1986

Dawn W. Horne v. W. Reid Horne : Brief of Respondent

Utah Supreme Court

Dawn W. Horne; Attorney for Respondent.
Richard K. Crandall; Rodney R. Parker; Snow, Christensen & Martineau; Attorneys for Appellant.

DOCKET NO. 860060

IN THE SUPREME COURT OF THE STATE OF UTAH

DAWN W. HORNE,

Plaintiff-Respondent,

860060-CA

vs.

Case No. 20187

W. REID HORNE,

Defendant-Appellant.

BRIEF OF RESPONDENT

On Appeal From The Third Judicial District Court
Of Salt Lake County
The Honorable Kenneth Rigtrup, District Judge.

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BRIEF OF RESPONDENT

STATE OF THE ISSUE PRESENTED FOR REVIEW

May the trial court, upon finding of good cause, enter Nunc Pro Tunc to the date of settlement agreement an order of distribution of property and other related matters as originally presented and read into the record on the 20th day of June, 1984?

DETERMINATIVE STATUTORY PROVISIONS

Utah Code Ann. S 30-4a-1 (Supp. 1983):

> Authority of Court. A court having jurisdiction may, upon its finding of good cause and giving of such notice as may be ordered, enter an order Nunc Pro Tunc is a matter relating to marriage, divorce, legal separation or annulment of marriage.

STATEMENT OF THE CASE

Nature of the case

This is the reply to an appeal of the trial court's entry Nunc Pro Tunc in a matter relating to a divorce. There is really only one issue at dispute here. It is an argument over the tax consequences of a divorce.

Course of Proceedings

On June 20, 1984, the parties entered into a property settlement and that settlement was read into the record in Judge's chambers with counsel and parties present. Judge Rigtrup asked each party if they understood the settlement and agreed to be bound by it. Each party answered yes.

For all practical purposes, the agreement was in effect and each party set about doing those things as required by the settlement. The transfer of the Townhouse Court Apartments took place and was effective on July 1, 1984.

The dispute arose when defendant wanted language added to the agreement that the agreement constituted an attempt to equalize the marital assets of the parties. This was inconsistent with the facts.

The total fair market value of the property received by each spouse was not equal. Mr. Horne received much more than Mrs. Horne did. In a noncommunity property state, such as Utah, the property must be jointly owned. The property was separately owned. The Townhouse Court Apartments were owned by Mr. Horne

prior to the couples marriage. (Under the tax law prior to July 18, 1984, an equal division of property that was co-owned did not result in gain or loss).

Failing to have the untrue tax language added to the documents, Mr. Horne and his counsel refused to cooperate in any way and delayed the matter for several weeks.

Disposition in the Court Below

On August 17, 1984, the court entered its Order of Property Division Nunc Pro Tunc to June 20, 1984 that being the day the settlement was made and could have been signed, dated, filed and entered.

Facts

Plaintiff, Dawn W. Horne, and defendant W. Reid Horne were married on January 17, 1970. Plaintiff filed for divorce on February 19, 1980. On January 27, 1984, the parties were divorced.

Plaintiff and defendant brought substantial premarital property into the marriage, and the parties accumulated substantial property during the marriage. After plaintiff filed for divorce, defendant disposed of a very large portion of the parties property. In November of 1981, defendant sold his nephew and partner his half interest in Larry H. Miller Toyota of Salt Lake and eleven other entities for a fraction of their value. He also disposed of various large equipment and real property. Plaintiff received nothing from the sales.

Trial of the division of property portion of the case began on June 19, 1984, and was scheduled to run four days. On the second day of the trial, parties entered into negotiations and reached a settlement agreement. Plaintiff wished to continue with the trial but was urged by her attorneys to accept settlement. She was advised that by taking the older premarital property, she would have the tax advantage of the stepped up basis and that by settling by stipulation, the matter would be settled once and for all, without possibility of appeal.

Under the law at the time, the defendant had a tax liability for capital gains on the property up to the date of transfer and the plaintiff had no gain or loss on the transaction. The basis of the property to the plaintiff would be its fair market value on the date of transfer. It is very important to the plaintiff to have the stepped up basis.

Under the law at the time, an equal division of property that was co-owned was not a taxable event. This settlement was not an equal division and the property was not jointly owned and thus, the exception to the Davis rule was not applicable.

