

2000

# George R. Bradford v. James A. Demita : Petition for Writ of Certiorari

Utah Court of Appeals

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BRIEF

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DOCKET NO 2000 0126

IN THE UTAH SUPREME COURT

GEORGE R. BRADFORD,

Plaintiff, Appellee

*Petition for Writ  
of Certiorari*

v.

JAMES A. DEMITA,

Defendants, appellant.

*20000126-SC*

Case No. 981745-CA

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APPEAL FROM UTAH COURT OF APPEALS

JUDGES PAMELA GREENWOOD, RUSSELL BENCH, JUDITH BILLINGS

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**FILED**

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## STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Did the Court of Appeals incorrectly apply the law, and improperly created new law, when it concluded Mrs. Bradford's conveyance of her undivided one half interest in real property to her son Mr. DeMita was a fraudulent conveyance because of "threats of divorce" by Mr. Bradford, even after the Court of Appeals determined Mr. Bradford's creditor claim (of inheritance) to Mrs. Bradford's undivided one half interest was not valid, and Mrs. Bradford retained her undivided one half interest in the property.

## OPINION ISSUED BY COURT OF APPEAL

The Court of Appeals issued its opinion and ruling on December 16, 1999. Case number 981745-CA. 1999 UT App 373.

## JURISDICTION

The date of the entry of the decision sought to be reviewed is December 16, 1999.

Order granting an extension of time to petition for certiorari was January 20, 2000.

The Utah Supreme Court has jurisdiction in this matter pursuant to Title VII Rule 45 & 46 (a)(2,3, &4).

## CONSTITUTIONAL PROVISIONS, ETC.

With respect to the issue of fraudulent conveyance, the Uniform Fraudulent Transfer Act, as set forth in Section 25-6-1 et seq., of the Utah Code Annotated is determinative. A copy of said Act is attached hereto as Exhibit "A".

## STATEMENT OF THE CASE

This case came before the Fourth District Court on a Complaint for Divorce and Claim for fraudulent conveyance. The matter was tried to the Honorable Steven L. Hansen on March 4, 1998, and Findings of Fact and a Decree of Divorce were entered on July 14, 1998. Thereafter, defendants filed a timely Motion to Alter and Amend Findings of Fact and Conclusions of Law and Decree and the Court denied said Motion September 4, 1998. The case was then timely appealed to the Utah Court of Appeals and a written ruling was entered into on December 16, 1999. Then this writ of certiorari followed.

## STATEMENT OF FACTS

1. Mr. Bradford and Mrs. Bradford were married in June of 1985 in Provo, Utah, and have been husband and wife since that date. (Findings of Fact No. 1, page 152, Record.)

2. Both parties have been married before, making this a second marriage for both parties. (Findings of Fact No. 4, page 152, Record.)

3. No children were born of this marriage, but each had adult children from prior marriages. (Findings of Fact No. 5, page 151, Record.)

4. Mr. Bradford is 63 years old and Mrs. Bradford is 65 years old. (Findings of Fact No. 6, page 151, Record.)

5. Neither Mr. nor Mrs. Bradford are at a point in their life where they could be retrained or develop new skills for purposes of substantially increasing their income. (Findings of Fact No. 12, page 151, Record.)

6. Mr. Bradford intended to give Mrs. Bradford one-half of the marital residence property when he deeded her a joint tenancy interest in it and did so because he was happy with her, wanted to care for her, and loved her. (Record page 190, Trial transcript at page 56, line 11 through 13 and 25, and page 57, line 1 through 12.)

7. Mr. Bradford deeded by way of warranty deed the property back to he and Mrs. Bradford as "joint tenants with full rights of survivorship and not as tenants in common" approximately four years after they had married. (Findings of Fact No. 18, page 150, Record.)

8. In 1992, Mr. Bradford filed for divorce from Mrs. Bradford. At that time, Mr. Bradford requested that the home and real property be awarded to him. This divorce action was dismissed in 1993. (Findings of Fact No. 19, page 150, Record.)

9. Since 1992, Mr. Bradford and Mrs. Bradford have had many arguments and Mr. Bradford has threatened to divorce Mrs. Bradford on many occasions. (Findings of Fact No. 20, page 150, Record.)

10. On August 8, 1996, Mrs. Bradford by way of Quit-Claim Deed deeded her share of the home to her son, James DeMita. Mr. DeMita gave his mother \$10.00 for the deed. (Findings of Fact No. 24, page 149, Record.)

11. When Mrs. Bradford deeded her half of the property to Mr. DeMita, she did so because she was concerned that if she predeceased him, her children would not get any of her interest in the property and she was not concerned at the time about Mr. Bradford

divorcing her, because of his repeated threats over the years. (Record page 190, Trial transcript at page 30, line 16 through 24.)

12. Mrs. Bradford owed nothing to Mr. Bradford and was not indebted to him before or after she quit claimed the subject property to her son. (Record page 190, Trial Transcript at page 78, lines 2 through 7.)

13. After the transfer, Mrs. Bradford and Mr. DeMita continued to live in the home as they had before. (Findings of Fact No. 29, page 149, Record.)

14. The time between the granting of the Quit-Claim Deed in August of 1996 and the filing of divorce was approximately eleven months. (Findings of Fact No. 31, page 148, Record.)

## SUMMARY OF ARGUMENT

1. A person asserting a fraudulent conveyance must be a creditor of the person claimed to have fraudulently conveyed the property. A person asserting fraudulent conveyance must prove by clear and convincing evidence that the claim is valid. The Court of Appeals ruled against Mr. Bradford's "claim" of inheritance to the property and Mrs. Bradford retained her undivided one half interest in the property, then the Court improperly created its own new classification of creditor, "threats of divorce" under the Fraudulent Conveyance Act. The Court of Appeals admits in its opinion there is no Utah case law to support its new classification of "threats of divorce," therefore, the Court is improperly creating new law, and misapplying existing law, by stating "threats of divorce" create a creditor claim under the Fraudulent Conveyance Act. Consequently, the threshold element, a legitimate claim proven by clear and convincing evidence, of the Fraudulent Conveyance Act fails.

## ARGUMENT

The Utah Supreme Court has repeatedly held that the threshold question to be answered in a fraudulent conveyance case is whether a party claiming a fraudulent conveyance is a creditor of the party who has allegedly fraudulently transferred property. It has stated that a creditor must prove by clear and convincing evidence that claimant is a creditor. Territorial Savings & Loan v. Baird, 781 P.2d 452, 458 (Utah 1989), Furniture v. Deamer, 680 P.2d 398, 399 (Utah 1984), and Meyer v. General Amer. Corp., 569 P.2d 1094, 1096 (Utah 1977). Moreover, the Arizona Supreme Court in Clark v. Rossow, 657 P.2d 903,

904 (Az. 1982) stated that the Fraudulent Conveyance Act does not itself create a new claim.

If a claim does not exist outside of the Act, there is no remedy. Utah's Uniform Fraudulent Transfer Act only refers to debtors and creditors and specifically states at Section 25-6-5, U.C.A. under the caption "Fraudulent Transfer" "(1) a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, . . ." A non-creditor of a person transferring property cannot assert a claim under the Fraudulent Transfer Act to set aside the conveyance of property by a party who is not his debtor.

In the present case, husband deeded property that was the marital residence and that husband owned separately prior to the marriage to himself and wife in joint tenancy approximately eight years prior to commencement of the divorce proceedings. Husband's testimony at trial admits that wife owed him nothing and that she was not indebted to him before or after she gave her son the Quit Claim Deed to her undivided one-half interest in the property.

If the Fraudulent Conveyance Act by itself does not make husband the creditor of wife and if husband admits that wife never owed him any money, then husband's only basis for being a creditor under the Fraudulent Transfer Act is that he wants the one-half of the property that he deeded to his wife back.

The Court of Appeals ruled Mr. Bradford's claim arose out of "threats of divorce" during the marriage (Note: Mr. Bradford's claim is the property was inherited, so he should be able to get it back, and that was his "creditor claim," the Court of Appeals created a different claim, "threats of divorce," then Mr. Bradford was even asserting.) The Court of

Appeals admits in ¶15 of its opinion there is no Utah case law to support its ruling. Bradford v. Bradford, 1999 UT App 373. The Court in ¶15 of the opinion cites to a 1975 Oregon Supreme Court ruling to support its analysis. Adamson v. Adamson, 541 p.2d 460 (Or. 1975). Although the Oregon case is not precedent for Utah law, a brief analysis of the case is in order since the Court included it in its analysis.

Adamson involved a husband and wife owning a half interest jointly as tenants by the entirety along with Husband's Mother; husband and his father Coerced and duressed wife into conveying joint title to husband's father. 541 p.2d 460 (Or. 1975). Husband and wife were living separately, wife was sick with her pregnancy, wife had confidential relationship with father in law and trusted him completely, wife was threatened, harassed, did not know what she was signing, husband had been unemployed and having financial difficulties, and this was husband's only tangible asset in which to pay any child support. 541 p.2d 460, 464-465 (Or. 1975). The Oregon Court found for wife to set aside the conveyance from her and her husband to her father in law. id. 466.

In the Adamson case, the creditor relationship, in so many words, was husband's child support obligation and his lack of means in which to pay it, not "threats of divorce". id. In our case, Mr. And Mrs. Bradford had no children together, and no claims by either party of child support were made, therefore, the Adamson case is not comparable to this case before this court. id.

If the Court of Appeals ruling were to stand, it will set a whole new category in the Uniform Fraudulent Conveyance Act, namely, a creditor must prove by clear and convincing

evidence he or she is a creditor, unless they are husband and wife and one party threatens divorce during the marriage. *id.*

This would be against good public policy as well; This would treat married individuals property rights different from non-married individuals property rights; Title companies, grantees, and others, would have to ensure there were no “threats of divorce” leaved from either married grantor before receiving property from one of them; This leaves a greater potential of abuse from married grantors; if a grantor changed their mind about a conveyance, the non grantor spouse could claim there were “threats of divorce,” and petition to rescind the conveyance as fraudulent. This could severely restrict the alienability of property.

Mrs. Bradford owned a one-half interest in joint tenancy in the marital residence and had a right to use it as she desired, indeed, the Court of Appeals ruled she has an undivided one-half interest. There is numerous Jurisprudence that supports Mrs. Bradford’s right to use it separately how she desires [ "The transfer of once separate property into joint names of both spouses is deemed a gift." (41 C.J.S. Section 103). "An interspousal gift operates as a transfer to the donee spouse of a separate property interest." (41 C.J.S. Section 102). "A gift from a husband to his wife confers on the wife good title . . . , and is not impliably limited to the duration of the marriage." (41 C.J.S. Section 102). "A gift from a wife to her husband is binding as a transaction between other persons . . . . The husband cannot be compelled to return the money or property given nor can the wife reclaim or recover it." (41 C.J.S. Section 102)]. Mrs. Bradford was concerned if she predeceased Mr. Bradford, her children would

not get any of her interest in the property, so she conveyed her interest to her son. Nothing placed into evidence by husband created a basis for a claim against wife to meet the threshold requirements of the Uniform Fraudulent Transfer Act, nor has the Court of Appeals shown anything to satisfy the “clear and convincing” requirement under the act. *id.*

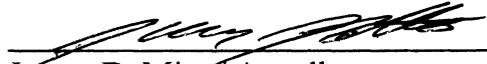
Definitive evidence that Mr. Bradford had no valid creditor claim against Mrs. Bradford is the fact that Mrs. Bradford retains her undivided one half interest in the property. The Court did not award Mr. Bradford, on any claim, or any portion of Mrs. Bradford’s undivided one half interest. *id.* If Mr. Bradford is a valid creditor of Mrs. Bradford, then that amount Mrs. Bradford was indebted to him would have been taken out of her undivided one half interest. This was not done, because Mrs. Bradford owes nothing to Mr. Bradford, and Mr. Bradford has no legitimate claim.

Therefore, the court's determination that conveyance of this property to her son was fraudulent should be reversed and the court should declare that husband and appellant, Mr. DeMita, each own a one-half interest in said property in common.

#### CONCLUSION

There was no evidence or legal precedent to support finding that Mr. Bradford was Mrs. Bradford's creditor and, therefore, a fraudulent conveyance fails. Appellant prays that this Court reverse the Court of Appeal’s ruling with respect to the fraudulent conveyance and declare that Mr. Bradford and appellant, Mr. DeMita, each own a one-half interest in said property in common.

DATED February 14, 2000.

  
James DeMita / Appellant

MAILING CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed, postage prepaid, this 15 day of February, 2000, to the following:

Thomas R. Patton  
Aldrich, Nelson, Weight & Esplin  
Attorneys for Plaintiff/Appellee  
43 East 200 North  
P.O. Box AL@  
Provo, UT 84603-0200

  
Andrea DeMita

# EXIBIT A

Utah Code Annotated §25-6-5

(a) a person who directly or indirectly owns, controls, or holds with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(b) a corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(c) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(d) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but does not include:

(a) property to the extent it is encumbered by a valid lien;

(b) property to the extent it is generally exempt under nonbankruptcy law; or

(c) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person who has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person who is liable on a claim.

(7) "Insider" includes:

(a) if the debtor is an individual:

(i) a relative of the debtor or of a general partner of the debtor;

(ii) a partnership in which the debtor is a general partner;

(iii) a general partner in a partnership described in Subsection (7)(a)(ii);

(iv) a corporation of which the debtor is a *director, officer, or person in control*; or

(v) a limited liability company of which the debtor is a member or manager;

(b) if the debtor is a corporation:

(i) a director of the debtor;

(ii) an officer of the debtor;

(iii) a person in control of the debtor;

(iv) a partnership in which the debtor is a general partner;

(v) a general partner in a partnership described in Subsection (7)(b)(iv);

(vi) a limited liability company of which the debtor is a member or manager; or

(vii) a relative of a general partner, director, officer, or person in control of the debtor;

(c) if the debtor is a partnership:

(i) a general partner in the debtor;

## CHAPTER 6

### UNIFORM FRAUDULENT TRANSFER ACT

Section	
25-6-1.	Short title.
25-6-2.	Definitions.
25-6-3.	Insolvency.
25-6-4.	Value — Transfer.
25-6-5.	Fraudulent transfer — Claim arising before or after transfer.
25-6-6.	Fraudulent transfer — Claim arising before transfer.
25-6-7.	Transfer — When made.
25-6-8.	Remedies of creditors.
25-6-9.	Good faith transfer.
25-6-10.	Claim for relief — Time limits.
25-6-11.	Legal principles applicable to chapter.
25-6-12.	Construction of chapter.
25-6-13.	Applicability of chapter.

#### 25-6-1. Short title.

This chapter is known as the "Uniform Fraudulent Transfer Act."

1988

#### 25-6-2. Definitions.

In this chapter:

(1) "Affiliate" means:

- (ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;
- (iii) another partnership in which the debtor is a general partner;
- (iv) a general partner in a partnership described in Subsection (7)(c)(iii);
- (v) a limited liability company of which the debtor is a member or manager; or
- (vi) a person in control of the debtor;
- (d) if the debtor is a limited liability company:
  - (i) a member or manager of the debtor;
  - (ii) another limited liability company in which the debtor is a member or manager;
  - (iii) a partnership in which the debtor is a general partner;
  - (iv) a general partner in a partnership described in Subsection (7)(d)(iii);
  - (v) a person in control of the debtor; or
  - (vi) a relative of a general partner, member, manager, or person in control of the debtor;
- (e) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
- (f) a managing agent of the debtor.

(8) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) "Person" means an individual, partnership, limited liability company, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) "Property" means anything that may be the subject of ownership.

(11) "Relative" means an individual or an individual related to a spouse, related by consanguinity within the third degree as determined by the common law, or a spouse, and includes an individual in an adoptive relationship within the third degree.

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, or voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings. 1992

### 25-6-3. Insolvency.

(1) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(2) A debtor who is generally not paying his debts as they become due is presumed to be insolvent.

(3) A partnership is insolvent under Subsection (1) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(4) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

(5) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset. 1988

### 25-6-4. Value — Transfer.

(1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred

or an antecedent debt is secured or satisfied. However, value does not include an unperformed promise made other than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(2) Under Subsection 25-6-5(1)(b) and Section 25-6-6, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous. 1988

### 25-6-5. Fraudulent transfer — Claim arising before or after transfer.

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) without receiving a reasonably equivalent value in exchange for the transfer or obligation; and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) To determine "actual intent" under Subsection (1)(a), consideration may be given, among other factors, to whether:

(a) the transfer or obligation was to an insider;

(b) the debtor retained possession or control of the property transferred after the transfer;

(c) the transfer or obligation was disclosed or concealed;

(d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) the transfer was of substantially all the debtor's assets;

(f) the debtor absconded;

(g) the debtor removed or concealed assets;

(h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor. 1988

### 25-6-6. Fraudulent transfer — Claim arising before transfer.

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if:

(a) the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

(b) the debtor was insolvent at the time or became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent. 1988

#### 25-6-7. Transfer — When made.

In this chapter:

(1) A transfer is made:

(a) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(b) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien other than under this chapter that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in Subsection (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in Subsection (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

(a) if oral, when it becomes effective between the parties; or

(b) if evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee. 1988

#### 25-6-8. Remedies of creditors.

(1) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 25-6-9, may obtain:

(a) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by the Utah Rules of Civil Procedure;

(c) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court orders, may levy execution on the asset transferred or its proceeds. 1988

#### 25-6-9. Good faith transfer.

(1) A transfer or obligation is not voidable under Subsection 25-6-5(1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Subsection 25-6-8(1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under Subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) the first transferee of the asset or the person for whose benefit the transfer was made; or

(b) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(3) If the judgment under Subsection (2) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to an adjustment as equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) a lien on or a right to retain any interest in the asset transferred;

(b) enforcement of any obligation incurred; or

(c) a reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under Subsection 25-6-5(1)(b) or Section 25-6-6 if the transfer results from:

(a) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) enforcement of a security interest in compliance with Title 70A, Chapter 9, the Uniform Commercial Code.

(6) A transfer is not voidable under Subsection 25-6-6(2):

(a) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(b) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor. 1988

#### 25-6-10. Claim for relief — Time limits.

A claim for relief or cause of action regarding a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

(1) under Subsection 25-6-5(1)(a), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under Subsection 25-6-5(1)(b) or 25-6-6(1), within four years after the transfer was made or the obligation was incurred; or

(3) under Subsection 25-6-6(2), within one year after the transfer was made or the obligation was incurred. 1988

#### 25-6-11. Legal principles applicable to chapter.

Unless displaced by this chapter, the principles of law and equity, including merchant law and the law relating to principal and agent, equitable subordination, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement this chapter's provisions. 1988

#### 25-6-12. Construction of chapter.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. 1988

## ADDENDUM "A"

4  
JUL 13 1998

1 THOMAS R. PATTON (2542)  
2 ALDRICH, NELSON, WEIGHT & ESPLIN  
3 Attorneys for Plaintiff  
4 43 East 200 North  
5 P.O. Box "L"  
6 Provo, UT 84603-0200  
7 Telephone: 373-4912

8 IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR  
9 UTAH COUNTY, STATE OF UTAH

10 GEORGE R. BRADFORD, :  
11 Plaintiff, : FINDINGS OF FACT AND  
12 vs. : CONCLUSIONS OF LAW  
13 :  
14 : Civil No. 974401237  
15 ANDREA O. BRADFORD and JAMES A. :  
16 DEMITA, :  
17 Defendant. : Judge Steven L. Hansen Div 7

18 The above entitled matter came before the Court for trial on March 4, 1998. The Plaintiff was  
19 present and represented by counsel, Thomas R. Patton. Defendants were also present and represented  
20 by counsel, Howard Chuntz. The Court having heard testimony and evidence and being sufficiently  
21 advised in the premises now makes the following:

22 FINDINGS OF FACT

- 23 1. Mr. Bradford and Mrs. Bradford were married in June of 1985 in Provo, Utah and have been  
24 husband and wife since that date.  
25 2. Mr. Bradford and Mrs. Bradford are and have been residents of Utah County, Utah for at least  
three months prior to the commencement of this action.  
3. There have arisen irreconcilable differences between Mr. Bradford and Mrs. Bradford that  
make the continuation of this marriage no longer viable.  
4. Both parties have been married before, making this a second marriage for both parties.

- 1           5. No children were born of this marriage, but each had adult children from prior marriages.
- 2           6. Mr. Bradford is 63 years old and Mrs. Bradford is 65 years old.
- 3           7. At the time of the parties' marriage, Mrs. Bradford had limited assets other than her personal
- 4 property and some property in Indianola which eventually sold for \$5000.00. However, Mr. Bradford
- 5 gave Mrs. Bradford the funds whose returns were eventually used to pay off the debt on the Indianola
- 6 land. Mrs. Bradford kept the returns on the sale of the Indianola land for herself.
- 7           8. Mr. Bradford worked at Geneva Steel before the parties married and subsequently obtained
- 8 other training and is now a janitor with Nebo School District.
- 9           9. Mr. Bradford receives \$410.00 from his current employment at Nebo School District, \$769.00
- 10 from Social Security, and \$324.00 from his pension and \$50.00 rent from the property for a total of
- 11 \$1553.00 net per month. The Court notes that Mr. Bradford pays approximately \$105.00 per month into
- 12 a retirement account at the school district. Since that payment is discretionary, the Court will add this
- 13 to his net income for a total of \$1658.00.
- 14           10. Mrs. Bradford has worked at temporary jobs, but has not worked for many years as she
- 15 claims that she has carpal tunnel syndrome and has difficulty focusing on her task.
- 16           11. Mrs. Bradford receives approximately \$150.00 for child care of her grandchild, and \$381.00
- 17 in Social Security for a total of \$531.00 per month.
- 18           12. The Court finds that neither Mr. nor Mrs. Bradford are in a point in their life where they
- 19 could be retained or develop new skills for purposes of substantially increasing their income.
- 20           13. Mr. Bradford and Mrs. Bradford have lived in the home in Spanish Fork, Utah since the
- 21 marriage. This home was paid for and given to Mr. Bradford as part of his inheritance before the
- 22 marriage. Mr. Bradford was born and raised in this house. This house has been owned by Mr.
- 23 Bradford's family for many generations and has been passed down within the family from generation to
- 24
- 25

1 generation.

