellant's Brief, addendum 8, and R. 232). When the Judgment was entered on October 19, 1984, the unpaid property settlement payments totaled \$8,411 (R. 131-132, R. 148). The amount due in property settlement payments is now more than twice that amount (calculation from R. 131-132).

RoseMary served William with an Order to Show Cause to require him to make the property settlement payments (R. 133-135). Pursuant to the Rules of the Third Judicial District Court, the matter was heard before Domestic Relations Commissioner Sandra Peuler on August 9, 1984 (R. 137). William argued that he should not be required to continue to make the property settlement payments to RoseMary because RoseMary had sold the property on contract and because she had remarried (R. 235-237). The Commissioner rejected William's arguments and recommended that RoseMary be awarded back payments of property settlement (R. 238-239, R. 137).

The decree of divorce had ordered that William give RoseMary a mortgage or trust deed against the parties' rental property in Evanston, Wyoming (R. 117). William failed and refused to deliver such trust deed or mortgage (R. 132). RoseMary's attorney argued

to Commissioner Peuler that because William had taken out additional mortgages on the rental property in Evanston, there was no value left in that property and William should be required to give RoseMary a trust deed in the other rental property of the parties (R. 233). The Commissioner ruled that he should be required to give her a mortgage on the property in Evanston, but if she wanted a mortgage on other properties she should bring a motion to modify the divorce decree (R. 239).

William's attorney did not say at any time in the hearing before Commissioner Peuler that he did not accept the Commissioner's recommendations or that he desired a further hearing before the district court (R. 230-241). After the Commissioner stated her decision, the following statements were made:

THE COURT (COMMISSIONER PEULER): Counsel, I'm not going to entertain further arguments. I've heard everything you had to say, and I think that the requirements of the decree need to be carried out.

I'll ask you to discuss the recommendation with your clients, and let me know if you need a further setting. For your information, the case has been appointed to Judge Frederick.

MR. MADSEN: Frederick? Thank you.

THE COURT: Thank you.

(Whereupon, this hearing was concluded.)
(R. 241).

Commissioner Peuler's clerk prepared a minute entry of the Commissioner's findings which included the following statements:

Based on arguments of respective counsel Comm. recommended: 1) As long as pltf is obligated on mortgage payments, deft is obligated too.

2) Pltf is entitled to judgments he hasn't made on that.

3) Deft is obligated to do what divorce decree required him to do.

Deft did not accept recommendation.
(R. 137).

Copies of this minute entry were not sent to the attorneys (Id.).

On August 23, 1984, fourteen days after the entry of Commissioner Peuler's minute entry in favor of RoseMary, William's attorney filed a notice that the matter had been referred to District Judge J. Dennis Frederick for another hearing on the issues heard before Commissioner Peuler (R. 138). RoseMary objected to the hearing before Judge Frederick on the ground that notice of objections to the recommended order was not given to the Commissioner and to RoseMary's attorney within five (5) days of the entry of the Commissioner's ruling, as required by Rule 8 (d) of the Rules of the Third Judicial District Court (R. 142, 147-148). Judge Frederick sustained RoseMary's objections and ruled that he would enter judgment pursuant to Commissioner Peuler's recommendations (Id.).

RoseMary's attorney then prepared a proposed Judgment pursuant to Commissioner Peuler's recommendations and sent it to Commissioner Peuler, along with an affidavit of RoseMary's attorney indicating he had spent a total of 17 hours and that a reasonable fee for his services would be \$1,700 (R. 143-146). The Judgment also was supported by the affidavit of RoseMary in support of the Motion for Order to Show Cause, which established that William had failed to make payments in the sum of \$6,662 as of July 20, 1984, and he continued to fail and refuse to make payments of \$583 per month (R. 131-132).

Commissioner Peuler filled in the sum of \$150 for attorney's fees and signed the Judgment approving it as to form (R. 149). She then submitted the order to Judge Frederick and the order was signed by Judge Frederick on October 19, 1984 (Id.).