The Court approved the settlement and requested plaintiff's counsel to prepare an appropriate order. Plaintiff's counsel submitted to defendant's counsel, proposed Findings of Fact and Conclusions of Law and Order of Distribution of Real and Personal Property, Payment of Debts, Support, Attorney's Fees and Other Related Matters on the 29th day of June, 1984, pursuant to the stipulation of the parties read into the record on the 20th day of June, 1984.

Counsel for the defendant returned said documents approximately two (2) weeks later requesting certain changes that did not conform with the agreement reached by the parties.

Minor changes were made to the plaintiff's proposed Findings, Conclusions and Order and sent on to the Court for signature. Thereafter, an informal conference was held with the Court in chambers, and the Court concluded a transcript of the proceedings was necessary and that the matter should be continued until said transcript was obtained.

Plaintiff's review of the transcript of the decision as stipulated to by the parties in open Court and read into the record, is in conformity with the Findings of Fact and Conclusions of Law and Order of Distribution of Real and Personal Property, Payment of Debts, Support, Attorney's Fees and Other Related Matters first submitted to the Court by plaintiff's counsel. (A copy of said transcript is attached hereto and made a part hereof by reference).

Defendant's contention that the stipulation was to include certain tax assumptions and consequences is not supported by said transcript and said objections should be denied.

At the time of reading of the Stipulation into the record, United States v. Davis was the law of the land and in full force and effect. Plaintiff's negotiations relied upon the law set forth in that case and the agreement reached at that time should be adopted herein and the Plaintiff should have the benefit of the stepped up basis on said properties for which she bargained.

On or about July 18, 1984, the Tax Reform Act of 1984 was signed into law by President Reagan. Said Act abolished the holding of United States v. Davis, and any Decree signed on or after the 18th of July, 1984 would literally wipe out what the plaintiff had bargained for and received by her agreement necessitating the entry of the Findings, Conclusions and Order Nunc Pro Tunc as of the 20th day of June, 1984, the date judgment was rendered in said matter.

Summary of Argument

This is a matter relating to divorce and the Court clearly has the authority to enter an Order Nunc Pro Tunc.

Good cause existed to enter the Nunc Pro Tunc Order. At the time of reading of the Stipulation into the record, United States v. Davis was the law of the land and in full force and effect. Respondent's negotiations relied upon the law set forth in that case and respondent should have the benefit of the stepped up basis on said properties for which she bargained and to which appellant agreed to.

Appellant deliberately delayed signing of the agreement in order to benefit from the change in the tax law. The Nunc Pro Tunc Order by Judge Rigtrup is to correct that injustice.

ARGUMENT

Appellant's Arguments are Inconsistent With the Facts

POINT I

APPELLANT'S ARGUMENT: THE LOWER COURT'S ENTRY OF THE NUNC PRO TUNC WAS IMPROPER IN THAT THE ORDER INCORPORATED SUBSTANTIVE RULINGS MADE AFTER THE PARTIES' AGREEMENT.

Fact: The changes Judge Rigtrup made were to correct the record to "speak the truth", and correctly represent the agreement read to the Court on June 20, 1984, and to which all parties agreed to. This Nunc Pro Tunc Order was a reflection of a previously made ruling in which no reference was made to the tax consequences.

If you will refer to reporter's transcript of June 20, 1984, in the addendum you will see that the Order of August 17th correctly reflects the events of June 20, 1984.

The Preece case in which Mrs. Preece sought to become a widow instead of a divorcee and won, does not apply to this case.

POINT II

APPELLANT'S ARGUMENT: THE LOWER COURT'S ENTRY OF ITS ORDER WENT BEYOND THE SCOPE OF ITS STATUTORY AUTHORITY.

Fact: A Court having jurisdiction may, upon its finding of good cause and giving of such notice as may be ordered, enter an order Nunc Pro Tunc in a matter relating to marriage, divorce, legal separation or annulment of marriage. Utah Code Ann, S 30-4a-1 (Utah 1983).

This is a matter relating to divorce. There was good cause to enter the Order Nunc Pro Tunc. For all practical purposes, the Order was in effect on June 20, 1984, and each party set about doing those things as required by the settlement.