2 14. The Court finds that since the marriage of the parties that there have been improvements to  
3 the house in that the roof was repaired, a furnace was added, and the septic system had been repaired and  
4 the home was hooked up to city water.

5 15. Although Mrs. Bradford claims to have been an integral part of the improvements, the Court  
6 finds that she merely made phone calls and arrangements to have the work completed. Any other  
7 projects, such as painting, which she did were not improvements but along the lines of general repair and  
8 maintenance of the home.

9 16. The repairs and improvements were paid for through funds which Mr. Bradford received  
10 from a settlement with Geneva Steel. These funds were accumulated prior to the marriage.

11 17. It is undisputed that the house is worth approximately \$180,000.00.

12 18. Mr. Bradford deeded by way of warranty deed the property back to he and Mrs. Bradford  
13 as "joint tenants with full rights of survivorship and not as tenants in common" approximately four years  
14 after they had married.

15 19. In 1992, Mr. Bradford filed for divorce from Mrs. Bradford. At that time, Mr. Bradford  
16 requested that the home and real property be awarded to him. This divorce action was dismissed in 1993.

17 20. Since 1992, Mr. Bradford and Mrs. Bradford have had many arguments and Mr. Bradford  
18 has threatened to divorce Mrs. Bradford on many occasions.

19 21. James Demita, Mrs. Bradford's adult son, has been living with Mr. Bradford and Mrs.  
20 Bradford since 1995. Mr. Demita's minor son also stays at the home from time to time. Mr. Demita  
21 stays rent free, although he is supposed to be pay the utilities.

22 22. Mr. Demita went to one year of law school and has since worked odd jobs. At the time of  
23 the trial, Mr. Demita was working part-time at a computer store. His 1996 gross income was only  
24

1 approximately \$3500.00.

2 23. In 1996, the parties began to jointly develop land for rezoning, division into lots and sale.  
3 They hired LSI Inc. to survey the ground, prepare a subdivision plat and perform other pre-sales work.  
4 Mr. Demita was to receive 25% of the profits form the sale for his assistance in developing the property.

5 24. In July of 1996, Mr. Bradford came home to various engineers at his home. Although the  
6 reasons for the ensuing argument with Mrs. Bradford are in dispute, Mr. Bradford was upset with the  
7 way the development was proceedings. This particular argument was more sever than prior arguments  
8 and divorce was discussed.

9 25. On August 8, 1996, Mrs. Bradford by way of Quit-claim Deed dedeed her share of the home  
10 to her son James Demita. Mr. Demita gave his mother \$10.00 for the deed.

11 26. The Court finds that \$10.00 was not equivalent value of one-half of the house and property.

12 27. The Court finds that the transfer of the Quit-claim Deed was made to an "insider" according  
13 to Utah law as Mr. Demita is Mrs. Bradford's son.

14 28. Mrs. Bradford claimed that the transfer to Mr. Demita was for estate planning purposes.  
15 However, she acknowledged that she only dedeed the property to him and not her other five children,  
16 and that she did not have nor did she prepare a will at that time nor were instructions given regarding the  
17 disposition of the property.

18 29. After the transfer, Mrs. Bradford and Mr. Demita continued to live in the home as they had  
19 before.

20 30. Neither Mrs. Bradford nor Mr. Demita told Mr. Bradford of the Quit-claim Deed. Mr.  
21 Bradford subsequently discovered the deed when his daughter went to the County Recorder's Office.  
22 Mr. Bradford's daughter went to the recorder's office to verify that the home and property had beer  
23 rezoned for development as Mr. Demita had indicated to them. The daughter then discovered the Quit-

24

25

1 claim Deed and that in actuality the property had not been rezoned.

2 31. Soon after the discovery of this information, Mr. Bradford filed for this divorce action. The  
3 time between the granting of the Quit-claim Deed in August of 1996 and the filing of divorce was  
4 approximately eleven months.

5 32. The transfer of Mrs. Bradford's portion of the home to her son left her in possession of only  
6 her personal property, which has limited value. Thus, this transfer constituted a transfer of substantially  
7 all of her assets.

8 33. When asked on cross examination whether she could afford to pay Mr. Bradford one-half  
9 of the value of the property, Mrs. Bradford indicated that she did not have the funds and would have to  
10 look to family members to assist her if she were obligated to pay this.

11 34. At the time of the transfer of the Quit-claim Deed, Mrs. Bradford should have reasonably  
12 believed that Mr. Bradford might file a divorce action and that he would probably claim the home and  
13 property as his before the marriage as he had done so in the divorce action which he filed in 1992.

14 35. The Court finds that the house and property is in fact not partitionable as it contains a  
15 residence, road and river frontage. If an interest were to be conveyed the house would have to be  
16 refinanced or sold.

17 36. Even though Mr. Bradford placed Mrs. Bradford's name on the new deed to the house, the  
18 Court finds that the house and property belong to Mr. Bradford as he inherited this from his father before  
19 the marriage. This is consistent with previous Utah Supreme Court Decisions wherein the parties married  
20 later in life and one of the parties had brought into the marriage a significant asset which they later deeded  
21 to the other spouse and subsequently were divorced. See *Georgedes vs. Georgedes*, 627 P.2d 44 (Utah  
22 1981); *Jespersion vs. Jespersen*, 610 P.2d 326 (Utah 1980).

23 37. Mr. Bradford earns \$1926.00 per month. He nets approximately \$1658. His financia  
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25

1 declaration indicates that his monthly expenses are \$1000.00 per month without rent or a mortgage  
2 payment. The Court finds that these expenses are reasonable and necessary.

3 38. Mr. Bradford has approximately \$600.00 per month after necessary expenses. Mr. Bradford  
4 would also have at his disposal the house and property which do not currently have a mortgage and are  
5 worth approximately \$180,000.00.

6 39. Mrs. Bradford nets \$531.00 per month. She listed her expenses at \$1750 which includes  
7 \$600.00 for rent (which she is currently not paying). This leaves Mrs. Bradford with a shortfall of  
8 approximately \$1200.00 per month. Mrs. Bradford is 65 years old, not trained in an employable skill, and  
9 has health concerns. She gives part-time child care to her grandson for which she is paid \$150.00 per  
10 month. Although she may be able to earn more from child care, there was insufficient evidence that she  
11 would be able to find such a position or that even if she were to increase her child care hours that it  
12 would meet her shortfall. Thus, the Court finds that Mrs. Bradford has a need for alimony.

13 40. Mrs. Bradford has expenses which exceed her income and cannot make up the shortfall. Mr.  
14 Bradford has approximately \$600.00 per month in income which exceeds his expenses. Therefore, Mr.  
15 Bradford shall pay Mrs. Bradford \$600.00 per month in alimony for a term not exceeding the length of  
16 the marriage. This would give \$1131.00 to Mrs. Bradford to meet her expenses and leave \$1058.00 for  
17 Mr. Bradford's expenses.

18 41. Mr. and Mrs. Bradford have acquired the following personal property during the marriage  
19 which property had value at the time of the trial as follows:

20	First Security Bank Accounts:	\$6492.00
21	Valic IRA	\$2418.00
22	Utah Retirement	\$1583.00
23	Insurance Policy Cash Value	\$3990.00

24  
25



1 she had.

2 7. The Court accordingly sets aside the transfer that Mrs. Bradford made to Mr. Demita as the  
3 transfer was a fraudulent conveyance.

4 8. The Court concludes that the property and the house are Mr. Bradford's as he inherited them  
5 before the marriage, the parties married later in life for twelve years with no children of issue of the  
6 marriage and that Mrs. Bradford brought minimal assets into the marriage and contributed little financially  
7 to the improvements on the house.

8 9. Since Mrs. Bradford has a need for alimony in the amount of nearly \$1200.00 which she  
9 cannot substantially reduce, and since Mr. Bradford has approximately \$600.00 per month at his disposal  
10 after expenses, the Court concludes that Mr. Bradford pay \$600 per month alimony to Mrs. Bradford  
11 which payment shall not exceed the length of the marriage.

12 10. The Court concludes that the parties shall divide equally the accounts listed in Finding  
13 number 41.

14 11. Each party has requested attorneys' fees; however, neither party has submitted testimony  
15 regarding that issue. Therefore, each party shall pay their own costs and attorney's fees.

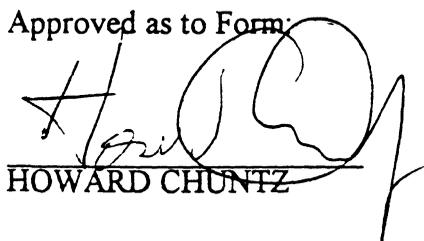
16 DATED this 14<sup>th</sup> day of June, 1998.

17 BY THE COURT:

18   
19 STEVEN L. HANSEN  
20 District Court Judge



21 Approved as to Form:

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23 HOWARD CHUNTZ  
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MAILING CERTIFICATE

I hereby certify that I mailed, postage prepaid, this 30 day of June, 1998, a copy of the foregoing to the following:

Howard Chuntz  
Attorney at Law  
1149 West Center Street  
Orem, UT 84057



---

**NOTICE OF INTENT TO SUBMIT FOR SIGNATURE**

TO HOWARD CHUNTZ, ATTORNEY FOR DEFENDANT:

You will please take notice that the undersigned attorney for Defendant will submit the above and foregoing Order to the Honorable Steven L. Hansen for his signature upon the expiration of five (5) days from the date of this notice, plus three (3) days for mailing, unless written objection is filed prior to that time pursuant to Rule 4-504 of the Utah Rules of Judicial Administration.

DATED this 30 day of June, 1998.

ALDRICH, NELSON, WEIGHT & ESPLIN



---

THOMAS R. PATTON  
Attorney for Plaintiff

## ADDENDUM "B"

JUL 14 1998

1 THOMAS R. PATTON (2542)  
2 ALDRICH, NELSON, WEIGHT & ESPLIN  
3 Attorneys for Plaintiff  
4 43 East 200 North  
5 P.O. Box "L"  
6 Provo, UT 84603-0200  
7 Telephone: 373-4912

MICROFILMED 7/17/98

8 IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR  
9 UTAH COUNTY, STATE OF UTAH

10 GEORGE R. BRADFORD,  
11 Plaintiff,

:  
: DECREE OF DIVORCE

12 vs.

:  
: Civil No. 974401237

13 ANDREA O. BRADFORD and JAMES A.  
14 DEMITA,  
15 Defendant.

:  
: Judge Steven L. Hansen

16 The above entitled matter came before the Court for trial on March 4, 1998. The Plaintiff was  
17 present and represented by counsel, Thomas R. Patton. Defendants were also present and represented  
18 by counsel, Howard Chuntz. The Court having heard testimony and evidence and being sufficiently  
19 advised in the premises and having heretofore entered its Findings of Fact and Conclusions of Law, now  
20 enters the following:

21 DECREE OF DIVORCE

- 22 1. This Court has jurisdiction over the matter in accordance with the provisions of Utah Code  
23 Ann. § 78-3-4(1).
- 24 2. The parties are granted a Decree of Divorce on the basis of irreconcilable differences.
- 25 3. Pursuant to Utah Code Ann. § 25-6-2(4) and § 25-6-5 Mr. Bradford is a creditor of Mrs.  
Bradford in that he has a claim to the real property which Mrs. Bradford deeded to her son, Mr. Demita.
4. This transfer between Mr. Bradford and Mr. Demita was made to an insider pursuant to § 25-

1 6-2(7) of the Utah Code.

2 5. This transfer made Mrs. Bradford insolvent, according to § 25-6-3 of the Utah Code, as her  
3 debts exceeded her income after the transfer was made.

4 6. According to the provisions of Utah Code Ann. § 25-6-5, the transfer by Mrs. Bradford to her  
5 son Mr. Demita was a fraudulent transfer. The Court looks to the fact that Mrs. Bradford only received  
6 \$10.00 for the Quit-claim Deed, not an equivalent value, and that she believed or reasonably should have  
7 believed that she would incur debts beyond her ability to pay if she were divorced from Mr. Bradford.  
8 The Court also looks to the evidence and applies it to the factors listed in § 25-5-6(2) and notes that the  
9 transfer was concealed from Mr. Bradford, Mrs. Bradford continued to live in the house as before, Mr.  
10 Bradford had threatened Mrs. Bradford with divorce a matter of weeks before the transfer, and the  
11 transfer was substantially all of the assets that Mrs. Bradford believed that she had.

12 7. The Court accordingly sets aside the transfer that Mrs. Bradford made to Mr. Demita as the  
13 transfer was a fraudulent conveyance. Therefore, Mr. Bradford is awarded all right title and interest in  
14 the property located at 1100 South Main, Spanish Fork, Utah. The property is more particularly  
15 described as:

16 Parcel No. 2: Beginning at a point which is West 322.35 feet and North 1288.95 feet  
17 from the East quarter corner of Section 25, Township 8 South, Range 2 East, of the Salt  
18 Lake Base and Meridian; thence South 89° 53' 7" West 259.68 feet; thence South 1° 42'  
19 11" West 71.44 feet; thence South 59° 44' 38" West 313.10 feet; thence North 66° 59'  
20 34" West along the North bank of the Spanish Fork River 668.40 feet; thence along said  
21 river bank South 87° 48' 04" West 592.12 feet; thence North 47° 54' 45" West 140.69  
22 feet; thence North 65° 44' 29" East 1150.07 feet; thence South 52° 37' 40" East 509.07  
23 feet; thence South 58° 16' 44" East 122.86 feet; thence North 38° 08' 23" East 7.40 feet;  
24 thence South 68° 07' 31" East 188.79 feet; thence South 88° 17' 42" East 110.24 feet;  
25 thence South 1° 41' 54" West 134.30 feet to the point of beginning.

Together with 13 shares in the Spanish Fork Southeast Irrigation Company.

23 8. Since Mrs. Bradford has a need for alimony in the amount of nearly \$1200.00 which she  
24 cannot substantially reduce, and since Mr. Bradford has approximately \$600.00 per month at his disposal

1 after expenses, the Court orders that Mr. Bradford pay \$600 per month alimony to Mrs. Bradford which  
2 payment shall not exceed the length of the marriage.

3 19. The Court orders that the parties shall divide equally the accounts listed below:

4	First Security Bank Accounts:	\$6492.00
5	Valic IRA	\$2418.00
6	Utah Retirement	\$1583.00
7	Insurance Policy Cash Value	\$3990.00

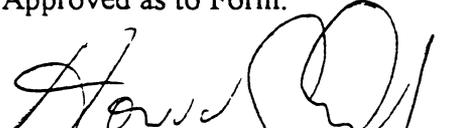
8 11. The Court orders that each party shall pay their own costs and attorney's fees  
9 DATED this 14 day of <sup>July</sup> ~~June~~, 1998.

10 BY THE COURT:

11   
12 STEVEN L. HANSEN  
13 District Court Judge



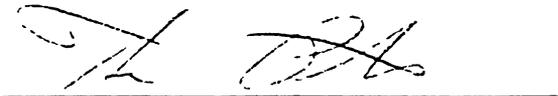
14 Approved as to Form:

15   
16 HOWARD CHUNTZ  
17

18 MAILING CERTIFICATE

19 I hereby certify that I mailed, postage prepaid, this 20 day of June, 1998, a copy of the  
20 foregoing to the following:

21 Howard Chuntz  
22 Attorney at Law  
23 1149 West Center Street  
24 Orem, UT 84057

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**NOTICE OF INTENT TO SUBMIT FOR SIGNATURE**

TO HOWARD CHUNTZ, ATTORNEY FOR DEFENDANT:

You will please take notice that the undersigned attorney for Defendant will submit the above and foregoing Order to the Honorable Steven L. Hansen for his signature upon the expiration of five (5) days from the date of this notice, plus three (3) days for mailing, unless written objection is filed prior to that time pursuant to Rule 4-504 of the Utah Rules of Judicial Administration.

DATED this 30 day of June, 1998.

ALDRICH, NELSON, WEIGHT & ESPLIN



\_\_\_\_\_  
THOMAS R. PATTON  
Attorney for Plaintiff

## ADDENDUM "C"

Howard Chuntz, No. 4208  
Attorney for Defendant  
1149 West Center Street  
Orem, Utah 84057  
Telephone: (801) 222-9700

IN THE FOURTH JUDICIAL DISTRICT COURT  
COUNTY OF UTAH, STATE OF UTAH

GEORGE R. BRADFORD,

Plaintiff,

v.

ANDREA O. BRADFORD and JAMES A.  
DEMITA,

Defendants.

MOTION TO ALTER AND  
AMEND FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECREE

Civil No. 974401237CS  
Judge Steven L. Hansen

---

COME NOW defendants in the above captioned matter, by and through their attorney, Howard Chuntz, and move the Court to alter and amend the Findings of Fact, Conclusions of Law and the Decree of Divorce entered in this matter pursuant to Rules 52(b) and 59(e) of the Utah Rules of Civil Procedure.

The Findings of Fact at paragraph 18 reflect that Mr. Bradford deeded the property to he and Mrs. Bradford in joint tenancy, but do not reflect any statement concerning Mr. Bradford's intent or the reason for doing so. The Findings of Fact should be amended to include two additional findings as follows:

- a. When Mr. Bradford deeded the property to Mrs. Bradford in joint tenancy, it was his intent to give her half the property. (See video tape at 2:35:30-48 and 3:09:45-3:10:05).
- b. Mr. Bradford gave half of the property to Mrs. Bradford because he wanted her to have half, because he wanted to take care of her and because he loved her. (See video tape at 2:36:27-51 and 3:44:20-50).

The Court's Findings of Fact reflect at paragraph 19 that at the time of the 1992 divorce proceedings, Mr. Bradford requested that the home and real property be awarded to him and that

that action was dismissed in 1993. There should be additional findings of fact to reflect that Mr. Bradford took no action nor made any demand of Mrs. Bradford for a reconveyance of the subject property subsequent to the 1992 divorce until filing again in 1997.

The Court should find that at the time Mrs. Bradford quit claimed her interest in the property to Mr. DeMita, she was not indebted to Mr. Bradford. (See video tape at 3:07:20-30).

There is no evidence to support finding no. 34 that Mrs. Bradford should have reasonably believed that Mr. Bradford might file a divorce action and that he would probably claim the home and property as he had done so in the divorce action in 1992. From the facts and circumstances adduced at trial and under which the parties lived, Mrs. Bradford could just have reasonably believed that Mr. Bradford had given up any demand for a return of half of the property that he gave to her. This belief could be reasonably founded on the basis that there had been no further demand to deliver the property to him during the intervening four to five years, despite the numerous threats of divorce, and in addition, because the parties continued to deal with the property as joint owners, particularly with respect to their efforts to develop and sell lots in the property. In fact, it seems more reasonable that Mrs. Bradford should have expected that any issue concerning demand for return of the property was long in the past and that she and Mr. Bradford, in fact, each owned one-half because the parties continued to work together to develop and sell the property after the "severe argument and discussion of divorce in July of 1996 and the fact that no divorce action took place for a year after that time.

The Court's finding in paragraph 36 that ". . . the house and property belonged to Mr. Bradford . . ." is not consistent with the evidence nor case law. Although Mr. Bradford owned the property prior to the parties' marriage, he chose to give half of it to Mrs. Bradford after they had been married several years because he cared for her, wanted to take care of her and because he loved her. He intended to give her the property and it was his intent that she own one-half of it. This gifting of one-half of the property changed the nature of the property from solely owned pre-marital property to jointly held marital property as set forth in Mortensen v. Mortensen, 760 P.2d 304 (Utah 1988). In that case, the Court ruled that property acquired by gift or inheritance by one spouse should be awarded to that spouse on divorce unless the

acquiring spouse places title in their joint names in such a manner as to evidence and intent to make it marital property. (*id*) That is the very situation in the present case. Mr. Bradford obtained the property as a gift from his parents, but deeded it in joint tenancy to Mrs. Bradford with the intent to give her half because he cared for her, loved her, wanted to take care of her and wanted her to have one-half of the property. The case of Jespersion v. Jespersen cited in paragraph 36 of the Court's Findings should be distinguished as not applicable to the present case because in that case the Court found ". . . there was no intention by plaintiff to create a one-half property interest in defendant, nor any expectation by defendant that he had received a one-half property interest." (Jespersion v. Jespersen, 610 P.2d 326, 328 (Utah 1980)). The case of (Georgedes) cited by the Court in paragraph 36 should also be distinguished. In that case the Court considered the marriage of fairly short duration whereas in this case the marriage is of almost thirteen years. In addition, the Court also weighed in connection with the property settlement the fact that the party receiving the property was also being burdened with all of the outstanding debts and that any increase in the value of the property was offset by the marital debt that was being taken on. Finally, Georgedes was decided several years prior to Mortensen v. Mortensen and makes no mention of the Court's rule in Mortensen regarding the gifted property.