William's attorney filed objections to the proposed Judgment in which he argued that the five day period in which to give notice of non-acceptance of the Commissioner's recommendations had not started to run and that the minute entry by Commissioner Peuler's clerk, which was not sent to RoseMary's attorney, constituted notice to RoseMary's attorney that William did not accept the Commissioner's recommendations (R. 151-155). William's attorney did not claim in those objections to the proposed Judgment that he gave oral notice to the court and RoseMary's attorney that he would not accept the Commissioner's recommendations and he made no such claim until the appeal to the Supreme Court (Id.).

SUMMARY OF ARGUMENTS

Rule 8 (d) of the Rules of the Third Judicial District Court requires that if a party objects to the recommendations of the Domestic Relations Commissioner or seeks further hearing before the district judge, the party must, within five days of the entry of the Commissioner's recommendations, provide notice to the Commissioner's office and opposing counsel that the recommendations are not acceptable or that further hearing is desired. If the party does not give such notice within five days he is deemed to have accepted the Commissioner's recommendations. The record is very clear that William and his attorney did not provide any such notice to the

Commissioner and to the opposing counsel until fourteen days after the entry of the Commissioner's recommendations. Therefore, William is deemed to have consented to entry of an order in conformance with the Commissioner's recommendations.

William's attorney claims that he gave oral notice to the Commissioner and to RoseMary's attorney in open court at the time of the hearing before Commissioner Peuler that he would not accept the Commissioner's recommendations and that further hearing was desired. The transcript of the hearing clearly shows that this claim is false. No such notice was given.

William's attorney claims that RoseMary's attorney had "actual or constructive notice" of William's refusal to accept the Commissioner's recommendation because William's attorney served interrogatories on RoseMary's attorney after the hearing. There is no notice in the interrogatories that William would not accept the Commissioner's recommendations or that he desired another hearing before the district judge.

In attempt to alter the facts to suit his own purposes, William's attorney has made numerous misrepresentations of fact with no support in the record and repeatedly refers to addenda to his brief which are not a part of the record and were never admitted in evidence. William's attorney's unsupported representations of fact and the affidavits and documents attached to William's brief which were not included in the record of the lower court should be stricken and not considered by this Court.

William's brief argues that Judge Frederick's Judgment is

inconsistent with the recommendations by Commissioner Peuler. The Judgment is completely in conformity with the recommendations of the Commissioner and was approved by her.

Although the issue of whether the Judgment was not correct on the merits is not properly before this Court, the evidence clearly establishes that the Judgment was correct and proper and that this appeal is merely another tactic for delay by William's attorney.

ARGUMENT

POINT I

PURSUANT TO RULE 8 (d) OF THE RULES OF THE THIRD JUDICIAL DISTRICT COURT, WILLIAM IS DEEMED TO HAVE CONSENTED TO THE COMMISSIONER'S RECOMMENDATIONS BECAUSE HE FAILED TO PROVIDE NOTICE OF HIS REFUSAL TO ACCEPT THOSE RECOMMENDATIONS WITHIN FIVE DAYS FROM THE ENTRY OF THE COMMISSIONER'S RECOMMENDATIONS.

Rule 8 of the Rules of the Third Judicial District Court requires that all domestic relations matters be heard before the domestic relations commissioner before a hearing can be scheduled before the assigned district judge, unless otherwise ordered by the judge. After hearing the matters, the commissioner shall make recommendations.

Rule 8 (d) of the Rules of the Third Judicial District Court provides:

Any party objecting to the recommended order or seeking further hearing before the assigned judge shall, within five (5) days of the entry of the commissioner's recommendations provide notice to the commissioner's office and opposing counsel that the recommended order is not acceptable or that further hearing is desired. The commissioner shall then refer the matter to the assigned

judge for further hearing, conference or trial. If no objection or request for further hearing is made within five (5) days, said party shall be deemed to have consented to entry of an order in conformance with the commissioner's recommendation.