POINT III

APPELLANT'S ARGUMENT: EVEN IF ENTRY OF THE ORDER NUNC PRO TUNC WAS OTHERWISE PROPER, THE COURT IMPROPERLY GRANTED THE NUNC PRO TUNC MOTION IN EXCHANGE FOR PLAINTIFFS ABANDONMENT OF THE CHARGES OF MISCONDUCT.

Fact: Plaintiff never "filed charges" of misconduct, not with the Court and not with the bar.

The hearing of August 8, 1984 was for one purpose only, it was on a motion by plaintiff to change counsel. Plaintiff had never filed charges against her counsel and was only explaining why she wished to change counsel if in fact the case was not over and needed to go back to trial.

Mr. Gustin, of Gustin, Adams, Kasting & Liapis, argued that the case was over on June 20, 1984, and that the only purpose of changing counsel was to cheat their firm out of attorney fees.

The Court ruled that the case was over on June 20, 1984 and that there was no tax language in that agreement and Mrs. Horne should have the benefit of the stepped up basis for which she had bargained and which was clearly the law of the land at that time.

Plaintiff was willing to drop her request for a change

of counsel if the case was indeed over with on June 20, 1984.

A reading of the transcript of August 8, 1984 will prove appellants argument is totally inconsistant with the facts.

CONCLUSION

I ask you to let Judge Rigtrup's Nunc Pro Tunc ruling stand. Under the circumstances it is a fair and proper ruling.

To overturn the Nunc Pro Tunc is to allow appellant to make a settlement under the old tax law and then failing to later have some untrue tax language put into the settlement, allow him to use delay tactics to delay final signing several weeks so that he could take advantage of the new tax law and deprive Mrs. Horne of the tax advantage she had bargained for under the original agreement.

In addition, the issue may be moot. The 1984 Tax Reform Act applies to transfers after July 18, 1984. The transfer of the Townhouse Court Apartments took place and was effective on July 1, 1984. Whether you rule for or against the Nunc Pro Tunc, the final decision on this tax matter will rest with the Internal Revenue Service.

RESPECTFULLY SUBMITTED this 4th day of January, 1985.

DAWN W. HORNE

By Dawn W. Horne
Dawn W. Horne
Plaintiff-Respondent

ADDENDUM

1. Internal Revenue Service publication 504 (Rev. Nov. 1983).
2. 1984 Tax Reform Act.
3. Reporter's Partial Transcript of June 29, 1984.

perty Settlements

ou transfer property in settlement of mari-
hts, you may have a gain or a loss on the
er of the property. The gain or loss is the
ence between the adjusted basis of the
rty and its fair market value at the time of
ansfer. If the property has appreciated
may be a taxable gain on the transfer.
erty has appreciated if its fair market value
re than its adjusted basis. The difference
ain. If the fair market value is less than the
ted basis, a loss is realized. If the loss is
operty held for personal use, it is not de-
ble. If the loss is on business or investment
erty, it is generally deductible. However, a
on the sale or exchange of property be-
n related parties is not deductible. For in-
ation on sales and exchanges between
ed parties, see Publication 544, *Sales and
r Dispositions of Assets*. An equal division
operty that is co-owned by you and your
se does not result in gain or loss. Property
-owned if: (1) it is held jointly; (2) it is com-
ity property; or (3) it is treated by state law
eing jointly owned property. These forms of
wnership are discussed later in this sec-

arately owned property. If you and your
se each keep your separately owned prop-
in a divorce settlement, there is no taxable
or deductible loss. If, on the other hand,
of the spouses transfers separately owned
perty to the other spouse, the spouse trans-
ng the property realizes gain or loss. The
rence between the fair market value of the
perty and its adjusted basis is the gain or
. The spouse receiving the property has no
or loss on the transaction. The basis of the
perty to the receiving spouse is its fair mar-
value on the date of the transfer.

xample. Jim and Jane get a divorce. Under
terms of the divorce decree and a property
lement that is included in the decree, Jim
nsfers his separately owned interest in an
rtment building to Jane in consideration for
in discharge of her dower rights in his re-
ining property. Jim's adjusted basis in the
nsferred interest is $40,000. Its fair market
value is $80,000 on the date of the
Jane's rights that she gave up are treated as equal in value to the fair market value of the property she receives for them ($80,000). Jim has a taxable gain of $40,000 ($80,000 fair market value less $40,000 basis). Jane has no gain or loss. Her basis in the property is $80,000.