The Court should amend paragraph 3 of the Conclusions of Law to reflect that Mr. Bradford was not a creditor of Mrs. Bradford's because Mr. Bradford's claim to the real property is not based on any legal right and Mrs. Bradford's knowledge of any such claim at the time of her conveyance to her son would have been purely speculative.

The Court should amend paragraph 6 of its Conclusions of Law to reflect that the conveyance from Mrs. Bradford to Mr. DeMita was not a fraudulent transfer.

The Court should amend paragraph 7 of the Conclusions of Law so as to remove the same and not set aside the transfer from Mrs. Bradford to Mr. DeMita as no fraudulent conveyance occurred.

The Court should amend paragraph 8 of the Conclusions of Law to be reflective of the amended Findings of Fact set forth above by defendants.

In the alternative, if the Court continues to conclude that there was a fraudulent conveyance, it should conclude that the parties own the real property jointly, that the property should be sold and the equity divided equally between them as each of them needs the funds therefrom to maintain a place of abode and that the property cannot be equitably divided without sale.

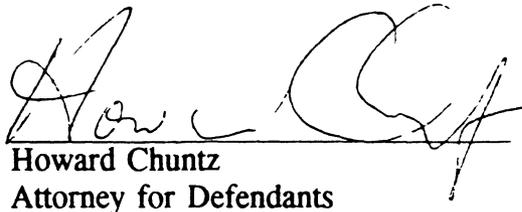
Defendant, Andrea Bradford, should be restored to her former name of Andrea DeMita.

Finally, the Court should amend and alter paragraphs 3, 4, 5, 6 and 7 of the Decree of Divorce to be consistent with the amendments and alterations to the foregoing Findings of Fact and Conclusions of Law and to reflect that either Mr. Bradford owns a one-half interest in the subject real property or that Mrs. Bradford owns a one-half interest in the subject property and to require the property to be sold and the proceeds divided between Mr. Bradford and whichever of the defendants the Court deems to own the other half.

The Court has broad discretion in dividing the parties' property at the time of a divorce regardless of its source or time of acquisition. In the exercise of discretion, trial courts need to be guided by the general purpose to be achieved by a property division, which is to allocate the property in a manner which best serves the needs of the parties and best permits them to pursue their separate lives. Read v. Read, 594 P.2d 871 (Utah 1979). The Court's present Findings of Fact, Conclusions of Law and Decree work an entirely and equitable outcome. The parties were married more than twelve years and are now into or close to their retirement from gainful employment. It is inequitable and does not serve the best interest of the parties to go forward in their lives to deprive Mrs. Bradford of any and all value in the real property that she was given by Mr. Bradford and which she believes she owned for more than seven years. The facts of the case, the law applicable to this case, and equity all require that the Court amend and alter its Findings of Fact, Conclusions of Law and the Decree as set forth herein and defendants'

respectfully pray that the same be done.

DATED this ~~2<sup>nd</sup>~~<sup>22<sup>nd</sup></sup> day of July, 1998.

  
Howard Chuntz  
Attorney for Defendants

#### MAILING CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed, postage prepaid, this 22<sup>nd</sup> day of July, 1998, to the following:

Thomas R. Patton  
Aldrich, Nelson, Weight & Esplin  
Attorneys for Plaintiff  
43 East 200 North  
P.O. Box "L"  
Provo, UT 84606



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## ADDENDUM "D"

JG  
SEP 14 1998

Howard Chuntz, No. 4208  
Attorney for Defendant  
1149 West Center Street  
Orem, Utah 84057  
Telephone: (801) 222-9700

IN THE FOURTH JUDICIAL DISTRICT COURT  
COUNTY OF UTAH, STATE OF UTAH

GEORGE R. BRADFORD,  
Plaintiff,

ORDER

v.

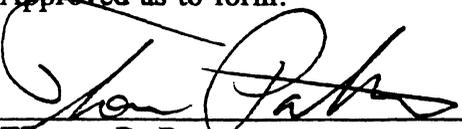
ANDREA O. BRADFORD and JAMES A.  
DEMITA,  
Defendants.

Civil No. 974401237CS

The Court having reviewed defendants' Motion to Alter and Amend Findings of Fact and Conclusions of Law and Decree of Divorce and finding that the Court's original Findings of Fact and Conclusions of Law issued by Judge Hansen are appropriate, therefore, denies defendants' Motion.

DATED September 4/1998.

BY THE COURT  
  
Gary D. Stone, Judge  


Approved as to form:  
  
Thomas R. Patton  
Attorney for Plaintiff

## ADDENDUM "E"

IN THE FOURTH JUDICIAL DISTRICT COURT  
THE STATE OF UTAH, UTAH COUNTY

\_\_\_\_\_) )  
GEORGE R. BRADFORD, ) )  
 ) )  
Plaintiff, ) )

vs. )

ANDREA O. BRADFORD and ) )  
JAMES DEMITA, ) )  
 ) )  
Defendants. ) )  
\_\_\_\_\_)

Copy

) Case No. 974401237 CS  
) (Partial transcript)  
)

Hearing  
Electronically Recorded on  
March 4, 1998

BEFORE: THE HONORABLE STEVEN L. HANSEN  
Fourth District Court Judge

For the Plaintiff: Thomas R. Patton  
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P R O C E E D I N G S

(Electronically recorded on March 4, 1998)

(Direct examination of Mrs. Bradford by Mr. Patton in progress. Certain portions extracted)

1 Q. BY MR. PATTON: Do you think that those  
2 things are worth more than \$500 if you added them all  
3 together?  
4

5 A. I don't know the market value that people  
6 would buy -- what they would pay for it. I don't know  
7 how much people would pay me for those.  
8

9 Q. Would it be worth more than a thousand?  
10

11 A. It would be worth more to me because to  
12 replace it I would have to pay more.  
13

14 Q. Can you tell the Court what you own right  
15 now that's worth more than \$300, any item of property  
16 that you own that is worth more than \$300?

17 A. A stereo, stereo console.

18 THE COURT: What console?

19 THE WITNESS: A stereo console. It's an  
20 old -- I don't know how you say it -- a console.

21 THE COURT: For a stereo?

22 THE WITNESS: Console.

23 Q. BY MR. PATTON: Do you remember when I took  
24 your deposition last year?

25 A. Yes.

1 Q. You indicated that you own two dressers; is  
2 that correct?

3 A. Yes, that's correct.

4 Q. And you also owned a wooden kitchen table  
5 and six chairs; is that right?

6 A. Yes, that's right.

7 Q. And then you also had personal pictures and  
8 family genealogy?

9 A. Yes.

10 Q. And those items--

11 A. And a bed.

12 Q. And a bed. And that if they were all added  
13 together, and you had to sell them at a yard sale or  
14 sell them as used furniture, could you get more than a  
15 thousand dollars for them?

16 A. Antiques, like -- I don't know.

17 Q. You don't know?

18 A. I don't know what people pay.

19 Q. Do you remember signing a quit claim deed to  
20 Mr. Demita?

21 A. Yes.

22 Q. And that was for half of the property that  
23 Mr. Bradford owned prior to the marriage; is that  
24 correct?

25 A. What I owned -- my half what I owned is what

1 I quit claimed.

2 Q. You quit claimed to Mr. Demita?

3 A. Yes.

4 Q. When did you do that?

5 A. When did I do that?

6 Q. Yes.

7 A. August 8th, 1996.

8 Q. I'm going to show you what's been marked  
9 Plaintiff's Exhibit No. 1 for identification and ask  
10 if you recognize that document. Is that a copy of the  
11 quit claim you signed to Mr. Demita?

12 A. Yes, it is.

13 Q. And when you are looking at that quit claim  
14 deed, whose handwriting is printed in there word,  
15 "Andrea Bradford, Spanish Fork, James Demita," whose  
16 handwriting is that?

17 A. That's James Demita's handwriting. I asked  
18 him to make up the form for me.

19 Q. And then you signed the quit claim deed?

20 A. Yes, I did.

21 Q. And it was notarized?

22 A. Yes.

23 Q. And that was by Lorea Galloway?

24 A. Yes.

25 Q. And whose office did you go to so that could

1 be notarized?

2 A. It wasn't an office, I went to a bank.

3 Q. You went to a bank and had it notarized?

4 A. Yes.

5 Q. Prior to signing that quit claim deed did  
6 you talk to my client about it?

7 A. No.

8 Q. Did you tell him you were going to do it?

9 A. No.

10 Q. After you did it did you tell him you had  
11 signed that?

12 A. Yes.

13 Q. You did tell him?

14 A. Yes.

15 Q. When did you tell him you had done it?

16 A. In order to get the right date it was one of  
17 the only times that Phyllis Penner came into our  
18 kitchen -- so she might remember the date -- and  
19 Phyllis and George were in the kitchen with me, and I  
20 told George and Phyllis both that they didn't need to  
21 worry about their concerns they had about if I died  
22 first that his children wouldn't get any of the  
23 property. So I told them that I took care of it to  
24 make sure, and I ensured that -- I promised you that  
25 you will get half of the property because I took care

1 of it so that it will be that way.

2 MR. PATTON: May I approach the witness,  
3 your Honor?

4 THE COURT: You may.

5 MR. PATTON: Your Honor, we would submit  
6 Plaintiff's Exhibit No. 1 for identification as  
7 Plaintiff's Exhibit No. 1.

8 THE COURT: Okay, you're offering it into  
9 evidence. Any objection?

10 MR. CHUNTZ: No objection, your Honor.

11 THE COURT: Number 1 will be received.

12 (Exhibit No. 1 received into evidence)

13 Q. BY MR. PATTON: When I took your deposition  
14 I asked you if you owed Mr. Demita any money when you  
15 signed that quit claim deed, and in fact you didn't  
16 owe him any money when you signed that, did you?

17 A. No.

18 Q. And when I asked you why you signed it you  
19 said it was simply estate planning. Is that why you  
20 signed that deed?

21 A. Yes.

22 Q. Did you sign a will?

23 A. No.

24 Q. Did you go see an attorney?

25 A. Yes.

1 Q. Who did you go see?

2 A. Howard Chuntz.

3 Q. And you went to his office and met with him  
4 prior to signing the quit claim deed?

5 A. I can't remember if it was on the telephone  
6 or in his office, but I remember he told me I had two  
7 options, that I could either -- I wasn't knowledgeable  
8 about how to take care of my -- what I owned in case I  
9 died, and so I asked him what I -- how I should ensure  
10 that my child will get what I have -- what I own when  
11 I die. He said I have two options, I could either  
12 quit claim it or I could put it in some kind of a  
13 trust -- family fund or something like that, and he  
14 said the second option will cost you money to do that,  
15 and the first -- quit claim won't cost you any money,  
16 and I said, "Well, I'll--" so I decided I wanted to do  
17 it the quit claim way.

18 Q. When I took your deposition last year you  
19 indicated that you believed you had talked to him by  
20 phone; isn't that correct?

21 A. Say that again.

22 Q. Last year when I took your deposition you  
23 believed that you had talked to Mr. Chuntz by phone  
24 and received that advice; isn't that correct?

25 A. Yes.

1 Q. And you still believe you talked to him by  
2 phone, don't you?

3 A. Yes.

4 Q. It was Mr. Demita who actually went to his  
5 office and met with him; isn't that true?

6 A. No, he was the one that was talking on the  
7 phone with me.

8 Q. So it was Mr. Demita who called Mr. Chuntz?

9 A. I don't know who dialed the number, but it  
10 was -- I needed some attorney and I didn't ever have  
11 an attorney in my life so I asked my son which  
12 attorney I could find this information from, and he  
13 suggested Howard Chuntz.

14 Q. And when you signed the quit claim deed I  
15 asked you if you believed the home was worth -- or the  
16 property was worth \$190,000, and your answer was yes,  
17 wasn't it?

18 A. Say that again.

19 Q. The home and the land that you quit claim  
20 deeded to Mr. Demita, if it hadn't been divided I  
21 asked you if you believed it was worth \$190,000, and  
22 you said yes, you believed that, didn't you?

23 A. Yes.

24 Q. And you still believe that?

25 A. That is what the county had when they sent

1 our tax notice.

2 Q. And you received from Mr. Demita for your  
3 one-half interest \$10; is that correct?

4 A. Not correct.

5 Q. Did he give you any money?

6 A. He gave me labor, which would amount to more  
7 than enough.

8 Q. So when you say you gave it to him for an  
9 estate plan, you're now saying it wasn't an estate  
10 plan, you sold him your property?

11 MR. CHUNTZ: Objection, your Honor, she  
12 hasn't said it wasn't for estate planning. He's  
13 mischaracterizing the witness' statement.

14 THE COURT: Sustained.

15 Q. BY MR. PATTON: How many children do you  
16 have, ma'am?

17 A. Five.

18 Q. Are they all still alive?

19 A. Yes.

20 Q. Are all of their names on that quit claim  
21 deed?

22 A. No.

23 Q. Just Mr. Demita's?

24 A. Yes.

25 Q. And you did that for estate planning

1 purposes?

2 A. Yes.

3 Q. What did you intend -- did you intend to  
4 continue living in the home? When you signed the deed  
5 did you plan to continue living in the home?

6 A. Actually I didn't have any plans.

7 Q. You had no plans?

8 A. No plans.

9 Q. Did you continue to live in the home?

10 A. I did, but--

11 Q. Did you believe that Mr. Demita was going to  
12 force you to not live in the home? Did you expect he  
13 was going to force you out of the home?

14 A. Again, I never had any thoughts about  
15 anything like that.

16 Q. When did you intend for him to actually own  
17 the half-interest in the home? Was it when you died  
18 or was it when you gave him the deed?

19 MR. CHUNTZ: Objection, your Honor, that  
20 calls for a legal conclusion, the deed and delivery of  
21 the deed created ownership, occupancy has nothing to  
22 do with that. I think the questions are confusing to  
23 the witness.

24 THE COURT: He's not asking for a legal  
25 conclusion, he wants to know what her intent was,

1 overruled.

2 MR. CHUNTZ: Maybe he could rephrase it in a  
3 way that doesn't--

4 THE COURT: Go ahead and rephrase it.

5 MR. PATTON: And I'll do that, your Honor.

6 Q. BY MR. PATTON: I'm not trying to trick you,  
7 ma'am. I'm trying to figure out this: did you plan  
8 that he would immediately own half the home when you  
9 gave him the deed, or did you plan that he got it when  
10 you died? Do you understand the difference?

11 A. Okay, say that slower.

12 Q. Did you plan that he would get the home when  
13 you deeded it to him? In other words when you signed  
14 the deed that, "I'm giving you half my home now," or  
15 did you plan that he wouldn't actually get that until  
16 you died?

17 MR. CHUNTZ: Your Honor, objection again.  
18 That goes to the question of ownership as opposed to  
19 the question of occupancy. I think the witness could  
20 be confused as to whether her leaving the home had to  
21 do with ownership or not. I mean these are legal  
22 technicalities that we understand but lay men don't  
23 particularly understand.

24 THE COURT: Well, I think you can follow up  
25 with your own questions to her to help her understand.

1 I think Mr. Patton's question is appropriate, it only  
2 goes to what she--

3 MR. PATTON: May I approach the witness,  
4 your Honor?

5 THE COURT: --her intent.

6 MR. PATTON: May I approach the witness?

7 THE COURT: Go ahead.

8 Q. BY MR. PATTON: Mrs. Bradford, I'm going to  
9 show you some questions that I asked you last year at  
10 the deposition. My question was, "When did you intend  
11 for him to get it?" And your answer was?

12 A. "The date that I signed it over to him."

13 Q. And then my question was, "So you intended  
14 it to be his at that time?" And what was your answer?

15 A. "Yes."

16 Q. And then my question was, "But you continued  
17 to live in the home?" And what was your answer?

18 A. "And why not?"

19 Q. And then you said, "Why not?" And then I  
20 pressed you further, I asked the question again, "You  
21 continued to live in the home, yes or no?" And what  
22 was your answer?

23 A. "Yes."

24 Q. And you still live in the home?

25 A. Yes.

1 Q. So even though you gave him the deed, you  
2 lived in the home?

3 A. Yes.

4 Q. And you used it as your primary residence?

5 A. Yes.

6 Q. And I asked you -- may I approach the  
7 witness again?

8 THE COURT: You may.

9 Q. BY MR. PATTON: My question was, "Did you  
10 tell my client, Mr. Bradford, that you had signed that  
11 quit claim deed?" And what was your answer?

12 A. "I had no reason to."

13 Q. Do you remember having an argument with my  
14 client in July of 1996?

15 A. (No response)

16 Q. Do you remember some engineers coming to the  
17 home?

18 A. Can I answer your first question?

19 Q. You bet.

20 A. I can remember having arguments with your  
21 client continuously through our marriage.

22 Q. Do you remember a specific argument that  
23 happened in July of 1996 when there were some  
24 engineers in the home? Do you remember that day?

25 A. Yes.

1 Q. And did you and he have an argument?

2 A. Yes.

3 Q. And was he complaining that he didn't want  
4 the home condemned?

5 A. Yes.

6 Q. And he was also complaining that he didn't  
7 like Mr. Demita living there for nothing, without  
8 paying; isn't that true?

9 A. That's what he claimed, but that wasn't  
10 true, that he was living for nothing.

11 Q. When you signed this quit claim deed to Mr.  
12 Demita August 8th, within a month of the argument that  
13 takes place in July -- you acknowledge you had that  
14 argument, right?

15 A. In July we had an argument.

16 Q. You signed the quit claim in August, right?  
17 When you signed that quit claim deed to Mr. Demita,  
18 did you have any side agreements with him concerning  
19 that quit claim deed? In other words, he's going to  
20 give it back to you or anything like that?

21 A. No.

22 Q. Did you have an agreement that he would  
23 continue to allow you to live there?

24 A. We didn't discuss anything at all. I was  
25 just doing what I wanted to do.

1 Q. So you didn't have a discussion about it?

2 A. No, that I remember.

3 Q. When you deeded that property away to Mr.  
4 Demita, the property that you kept in your possession,  
5 was it worth \$40,000 or \$50,000? In other words, your  
6 furniture, your car, everything else you owned, was it  
7 worth \$40,000?

8 A. You mean if I sold it?

9 Q. Right. May I approach again, your Honor?

10 THE COURT: You may.

11 Q. BY MR. PATTON: I took your deposition last  
12 year, and my question was, "The real property that you  
13 deeded away, did you own any other assets that were  
14 worth \$40,000 or \$50,000?" And what was your answer?

15 A. "No."

16 Q. And my question was, "Did you own any other  
17 assets that were worth \$85,000 or \$90,000?" And what  
18 was your answer?

19 A. "No."

20 Q. And you don't own any property now that is  
21 worth \$40,000 or \$50,000, do you?

22 A. No.

23 Q. Do you remember filing an affidavit in this  
24 matter for an order to show cause?

25 A. What do you mean?

1 Q. A document called an affidavit.

2 A. That I signed?

3 Q. Yes. Do you remember signing one?

4 A. About what?

5 MR. PATTON: May I approach the witness,  
6 your Honor?

7 THE COURT: You may.

8 Q. BY MR. PATTON: Let me show you what's been  
9 marked Plaintiff's Exhibit No. 2 for identification.  
10 It's entitled, "Affidavit of Andrea Bradford," and it  
11 purports to have been signed by Andrea Bradford. Do  
12 you recognize that document?

13 A. Yes, that's -- you're right.

14 Q. I want you to continue looking at that. The  
15 first paragraph says that you're the defendant in the  
16 action, that just labels who you are; is that right?

17 A. Right.

18 Q. And then it indicates that you received a  
19 one-half joint tenancy interest in 1989, that's  
20 paragraph 2, right?

21 A. Yes.

22 Q. And then you state that during your 12 years  
23 of marriage you've helped to maintain the property,  
24 care for it and improve it.

25 A. Yes.

1 Q. What improvements did you make to the  
2 property during the 12 years of the marriage, ma'am?

3 A. When I say improve it, does that mean that I  
4 have to -- are you saying that it was from my own  
5 personal money or from our marital money that I made  
6 the improvements?

7 Q. Ma'am, I didn't write the affidavit, I'm  
8 asking you what you meant. Do you know what you  
9 meant?

10 A. Yes.

11 Q. What did you mean?

12 THE COURT: Which paragraph are you  
13 referring to?

14 MR. PATTON: May I approach, your Honor? I  
15 can give you a copy of the affidavit, if you want it.

16 THE COURT: I think I have it, let's just  
17 make sure it's the right one.

18 MR. PATTON: I'm referring to paragraph 3 of  
19 her affidavit.

20 THE COURT: Okay.

21 THE WITNESS: You want -- okay--

22 Q. BY MR. PATTON: Let me ask you this, did you  
23 build on any rooms on the home?

24 A. No, but more important, I built -- I had  
25 installed the basic utilities that we needed that

1 weren't there when I moved in.

2 Q. What basic utilities were those?

3 A. I don't have the drain field with me here,  
4 but I have the others with me, the documents what I  
5 improved on.

6 Q. And I'm just asking what improvements did  
7 you make? I'm not asking to see the documents, I just  
8 want to know what--

9 A. I called up -- this was one of our very  
10 first arguments.

11 Q. Stop there. I don't want an explanation.

12 A. Okay, because you said--

13 Q. Did you build on a room? Let me ask you  
14 that, did you build a room or make any additions to  
15 the home?

16 A. Yes, I made additions to the home.

17 Q. Just tell me what the exact additions --  
18 just list what the additions were.

19 A. One was a sewer so we could use the septic  
20 tank -- sewage system. I had to order a new drain  
21 field.

22 Q. So you improved the septic system?

23 A. No, there was no septic system there when I  
24 moved in. The black sludge was coming up into the  
25 home in the basement where I had to take a shower, and

1 there was no plumbing sewage place, there was nothing  
2 there for a sewage to go to, it was plugged with a  
3 piece of wood, so I had to keep unplugging the piece  
4 of wood to use the shower that I had to have to take a  
5 shower, and then plug the piece back in.