RoseMary's Order to Show Cause against William for William's failure to make property settlement payments was heard before Commissioner Peuler on August 9, 1984, and Commissioner Peuler entered her recommendations in favor of RoseMary the same day. William's attorney did not provide any notice that he objected to the commissioner's ruling or that he desired a further hearing before the district judge until August 23, 1984, fourteen days after the entry of Commissioner Peuler's recommendations. Therefore, pursuant to Rule 8 (d), William is deemed to have consented to entry of a Judgment in accordance with Commissioner Peuler's recommendations.

William's attorney now admits that he did not file or serve upon RoseMary's attorney any written notice that he would not consent to the commissioner's recommendations but he claims, for the first time on appeal, that he gave oral notification that the commissioner's recommendations would not be accepted in open court at the hearing before Commissioner Peuler. The transcript of the hearing before Commissioner Peuler shows very clearly that this claim is not true.

The transcript of the hearing before Commissioner Peuler contains no statement whatsoever to the effect that William would not accept the commissioner's recommendations. In fact, the parties clearly left the matter open at the end of the hearing. The transcript ends with the following statements:

THE COURT (COMMISSIONER PEULER): Counsel, I'm not going to entertain further arguments. I've heard everything you had to say, and I think that the requirements of the decree need to be carried out.

I'll ask you to discuss the recommendation with your clients, and let me know if you need a further setting. For your information, the case has been appointed to Judge Frederick.

MR. MADSEN: Frederick? Thank you.

THE COURT: Thank you.

(Whereupon, this hearing was concluded.)
(R. 241).

William's attorney now admits that the transcript of the hearing before Commissioner Peuler shows he did not give any oral notification in open court that he did not accept the commissioner's ruling. In order to avoid this obvious fact, the appellant's brief has included an unsigned affidavit of Commissioner Peuler which is not a part of the record and has made very strained arguments about the contents of the record and the transcript of the hearing.

The unsigned affidavit of Commissioner Peuler is not a part of the record and should not be considered in this appeal. The evidence of what occurred at the hearing is very clearly set forth in the transcript of the hearing. The transcript clearly shows that William's attorney gave no notice of objection to the commissioner's recommendations at the hearing.

William's attorney next argues that the notation in the minute entry regarding Commissioner Peuler's recommendations, "Deft did not accept recommendation," indicates that William's attorney gave notice in open court that the recommendations would not be accepted and that

he desired further hearing before the district court. It is unknown why this notation is in the record but it did not result from any statement in open court by William's attorney. William's attorney may have told Commissioner Peuler or her clerk after the hearing that he did not accept the recommendation but he made no such statement in open court or in the presence of RoseMary or her attorney.

William's attorney next argues that the transcript of the hearing must be incomplete because it does not include his statement that he would not accept the recommendations of the commissioner. He suggests that the recording machine may have been prematurely turned off or it may have become mixed up with the subsequent case. There is no indication in the record that the record is incomplete or that William's attorney made any statements about not accepting the commissioner's recommendations.

It is also significant that William's attorney made no claim before the lower court that he had given oral notice in open court before Commissioner Peuler that he would not accept her recommendations, even though he filed a lengthy objection to the court's Judgment arguing that no such notice was necessary.

The appellant's brief also claims that RoseMary's attorney stated to Judge Frederick at the hearing that the rules of the Third District Court required the rejection of the commissioner's recommendations to be in writing and that Judge Frederick did not take time out on the bench to read the rules. This again is a false statement with no support in the record. The plaintiff's attorney did not order a transcript of the hearing before Judge Frederick and

is now making misrepresentations as to what would be included in that transcript.

Whether the objections to the commissioner's ruling must be in writing or may be oral, the record clearly shows that William's attorney did not give any notice to the commissioner and to RoseMary and her attorney that he objected to the commissioner's recommendations. Therefore, pursuant to Rule 8 (d) of the Rules of the Third Judicial District Court, William is deemed to have consented to Commissioner Peuler's recommendations and this Court should affirm the Judgment entered by Judge Frederick in accordance with those recommendations.