Jointly owned property. Property that is held by you and your spouse as joint tenants with right of survivorship, tenants by the entirety, or tenants in common, each having an undivided half interest, is considered jointly owned. If such property is ***equally divided*** by the spouses incident to divorce, there is no taxable gain or loss.

Community property. In a community property state (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, or Washington) an ***equal division*** of community property in connection with divorce is not a taxable exchange. It does not matter which spouse actually holds title to the property.

Property treated as jointly owned. Although they are not community property states, some states treat property received during marriage as marital property. Such property is treated as held by a type of common ownership even though title is in the name of only one of the spouses. In such a case, the state property law is controlling. A division of the property in these states may be treated for federal tax purposes in the same way as a division of community property. States that require an equitable distribution of property between the spouses do not come under this rule.

An approximately equal division of property in connection with divorce is not a taxable exchange. In a noncommunity property state, the property must be jointly owned. In a community property state it does not matter which spouse actually holds title to the property. However, the property must be community property. If there is an approximately equal division of the total fair market value of the property, some of the assets may go in their entirety to one spouse and some may go in their entirety to the other spouse with no gain or loss being realized. Such a division is not taxable when the total fair market value of the property received by each spouse is equal.

Example. Harry and Edith were married in a noncommunity property state. As a part of their divorce, they agree to equally divide their jointly owned property. Harry and Edith own no separate property.

They intend to divide their property equally, but certain assets cannot be divided because they are associated with a particular liability, or they are part of a business venture that can be managed by only one person. Therefore, some assets are given to Harry and other assets of nearly equal value are given to Edith. The rest of the assets are equally divided.

The total net fair market value of the jointly owned property is $300,000. Harry receives assets valued at $150,258, while Edith receives assets worth $149,742. The difference in the value of the property that each receives ($516) is due to the property that could not be equally divided. To make up the difference, Harry gives Edith a note for $258.

Although Edith could consider Harry's note as a sale or exchange of property rights in some of the assets for consideration not part of the assets (the note), it is not important enough to prevent the division from being about equal. The transaction, therefore, is not considered a taxable exchange.

proximately equal division of community property or jointly owned property is the same as its basis to the community or when it was jointly owned. If a particular asset is divided between the spouses, each spouse's basis for the part received is the part related to the community o jointly owned basis.

An unequal division of jointly owned property or community property may result in gain or loss. The gain or loss is the difference betwee the net fair market value and the adjusted basi The formula you must use to figure the taxabl gain is shown in the following example.

Example. Tom and Mary are divorced. Their total assets (money and property) include join owned property that has a net fair market valu of $70,000. Tom has separately owned proper with a net fair market value of $40,000. Mary has no separately owned property.

The divorce decree gives Mary jointly owne property that has a net fair market value of $55,000. Tom is awarded the rest of the jointly held property, which has a net fair market vali of $15,000. He gets all of his separately owne property, which has a net fair market value of $40,000.

The adjusted basis of the jointly owned pro erty received by Mary is $29,500. This include personal furniture which has an adjusted bas of $6,000 and a net fair market value of $4,00 Therefore, Mary has a loss of $2,000 on the f niture. Because a loss on property held for p sonal use is not deductible, Mary reduces the adjusted basis of the furniture by $2,000 and duces the adjusted basis of all the property s received to $27,500.

The division of the jointly owned property i not equal. Tom gives up a part of his share o the jointly owned property for Mary's marital rights in Tom's separately owned property. T must figure his gain on the transfer He must first figure his share of the jointly owned pro erty received by Mary as follows:

Jointly owned property received by Mary	$55
Half of all jointly owned property (1/2 of $70,000)	35
Excess jointly owned property received by Mary .	$20

Tom determines his adjusted basis in the ex cess jointly owned property received by Mar using this formula:

Net fair market value of excess jointly owned property received by Mary

Net
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Mary

Thus
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$20,00
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Tom

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Department of the Treasury
Internal Revenue Service

Tax Information f Divorced or Separated Individuals

Publication 504
(Rev. Nov. 83)

1984 Tax Reform Act

Domestic Relations Provisions

Transfers of Property

Gain has generally been recognized on certain transfers of property in exchange for marital rights of a spouse or former spouse. Beginning after July 18, 1984, transfers of property between spouses or former spouses, if incident to a divorce, will no longer result in the recognition of gain or loss. The basis of the property transferred will be the transferor's adjusted basis.