6 Q. Ma'am, I know you want to tell your story,  
7 and your counsel can let you do that. I just asked --  
8 let me ask you this. Was there indoor plumbing when  
9 you moved into the home?

10 A. Not up to city code, no.

11 Q. But there was indoor plumbing?

12 A. Very poor.

13 Q. Just yes or no.

14 A. There was some plumbing, I'll say, some.

15 Q. And so when you say that the addition was  
16 made, what you did was you improved the plumbing?

17 A. Yes. And then another thing I improved, I  
18 improved was there was also -- I ordered a -- the  
19 chimney hadn't been cleaned for long years -- many  
20 years, so I improved to have the chimney cleaned, but  
21 the furnace man said to have the coal furnace cleaned  
22 so that -- to eliminate all of the coal smoke that was  
23 coming throughout the house constantly, so when I had  
24 it cleaned the furnace man said the coal furnace was  
25 so defective that the tears -- I think that's the

1 word -- were all--

2 Q. Did you add a furnace, is that what--

3 A. So I ordered a new furnace and changed it  
4 from coal to gas furnace.

5 Q. So you ordered a new furnace and you  
6 improved the septic system?

7 A. And also the well, the drinking water, and  
8 the water I used for brushing my teeth and the shower  
9 was contaminated, so I had to have it tested at the --  
10 by the State, and I have a thing here to--

11 Q. Did you dig a new well?

12 A. No, we didn't. Our bishop asked George  
13 to -- more or less told George to get on the city  
14 water right now.

15 Q. So did you get on city water?

16 A. Yes.

17 Q. Now besides improving the septic system,  
18 changing the furnace and changing to city water, did  
19 you make any improvements to the property or any  
20 additions?

21 A. What would entail improvements?

22 Q. Well, I don't know, that's why I asked you.  
23 You said you made improvements and I asked you what  
24 they were. Now you've listed three.

25 A. In the back, out in the back where the farm

1 is I did a lot of cleaning up to improve the  
2 sanitation and the health and life risks that were  
3 there.

4 Q. So you also cleaned up around the home?

5 A. In the home and in the back of the whole  
6 property.

7 Q. What else did you do?

8 A. I did so much I don't think I'd ever be able  
9 to tell you here.

10 Q. Well, I'm just asking you what your  
11 improvements were. Are those the big items that you  
12 did?

13 A. Those are the main ones, but there are many,  
14 many smaller ones that were equally as threatening to  
15 my health and my life.

16 Q. So those were day-to-day maintenance items;  
17 is that right? The other items were more day-to-  
18 day -- they weren't a big project, but you would work  
19 on a regular basis; is that what you're saying?

20 A. Now what did you say?

21 Q. You've listed the main items that you  
22 improved; is that correct, the ones you've listed?

23 A. Yes.

24 Q. And then you state that there were other  
25 things that you did, right?

1           A.    Yes, many.

2           Q.    But those were more on a day-to-day basis  
3 and not a big project like improving the sewer or  
4 changing the plumbing.  We're talking day-to-day go  
5 out and haul trash away, clean things up and make it  
6 more presentable; is that right?

7           A.    Yes.

8           Q.    And when you say that you maintained the  
9 property, that's what you're saying when you  
10 maintained it and cared for it; isn't that correct?

11          A.    Yes.

12          Q.    You also indicate in paragraph 6, it says,  
13 "My conveyance of my interest in this subject real  
14 property did not and has not made me insolvent."  
15 Isn't that what you said?

16          A.    Yes.

17          Q.    What did you mean?

18          A.    Well, I asked you what insolvent meant  
19 because I'm not that--

20          Q.    And I'm asking you what you meant when you  
21 filed the affidavit.

22          A.    I thought it meant that I would be  
23 destitute, or something like that, I don't know, and I  
24 never lacked for anything, even with my conveyance, I  
25 know I would not lack.

1 Q. And the reason you didn't lack is because  
2 you were married to Mr. Bradford who supported you;  
3 isn't that true?

4 A. That's kind of questionable.

5 Q. Are you saying you can support yourself?

6 A. I never felt that I was supported.

7 Q. Are you saying you can support yourself if  
8 you're divorced, that you don't need money from Mr.  
9 Bradford?

10 A. I don't know the future because I can't  
11 foresee what I might -- I'm 65, I don't know if I'll  
12 be -- my health might deteriorate or whatever, I can't  
13 foresee the future.

14 Q. The fact of the matter is, ma'am, when you  
15 signed that affidavit saying that you weren't  
16 insolvent, you didn't know what the word "insolvent"  
17 meant, did you?

18 A. I thought it meant being without, I think,  
19 without anything.

20 MR. PATTON: I have no further questions of  
21 this witness.

22 THE COURT: Let's take a five minute break.  
23 We'll be in recess for five minutes.

24 (Short recess)

25 Q. BY MR. PATTON: When I took your deposition

1 last year, I asked you this question: "Did you owe  
2 Mr. Demita -- when you signed this quit claim deed to  
3 Mr. Demita, did you owe him any money?" And what was  
4 your answer?

5 A. "No."

6 Q. And I said, "Okay, can you tell me why you  
7 signed the quit claim deed to Mr. Demita?" And your  
8 answer was, "Sure." And then I said, "Why did you  
9 sign it?" And what was your answer?

10 A. "It was simply estate planning."

11 Q. And you didn't owe him any money when you  
12 signed it, did you?

13 A. No.

14 MR. PATTON: Thank you.

15 CROSS EXAMINATION

16 BY MR. CHUNTZ:

17 Q. Mr. Patton was asking you about improvements  
18 that you made to the property, or that were made to  
19 the property during the 12 plus years that you've  
20 lived there. Was anything done to the roof?

21 A. Yes.

22 Q. What was done to the roof?

23 A. The whole entire roof was shingled.

24 Q. Was there any painting done to the property?

25 A. Yes.

1 Q. What was painted, inside or out?

2 A. Inside and -- the house is brick, so all the  
3 trim was painted, and the porch railings, and inside  
4 rooms have been painted because I asked my son to help  
5 me paint.

6 Q. Now Mr. Patton was asking you some questions  
7 about insolvency. At the time in August of 1996 when  
8 you deeded the property to your son, did you owe  
9 anybody any money at that time?

10 A. No.

11 Q. Did you have any bills that were  
12 outstanding?

13 A. No.

14 Q. And you were able to pay for your living  
15 expenses between what you got from Social Security and  
16 what Mr. Bradford provided?

17 A. Yes.

18 Q. Mr. Patton asked you about a time in July  
19 when Mr. Bradford came home and there were some  
20 engineers at the house. Were the engineers at the  
21 house concerning condemning the house?

22 A. No.

23 Q. Was there any discussion at all at that time  
24 or at any time about tearing the house down?

25 A. No.

1 Q. Were you and Mr. Bradford planning and  
2 working on developing the property?

3 A. Yes.

4 Q. You were planning on selling it?

5 A. Yes.

6 Q. Could the property have been developed  
7 without tearing down the home?

8 A. Yes.

9 Q. When Mr. Patton was asking you about this  
10 July argument, you had wanted to tell the Court  
11 something about this argument or arguments. Why don't  
12 you tell the Court about arguments with George. Did  
13 George and you have arguments often or not?

14 A. Yes, very often.

15 Q. About how often would you say that you and  
16 George had arguments?

17 A. Out of a month's time, you mean?

18 Q. Okay, out of a month's time.

19 A. Every three days and more.

20 Q. Did George ever talk about divorce during  
21 these arguments?

22 A. He always threatened me with divorce if he  
23 didn't like the decisions I made for the property --  
24 of repairing and any -- even the little things in the  
25 kitchen, if I threw kitchen garbage in the garbage and

1 if I wanted to have a place to dump my garbage, he  
2 always went into ranting and raving and rages --  
3 violent rages to me all the time.

4 Q. Did he raise the issue of divorce during  
5 these times?

6 A. Yes, every time he threatened me with  
7 divorce when I wouldn't agree with the way he wanted  
8 things done.

9 Q. So divorce was a regular and common subject  
10 in your household?

11 A. Yes.

12 Q. And what was your reaction to these threats  
13 of divorce?

14 A. At first I was frightened, but he always  
15 ended up saying that he was sorry after, and he would  
16 always apologize and be -- lived like civil together,  
17 and so I never paid much attention after that because  
18 he was always threatening me and then never doing  
19 anything, so I just assumed that we never would ever  
20 be divorced.

21 Q. Did you take his threats of divorce  
22 seriously?

23 A. Never after so many times, no.

24 Q. Did you make plans or take actions on the  
25 basis that when he told you he was going to divorce

1 you that you better do something about that?

2 A. No.

3 Q. This argument that Mr. Patton refers to that  
4 occurred in July of 1996, did George threaten to  
5 divorce you at that argument?

6 A. Yes, he was constantly threatening me around  
7 that time.

8 Q. And did things get resolved between you and  
9 he after that argument?

10 A. Yes, we still--

11 Q. Did he go back to being civil?

12 A. Yes.

13 Q. Between that July argument and when you  
14 deeded the property -- quit claimed the property to  
15 your son in August, was he still threatening to  
16 divorce you during this time?

17 A. (No response)

18 Q. Let me ask you a different question. Were  
19 you and Mr. Bradford continuing to attempt to develop  
20 the property after the July argument?

21 A. Yes, we were always doing that.

22 Q. And between this July argument and the day  
23 you deeded the property to your son, did Mr. Bradford  
24 tell you again that he was going to divorce you?

25 A. What was that again?

1 Q. After the July argument, between that time  
2 and when you deeded you property in August to James,  
3 did Mr. Bradford, while you were continuing to try to  
4 develop the property, did he threaten to divorce you  
5 again?

6 A. During the time we were developing he never  
7 ever mentioned divorce then.

8 Q. Well, he mentioned it at this argument in  
9 July when you were developing it.

10 A. Right, just because he was mad for that one  
11 day, yeah.

12 Q. And then he let it go?

13 A. Yes, because then it was just the same  
14 pattern, he just said he was sorry and apologized and  
15 then afterwards keep on talking about developing.

16 Q. So when you deeded your property to James in  
17 August, you didn't do it because you were concerned  
18 about George's divorcing you?

19 A. No.

20 Q. You did it because you wanted to take care  
21 of the problem of if you died before George, George  
22 would get all of the property and your children would  
23 get nothing?

24 A. Right.

25 Q. Now there's been some suggestion that you

1 didn't do this deed to James for estate planning  
2 because you only gave the property to James and not to  
3 your other children. Why didn't you deed the property  
4 to your other children's names?

5 A. Because my other four children are in  
6 another age bracket, they're ten years way over James,  
7 and they've already established themselves well in  
8 life, and they all own their own -- have their own  
9 home, and I wanted before I died to make sure that all  
10 my children had a home.

11 MR. CHUNTZ: Thank you.

12 MR. PATTON: First your Honor, let me submit  
13 Plaintiff's Exhibit No. 2 for identification as  
14 Plaintiff's Exhibit No. 2. It's her affidavit.

15 MR. CHUNTZ: No objection, your Honor.

16 THE COURT: Number 2 will be received.

17 (Exhibit No. 2 received into evidence)

18 REDIRECT EXAMINATION

19 BY MR. PATTON:

20 Q. First I want to make it clear in my mind,  
21 when you say you deeded to James Demita, you intended  
22 for him to get the entire thing.

23 A. What entire thing?

24 Q. Your half interest in that home. Isn't that  
25 right, just--

1           A.    Just whatever I owned, yes.

2           Q.    And so you didn't intend for your other  
3 children to get any of it?

4           A.    I know my children, and I know that if any  
5 of my any other children were in need that James would  
6 help them and give them whatever they needed. I know  
7 that.

8           Q.    But when you signed the quit claim deed it  
9 wasn't your intent that they each get the same amount,  
10 it was that it all go to him; is that what your  
11 testimony just was?

12          A.    Yes, because I know he would do the right  
13 thing with it.

14               MR. PATTON: May I approach the witness,  
15 your Honor?

16               THE COURT: You may.

17          Q.    BY MR. PATTON: At the deposition I asked  
18 you this question: "Is there a reason you didn't quit  
19 claim to all of them?" And what was your answer?

20          A.    "Just to simplify it," like I said.

21          Q.    And then you went on, what did--

22          A.    "I knew James would do the right thing and  
23 share and share alike."

24          Q.    And then my next question was, "Did you give  
25 him instructions to do that?" And what was your

1 answer?

2 A. "I didn't need to. He told me that's what  
3 he would do."

4 Q. So he told you he would share equally with  
5 his brothers and sisters?

6 A. Only if there was a need.

7 Q. Only if there was a need?

8 A. But I didn't add that on there. That was--

9 MR. CHUNTZ: I'm going to object to this  
10 line of questioning, your Honor, I don't think it goes  
11 to anything that's relevant.

12 MR. PATTON: They opened the door.

13 THE COURT: Overruled. Go ahead.

14 MR. PATTON: No further questions.

15 MR. CHUNTZ: Nothing further, your Honor.

16 THE COURT: You may step down.

17 (Court handles another matter)

18 THE COURT: All right.

19 MR. PATTON: Your Honor, I would call George  
20 Bradford to the stand.

21 COURT CLERK: You do solemnly swear that the  
22 testimony you are about to give in this case now  
23 pending before the Court will be the truth, the whole  
24 truth, and nothing but the truth, so help you God?

25 THE WITNESS: Yes.



1 property?

2 A. No. Yes, excuse me.

3 Q. And the land that we're talking about, it's  
4 a home and how many acres?

5 A. There's only 20 acres all together.

6 Q. And the first Bradford that owned that home  
7 and acreage, who was that?

8 A. Pleasant Sprague Bradford.

9 Q. And who was that in relationship to you?

10 A. My father's dad, my grandpa.

11 Q. So your grandpa owned it originally?

12 A. Yes.

13 Q. And then who owned it after him?

14 A. My father, Roy Bradford.

15 Q. And?

16 A. Minnie Williams Bradford.

17 Q. And then who owned it after them?

18 A. I did.

19 Q. And when did you get it? Did you get it  
20 before or after you married Andrea?

21 A. It was before.

22 Q. And when you married Andrea did you owe any  
23 money on that property?

24 A. No.

25 Q. I see you looking and thinking hard. Do you

1 have some trouble with your thought process on  
2 occasion?

3 A. Yes.

4 Q. Why is that?

5 A. Sometimes my mind goes almost blank, I  
6 can't--

7 Q. Did you ever have any accidents that has  
8 complicated this?

9 A. When I was three I was kicked in the head by  
10 a horse -- a colt, it wasn't a horse, and it seemed to  
11 slow my thinking a lot.

12 Q. Can you tell the Court how much education  
13 you have?

14 A. Well, I graduated from high school, 12  
15 years, and then I have -- after they closed the  
16 foundry down at Geneva they told us that we had an  
17 option of we could go take a class in UVSC in several  
18 different areas, auto repair or maintenance or  
19 mechanic.

20 Q. So did you get that education?

21 A. Yes.

22 Q. How many additional years?

23 A. I started in 1985 and it was a two year  
24 course.

25 Q. Do you remember marrying Andrea in 1985?

1           A.    Yes.

2           Q.    Were you still working at Geneva when you  
3 married her?

4           A.    Yes.

5           Q.    And how long had you worked at Geneva?

6           A.    Total?

7           Q.    Yes.

8           A.    Twenty-two years something.

9           Q.    And so when you were with Andrea working at  
10 Geneva, when did you retire from Geneva?

11          A.    I believe it was 1986 that they ordered us  
12 off the property.

13           THE COURT:   Just a minute, let me make sure  
14 I'm clear.   What did he start in 1985?   You said he  
15 started in 1985.

16           MR. PATTON:   He married in 1985.

17           THE COURT:   I got that.

18           MR. PATTON:   And he started an educational  
19 program in 1985.

20           THE COURT:   Thank you.

21          Q.    BY MR. PATTON:   You worked at Geneva a total  
22 of 22 years?

23          A.    And so many months, yes.

24          Q.    And you married Andrea in 1985?

25          A.    Yes.

1 Q. And then you worked at Geneva another year  
2 before--

3 A. No -- well, it was close to a year because  
4 1986, I believe, was when they ordered us off the  
5 place.

6 Q. So it was about a year. So out of the 22  
7 years that you worked there you were married to Andrea  
8 one year?

9 A. Yeah.

10 Q. I'm going to ask you to look at the very  
11 first document on top that you've got there. It's a  
12 document entitled, "Order of Dismissal," and it  
13 purports to be a divorce action George Bradford and  
14 Andrea Bradford, just the very first page, don't turn  
15 back, very first page. Do you remember filing a  
16 divorce action against Andrea in 1992?

17 A. Yes.

18 Q. And that was--

19 A. Okay.

20 Q. And that was dismissed in 1993 in February;  
21 is that right?

22 A. Yes.

23 Q. And you and Andrea decided to try and make  
24 your marriage work; is that right?

25 A. Yes.

1 Q. Did you continue to have arguments and  
2 discussions about divorce?

3 A. Yes.

4 Q. Did you continue to have arguments and  
5 discussions about divorce up until the time you filed  
6 this divorce action?

7 A. Yes.

8 Q. Do you remember an argument that you had  
9 with Andrea in July of 1996?

10 A. Yes.

11 Q. And was that at your home?

12 A. Yes.

13 Q. Was it like all of the other arguments or  
14 was it smaller or was it bigger?

15 A. It was bigger.

16 Q. Why was it bigger?

17 A. Because I had a feeling that those engineers  
18 were down there for a purpose, and--

19 Q. For what purpose did you think they were  
20 there for?

21 A. To condemn the place.

22 Q. And when you argued with Andrea that day,  
23 how long did that argument last?

24 A. Well, I worked at the school, and I don't  
25 get off until about 4 -- it must have been off and on

1 the rest of the day.

2 Q. Did you hear Andrea say that that argument  
3 sort of slopped over -- in other words, it was around  
4 that time -- in other words it wasn't just that day,  
5 but it was actually around that time. Do you recall  
6 that happening?

7 A. Yes, around that day?

8 Q. Yes.

9 A. Yes.

10 Q. Did you argue about anything other than just  
11 the fact that the people were there, or did you argue  
12 about anything else, too?

13 A. Yes.

14 Q. Did you argue about Mr. Demita?

15 A. Yes.

16 Q. What was that argument about?

17 A. That he wasn't living up to the verbal  
18 agreement that we made, and that he -- I wanted him  
19 out of there.

20 Q. You wanted him out of where?

21 A. Out of the place, out of the home because of  
22 his long stay, that he had already been there.

23 Q. And what verbal agreement wasn't he living  
24 up to?

25 A. We made a verbal agreement that he would pay

1 all the utility bills and he never did, he only paid  
2 for the first three months, and then after that I paid  
3 them.

4 Q. When was that agreement made?

5 A. In December of 1985.

6 Q. In December of 1985?

7 A. I mean December of 1995, excuse me.

8 Q. So he moved in in December of 1995?

9 A. No, he lived there in -- he moved in  
10 December of 1995.

11 Q. Did he bring anyone with him?

12 A. No.

13 Q. Did he have his son with him?

14 A. No.

15 Q. But did he have an agreement to pay  
16 utilities?

17 A. Yes.

18 Q. How many months did he pay utilities?

19 A. Three months.

20 Q. And then what happened?

21 A. And then I paid them from then on.

22 Q. Did there come a time that his son started  
23 living with you, too?

24 A. Well, after he was born, yes.

25 Q. When was that?

1           A.    Well, he's 11 now, so it's been 11 years  
2           ago.

3           Q.    Now in the July argument it's your testimony  
4           that you told your wife you wanted Mr. Demita out of  
5           that house?

6           A.    Yes.

7           Q.    Had you and your wife and Mr. Demita, had  
8           you guys talked about trying to develop the property  
9           part of that?

10          A.    What day are we using?

11          Q.    July of 1996 when you have the fight, prior  
12          to July of 1996 -- when the engineers were there,  
13          prior to that date had you and she and Mr. Demita  
14          talked about developing that property?

15          A.    Yes.

16          Q.    Had you talked about selling the home or  
17          bulldozing the house down?

18          A.    No.

19          Q.    What was the agreement in terms of  
20          developing the house?

21          A.    Well, it started out with two other  
22          developers that were interested in it, and it fell  
23          through, so James claimed he could do it himself, so I  
24          wanted to have it developed. I accepted until I found  
25          out later that none of the stuff that he was telling

1 me was true.

2 Q. Was there a reason the property in the back  
3 of your home couldn't be developed?

4 A. Yes.

5 Q. What was the problem?

6 A. It was on a flood plain, mostly, and that  
7 there was no access to it -- the code of the city  
8 required you to have 160 some-odd feet to get to the  
9 property, and there wasn't--

10 Q. You say 160-odd feet, is that 160-odd feet  
11 on a city road?

12 A. Yes, for a city road, a double lane road  
13 going down.

14 Q. And was there 160 some-odd feet?

15 A. No, sir, there wasn't.

16 Q. Was there 160 some-odd feet if the house was  
17 taken down?

18 A. Yes. No, no, excuse me, there wasn't  
19 because -- I'm not sure of the width of the place, I  
20 think it's 130 some-odd feet.