POINT II

THE FILING OF INTERROGATORIES BY WILLIAM'S ATTORNEY DID NOT CONSTITUTE NOTICE OF WILLIAM'S REFUSAL TO ACCEPT THE COMMISSIONER'S RECOMMENDATION.

William's attorney argues that his filing of interrogatories after the hearing before Commissioner Peuler constituted notice that he would not accept Commissioner Peuler's recommendation. William's attorney does not claim that the answers to interrogatories contained any notice that he would not accept the recommendations of the commissioner, but he seems to be arguing that RoseMary's attorney should have known that he intended to reject the commissioner's recommendations because he was still pursuing discovery.

Neither the Interrogatories nor the Answers to Interrogatories are part of the record but William's attorney has attached a copy of the Answers to Interrogatories to his brief. Since the Answers to Interrogatories are not a part of the record they should not be

considered by this Court but it is clear that there is nothing in the Answers to Interrogatories which would give notice that William did not intend to accept Commissioner Peuler's recommendations. The Court has continuing jurisdiction over a divorce action, and the parties are free to conduct discovery at any time. There is no reason to assume that the filing of interrogatories indicates a party is not willing to accept the commissioner's recommendations, and it certainly would not constitute notice of such non-acceptance.

POINT III

WILLIAM'S BRIEF INCLUDES REPRESENTATIONS OF FACT WHICH ARE UNSUPPORTED BY THE RECORD AND AFFIDAVITS AND DOCUMENTS WHICH ARE NOT INCLUDED IN THE RECORD, ALL OF WHICH SHOULD BE STRICKEN.

William's brief includes numerous representations by William's attorney about his alleged statements in open court at the hearing before Commissioner Peuler, none of which are supported by the record or by the transcript of the hearing. William's attorney also has made representations about the hearing before Judge Frederick without producing a transcript of the record or any other support for his statements. All of the statements of William's attorney should be stricken.

The brief also quotes in detail from an unsigned affidavit of Commissioner Sandra Peuler which is attached to the brief and is not a part of the record. This affidavit should be stricken.

William's attorney also attempts to argue the merits of his case and has attached to his brief copies of several real estate contract documents, none of which were presented in the lower court and none of which are part of the record. All of these documents

should be stricken and not considered by the Court.

POINT IV

THE COURT'S ORDER IS IN CONFORMITY WITH THE
RECOMMENDATIONS OF COMMISSIONER PEULER.

William's brief argues that Judge Frederick's Judgment exceeds and modifies the recommendations of Commissioner Peuler. He argues that the award of \$150 attorney's fees was not consistent with Commissioner Peuler's recommendations and that Commissioner Peuler's recommendations did not require defendant to give plaintiff a mortgage or trust deed on the Evanston property in the amount of the first mortgage on plaintiff's house.

It is incredible that plaintiff would argue that the Court improperly awarded \$150 attorney's fees to RoseMary. RoseMary's attorney filed an affidavit establishing reasonable attorney's fees in the sum of \$1,700 and it was only upon the recommendation of Commissioner Peuler that that sum was reduced to \$150. Commissioner Peuler filled in the award of attorney's fees in the sum of \$150 and signed her approval to the order which was later signed by Judge Frederick. An award of \$150 attorney's fee was more than adequately supported by the record and the award should have been much higher. If anyone has reason to complain about the award of attorney's fees it is RoseMary.

With regard to the order that William give RoseMary a mortgage or trust deed on the Evanston property in the amount of the first mortgage on plaintiff's house, Commissioner Peuler very clearly recommended that William give RoseMary that mortgage or trust deed. The original Decree of Divorce which was signed on June 23, 1981,

required that William execute a mortgage or trust deed on the Evanston property for the benefit of RoseMary in the amount of the first mortgage on RoseMary's house. Commissioner Peuler's recommendation and the transcript of the hearing includes the following:

And in terms of the mortgage that the divorce decree required him to do, the decree required him to give her a mortgage on the real property, my belief about that would be that he should be required to do that, and if the plaintiff feels that there is sufficient equity there to protect her, I think at that point, she's probably going to have to come in and ask that the decree be modified. (R. 239).