Incident to divorce—A transfer is incident to a divorce if it occurs within one year after the marriage ceases or is related to the cessation.

Election—Although this provision generally only applies to transfers after July 18, 1984, if both spouses or former spouses elect, this non-recognition of gain can be applied to transfers made after December 31, 1983. Further, the provisions do not apply to transfers made after July 18, 1984 pursuant to an instrument in effect on or before that date unless both spouses or former spouses elect to have the non-recognition provision apply.

Alimony

Alimony is generally deductible by the payor and includible in the income of the payee. Beginning in 1985, only cash payments pursuant to a divorce or separation agreement that will terminate upon the death of the payee made between former spouses not living in the same household will qualify

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-oo0oo-

DAWN W. HORNE, Plaintiff,	)	
vs.	)	Civil No. D80-668
W. REID HORNE, Defendant.	)	

REPORTER'S PARTIAL TRANSCRIPT

June 20, 1984

BEFORE THE HONORABLE KENNETH RIGTRUP,
District Court Judge

A P P E A R A N C E S:

For the Plaintiff: Paul H. Liapis
GUSTIN, ADAMS, KASTING & LIAPIS
9 Exchange Place
Salt Lake City, Utah 84111

For the Defendant: Richard K. Crandall
SNOW, CHRISTENSEN & MARTINEAU
11th Floor, 10 Exchange Place
Salt Lake City, Utah 84111

GAYLE B. CAMPBELL
CERTIFIED SHORTHAND REPORTER
SALT LAKE CITY, UTAH

SALT LAKE CITY, UTAH; WEDNESDAY, JUNE 20, 1984; 10:00 A. M.

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[The Court, having conferred with counsel and parties off the record, and negotiations having taken place, the following proceedings were held in chambers with counsel and parties present at 3:12 p.m.]

THE COURT: The attorneys have advised the Court that they have settled the outstanding issue in this case; is that correct?

MR. LIAPIS: That's correct, your Honor.

THE COURT: Is that right, Mr. Crandall?

MR. CRANDALL: Yes, I hope so. I think we've got it all agreed to.

THE COURT: Will you state what the agreement is on the record, Mr. Liapis?

MR. LIAPIS: Yes, I would. Let me just locate the checklist here.

THE COURT: Plaintiff may have a divorce, final on entry.

MR. LIAPIS: That has already been entered, your Honor.

THE COURT: That's right. I can't do that. She got one in advance.

MR. LIAPIS: With regard to the properties,

the plaintiff, Mrs. Horne, will be awarded the condominium which she's now residing in, the duplexes --

THE COURT: Where at?

MR. LIAPIS: Well, I knew you were going to ask that.

MRS. HORNE: 691 East 4181 South.

THE COURT: Okay.

MR. LIAPIS: The two duplexes at 1925-27 East 1700 South and 1933-37 East 1700 South. That's free and clear of any interest of the defendant, and subject to plaintiff assuming and paying the mortgage payments thereon.

THE COURT: Plaintiff to assume and pay mortgage payments? Is that what you said?

MR. LIAPIS: Yes.

THE COURT: All right.

MR. LIAPIS: In addition, the plaintiff will be awarded all right, title and interest in and to the Townhouse Court apartment complex, together with all of the appliances. Is there any furniture in it?

MR. HORNE: No.

MR. LIAPIS: Appliances, deposits, rentals, the whole thing. It will be transferred to her as an exchange item to equalize the marital assets of the parties in this matter.

MR. HORNE: Could I make one point? Could

we have a cutoff point as of the first of the month?

MR. LIAPIS: What is today?

MR. HORNE: It's the 20th.

MR. LIAPIS: That's fine. Commencing with the first of July. Is that all right?

MRS. HORNE: That's fine.

MR. LIAPIS: Plaintiff will assume the first mortgage payment thereon, taxes commencing with the month of July through the end of the year.

MR. HORNE: The reserve account is set up at Prudential.

MR. LIAPIS: The reserve account likewise will be transferred.

MR. HORNE: That will go with it.

MR. LIAPIS: All right. And there is no shortage in that reserve account?

MR. HORNE: No, there's $833 at the first of the year that was left over, so --

MR. LIAPIS: And there have been payments made?

MR. HORNE: It's been made every month. There should be an overage, not an underage.