21 Q. Did you ever agree that the house would be  
22 taken down?

23 A. No.

24 (Direct testimony of Mr. Bradford by Mr. Patton  
25 continues. Certain portions extracted)

1           Q.    BY MR. PATTON:  Other than the thousand  
2           dollars you took out and \$700 you took out, since this  
3           divorce has been pending have you taken any other  
4           money out of your savings or IRA, that you're aware  
5           of?

6           A.    No.

7           Q.    Not that you're aware of?

8           A.    Not that I'm aware of, no.

9           Q.    Have you made additional contributions to  
10          it?  Do you put money in each month?

11          A.    No, I just barely have enough to pay the  
12          bills, utility bills.

13          Q.    The next document claims it's a warranty  
14          deed.

15          A.    Yes.

16          Q.    It says it's a warranty deed and it's dated  
17          November 1989, and it purports to be a deed  
18          transferring property to you and Andrea as husband and  
19          wife with full rights of survivorship and not as  
20          tenants in common.  Is that the deed that you signed  
21          that transferred the property to you and Andrea?

22          A.    Yes.

23          Q.    And then the next page is a document  
24          entitled, "Quit Claim Deed," and that's the document  
25          that purports that Andrea transferred it to Mr.

1 Demita. Were you aware that she had done that?

2 A. No, sir, I wasn't.

3 Q. How did you become aware of the fact that  
4 she had done that?

5 A. Through my daughter.

6 Q. How did your daughter tell you?

7 A. My lawyer asked for a copy of the deed, and  
8 my daughter went to the courthouse to get it and then  
9 she found out that this had been done.

10 Q. When you say the deed, you didn't mean the  
11 quit claim deed, did you?

12 A. No.

13 Q. You mean the deed transferring it to you and  
14 Andrea?

15 A. Yes.

16 Q. So you weren't aware that there had even  
17 been a quit claim deed?

18 A. No.

19 Q. And when did you find out there had been a  
20 quit claim deed?

21 A. When my daughter, Phyllis, told me.

22 Q. Do you know about what year that was, was it  
23 in 1996, was it in 1997?

24 A. It happened in 1997.

25 Q. Was that at or about the time you filed for

1 divorce, was it about the same time?

2 A. Yes, about the same.

3 MR. PATTON: Your Honor, we would submit  
4 Plaintiff's Exhibit No. 3 for identification as  
5 Plaintiff's Exhibit No. 3.

6 MR. CHUNTZ: I have no objection, your  
7 Honor.

8 THE COURT: Three will be received.  
9 (Exhibit No. 3 received into evidence)

10 Q. BY MR. PATTON: Mr. Bradford, did you hear  
11 the statements that were made by your wife here today?

12 A. Yes.

13 Q. Do you agree with all those statements?

14 A. No, I don't.

15 Q. Do you think she's misrepresented some of  
16 the facts to the Court?

17 A. Yes.

18 Q. If you were to tell the Court what you  
19 believe the real problem in your marriage to Mrs.  
20 Bradford is, what would you be telling him you think  
21 the real problem in the marriage is?

22 A. Having her son living with us and his son.

23 Q. Were you residing in Utah County for three  
24 months immediately prior to the commencement of this  
25 action?

1 A. Yes.

2 Q. And were you a resident of Utah County?

3 A. Yes.

4 Q. And in your complaint for divorce you've  
5 alleged that there are irreconcilable differences  
6 between you and she; is that correct?

7 A. Yes.

8 Q. And are there in fact irreconcilable  
9 differences?

10 A. Yes.

11 Q. And are those differences Mr. Demita?

12 A. Yes.

13 Q. And his continuation in the home?

14 A. Yes.

15 Q. And as a result of that are you requesting  
16 the Court to award you a divorce?

17 A. Yes.

18 Q. And if the Court awards the divorce, are you  
19 asking the Court to set aside the transfer from your  
20 wife to Mr. Demita -- set that aside and say it  
21 belongs to you and she?

22 A. Yes.

23 Q. And then are you asking the Court to award  
24 the property to you as your premarital property?

25 A. Yes.

1           Q.    I want to make it clear, and I want to be  
2           fair to her and I want to be fair to you and I want to  
3           be fair to the Court -- the improvements, the furnace,  
4           the sewage system, the painting, the other things that  
5           she described, where did the money come from that  
6           those things were paid for?

7           A.    Out of my pocket. Like I say, I had to use  
8           up that sub that had collected at Geneva before I was  
9           eligible -- before I could get any pension from them  
10          or before I was able to even start the rule of 65,  
11          that had to be used up first, she told me, the lady  
12          over at Geneva.

13          Q.    If the Court orders that we can't set aside  
14          the deed, are you asking the Court to let you purchase  
15          Mr. Demita out?

16          A.    Yes.

17          Q.    And do you need 90 to 120 days to do that?

18          A.    Yes.

19          Q.    And you understand if the Court does that  
20          and you can't, that the Court's likely to say that Mr.  
21          Demita can purchase you out?

22          A.    Yes.

23          Q.    Do you have any reason to disbelieve that  
24          the home and the property is worth \$180,000, less the  
25          \$9,000 to fix the tanks?

1 A. (No response)

2 Q. Remember the appraisals we both--

3 A. Yes.

4 Q. And both appraisals were for \$180,000,  
5 weren't they?

6 A. Yes.

7 Q. And then there's the tank issue and it's  
8 going to cost \$9,000 to remove them, right?

9 A. Yes.

10 Q. If they're removed?

11 A. Yes.

12 Q. And do you believe they need to be removed?

13 A. Yes.

14 Q. Did you hear your wife testify that on the  
15 date she signed that quit claim deed to Mr. Demita she  
16 didn't owe him any money?

17 A. Yes.

18 Q. Is that true?

19 A. I don't know about their financial business.  
20 From all that I know I don't think she owes him any.

21 MR. PATTON: Thank you, no further  
22 questions.

23 (Cross examination of Mr. Bradford beginning by Mr.  
24 Chuntz. Certain portions extracted)

25 ///



1       someday. I had high hopes of using it, not rebuilding  
2       the cycle, making another thing out of it, and I  
3       needed the frame to do it.

4             Q.    Now the tanks that are still buried on the  
5       property, they're still there now?

6             A.    Yes, sir.

7             Q.    And you haven't had to remove them anytime  
8       during the years that you've owned the property; is  
9       that correct?

10            A.    That's right, yes.

11            Q.    And nobody's told you that you had to remove  
12       them, have they?

13            A.    No.

14            Q.    As far as you know at this point in time  
15       there's no need to remove any of the tanks?

16            A.    I guess not if nobody demands that they be  
17       removed.

18            Q.    You got this property from your mom and dad?

19            A.    I inherited it, yes.

20            Q.    When you say you inherited it, they were  
21       alive when they deeded it to you, weren't they?

22            A.    Yes.

23            Q.    So you got it by deed from them?

24            A.    Yes.

25            Q.    It was a gift?

1           A.    Yes.

2           Q.    At the time that they deeded this property  
3 to you -- do you have brothers and sisters?

4           A.    Yes.

5           Q.    How many?

6           A.    I have a brother and two sisters.

7           Q.    They didn't deed any part of this property  
8 to your brother and sisters, did they?

9           A.    Of the property that I have?

10          Q.    Uh-huh.

11          A.    No, but they were questioned about it if  
12 they wanted it, and they all refused it.

13          Q.    Your dad, he got the property from--

14          A.    His father, yes, sir, Pleasant Sprague.

15          Q.    And his father deeded it to him alone,  
16 didn't he?

17          A.    From what I know.

18          Q.    And then later your dad added your mother's  
19 name after they got married, your dad added your  
20 mother's name to the property; is that right?

21          A.    I don't know, I just know her name was on it  
22 with dad's on the deed.

23          Q.    But originally it was deeded -- let me show  
24 you this and ask if you've ever seen this document.

25          A.    No, I've never.

1 Q. Is that a deed to the property?

2 MR. PATTON: Objection, he's indicated he's  
3 never seen it before. I don't think he knows.

4 THE COURT: Sustained as to the form of the  
5 question.

6 THE WITNESS: Dora Hansen, that's my  
7 father's mother.

8 Q. BY MR. CHUNTZ: Did she deed that -- does  
9 that deed deal with the property that you presently  
10 own?

11 A. Let's see--

12 Q. Does that have the same legal description on  
13 it as the property that you presently own?

14 MR. PATTON: Your Honor, maybe we could  
15 short circuit this. I'm not sure my client would  
16 know. I'm not sure he can read well enough -- if  
17 counsel wants to bring it (inaudible) we might be able  
18 to stipulate.

19 THE WITNESS: I've never read this before, I  
20 don't know -- it's new to me, no. Does this pertain  
21 to the property where we live?

22 MR. PATTON: Your Honor, counsel has two  
23 documents, and maybe if he would just proffer what  
24 they are, it might save us some time because I don't  
25 think I'd object to them. We've already agreed that

1 documents like this could come in and we would save  
2 bringing people in to testify, and I'm not sure my  
3 client knows.

4 THE COURT: State your proffer.

5 MR. CHUNTZ: I have a deed -- all of these  
6 deeds deal with the subject farm, the legal  
7 descriptions are the same. I have a deed from Dora  
8 Hansen.

9 Q. BY MR. CHUNTZ: Was Dora Hansen your  
10 grandmother?

11 A. Yes.

12 Q. And the deed deeds the subject property to  
13 Roy Bradford, and that's your father, right?

14 A. Yes.

15 Q. And then subsequently I have a deed from Roy  
16 Bradford to Roy and Minnie Bradford as joint tenants,  
17 and Minnie Bradford is your mother?

18 A. Yes, sir.

19 MR. PATTON: We wouldn't have any dispute  
20 that those are the documents (inaudible).

21 THE COURT: Have them marked and they'll be  
22 received.

23 Q. BY MR. CHUNTZ: You have filed for divorce  
24 previous to this time against Mrs. Bradford, haven't  
25 you?

1 A. Yes.

2 Q. That was in 1992?

3 A. 1992, yes.

4 Q. And you were the one that filed?

5 A. Yes.

6 Q. And then you had that divorce dismissed,  
7 didn't you, in February of 1993?

8 A. Yes.

9 Q. You've indicated already that you had  
10 several discussions -- frequently discussed divorcing  
11 Mrs. Bradford with her over the years that you were  
12 married; is that true?

13 A. Off an on, yes.

14 Q. How often did that happen?

15 A. Maybe every other month or more often, I  
16 don't -- I'm not sure.

17 Q. Maybe even more often than that?

18 A. Yes, on times.

19 Q. So divorce was a frequent conversation  
20 around your home, wasn't it, but you didn't act on it  
21 very often, did you?

22 A. Not until this event took place that really  
23 stirred me up.

24 Q. What stirred you up the first time? Why did  
25 you file for divorce the first time in 1992?

1           A.    My wife was stepping out on me.

2           MS. BRADFORD:   That's his first wife, not  
3   me.

4           THE WITNESS:   In 1992, excuse me.

5           Q.    BY MR. CHUNTZ:   In 1992.   Why did you file  
6   for divorce from Andrea in 1992?

7           A.    I really don't remember right now.   I can't  
8   remember.

9           Q.    You married Andrea in 1985?

10          A.    Yes.

11          Q.    And then in 1989 you gave her the subject  
12   property in joint tenancy; is that right?

13          A.    Yes.

14          Q.    You gave that to her as a gift, didn't you?  
15   You wanted her to have--

16          MR. PATTON:   Objection, that calls for a  
17   legal conclusion.   I think he can ask if he signed it,  
18   I think he can ask why, but if he wants my client to  
19   give a legal conclusion, your Honor, I think that  
20   that's an (inaudible) my client may not understand  
21   that term.   I think he's already explained why he gave  
22   it to her and why he did it.   There's a difference  
23   between saying that and saying it's a gift.

24          THE COURT:   Sustained.

25          Q.    BY MR. CHUNTZ:   You were happy with Andrea

1 in 1989; were you not?

2 A. Yes, 1989, yes.

3 Q. At the time when you deeded the real  
4 property over to her--

5 A. Half, yes.

6 Q. You were happy?

7 A. Yes.

8 Q. Did you want to take care of her at that  
9 time?

10 A. Yes.

11 Q. Did you love her at that time?

12 A. I must have, yes.

13 Q. Do you remember at about that time your  
14 parents deeding some property over to you and she,  
15 their property?

16 A. At 245?

17 Q. Pardon?

18 A. Their property?

19 Q. Their property.

20 A. At 245 South Main?

21 Q. I think so.

22 A. Yes.

23 Q. And they deeded that over to you and to  
24 Andrea as joint tenants with rights of survivorship;  
25 is that correct?

1 A. I don't know how it read, I didn't--

2 Q. But it was to you and Andrea?

3 A. Yes. Andrea's name was added later, yes.

4 Q. And you didn't try to dissuade them from  
5 doing that? You didn't try to convince them not to  
6 put her name on their property, did you?

7 A. No.

8 Q. Because you wanted Andrea to have that as  
9 well with you?

10 A. No.

11 Q. You didn't?

12 A. Not necessarily. My father put Andrea's  
13 name on it.

14 Q. Why did he do that?

15 A. I don't know.

16 Q. Did you try to talk him out of it?

17 A. No.

18 Q. This was at a time when--

19 A. He had deeded it to me first, and then after  
20 we were married he added her name onto it, I didn't  
21 know it.

22 Q. You didn't know it?

23 A. Until she told me. Then the State took it  
24 from us because of a shortage of time.

25 Q. Let me show you this document, the warranty

1 deed. Is this the property that your mom and dad own  
2 in Spanish Fork?

3 A. At 245, where is that?

4 Q. I don't know that there's an address on it.

5 A. I guess if it's up in town, nine rods south.

6 Q. Did they own any other property in town?

7 A. No.

8 Q. And this is your mother and father's names?

9 A. Yes.

10 Q. So they were the owners of the property back  
11 in March of 1989?

12 A. Yes.

13 Q. Who did they deed this property to?

14 A. George Bradford and Andrea Bradford, husband  
15 and wife.

16 MR. CHUNTZ: May I have this marked? I move  
17 to admit Exhibit 6.

18 THE COURT: Any objections?

19 MR. PATTON: No, I'd like counsel to lay a  
20 little more foundation. I'm not sure my client  
21 understands what it was. Again, this is the type of  
22 document counsel and I talked about, we're not going  
23 to object and bring a lot of people in.

24 THE COURT: Is it at 245 South?

25 MR. CHUNTZ: Yes, I believe it is.

1 MR. PATTON: No objection.

2 THE COURT: It will be received.

3 (Exhibit No. 6 received into evidence)

4 Q. BY MR. CHUNTZ: So your parents deeded that  
5 property to you and Andrea, right?

6 A. Yes.

7 Q. And you didn't try to talk your mom or dad  
8 out of doing that?

9 A. No, sir, we tried to -- not we -- I tried to  
10 talk to them that they ought to deed that place to  
11 somebody or else the State's going to end up with it.

12 Q. And so they deeded it to both you and she?

13 A. Too late. We hadn't had it in our names  
14 for -- I believe the time was 33 months, and we only  
15 had it 11 months in our name, and dad was in a rest  
16 home and as soon as mother passed away the place filed  
17 back to dad in his name, and the State said we had to  
18 sell it or get -- they just told us we had to sell it  
19 in order for dad to stay in the rest home.

20 Q. Was Andrea taking care of your parents at  
21 that time?

22 A. Off and on, yes. I stayed with mother quite  
23 a bit at nights.

24 Q. You did?

25 A. Yes, while dad was in the rest home or while

1 she was alone.

2 Q. She was down there taking care of your mom  
3 during the day?

4 A. At times, not all the time.

5 Q. In February of 1996 you were interested in  
6 selling the subject property, weren't you?

7 A. 1996?

8 Q. 1996. You entered into a real estate sales  
9 agreement with a Mr. Mullen, GM Development?

10 A. I didn't.

11 Q. You didn't?

12 A. Is that the one that -- okay, it was with  
13 David Gardner and it fell through?

14 Q. Let me show you, I believe it probably is,  
15 and I'll show you a document marked Exhibit 7, and let  
16 me ask you if--

17 A. That's my--

18 Q. Is that your signature?

19 A. Yes. So is that the agreement that was--

20 Q. Do you remember what that is? Do you recall  
21 that agreement?

22 A. No, but I signed it.

23 Q. Do you recall entering into an agreement  
24 with GM Development and Mr. Mullen?

25 A. Well, it's just one that Jim had us sign.

1 Q. Do you remember getting \$10,000 earnest  
2 money on the agreement?

3 A. He said something about it, but I never did  
4 get it, no.

5 Q. The agreement that you recall, did that fall  
6 through?

7 A. Yes. This one?

8 Q. Yes.

9 A. Yes.

10 Q. It fell through?

11 A. It didn't go through, yes.

12 Q. And you had to give back the earnest money?

13 A. I never did see it.

14 Q. Do you recall this Exhibit marked No. 8?  
15 Your signature's on that.

16 A. What's this on?

17 Q. This is an escrow agreement whereby you  
18 instruct the title company to return the \$10,000 to GM  
19 Development.

20 A. Yes, he said something about -- Jim  
21 explained something about that if they didn't do it in  
22 so many months, I believe, that you had -- that they  
23 were -- I didn't have to pay it; is that right?

24 Q. So you signed that agreement?

25 A. Yes, that's my signature.

1 MR. CHUNTZ: I move to admit 7 and 8.

2 MR. PATTON: No objection.

3 THE COURT: Seven and eight will be  
4 received.

5 (Exhibit Nos. 7 and 8 received into evidence)

6 Q. BY MR. CHUNTZ: So after that deal fell  
7 through, you still wanted to develop the property,  
8 didn't you?

9 A. Yes and no because of the funny stories I  
10 was getting back from the way the city was accepting  
11 it when the city hadn't accepted it at all.

12 Q. Let me show you what's been marked as  
13 Exhibit 9 and ask you if your signature appears on  
14 this document.

15 A. Yes.

16 Q. That document is entitled a "Contract?"

17 MR. PATTON: Your Honor, I don't have any  
18 objection if he stands next to my client and points to  
19 the document and help my client find those things.

20 THE COURT: Go ahead.

21 MR. CHUNTZ: I'm going to give him an  
22 opportunity to read it, see if he recalls it.

23 THE WITNESS: Yes, I remember it.

24 Q. BY MR. CHUNTZ: This is an agreement that  
25 you entered into with your wife and James Demita?

1           A.    Yes, this is the one that I should have  
2 talked to my attorney about and I didn't.

3           Q.    And this is an agreement that was putting a  
4 prior oral agreement in writing?

5           A.    It says yes, 25 percent.

6           Q.    James was going to get 25 percent, wasn't  
7 he, of the property?

8           A.    That's what it says on here, yes, value of  
9 the lot, yes.

10          Q.    So you were willing to transfer a portion of  
11 the proceeds from the sale of those lots--

12          A.    This was if he developed it, which he never  
13 did.

14          Q.    I understand, but you were willing to--

15          A.    Well, why is it still in force?

16                THE COURT:  Just a minute, sir.  Please  
17 answer the questions.

18          Q.    BY MR. CHUNTZ:  You were willing to go  
19 forward with this transaction?

20          A.    Yes, if he developed it.

21                MR. CHUNTZ:  I move to admit No. 9.

22                MR. PATTON:  No objection.

23                THE COURT:  Number 9 will be received.

24                (Exhibit No. 9 received into evidence)

25          Q.    BY MR. CHUNTZ:  That was in -- you entered

1 into that agreement in late April of 1996, right?

2 A. What's the date on it, I don't know.

3 Q. That's what it says, April 26th.

4 A. Okay.

5 Q. Did the three of you continue with  
6 development activities, trying to get the property  
7 developed?

8 A. No, I think shortly after that I stopped it.

9 Q. Did you? When did you stop it?

10 A. When I found out what he was doing to me.

11 Q. When was that?

12 A. A little past this date that was on there.

13 Q. A little past, is that a few days, a few  
14 weeks, a few months?

15 A. I don't know when it was. As soon as I  
16 found out from the city that none of this stuff had  
17 been passed through that he said had been all voted  
18 on. Nothing had been passed by the city, that's what  
19 they told me.

20 Q. Let me show you what's been marked as  
21 Exhibit 10. Do you recognize that document?

22 A. Yes.

23 Q. What's River and Park View Estates?

24 A. That's the name we agreed on.

25 Q. What is the document?

1 A. What is the document?

2 Q. Yes. Have you ever seen this or something  
3 like this before?

4 A. This document?

5 Q. Yes.

6 A. Yes, I guess. This is the one that they  
7 had -- he had LEI map out.

8 Q. Who's "he?"

9 A. James.

10 Q. Did you hire LEI?

11 A. No, I didn't.

12 Q. Did you have anything to do with LEI?

13 A. No.

14 Q. How about paying them for their services?

15 A. Yes.

16 Q. You paid them for their services?

17 A. After this was all mapped out, yes.

18 Q. You knew they were doing that, right?

19 A. Yes.

20 Q. Do you remember having the whole property  
21 surveyed?

22 A. By LEI?

23 Q. Yes.

24 A. Yes.

25 Q. And did you talk with LEI about any of this

1 development or mapping out the property?