Commissioner Peuler had no doubt that William should be required to execute a mortgage or trust deed on the Evanston property, as required by the original Decree of Divorce. The issue in the hearing before Commissioner Peuler was whether William should be required to execute another trust deed on the Midvale property because he had subsequently mortgaged the Evanston property so there was no value in it. It was with regard to the Midvale property that Commisisoner Peuler said that there should be an evidentiary hearing on a motion to modify the original decree. All Commissioner Peuler's ruling did was to enforce the terms of the original decree which William had ignored since 1981.

Commissioner Peuler reviewed the proposed Judgment before it was submitted to Judge Frederick and signed it approving it as to form. The Judgment was fully in conformity with Commissioner Peuler's recommendations.

POINT V

THE JUDGMENT WAS CORRECT ON THE MERITS.

Although the only proper issue on this appeal is whether William failed to give notice of objections within the time required by Rule 8 (d) of the Rules of the Third Judicial District Court, we are compelled to point out that Commissioner Peuler's decision was correct on the merits.

The divorce decree in this case was entered on June 23, 1981. At the time of the divorce, the parties owned property having a value of over \$780,000. In order to ensure that William could pay child support payments, RoseMary agreed to take only the residence in Holladay, which had a value of about \$110,000, and give William all of the rental properties. The decree required that William pay the first mortgage on the residence, having a balance of approximately \$52,800 and monthly payments of approximately \$578. The decree specifically stated that this was property awarded to RoseMary and that RoseMary would be entitled to only \$1 per year in alimony.

Just after the divorce decree was entered, RoseMary sold the residence in Holladay on contract. The contract provided for a down payment and for the buyers to make payments to RoseMary. The buyers did not assume the mortgage on the property and RoseMary is still liable for those payments.

With a down payment from the sale of the residence in Holladay, RoseMary purchased a condominium in St. George, Utah, in approximately June, 1982. She used the payments from the property in Holladay to make the payments on the condominium. William continued to make the property settlement payments to RoseMary for over one year after she moved into the condominium but refused to continue making the payments

when RoseMary remarried in 1983. As a result of William's refusal to make the property settlements, RoseMary was unable to make the payments on her condominium and she lost it. William now owns all of the other property and RoseMary has lost her share of the property because William refused to make the property settlement payments required under the contract.

William is now taking the position that he should not have to pay RoseMary anything since her remarriage because the property settlement payments under the divorce decree were actually alimony, even though the divorce decree specifically provided that she would only receive \$1 per year in alimony. William has caused RoseMary to lose all of her property by failing to make the property settlement payments and he has refused to make the property settlement payments required under the decree of divorce for over two years.

RoseMary's situation is becoming desperate because of William's continual refusal to abide by the terms of the divorce decree and because of the continual delays and legal expenses caused by actions by William's attorney.

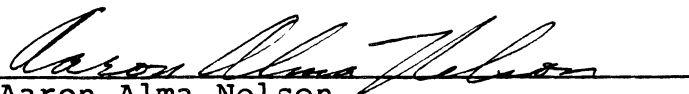
RoseMary is clearly entitled to the sums awarded by the Judgment entered by Judge Frederick and the time has come for William to pay his just due.

CONCLUSION

On the basis of the foregoing analysis, the plaintiff-respondent, RoseMary Wiscombe, respectfully submits that the Judgment on Order to Show Cause entered by Judge Frederick should be affirmed.

DATED this 3 day of December, 1985.

BAYLE, HANSON, NELSON & CHIPMAN



Aaron Alma Nelson
Attorneys for Plaintiff-Respondent

CERTIFICATE OF HAND-DELIVERY

I hereby certify that I hand-delivered four copies of the foregoing **BRIEF OF RESPONDENT, ROSEMARY WISCOMBE**, to Gordon A. Madsen and Robert C. Cummings, attorneys for appellant, 320 South 3rd East, Salt Lake City, Utah 84111, this 3 day of December, 1985.


AARON ALMA NELSON