MR. LIAPIS: In addition, the plaintiff will be awarded the vacant lot at 6716 13th East as her sole and separate property, free and clear of any interest of

the defendant.

Defendant will be awarded, by way of properties -- let me start at the front.

THE COURT: Awarded all other real property?

MR. LIAPIS: All the rest, which would include, for the Court's notes, the Suzie-Q Apartments, the Elm Avenue five-plex, the Townhouse Villa complex, the Townhouse II complex, the office and warehouse complex, the Edison property, Snowbird Iron Blosam time share, and lot 76 of Bloomington Country Club.

Plaintiff will be awarded all right, title and interest in and to the balloon payment that's part of the sale of the 4400 South State Street property, including the monthly payments.

THE COURT: Of how much?

MR. LIAPIS: $160,000 is the principal sum.

THE COURT: Due when?

MR. LIAPIS: With eleven and a half per cent interest, I think it was. Due November of 1988.

THE COURT: And what's the property?

MR. LIAPIS: 4400 South State Street. And that would include the payment of the regular monthly payments on that balloon of $2,000 a month.

THE COURT: She's just awarded the seller's interest?

MR. HORNE: That's right.

MR. LIAPIS: That's correct. And he is awarded, in addition, the Honeywood Condominiums at -- the two Honeywood Condominiums.

The defendant will pay to plaintiff the sum of $5,000 today, $15,000 cash in ten days, and an additional $5,000.

THE COURT: $5,000 today and $15,000 when?

MR. LIAPIS: Ten days from today. $5,000 cash in six months. Okay.

The June support payment will be considered paid with the transfer of the $5,000 today. The defendant will maintain the plaintiff as an owner with the defendant paying the premium on a $100,000 term life insurance policy, a reasonable rate policy.

THE COURT: Defendant will maintain a $100,000 life insurance policy?

MR. LIAPIS: With plaintiff to have ownership, plaintiff beneficiary. Defendant pays the premium.

THE COURT: Term policy. All right.

MR. LIAPIS: And he'll give us notification of the policy. You'll have to give us the policy.

Defendant will continue to obtain for the plaintiff a new Toyota automobile at wholesale cost, and

that's wholesale to the dealer, not to the retailer to the public, as long as that privilege is provided to him. That means that she'll pay for the wholesale price, but we get the benefit of his benefits.

The parties agree that if the defendant in any way, shape or form ever returns to an interest in the Toyota dealership that's involved in this lawsuit, that she'll automatically be awarded one-half interest.

No alimony to either party. The defendant will, within 60 days or sooner place a new roof on the duplex at 1935-37 East 1700 South, at his cost and expense through his workers.

THE COURT: At his cost and expense? So plaintiff will pay?

MR. HORNE: No, defendant will pay.

MR. LIAPIS: Defendant will pay at no cost to the plaintiff. Total cost to the defendant.

If there are any additional claims for attorneys' fees from this action by plaintiff against defendant, she will assume and pay the balance.

THE COURT: What do you mean? Each party pay their own fees and costs?

MR. LIAPIS: After the transfer of those cash sums we referred to earlier.

THE COURT: So each of you pay their own

fees and costs?

MR. LIAPIS: Right.

THE COURT: Then you can decide between you and the clients who gets it.

MR. LIAPIS: The parties will each assume and pay the debts and obligations against their respective properties that they are receiving, as well as any debts which they have incurred in their own name since the filing.

Defendant will further hold us harmless from any tax obligations that result from prior joint filing of tax returns, which I think ended with what, 1981?

MRS. HORNE: 1982 but you haven't actually filed but you are going to file that as a joint return?

MR. HORNE: For 1982 I guess we still can.

THE COURT: There's no filing at this point. Each party will execute necessary documents?

MR. LIAPIS: Yes.

MR. HORNE: Do we need to spell out that exchange, the way we're going to set that up?

MR. CRANDALL: I don't think so.

MR. LIAPIS: We're not through.

THE COURT: The parties are mutually restrained from picking on each other.

MR. LIAPIS: Yes. The defendant will further

be awarded all his right, title and interest in and to his business entitled W. R. Horne, Incorporated.

THE COURT: Each awarded own checking and savings account?

MR. LIAPIS: Bank accounts. That's right. Each is awarded own retirement, stock plans, et cetera, if any. Don't you have some retirement benefits at St. Mark's?