2 A. No.

3 Q. The date on Exhibit 10 shows 6/96. Is that  
4 when LEI did its work?

5 A. I can't tell you that -- yes, if that's the  
6 date on it.

7 Q. Do you have a recollection yourself?

8 A. No, I don't. If that's when it's dated,  
9 that's when they did the work, I guess.

10 MR. CHUNTZ: I move to admit 10.

11 THE COURT: Any objection?

12 MR. PATTON: And 10 was the topographical  
13 map?

14 MR. CHUNTZ: Yeah, the plat map.

15 MR. PATTON: No objection.

16 THE COURT: Ten will be received.

17 (Exhibit No. 10 received into evidence)

18 Q. BY MR. CHUNTZ: Exhibit 11 consists of two  
19 checks for the -- copies of the two checks. Do you  
20 recognize these two checks?

21 A. No, I don't. That's not my writing.

22 Q. That's not your writing?

23 A. No.

24 Q. Is this your signature down in here?

25 A. This is mine, yes.

1 Q. That's your signature down in here?

2 A. Yes.

3 Q. These are checks to whom?

4 A. LEI Engineers.

5 Q. What are the dates on the two checks?

6 A. June 1st of 1996 and June 17th of 1996.

7 Q. And are there notations on those checks as  
8 to what these payments were for?

9 A. Subdivision, yes.

10 Q. These had to do with the subdivision?

11 A. That's what it says on here, yes.

12 Q. And you signed these checks?

13 A. I must have, that's my signature, yes.

14 Q. But you don't recall now being involved with  
15 LEI and what they were doing? What are the dates on  
16 the two checks?

17 A. One is the 1st of June and the other is the  
18 17th.

19 Q. Of June?

20 A. Yes.

21 Q. Both in 1996?

22 A. Yes.

23 Q. So you were paying money to LEI, signing  
24 checks, but you didn't know what they were doing?

25 A. Okay, this one was on the -- he said that

1 this on the -- when they mapped it out for \$1400.

2 Q. And is that the subdivision plot, Exhibit 10  
3 that I just showed you? That's what that was for when  
4 they mapped it out?

5 A. I think so.

6 Q. And did you get to see that at the time it  
7 was done?

8 A. Showed us that, yes.

9 Q. So you did see it and you paid for it?

10 A. Yes.

11 MR. CHUNTZ: We move to admit Exhibit 11.

12 MR. PATTON: No objection.

13 THE COURT: Eleven will be received.

14 (Exhibit No. 11 received into evidence)

15 Q. BY MR. CHUNTZ: In June of 1996 you were  
16 still working on the project, weren't you?

17 A. It looks like it, yes. When was this  
18 that -- the question before that, what was it you  
19 asked about, if you remember.

20 Q. If I remember I'll ask it again. I'm sorry,  
21 I don't remember. Let me show you Exhibit 12. Do you  
22 remember getting this bill from LEI?

23 A. This is that \$1400.

24 Q. I think that's a different \$1400.

25 A. No, I only paid them once, didn't I?

1 Q. Well, I think not. If it will help--

2 A. I made two checks after that \$1400?

3 Q. Let me show you Exhibit 13, and ask you if  
4 your signature appears at the bottom of this.

5 A. Yes, that's it.

6 Q. That's it?

7 A. Yes.

8 Q. That's another check for \$1405, that's the  
9 amount of this invoice, right?

10 A. Yeah.

11 Q. What's the date on the invoice?

12 A. This is in September.

13 Q. This is in September, in fact it's September  
14 30th that you paid it; isn't that correct?

15 A. Yes.

16 Q. So you were still working with LEI in  
17 September of 1996?

18 A. Yes.

19 Q. Working on developing this property?

20 A. It looks like it.

21 MR. CHUNTZ: I move to admit 12 and 13.

22 MR. PATTON: No objection.

23 THE COURT: Twelve and thirteen will be  
24 received.

25 (Exhibit Nos. 12 and 13 received into evidence)

1 Q. BY MR. CHUNTZ: Let me show you Exhibit No.  
2 14. Is your signature there on this one?

3 A. Yeah.

4 Q. And this one is made out to Newman Bundy?

5 A. Yes, I owed him \$500.

6 Q. He delivered some dirt to the property,  
7 right? That was part of the development of the  
8 property, wasn't it?

9 A. No, that was part of the -- just to fill up  
10 the land, and they had some dirt they wanted to get  
11 rid of.

12 Q. But you needed the dirt to fill in the land?

13 A. Yeah, we agreed that -- I agreed to buy it,  
14 yes.

15 Q. And that was part of the development process  
16 that you were going through there in September?

17 A. Yes, if that's what you want to call it, the  
18 development project. Yeah.

19 MR. CHUNTZ: I move to admit 14.

20 MR. PATTON: No objection.

21 THE COURT: Fourteen will be received.

22 (Exhibit No. 14 received into evidence)

23 Q. BY MR. CHUNTZ: In fact, you were still  
24 going forward with the development of the project in  
25 trying to get in position to sell lots and trying to

1 have James work with the city all the way up until  
2 April of 1997, weren't you?

3 A. I don't know, was it that late?

4 Q. Do you remember talking to your daughter,  
5 Phyllis, and asking her to contact the city and find  
6 out what was going on?

7 A. Yes.

8 Q. And that was in about April of 1997?

9 A. I don't know the time.

10 Q. Let me show you Exhibit 15, it's the letter  
11 that Phyllis received. Did you ever get to see this?  
12 Look at that letter. Do you remember having a  
13 conversation with Phyllis about that letter or seeing  
14 that letter before?

15 A. Just a minute. I don't remember, but this  
16 is the one that she we went to Comstock and received,  
17 yes.

18 Q. Comstock, he's the planning--

19 A. Yes, engineer.

20 Q. Planning engineer for Spanish Fork?

21 A. Yes.

22 Q. Did you ask her to go and see him?

23 A. Yes, talk to him.

24 Q. Why was that?

25 A. Because all the stuff that he was telling me

1 that hadn't been--

2 Q. Are you talking about James Demita?

3 A. Yes.

4 Q. So James was telling you things about the  
5 project?

6 A. He was going to these council meetings, and  
7 he would come home and say, "Well, I can't believe how  
8 fast they accepted all these things, and it's all  
9 passed," and I went to Comstock and he said no, it  
10 hadn't been passed by the city at all.

11 Q. So you asked your daughter to talk to--

12 A. Talk to Comstock, yes.

13 Q. And that was just before you got this  
14 letter?

15 A. Yes.

16 Q. So before you learned that, you were still  
17 moving ahead with James and--

18 A. Well, yes, I thought he was being truthful  
19 with me.

20 Q. The three of you were still trying to  
21 develop the property to sell as late as April, and  
22 maybe even as late as May of 1997?

23 A. I didn't think it was that late.

24 Q. Well, the letter is May 5, 1997?

25 A. May 5th, yes.

1 Q. Then you got angry after you learned that  
2 James wasn't telling you the truth, right?

3 A. Yes, I was angry before, too.

4 Q. But you were willing to continue developing  
5 the property with him?

6 A. Yes.

7 Q. Then you went to see your lawyer after you  
8 got this letter -- saw this letter?

9 A. Yes.

10 Q. And that's when you went to see him about  
11 getting a divorce, right?

12 A. Yes.

13 Q. That's when you asked Phyllis to go over and  
14 check on the records to see who owned the property; is  
15 that right?

16 A. No, I believe--

17 Q. Mr. Patton asked that?

18 A. Wasn't it that way?

19 MR. PATTON: Counsel, do you want me to  
20 testify?

21 MR. CHUNTZ: No, it's all right.

22 Q. BY MR. CHUNTZ: Either you or Mr. Patton  
23 asked your daughter to go check on the records about  
24 the property?

25 A. Get a deed for the property, yes, when she

1 found out about that it had been done.

2 MR. CHUNTZ: We move to admit 15.

3 MR. PATTON: Your Honor, I want to make my  
4 objection clear because I'm only objecting to the  
5 admission of 15 if it's being admitted for the  
6 purposes of what's stated in the letter. What's  
7 stated in the letter is hearsay, and so therefore I'm  
8 objecting to it being submitted for purposes of the  
9 truthfulness of the letter.

10 However, if what he's submitting is to see  
11 that my client was aware of the letter and had  
12 received a copy of it, (inaudible) or at least seen a  
13 copy, I'm not objecting to that. But for purposes of  
14 the truthfulness of the letter itself, we object.

15 MR. CHUNTZ: I'm not offering it for the  
16 subject matter of the letter.

17 THE COURT: Okay, it will be received.  
18 (Exhibit No. 15 received into evidence)

19 Q. BY MR. CHUNTZ: During this whole period  
20 when you and James and Andrea were working on  
21 developing the property, you weren't contemplating  
22 divorce then, were you?

23 A. I really can't say.

24 Q. You hadn't gone to see a lawyer about  
25 getting a divorce, had you?

1           A.    No.

2           Q.    You were still working with Andrea and James  
3 to get this property developed, weren't you?

4           A.    I must have.

5           Q.    That's what the documents seem to show,  
6 don't they?

7           A.    Yes.  But I could begin to see what a mess I  
8 was getting in.

9           Q.    So you were beginning to see that you were  
10 not going to be happy?

11          A.    Yes, I was beginning to see that it wasn't  
12 his land, it was my land, I had to pay the consequence  
13 of what I gave him to do, and I paid the consequences  
14 of it.

15          Q.    So you weren't happy with the deal that you  
16 entered into with him?

17          A.    No, I wasn't.

18          Q.    You wanted to get out of that?

19          A.    Yes.

20          Q.    But you still weren't looking to divorce  
21 Andrea at that point, were you?

22          A.    I don't know, there's been quite a few times  
23 it's come up.

24          Q.    Now you've got other real property -- real  
25 estate -- in addition to the subject property here,

1 the marital home, don't you?

2 A. The marital home?

3 Q. Yeah, the place where you and Andrea lived.

4 A. Yes. No, I don't, no.

5 Q. You have some property in a place called  
6 Aspen Hills?

7 A. No. What made you think I have property up  
8 there? That was dropped many years ago.

9 Q. When was that dropped?

10 A. I don't know, but I sold it -- I went up  
11 there and had that stopped a long time ago. When did  
12 I buy it?

13 Q. Well, I know you had it at least back in  
14 1986, and in your answers to interrogatories back in  
15 August of 1997, you listed real property in Indianola.

16 A. No, that's not mine. I don't have nothing  
17 up there.

18 Q. You don't have anything up there, either?

19 A. No, I don't.

20 Q. You did have property in Aspen Hills,  
21 though?

22 A. No. I let that go a long time ago. If I  
23 still own it, it's never been paid for.

24 Q. That would be a pretty good deal. I don't  
25 know if you own it or not.

1           A.    I don't own it.

2           Q.    In 1996 and in 1997 Andrea didn't owe you  
3 any money, did she?

4           A.    No, I don't think so.

5           Q.    You've never claimed that she's owed you any  
6 money, have you?

7           A.    No.

8           Q.    You weren't demanding or insisting that --  
9 in 1996 you weren't demanding her or insisting that  
10 she give you back the half of the property that you  
11 had deeded over to her, were you?

12          A.    You mean the property that she owned?

13          Q.    No, I'm talking about the farm, the subject  
14 property. You weren't asking or demanding that she  
15 give it back to you in 1996, were you?

16          A.    I could have been, yes.

17          Q.    You could have been?

18          A.    I wanted her to sign it back, I don't know  
19 what year it was.

20          Q.    But you and she were trying to develop it in  
21 1996?

22          A.    No, it wasn't then, it was before then.

23          Q.    You were aware in 1996 that if you died  
24 before Andrea did, that she would get all of the  
25 property and your kids wouldn't get any of it, weren't

1 you?

2 A. No, I wasn't.

3 Q. You weren't aware of that?

4 A. No. My understanding was that it would go  
5 half.

6 Q. You hadn't talked with anybody about what  
7 joint tenancy meant?

8 A. No. Joint tenancy, that would mean both of  
9 us, wouldn't it?

10 Q. Did your daughter ever talk with you about  
11 what would happen if you died, what would happen to  
12 the property?

13 A. No.

14 Q. She never talked with you about it?

15 A. My daughter?

16 Q. Yes, your daughter, Phyllis.

17 A. She might have, I don't remember.

18 Q. You don't remember her ever talking with you  
19 about getting the property taken out of joint tenancy  
20 so that she could get half of the property?

21 A. No.

22 Q. That wasn't a concern of yours?

23 A. Well, no, I don't think it was, not right  
24 then. When was this?

25 Q. 1996.

1 A. I can't remember.

2 Q. What do you remember about it?

3 A. Talking to her about it, the property.

4 Q. What do you remember about that? Did you  
5 ever have a concern that Andrea would get all of the  
6 property if you died first?

7 A. No, I didn't.

8 Q. You never worried about that?

9 A. Well, I signed it expecting that -- her name  
10 on there expecting that she would only get half of it.

11 Q. And that was your intention, wasn't it?

12 A. Yes.

13 Q. I want to take a look at part of Exhibit 3  
14 with you, your financial declaration. Let me show you  
15 where I'm looking. You've indicated here that your  
16 gross income from your employment is \$638, and that  
17 your net income is \$410; is that right?

18 A. Yes, pretty close.

19 Q. And the amount that--

20 A. That's an average of the whole year.

21 Q. And the average of the deductions that are  
22 coming out are listed down here, \$60 for federal and  
23 state tax, right?

24 A. Just the state, the federal wasn't taken  
25 out.

1 Q. There was nothing taken out?

2 A. Not at the school, no.

3 Q. \$35 per month for FICA, Social Security?

4 A. Yes, they take that out automatically.

5 Q. \$8 per month for--

6 A. This is medical insurance.

7 Q. That's the \$165.

8 A. That's Geneva.

9 Q. You're right. And then you have this \$105  
10 that you've listed as a deduction, and that's  
11 (inaudible)?

12 A. Yes.

13 Q. That's a savings account, isn't it?

14 A. Yes.

15 Q. You put that in every month?

16 A. Yes, they take it out, yes.

17 Q. And you're still taking that out every  
18 month; is that right?

19 A. Yes.

20 Q. So really what comes out of this \$638 every  
21 month for taxes are the \$103 that go to governments,  
22 right, the \$60, the \$35 and the \$8?

23 A. Yes.

24 Q. And the rest just goes into an account --  
25 the \$105 goes into an account for you; is that

1 correct?

2 A. Yes.

3 Q. It's \$105 to (inaudible), that goes to you?

4 A. Yes.

5 Q. So if we take that \$103 for taxes off of the  
6 \$638, we're left with \$535 a month that you've got in  
7 disposable income after taxes from your employment?

8 A. Wait, now I don't understand.

9 Q. Let me point it out.

10 A. All of these are taken out in taxes from  
11 there down to--

12 Q. Well, (inaudible) isn't a tax, is it?

13 A. No, but there down to there.

14 Q. And \$165 for your medical insurance--

15 A. That's Geneva.

16 Q. That's for your medical, right?

17 A. Medical, yes.

18 Q. Taxes are \$60, \$35, and \$8?

19 A. Yes.

20 Q. Unless counsel corrects me, I believe that  
21 adds up to \$103. If you subtract \$103 from the \$638  
22 that should be \$535.

23 A. No. I'd be getting that much in cash? I  
24 don't get that much.

25 Q. I know you don't because you put \$105 into

1 (inaudible).

2 A. (inaudible) yes.

3 Q. So this was \$535, and then you told us that  
4 this is \$329 for Geneva?

5 A. Yes.

6 Q. And that's because \$165 comes off of this  
7 \$469, doesn't it?

8 A. Yes.

9 Q. And then you get \$769 from Social Security?

10 A. Yes.

11 Q. And my calculator tells me that those three  
12 net amounts equal \$633 as disposable income that you  
13 have every month. Does that seem right to you?

14 MR. PATTON: Your Honor, if I may interject,  
15 I'm going to object just because of the nature of the  
16 conversation. I think we indicated in my client's  
17 direct testimony sometimes he has trouble, I think he  
18 explained why he had Phyllis trying to fill it out,  
19 because we had trouble with this and some of those  
20 numbers.

21 I don't dispute, counsel, that in closing  
22 argument you can say "This number, if my addition is  
23 correct--" I think what he's asking my client to do,  
24 my client probably can't do without a calculator, and  
25 just physically can't answer the questions. I know

1 where (inaudible) is going, he has a right to answer  
2 it, the numbers are what they are, we don't dispute  
3 that. I think pursuing this is starting to reach the  
4 point of harassment of my client simply because he  
5 can't do the numbers in his head.

6 THE COURT: Sustained.

7 MR. CHUNTZ: That's all the questions I  
8 have.

9 THE WITNESS: Can I ask you a question?

10 MR. CHUNTZ: Maybe after court is over, but  
11 not at the present time.

12 THE COURT: Mr. Patton, do you have any  
13 further inquiry of your client?

14 MR. PATTON: Yes, your Honor.

15 REDIRECT EXAMINATION

16 BY MR. PATTON:

17 Q. Mr. Bradford, these documents, the contract  
18 with Mr. Mullen, the working up, the LEI, the  
19 surveyors, et cetera, did you do that or did Mr.  
20 Demita do that?

21 A. He hired it done, yes.

22 Q. And these documents, did you prepare them or  
23 did Mr. Demita prepare them?

24 A. Jim.

25 Q. And he brought them to you and had you sign

1       them?

2           A.     They billed -- whether they -- I got a note  
3       from them or whether they told Andrea, and Andrea told  
4       me that this is what I owe them, I don't know.

5           Q.     And you were trying to say something about  
6       Mr. Demita would get a percentage of the property if  
7       the property was actually sold or actually -- and you  
8       got cut off. What was your understanding of what  
9       would happen?

10          A.     That I would owe him 25 percent -- it says  
11       on there on the document that I would owe him 25  
12       percent of each lot; was that the way it read?

13          Q.     What was your understanding? I'm not asking  
14       you what it read, I'm asking what your understanding  
15       of it was.

16          A.     That he would end up with a lot of money.

17          Q.     If it was developed?

18          A.     Yes.

19          Q.     Did you expect that he would get half the  
20       property from Andrea and get an additional 25 percent?

21          A.     Yes, that's the way I figured it.

22          Q.     No, no, no. Mr. Bradford, listen to what  
23       I'm saying. At any of the time that you signed that  
24       25 percent contract that you were trying to develop,  
25       did you know that Andrea had already deeded over half

1 the property to him?

2 A. Now when was this, what year?

3 Q. 1996. Counsel asked you about trying to  
4 develop the property in 1996 and early 1997. Do you  
5 remember those conversations that he talked about?

6 A. No, I don't really.

7 Q. Do you remember counsel asking you about you  
8 and Mr. Demita and Andrea trying to develop the  
9 property from 1996 and in the first part of 1997?

10 A. Yes.

11 Q. During the period of time that you and Mr.  
12 Demita and Andrea were trying to develop the property,  
13 were you aware of the fact that Andrea had already  
14 deeded one-half of the property to Mr. Demita?

15 A. No. Now this had happened -- when was this,  
16 August of 1996 that this happened, that she had--

17 Q. Well, I can't answer those.

18 A. Okay, but it was early--

19 Q. When did you find out that Andrea had  
20 deeded--

21 A. When she had gone to the county to get a  
22 copy of the deed.

23 Q. And who is "she" went to get a copy?

24 A. That's Phyllis, my daughter.

25 Q. So that would have been about the same time

1 you saw the letter from Spanish Fork; is that right?

2 A. Oh, the one from Comstock?

3 Q. Yes.

4 A. I never did see it, she took it right over  
5 to you, I believe. I don't remember seeing it.

6 Q. The Comstock letter appears to be dated May  
7 5, 1997. About the time Phyllis got this letter, is  
8 that about the same time you found out that Andrea had  
9 deeded the property?

10 A. It must have been, because that was in --  
11 now what date was that? I'm getting -- it was in  
12 August, wasn't it, that she had taken her son over  
13 there and did that?

14 Q. Well, the document speaks for itself. I  
15 can't answer your questions. When you were dealing  
16 with Mr. Demita concerning the development of the  
17 property, were you trying to deal with him in any  
18 dishonest way?

19 A. No.

20 Q. When you deeded the property to Andrea, and  
21 when you were doing those things with Andrea, when you  
22 deeded it in both of your names, did you believe that  
23 you and Andrea would continue to be married?

24 A. Yes.

25 MR. PATTON: Thank you, no further

1 questions.

2 MR. CHUNTZ: Nothing further, your Honor.

3 THE COURT: You may step down. Let's take a  
4 short break.

5 (Short recess taken)

6 MR. PATTON: (Court already in session when  
7 recorder was turned on) Ms. Penner, who is here. I  
8 have primarily brought her, your Honor, to explain why  
9 my client didn't do so well explaining his numbers on  
10 his financial declaration.

11 If she were called to testify she would  
12 testify that in fact sometimes her dad doesn't do real  
13 well with numbers, that she tried to assist him with  
14 the financial declaration concerning what his income  
15 sources were, and that some of the figures that we  
16 gave in Exhibit 3 were actually figures that she and I  
17 came up with working together, and to the best of her  
18 information we believe they're correct. I don't think  
19 counsel wants me to do anything other than just  
20 proffer that, and he can cross examine her if he  
21 wants. Is that correct, counsel?