MRS. HORNE: I don't think so. Working part time, I don't think they provide me with any.

MR. LIAPIS: The plaintiff will be awarded her 1982 Toyota Cressida automobile. Plaintiff and defendant are each awarded the furniture in their possession.

Defendant will be awarded the 30,000 shares of Challenge Corporation stock, if you still have it.

THE COURT: Defendant awarded?

MR. LIAPIS: Yes.

THE COURT: Each awarded own personal effects, clothing, and all personal property in possession.

MR. LIAPIS: Also, your Honor, the defendant has requested a further right of refusal on any of the properties awarded to the plaintiff if she should sell, at whatever bona fide offer that she's received on those properties if and when she puts it for

sale or puts them for sale.

A 48-hour time period on that right of refusal?

THE COURT: How much?

MR. LIAPIS: Forty-eight hours.

THE COURT: That's not reasonable.

MR. LIAPIS: Sure it is. No one is going to give you an earnest money for more than two or three days, at best.

THE COURT: But if you hit it on a Friday, then you ought to have ten days.

MR. LIAPIS: No one is going to stay on an earnest money agreement for ten days. They're going to give you an offer and expect you to counter it.

MR. CRANDALL: Well, yes. I think that's probably right. Over the weekend we would probably need seven days.

THE COURT: We'll be off the record.

[Discussion off the record.]

MR. CRANDALL: We want three business days, but we'll exclude the condo.

MR. LIAPIS: Is that all right?

MRS. HORNE: Yes.

MR. LIAPIS: Is that all right with you, three business days?

MRS. HORNE: Yes.

MR. LIAPIS: Your Honor, on the attorneys' fees, we may want to spell that out.

THE COURT: You are required to be reasonable.

MR. CRANDALL: We have it now that each party bears their own attorneys' fees. A large part of this cash settlement is for attorneys' fees, and I may want to examine that from a tax standpoint and change that. We may want to make it payable as alimony.

MR. LIAPIS: No.

MR. HORNE: The $5,000 is alimony.

MR. LIAPIS: No.

MR. CRANDALL: $25,000 of it is.

MR. LIAPIS: $20,000 is. The $5,000 is hers.

MR. CRANDALL: So $20,000 of it is attorneys' fees and costs? Is that the way it is?

MR. LIAPIS: I think that's the way it was intended.

THE COURT: And it's not denominated as alimony, so --

MR. CRANDALL: No.

MR. LIAPIS: No. So that's it. Do you want to ask them if they agree to that?

THE COURT: Is that as you understand it?

MR. CRANDALL: Yes, your Honor.

MR. HORNE: You've heard everything that's been read into the record, have you?

MR. HORNE: Just as long as I get my sword, I agree.

THE COURT: Do you understand it?

MR. HORNE: Yes, I do.

THE COURT: And you agree to be bound thereby?

MR. HORNE: Yes.

THE COURT: Mrs. Horne, you have heard what's been read into the record?

MRS. HORNE: Yes.

THE COURT: And you understand it?

MRS. HORNE: Yes.

THE COURT: You agree to be bound thereby?

MRS. HORNE: Yes.

THE COURT: I will approve the stipulation of settlement. Will you draft it?

MR. LIAPIS: Yes. Thank you, your Honor.

[Whereupon, at the hour of 3:32 p.m., the proceedings were concluded.]

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REPORTER'S CERTIFICATE

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

I, GAYLE B. CAMPBELL, an Official Reporter of the District Court for the State of Utah, County of Salt Lake, do hereby certify that the foregoing pages, 1 through 12, inclusive, comprise a full, true, and correct transcript of the testimony given and the proceedings had upon the hearing of the above-entitled action on June 20, 1984, and that said transcript contains all of the evidence, all of the objections of counsel and rulings of the court, and all matters to which the same relate.

DATED this _____ day of July 1984.

GAYLE B. CAMPBELL, CSR

CERTIFICATE OF SERVICE

I certify that four true and correct copies of the foregoing Brief of Respondent were served on Richard K. Crandall, Rodney R. Parker, Snow, Christensen and Martineau, attorneys for appellant, 10 Exchange Place, Eleventh Floor, Post Office Box 3000, Salt Lake City, Utah, 84110, by hand delivery, on January 4 1985.

Dawn W. Horne