22 MR. CHUNTZ: Yeah, I don't have a problem  
23 with that, and I'm not going to cross examine her.

24 THE COURT: All right, I'll accept the  
25 proffer.

1 MR. PATTON: With that, your Honor, we would  
2 rest.

3 THE COURT: Mr. Chuntz?

4 MR. CHUNTZ: I call Andrea Bradford back to  
5 the stand.

6 THE COURT: I just remind you that you're  
7 still under oath.

8 ANDREA BRADFORD

9 having been first duly sworn,  
10 testifies as follows:

11 DIRECT EXAMINATION

12 BY MR. CHUNTZ:

13 Q. Mrs. Bradford, you've already stated your  
14 name for the record. What is your birthdate?

15 A. January 1, 1933.

16 Q. How old are you now?

17 A. Sixty-five.

18 Q. You've heard George testify. I believe his  
19 age is--

20 A. Sixty-three.

21 Q. Are you presently employed outside of the  
22 home?

23 A. No.

24 Q. Have you worked outside of the home during  
25 the marriage?

1           A.    Yes.

2           Q.    When you first married Mr. Bradford, what  
3 were you doing while George was at work?

4           A.    The first year and a half or so he was going  
5 full-time to work and full-time to school, and he came  
6 home about 1 in the morning and left again about 7 in  
7 the morning. So the rest of the time I was taking  
8 care of everything that needed to be taken care of  
9 with the house and the farm and the property all  
10 around the house there, the shed and everything, and  
11 all the people that would come and go, and the back.

12          Q.    And were you taking care of--

13          A.    I was taking care of his mother and father,  
14 and also at that time his daughter was living with us  
15 with her new baby, and I was taking care of all of the  
16 cleaning and all of the shopping and the bills and the  
17 mail and everything that needed to be--

18          Q.    How much time did you spend taking care of  
19 Mr. Bradford's parents every day on average?

20          A.    It would average out to be about four hours  
21 a day doing laundry--

22          Q.    How many years did you do this?

23          A.    Pardon?

24          Q.    How many years did you do this?

25          A.    Since I got married in 1985 until they died.

1 Q. When did they die; do you recall?

2 A. One died in -- I can't remember the exact  
3 year, I can't remember the years that they died, but  
4 it was at least eight or nine years.

5 Q. Did you take employment outside of the home  
6 during the marriage?

7 A. Whenever I felt that I could have a little  
8 opening to -- would be okay for me to leave long  
9 enough to earn some money, yes.

10 Q. How much time did you work outside of the  
11 home during the marriage?

12 A. Not very often because there was too many  
13 needs to be done at the household.

14 Q. Can you average out either the total amount  
15 of time that you worked outside of the home during the  
16 marriage, or maybe an average per year, something like  
17 that if you can?

18 A. About maybe in one year I would go in and  
19 out during that year maybe about three months of work.

20 Q. Have you ever worked more than three months  
21 in a year's time since you were married to George?

22 A. I don't remember, I don't think so.

23 Q. Were most years less than three months?

24 A. Yes.

25 Q. Have you worked outside the home in the last

1 few years?

2 A. Nothing at all, none at all. I was too busy  
3 working on the developing. It was a lot of work in  
4 the back, the clean-up.

5 Q. You had a job -- you used to go to temporary  
6 services to get employment?

7 A. Yes, I did.

8 Q. And what happened with those temporary  
9 services, what did they tell you?

10 A. Well, I only could qualify for production  
11 work, and by doing production I acquired -- started to  
12 get carpal tunnel in my wrist, so that's another  
13 reason I needed to work just sporadically so I  
14 wouldn't ruin my wrist.

15 Q. Was that why you were let go from your last  
16 job was because of the carpal tunnel?

17 A. Yes, and also because they said that not  
18 to -- they had my name on their computer at SOS -- not  
19 to send me back to certain companies that told them  
20 not to send me into their company to work.

21 Q. Did they tell you why they didn't want you  
22 back?

23 A. That I couldn't focus as well. I needed  
24 to -- I couldn't focus to do the job.

25 Q. Mrs. Bradford, do you recognize this as your

1 financial declaration?

2 A. Yes, I do.

3 Q. I assisted you in filling this out?

4 A. Yes.

5 Q. The document on page 1 shows that you get  
6 Social Security of \$416 per month?

7 A. Yes.

8 Q. You've indicated that's gone up a little  
9 bit?

10 A. Now I only get \$387 because now -- since  
11 that time I turned 65 on January 1st of this year, so  
12 now they take out \$43.

13 Q. If you'll turn to page 2, we've calculated  
14 you're taking home from your Social Security, your  
15 check is actually \$372 a month?

16 A. Yes.

17 Q. You've got debts that are listed there, one  
18 to Dr. Lynn Richards?

19 A. Yes.

20 Q. And one to another dentist?

21 A. Yes.

22 Q. Do you remember who the other dentist is?

23 A. Dr. Kent Turner.

24 Q. And you are paying on those?

25 A. No, I was waiting to see who is going to

1 pay, because it's under George's -- at that time I was  
2 married to George, and he was billed for the bill.

3 Q. And these debts are -- these doctors are  
4 being patient with you?

5 A. Pardon?

6 Q. These doctors are being patient with you  
7 right now?

8 A. Yes, they are.

9 Q. If you'll turn the page and look at No. 6  
10 where it lists all of your expenses, you've had a  
11 chance to review all of these expenses after we  
12 prepared the document; is that correct?

13 A. Yes.

14 Q. And it would be your testimony that these  
15 are the amounts that you are currently having to  
16 spend, with exception of the rent money and utilities?

17 A. Yes.

18 Q. And you're not paying any rent because  
19 you're living in the marital home?

20 A. That's right.

21 Q. And you're not paying any utilities because  
22 Mr. Bradford was ordered to pay the utilities?

23 A. That's right.

24 Q. So once this divorce is over and you're  
25 living in your own place, or Mr. Bradford is no longer

1 living with you, you expect that you'll have to pay  
2 utilities in the amount of \$120 a month?

3 A. Yes.

4 Q. So your monthly expenses without any rent --  
5 paying any rent at all is still going to be \$1150 per  
6 month?

7 A. Yes.

8 Q. And you have available to you \$372?

9 A. Yes.

10 Q. Are you requesting that Mr. Bradford  
11 continue paying you alimony?

12 A. Yes.

13 Q. Are you requesting that that alimony be in  
14 the amount of \$600 per month?

15 A. Yes.

16 Q. There's been testimony that Mr. Bradford  
17 deeded over the marital residence joint tenancy  
18 interest to you in 1989; is that correct?

19 A. Yes, that's correct.

20 Q. Did Mr. Bradford ever tell you why he did  
21 this?

22 A. A few times.

23 Q. What did he tell you?

24 A. That I love you, that's why -- and I want to  
25 take care of you, I want you to have half.

1 Q. And you deeded your half of the property to  
2 James in 1996?

3 A. Yes.

4 Q. You've heard testimony here today about the  
5 bank accounts and retirement accounts and life  
6 insurance cash values that are in George's name.

7 A. Yes.

8 Q. Are you asking for half of the value of all  
9 of those assets?

10 A. Yes, I am.

11 Q. If the Court decides that your deeding the  
12 property to James was okay, are you asking for any  
13 portion of Mr. Bradford's half of the property?

14 A. Absolutely no.

15 Q. If the Court decides that you should not  
16 have deeded the property to James, do you want the  
17 Court to allow you to live in the home with your  
18 grandson and James?

19 A. Yes.

20 Q. If the Court decides that you should not  
21 have deeded the property to James, do you believe that  
22 you should be entitled to your half of the property?

23 A. Yes.

24 MR. CHUNTZ: That's all I have, your Honor.

25 THE COURT: Anything further?

1 MR. PATTON: Yes, your Honor.

2 CROSS EXAMINATION

3 BY MR. PATTON:

4 Q. Mrs. Bradford, if the Court decides that Mr.  
5 Demita owns half the property -- in other words he  
6 owns half and George owns half, if I'm correct, you're  
7 stating you agree that you don't own half of George's  
8 half; is that right? In other words, if it belongs to  
9 Mr. Demita and Mr. Bradford, you don't own any portion  
10 of Mr. Bradford's; is that correct?

11 A. That's correct.

12 Q. Do you own any part of Mr. Demita's if the  
13 Court says that?

14 A. We're family.

15 Q. Which means what?

16 A. That we take care of each other.

17 Q. So if the Court were to give half of this  
18 property -- determine that half of it belongs to Mr.  
19 Demita, you believe that Mr. Demita would take care of  
20 you?

21 A. If I needed it, if I needed caring.

22 Q. If the Court determined that Mr. Demita  
23 could purchase Mr. Bradford's interest out of the  
24 property, in other words he gets to purchase the  
25 property from Mr. Bradford and not Mr. Bradford from

1 Mr. Demita, would Mr. Demita continue to allow you to  
2 live there?

3 A. If I asked him, yes.

4 Q. And if you continued to live there you  
5 wouldn't have the \$600 a month rent or mortgage  
6 payment, would you?

7 A. No.

8 Q. And on your financial declaration that you  
9 listed what your income is, you didn't list the \$150  
10 that Mr. Demita gives you for child care, did you?

11 A. It's not my child, though.

12 Q. But wasn't your testimony this morning that  
13 he pays you \$150 a month to watch his child?

14 A. And I use it on his child, but it has  
15 nothing to do with my needs, though. That's just a  
16 child's needs being met, but my needs aren't met.

17 Q. Can you tell the Court how long you've had  
18 this carpal tunnel problem?

19 A. The last two years I haven't had it because  
20 I haven't gone to work because of that mostly. I  
21 didn't want to expound on it, you know, make it worse.

22 Q. So you haven't done anything in the last two  
23 years to make that worse?

24 A. Except for the work I did around the  
25 property. I've hurt myself different times working on

1 the property like a man.

2 Q. But you were able to work around the  
3 property like a man, then?

4 A. Well, at my own pace. At the factories they  
5 make you keep up with an assembly line, and then that  
6 aggravates the carpal tunnel where you can't stop and  
7 rest it. Days I didn't do things -- I didn't work  
8 every day like a man at the property, just when my  
9 health and strength would allow it.

10 Q. Do you have problems focusing? I mean there  
11 was some comment about you had trouble focusing. Do  
12 you agree you have trouble focusing?

13 A. Yes.

14 Q. Andrea -- is it Andrea or Andréa?

15 A. It doesn't matter.

16 Q. If the Court concludes that Mr. Demita owns  
17 half the property and that Mr. Bradford owns half the  
18 property, he says that deed's valid, it's upheld, but  
19 then he decides that--

20 A. Who's "he?"

21 Q. The judge. But then the judge decides or  
22 rules that it was a dissipation, that you didn't have  
23 any right to transfer the property away -- in other  
24 words what I'm saying is he says the deed is valid,  
25 Mr. Demita owns the property or owns half of it, but

1 then he rules "Mrs. Bradford, you didn't have any  
2 right to transfer it, therefore you shouldn't have  
3 done that, and you owe Mr. Bradford half the value of  
4 that land," you would owe Mr. Bradford \$60,000 or  
5 \$70,000 minimum, wouldn't you?

6 MR. CHUNTZ: Objection, I think it's calling  
7 for a legal conclusion. He's giving argument and  
8 asking her to--

9 THE COURT: Where are you headed with this,  
10 counsel?

11 MR. PATTON: Your Honor, what I'm trying to  
12 establish is really that she doesn't have \$60,000 or  
13 \$70,000 worth of assets to pay my client, and that's  
14 clearly relevant because it goes to the issue of  
15 solvency, and it's one of the possibilities that this  
16 Court can issue a ruling on.

17 This Court can conclude that the deed is  
18 valid, but it was a dissipation of assets, and as such  
19 therefore she has to pay that back to the marital  
20 estate, and at even the lowest figure I can come up  
21 with, taking out costs of sale, taking out having to  
22 repair the tanks, et cetera, she would still owe the  
23 marital estate \$60,000 to \$70,000. If you want me to  
24 ask it that way, I'll withdraw that question and say,  
25 "Do you have \$60,000 or \$70,000 worth of assets you

1 could pay the marital estate?"

2 MR. CHUNTZ: And I would say asked and  
3 answered. If that's the question and that's where  
4 he's going with it, he put her through that whole  
5 rigamorole on direct examination when he had her up on  
6 the stand, and asked about every piece of property she  
7 had and how much value it was and -- he already knows  
8 the answer.

9 MR. PATTON: Are you stipulating she  
10 doesn't?

11 THE COURT: Overruled, go ahead.

12 Q. BY MR. PATTON: Andrea Bradford, do you have  
13 \$60,000 or \$70,000 worth of assets that you could pay  
14 back to the marital estate if that's what the Court  
15 orders you to do?

16 A. Personally, no, but I possibly -- definitely  
17 could get it.

18 Q. From where?

19 A. That is my business.

20 MR. PATTON: Your Honor, I'm going to ask  
21 you that you instruct her to answer.

22 THE COURT: Please answer the question,  
23 ma'am.

24 THE WITNESS: I have family.

25 Q. BY MR. PATTON: So you would get that money

1 from the family?

2 A. Yes.

3 Q. So you don't personally have those assets?

4 A. No.

5 MR. PATTON: No further questions.

6 THE COURT: Anything further?

7 MR. CHUNTZ: Nothing further, your Honor.

8 THE COURT: You may step down.

9 MR. CHUNTZ: Your Honor, could we have a  
10 five minute recess? I want to call Mr. Demita, but he  
11 needs to call his son.

12 THE COURT: That's fine.

13 (Short recess taken)

14 THE COURT: Come forward and be sworn.

15 COURT CLERK: You do solemnly swear that the  
16 testimony you are about to give in this case now  
17 pending before the Court will be the truth, the whole  
18 truth, and nothing but the truth, so help you God?

19 THE WITNESS: Yes.

20 JAMES DEMITA

21 having been first duly sworn,

22 testifies as follows:

23 DIRECT EXAMINATION

24 BY MR. CHUNTZ:

25 Q. Please state your name for the record.

1 A. James A. Demita.

2 Q. And where do you reside?

3 A. 1100 South Main in Spanish Fork.

4 Q. Who do you reside there with?

5 A. My mother and step-father and my son.

6 Q. You've heard testimony that your mother  
7 deeded you by quit claim deed all of her interest in  
8 the property where you reside; is that correct?

9 A. Correct.

10 Q. And that was in August of 1996?

11 A. Yes.

12 Q. Were you involved -- did you discuss this  
13 transfer of the property with your mother prior to its  
14 being deeded?

15 A. Yes, most of the discussion was with you and  
16 my mother, but I discussed it with her as well.

17 Q. Did you have a concern about what would  
18 happen to her share of the property if she died before  
19 Mr. Bradford?

20 A. Yes, actually both sides of that coin  
21 because my mother didn't necessarily know if it was  
22 great to -- if Mr. Bradford were to die first then she  
23 would get it all, and she thought it would be more  
24 fair just to make sure both sides got half with how it  
25 stood, you know, Mr. Bradford got half, she got half,

1 so she just wanted to make sure that both sides of the  
2 family got their half instead of one getting it all  
3 and the other nothing.

4 Q. You heard my questions and Mr. Bradford's  
5 answers about developing the subject property.

6 A. Yes.

7 Q. How long had he and you been talking about  
8 doing that, say before August of 1996?

9 A. How many months before?

10 Q. Yes.

11 A. We initially started in approximately  
12 December of 1995, late December of 1995.

13 Q. And then you went through assisting in  
14 getting these contracts drawn up and entered into?

15 A. Well, I didn't draw the contracts up, I  
16 called around and tried to find people (inaudible)  
17 selling the land to be developed, I contacted  
18 different developers and saw if any of them would be  
19 interested in purchasing it, and then Mr. Mullen and  
20 Mr. Gardner had their attorney, I'm assuming --  
21 actually Mr. Mullen's an attorney, from what I  
22 understand.

23 Anyway, they provided the documents and then  
24 I had a friend that used an attorney up at Snow,  
25 Christensen, and Martineau in Salt Lake and he agreed

1 to look over the documents just in George and my  
2 mother's behalf, just to see if there was any problem  
3 with it or whatever, and he said they looked fine, so  
4 then they signed them.

5 Q. As the property now exists, can it be  
6 divided into two equal parts in a partition?

7 A. I don't think so.

8 Q. Why not?

9 A. Well, it's unique, it's got the river on one  
10 side and then you've got city ground on the other and  
11 then you have the house, so I don't really know how  
12 you could do it equitably, especially with the house  
13 on it.

14 Q. Are you asking the Court to award the  
15 property be sold pursuant to the partition statute?

16 A. Yes.

17 Q. Are you willing to buy Mr. Bradford's share  
18 of the property for half of its appraised value?

19 A. Yes.

20 MR. CHUNTZ: That's all the questions I  
21 have.

22 Q. BY MR. CHUNTZ: Let me ask you another  
23 question. If the property was placed on the market  
24 pursuant to the partition statute, would you be  
25 willing to take half of the higher amount if it would

1 sell for more than the appraised value?

2 A. Why don't you just say that one more time.

3 Q. If the property was put up for sale pursuant  
4 to the statute, and a buyer was willing to pay more  
5 than what it's been appraised for, would you be  
6 satisfied in taking your half?

7 A. Sure. I'd prefer to keep it, obviously,  
8 because my son has been living there and I've been  
9 living there and my mom lives there.

10 Q. So if somebody was willing to offer more  
11 than \$180,000 for the property, would you be willing  
12 to try to match that offer?

13 A. Yeah, I would try to do that because like I  
14 said, I would like to keep my son -- you know, we've  
15 been living there for awhile now and just keep things  
16 stable.

17 MR. CHUNTZ: Thank you.

18 CROSS EXAMINATION

19 BY MR. PATTON:

20 Q. Mr. Demita, you're indicating that you would  
21 like to do that and buy my client out. Where are you  
22 employed?

23 A. Pardon me?

24 Q. Where are you employed?

25 A. Well, I do independent consulting for a

1 computer store here in town. I'm working with other  
2 developers right now since I gained experience in  
3 developing land, and working with different projects  
4 in the valley right now, then I do a public community  
5 service, I write a column in the -- a weekly column in  
6 the newspaper.

7 Q. And from all these different things that you  
8 do, how much money did you earn last year?

9 A. Well, last year I was developing with Mr.  
10 Bradford so I didn't earn very much.

11 Q. How much did you earn?

12 A. Less than \$3,500.

13 Q. So all of last year you earned less than  
14 \$3,500?

15 A. Yes and no.

16 Q. How much did you earn in the tax year 1996?

17 A. I'm sorry, I thought you said 1996. You  
18 said 1995?

19 Q. No, last year was 1997.

20 A. Right, so what are you asking?

21 Q. Last year was 1997.

22 A. Right.

23 Q. How much did you earn in 1997?

24 A. Less than \$3,500.

25 Q. How much did you earn in 1996?

1           A.    I was working on land still, so it was less  
2 than \$3,500.

3           Q.    And how much in 1995?

4           A.    Well, I was in school.

5           Q.    Which law school was it?

6           A.    In Oregon.

7           Q.    What was the name of the law school?

8           A.    Will (inaudible).

9           Q.    When this development discussion was going  
10 on, I believe your testimony was you were the one who  
11 was talking with the attorneys?

12          A.    I don't know what you mean by talking to the  
13 attorneys. Mr. Mullen is an attorney, one of the  
14 developers, and I spoke with him, yes.

15          Q.    I believe you spoke with somebody at  
16 Martineau in Salt Lake?

17          A.    Yes, some firm up in Salt Lake. My buddy  
18 that I met in law school said his family uses this guy  
19 and he would be willing to take a look at it for free  
20 and see how it looked, so I asked Mr. Bradford --  
21 well, actually he didn't say free, he said a small  
22 fee, whatever his hourly fee is. So then I told Mr.  
23 Bradford and my mother and they said, "Yeah, go ahead  
24 and have him look at it." When I got up there he  
25 didn't charge, he just said, "It looks fine," and he

1 didn't charge.

2 Q. So when you were going to do that you  
3 discussed that with your mother and Mr. Bradford?

4 A. Yes.

5 Q. Because they were involved with it and you  
6 wanted to be fair with them; is that right?

7 A. Well, I just told them everything that was  
8 going on.

9 Q. So you tried to be sure that they knew  
10 everything that was going on?

11 A. At that point yes, definitely.

12 Q. Are you the individual who prepared the quit  
13 claim deed that was signed by Andrea Bradford?

14 A. I'm not sure if you mean prepared, I signed  
15 in the part where it was \$10 -- the handwritten part I  
16 did. I didn't notarize it or I didn't sign her  
17 signature or anything. I just did the handwritten  
18 part that you can see on there.

19 MR. PATTON: May I approach the witness?

20 THE COURT: You may.

21 Q. BY MR. PATTON: I'm going to show you my  
22 copy of Exhibit 1.

23 A. Okay.

24 Q. I'm going to show you what's been marked  
25 Plaintiff's Exhibit No. 16 for identification and ask

1 you if you recognize that.

2 A. Yes, I do.

3 Q. I'm going to ask you to take this yellow  
4 highlighter and I want you to highlight--

5 THE COURT: Plaintiff's 16, this is  
6 Plaintiff's 1.

7 MR. PATTON: Well, we're making a new--

8 THE WITNESS: This says Plaintiff's 1, just  
9 so you know. I'm sorry, I thought you were saying P-1  
10 here (inaudible) 16, sorry.

11 THE COURT: Do you want to take this one?

12 MR. PATTON: We have another copy -- no,  
13 we're not using Plaintiff's 1, we're now using  
14 Plaintiff's 16.

15 THE COURT: What's the difference?

16 MR. PATTON: (inaudible) mark it.

17 THE COURT: Make sure that's--

18 COURT CLERK: I think we're using  
19 (inaudible).

20 MR. PATTON: Yes, we are, this is the new  
21 one.

22 THE COURT: Right, so that one--

23 MR. PATTON: That's 1.

24 THE COURT: You lost me, why do we have two  
25 of the same deed?

1 MR. PATTON: Because this one will be  
2 different in just a second. This one will look  
3 different than that one in just a second. That's the  
4 one I'm going to have him mark.

5 MR. CHUNTZ: If he's going to mark it I  
6 suppose it's okay.

7 THE COURT: Go ahead.

8 Q. BY MR. PATTON: Will you highlight in yellow  
9 those portions that you printed in that document?

10 A. Sure.

11 (Witness marks document)

12 Q. BY MR. PATTON: So those portions you've  
13 highlighted on Plaintiff's Exhibit No. 16 for  
14 identification are the portions that you wrote in?

15 A. Yes.

16 Q. Now the legal description of the property,  
17 although it's typed, it actually looks like it's been  
18 xeroxed on there; is that correct?

19 A. I believe so. The actual -- LEI, I think,  
20 is the one that provided the document.

21 Q. LEI provided this document?

22 A. Yeah, because they had it on file, so they  
23 said -- I don't know if they copied it or what they  
24 did to it, but they said, "Here's the document," and  
25 then I hand wrote the part you see that's in

1 handwriting, and then we went to the bank and an  
2 individual at Zion's Bank notarized it.

3 Q. When you say "we" you mean you and your mom?

4 A. Yes.

5 MR. PATTON: Your Honor, we would submit  
6 Plaintiff's Exhibit No. 16 as Plaintiff's Exhibit No.  
7 16.

8 THE COURT: Any objection?

9 MR. CHUNTZ: No objection.

10 THE COURT: Sixteen will be received.

11 (Exhibit No. 16 received into evidence)

12 Q. BY MR. PATTON: I'm curious, Mr. Demita, if  
13 you had the document and you talked with Mr. Chuntz  
14 with your mom, or if you spoke with Mr. Chuntz and  
15 then you went and got the document, the quit claim  
16 deed, which occurred first?

17 A. I didn't get the quit claim deed for some  
18 time after they discussed different options that she  
19 had before her.

20 Q. My question is what was that some time, a  
21 week, two weeks?

22 A. No, it was a few months.

23 Q. A few months?

24 A. Yeah, a few months.

25 Q. So when she spoke to Mr. Chuntz about her

1 options on estate planning, that was several months  
2 before August?

3 A. Well, I didn't say several, I said a few.

4 Q. So it was a few months before August?

5 A. It was in about April, I believe.

6 Q. So that was in about April, and the quit  
7 claim deed was signed in August?

8 A. Yes.

9 Q. What was the urgency to sign the quit claim  
10 deed in August if you had known about it since April?

11 A. There is no urgency.

12 Q. Was there any particular reason it wasn't  
13 typed, and it was handwritten instead of being typed?

14 A. I didn't have a typewriter.

15 Q. In August when the quit claim deed was  
16 prepared, how long after you got it from these people  
17 that you said had it and it was signed?

18 A. Not too long, I can't remember exactly.

19 Q. A day, a week?

20 A. It was probably in the duration of a week or  
21 less.

22 Q. My question is it's been since April, you  
23 get this document evidently right at the end of July  
24 or the first part of August, was there any  
25 conversations between you and your mom at or about

1 that time as to why it had to be done then and not  
2 later or not earlier?

3 A. Like I said, I don't know what you mean by  
4 "had to be done." We never -- it didn't necessarily  
5 have to be done. That was just part of what she was  
6 discussing, and they said you can do a trust or you  
7 can quit claim it, and it's quicker, you don't have to  
8 have all the added fees and all that other stuff, and  
9 so there's no particular magical number about that  
10 date. That's just when it got signed.

11 Q. The quit claim deed, the talking with the  
12 attorneys, the talking with LEI, et cetera, the reason  
13 that was done -- and I don't want to be rude to your  
14 mom and I don't want to be rude to Mr. Bradford, but  
15 it's fair for me to assume that they're not very  
16 sophisticated people in terms of those type of  
17 business dealings; isn't that true?

18 A. I can't make a characterization like that.

19 Q. Is it fair to say that you're more  
20 sophisticated than they are?

21 A. I'm not going to say I'm better than  
22 somebody, okay? I'm not going to say I'm more  
23 sophisticated or I'm smarter than somebody else. I  
24 think everybody has a relative range of normality.

25 Q. You have graduated from college?

1           A.    Yes.  That doesn't mean you're smarter.

2           Q.    I agree.  And I don't know if you finished  
3 law school, but you at least had some training at law  
4 school?

5           A.    Sure.

6           Q.    I believe your previous testimony was when  
7 you were dealing with Mr. Bradford and your mom and  
8 doing these types of things, you were trying to be as  
9 open and honest with them as you could and keep them  
10 informed?

11          A.    Yes, absolutely.

12          Q.    But you didn't inform Mr. Bradford that she  
13 had signed that quit claim deed, did you?

14          A.    We discussed it the whole time.  I mean we  
15 knew right when we went in, we said, "Okay, we're  
16 going to develop the property, where's the money going  
17 to go when they get the money?"  And they said, "Well,  
18 it's only fair half goes to his side and half goes to  
19 the other."

20          Q.    My question is when the quit claim deed was  
21 signed did you tell Mr. Bradford it had been signed?

22          A.    Not in so many words, no.

23                   MR. PATTON:  Thank you.

24                   (End of partial transcript)

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REPORTER'S CERTIFICATE

STATE OF UTAH )  
 )  
COUNTY OF UTAH )

I, Beverly Lowe, a Notary Public in and for the State of Utah, do hereby certify:

That the foregoing proceedings were transcribed under my direction from the electronic tape recording made of these proceedings.

That this transcript is full, true, and correct and contains all of the evidence, all of the objections of Counsel and rulings of the Court and all matters to which the same relate which were audible through said tape recording.

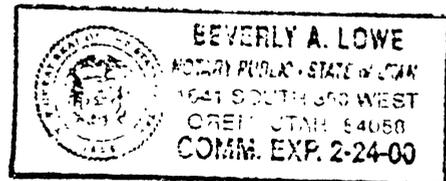
I further certify that I am not interested in the outcome thereof.

That certain parties were not identified in the record, and therefore the name associated with the statement may not be the correct name as to the speaker.

WITNESS MY HAND AND SEAL this 8th day of December 1998.

My commission expires:  
February 24, 2000

  
\_\_\_\_\_  
NOTARY PUBLIC  
residing in Utah County



CERTIFICATE OF MAILING

I hereby certify that on the 16th day of December, 1999, a true and correct copy of the attached OPINION was deposited in the United States mail to:

HOWARD CHUNTZ  
ATTORNEY AT LAW  
1149 W CENTER ST  
OREM UT 84057

THOMAS R. PATTON  
ALDRICH NELSON WEIGHT & ESPLIN  
43 E 200 N  
PO BOX "L"  
PROVO UT 84603

and a true and correct copy of the attached OPINION was deposited in the United States mail to the judge listed below:

HONORABLE STEVEN L. HANSEN  
FOURTH DISTRICT, PROVO DEPT  
125 N 100 W  
PO BOX 1847  
PROVO UT 84603

  
\_\_\_\_\_  
Judicial Secretary

TRIAL COURT: FOURTH DISTRICT, PROVO DEPT, 974401237  
APPEALS CASE NO.: 981745-CA

FILED

DEC 16 1999

This opinion is subject to revision before  
publication in the Pacific Reporter.

IN THE UTAH COURT OF APPEALS

COURT OF APPEALS

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George R. Bradford,	)	OPINION
	)	(For Official Publication)
Plaintiff and Appellee,	)	Case No. 981745-CA
	)	
v.	)	F I L E D
	)	(December 16, 1999)
Andrea O. Bradford and	)	
James A. Demita,	)	<u>1999 UT App 373</u>
	)	
Defendants and Appellants.	)	

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Fourth District, Provo Department  
The Honorable Steven L. Hansen

Attorneys: Howard Chuntz, Orem, for Appellants  
Thomas R. Patton, Provo, for Appellee

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Before Judges Greenwood, Bench, and Billings.

GREENWOOD, Associate Presiding Judge:

¶1 Mr. George K. Bradford filed for divorce from his wife, Mrs. Andrea O. Bradford, on June 10, 1997. In the same complaint, he alleged Mrs. Bradford had fraudulently conveyed a property interest in the couple's home to her son, Mr. James A. Demita, a named defendant. This appeal thus arises from two related cases tried together by agreement of the parties and the trial court. Mrs. Bradford appeals the trial court's order setting aside her conveyance of her interest in the home to Mr. Demita and the trial court's order awarding the home entirely to Mr. Bradford. We affirm the order setting aside the conveyance, but reverse the award of the home to Mr. Bradford and remand for further proceedings regarding property division between Mr. and Mrs. Bradford.

RELEVANT FACTS

¶2 The Bradfords were married in June 1985. Each had been married once before, and each had at least one child from the prior marriage. No children were born of their marriage to each other.

¶3 During their marriage, the couple lived in Mr. Bradford's home located in Spanish Fork, Utah. Mr. Bradford was raised in this home, which his grandfather and father both owned before him. Before marrying Mrs. Bradford, he received title to the home from his father as a gift. Several improvements were made to the home during the couple's marriage, including a repaired roof and septic system, the addition of a new furnace, and plumbing work connecting the home to the city's water supply. Mr. Bradford paid for these improvements with funds he received before the marriage as part of a settlement with Geneva Steel. Mrs. Bradford's only contribution to the improvements consisted of making phone calls and arranging for the work to be done. The undisputed present estimated value of the home is \$180,000.

¶4 In 1989, approximately four years after they married, Mr. Bradford transferred the home by way of warranty deed to himself and his wife as "joint tenants with full rights of survivorship and not as tenants in common." Three years later, however, Mr. Bradford filed for divorce and asked that the home and real property be awarded to him. That action was dismissed in 1993 after the parties reunited.

¶5 The couple continued to have marital difficulties, and Mr. Bradford threatened divorce many times. Nevertheless, in 1996, the couple engaged in a joint business venture with Mrs. Bradford's son, Mr. Demita, to develop property, upon which the home was located. Mr. Demita was to receive twenty-five percent of the profits for his assistance in developing the property. At the time of this business arrangement, Mr. Demita was living with the Bradfords and had done so rent-free since December 1995.

¶6 In July 1996, shortly after the property venture began, Mr. Bradford arrived home to find several engineers in the house. He was upset with the slow progress of the project and had an argument with Mrs. Bradford. This time, the argument was severe, and the couple again discussed divorce.

¶7 On August 8, 1996, Mrs. Bradford transferred her interest in the home by way of quit claim deed to her son, Mr. Demita. She later claimed this transfer was for "estate planning purposes." Mr. Demita gave Mrs. Bradford \$10 as consideration for the property transfer. Neither Mrs. Bradford nor Mr. Demita told Mr. Bradford about this transaction, and Mrs. Bradford continued to live in the home. Mr. Bradford discovered the existence of the quit claim deed several months later when his daughter went to the County Recorder's Office to verify Mr. Demita's representations that the home and property had been rezoned for development. She found the quit claim deed and discovered the property, in fact, had not been rezoned.

¶8 On June 10, 1997, soon after he learned about the deed to Mr. Demita, Mr. Bradford filed a complaint for divorce against Mrs. Bradford and included Mr. Demita as a party to the action. After a bench trial, the court awarded Mr. Bradford a divorce. The trial court also found that the transfer between Mrs. Bradford and Mr. Demita was fraudulent and set aside the conveyance. In awarding the subject property, the trial court concluded the house and real property were not partitionable and would have to be refinanced or sold if awarded to both Mr. Bradford and Mrs. Bradford. The court thus awarded the home and the real property to Mr. Bradford. In addition, the court awarded Mrs. Bradford alimony in the amount of \$600 a month and divided equally the remaining marital property, including bank accounts, an IRA account, retirement funds, and the cash value of an insurance policy.

¶9 Mrs. Bradford moved the trial court to amend its findings of fact and conclusions of law, but the court denied her motion. Mrs. Bradford and her son then filed this appeal.

#### ISSUES AND STANDARDS OF REVIEW

¶10 This case involves three critical issues. First, did Mrs. Bradford's conveyance of her joint tenancy interest in the home constitute a fraudulent transfer? Because this issue involves both questions of law and of fact, we review the trial court's findings of fact for clear error. See Jeffs v. Stubbs, 970 P.2d 1234, 1244 (Utah 1998). "In contrast, we review a trial court's conclusions as to the legal effect of a given set of found facts for correctness." Id. (citing State v. Pena, 869 P.2d 932, 936 (Utah 1994)). Nevertheless, "[w]e may still grant the trial court discretion in its application of the law to a given fact situation." Id.

¶11 Second, if the transfer was fraudulent, and therefore void, was the nature of the property marital or separate? This issue primarily presents a question of law; therefore, we review the trial court's legal conclusions concerning the nature of property for correctness. See Jefferies v. Jefferies, 895 P.2d 835, 836 (Utah Ct. App. 1995) (considering whether 401(k) plan is marital property).

¶12 Third, did the trial court properly award the subject property entirely to Mr. Bradford? In deciding this question, we acknowledge that "[t]rial courts have considerable discretion in determining alimony and property distribution in divorce cases, and will be upheld on appeal unless a clear and prejudicial abuse of discretion is demonstrated." Howell v. Howell, 806 P.2d 1209, 1211 (Utah Ct. App. 1991).

## ANALYSIS

### I. Fraudulent Conveyance

¶13 We first address the fraudulent conveyance issue. The trial court concluded the transfer was fraudulent under the Uniform Fraudulent Transfer Act, see Utah Code Ann. §§ 25-6-1 to -13 (1998), and declared the transfer void.

¶14 A fraudulent transfer in Utah first requires a creditor-debtor relationship. Essentially, a fraudulent transfer occurs when a debtor transfers substantially all his or her assets to another to defraud a creditor or avoid a debt. A "creditor," according to section 25-6-2(4), "means a person who has a claim." A "'claim' means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." Utah Code Ann. § 25-6-2(3) (1998) (emphasis added); see also Zuniga v. Evans, 87 Utah 198, 206, 48 P.2d 513, 516 (1935) (holding persons having tort claim against grantor that was not reduced to judgment at time of conveyance are "creditors").

¶15 Although no Utah cases directly address whether a husband or wife becomes a creditor of his or her spouse when contemplating divorce, the Oregon Supreme Court's statement on the subject is helpful to our analysis:

In Weber v. Rothchild, 15 Or. 385, 388-89, 15 P. 650, 2 Am. St. Rep. 162 (1887), we held that a person in the position of plaintiff may maintain a suit to set aside a transaction which may defeat her recovery and rights in a contemplated suit for divorce. This rule prevails in other jurisdictions that have considered the matter.

We conclude, as did the trial court, that the conveyance by deed of April 14, 1972, was obtained by fraud to hinder or prevent plaintiff's recovery of [defendant's] equitable interest in the fourplex, in the divorce suit, and is therefore set aside and held to be void.

Adamson v. Adamson, 541 P.2d 460, 466 (Or. 1975) (citations omitted).

¶16 In this case, the trial court determined that "[p]ursuant to Utah Code Ann. § 25-6-2(4) and § 25-6-5 Mr. Bradford is a creditor of Mrs. Bradford in that he has a claim to the real

property which Mrs. Bradford deeded to her son, Mr. Demita." The trial court based this conclusion on the fact that Mr. Bradford had threatened divorce just weeks before Mrs. Bradford made the transfer. That conclusion is consistent with the Oregon Supreme Court's analysis in Adamson, which we adopt. In our view, the trial court correctly concluded Mr. Bradford was, indeed, a creditor of Mrs. Bradford, given that his claim to the house--although not reduced to judgment in a divorce proceeding--had arisen through recent threats of divorce. We note this conclusion is consistent with our supreme court's admonition to construe the statute liberally "to reach all artifices and evasions designed to rob the Act of its full force and effect." Butler v. Wilkinson, 740 P.2d 1244, 1260 (Utah 1987); see also Givan v. Lambeth, 10 Utah 2d 287, 291, 351 P.2d 959, 962 (1960) ("[A]ll statutes made against fraud should be liberally and beneficially expounded to suppress the fraud.") (quoting Twyne's Case, 76 Eng. Rep. 809 (1601)).

¶17 Having concluded Mr. Bradford is a creditor of Mrs. Bradford, we next examine whether Mrs. Bradford made a fraudulent transfer of her joint tenancy interest to her son. According to Utah's Fraudulent Transfer Act, "A transfer made . . . by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made . . . , if the debtor made the transfer . . . (a) with actual intent to hinder, delay, or defraud any creditor of the debtor." Utah Code Ann. § 25-6-5(1) (1998).

¶18 A creditor who claims a debtor transferred property with actual intent to defraud under section 25-6-5(1)(a) must establish that claim by clear and convincing evidence. See Territorial Sav. & Loan Ass'n v. Baird, 781 P.2d 452, 462 (Utah Ct. App. 1989). Nevertheless, "[f]raudulent intent is ordinarily considered a question of fact, and 'may be inferred from the presence of certain indicia of fraud or 'badges of fraud.'" Id. at 462 (quoting Dahnken, Inc. v. Wilmarth, 726 P.2d 420, 423 (Utah 1986)) (other citations and footnotes omitted). Utah's statute codifies those factors historically considered by the common law as indicia or badges of fraud in section 25-6-5(2), which states:

To determine "actual intent" under Subsection (1)(a), consideration may be given, among other factors, to whether:  
(a) the transfer or obligation was to an insider;<sup>(1)</sup>

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1. The relevant portion of the Act includes in its definition of  
(continued...)

- (b) the debtor retained possession or control of the property transferred after the transfer;
- (c) the transfer or obligation was disclosed or concealed;
- (d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (e) the transfer was of substantially all the debtor's assets;
- . . .
- (h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred . . . .

See also Paxton v. Paxton, 80 Utah 540, 553, 15 P.2d 1051, 1056 (1932) (holding conveyances between near relatives, calculated to prevent creditor from realizing on claim, are subject to rigid scrutiny); Givan, 351 P.2d at 962 (holding transactions among close relatives receive close scrutiny but close relationship does not necessarily mean transaction is invalid).

¶19 The trial court used these factors in concluding Mrs. Bradford had actual intent to defraud Mr. Bradford. Specifically, the trial court found "that the transfer was concealed from Mr. Bradford, Mrs. Bradford continues to live in the house as before, Mr. Bradford had threatened Mrs. Bradford with divorce a matter of weeks before the transfer, and the transfer was substantially all of the assets that Mrs. Bradford believed that she had."

¶20 We, too, conclude these badges of fraud are adequate to show actual intent by Mrs. Bradford to fraudulently convey her interest to her son. Accordingly, we affirm the trial court's findings (including those denominated as conclusions) that the transfer was fraudulent and void. See Utah Code Ann. § 25-6-8(1)(a) (1998).

## II. Nature of Property

¶21 Our conclusion that the transfer is void necessarily restores the joint tenancy title to the home in Mr. and Mrs. Bradford. Nevertheless, Mr. Bradford argues the property should be treated as separate property because he inherited it, brought it into the marriage, and maintained and improved it. The trial

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(...continued)  
an "insider" a person who is "a relative of the debtor." Utah Code Ann. § 25-6-2(7)(a)(i) (1998).

court, he contends, was therefore correct in awarding the subject property to him despite its joint tenancy status.

¶22 Utah law provides that a spouse may transfer his or her interest in separately acquired property into the marital estate. See Utah Code Ann. § 30-2-3 (1998). A transfer of otherwise separate property to a joint tenancy with the grantor's spouse is generally presumed to be a gift, see 41 C.J.S. Husband and Wife § 103(a), at 397 (1991) (citing Kramer v. Kramer, 709 S.W.2d 157, 159 (Mo. Ct. App. 1986)), and, when coupled with an evident intent to do so, effectively changes the nature of that property to marital property. See Mortensen v. Mortensen, 760 P.2d 304, 307-08 (Utah 1988); see also Bonnell v. Bonnell, 344 N.W.2d 123, 126 (Wis. 1984) (stating spouse may transfer separate property into marital estate and "separate property transferred into joint tenancy becomes part of the marital estate"); cf. Jespersion v. Jespersen, 610 P.2d 326, 328 (Utah 1980) (finding trial court did not abuse discretion in awarding home held in joint tenancy to wife when "there was no intention by [wife] to create a one-half property interest in [husband], nor any expectation by [husband] that he had received a one-half property interest").

¶23 In Mortensen, our supreme court considered how property inherited during a marriage should be divided upon divorce. After examining the law in other jurisdictions, the court announced that, as a general rule, "property acquired by one spouse by gift and inheritance during the marriage [should be awarded] to that spouse, together with any appreciation or enhancement of its value." Mortensen, 760 P.2d at 308;<sup>2</sup> see also Haumont v. Haumont, 793 P.2d 421, 424 (Utah Ct. App. 1990) ("[E]quity [generally] requires that each party retain the separate property he or she brought into the marriage."). This rule applies

unless (1) the other spouse has by his or her efforts or expense contributed to the enhancement, maintenance, or protection of that property, thereby acquiring an equitable interest in it, . . . or (2) the property has been consumed or its identity lost through

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2. Although the subject property in Mortensen was inherited during the couple's marriage, subsequent courts have applied the Mortensen ruling to property inherited before marriage. See, e.g., Finlayson v. Finlayson, 874 P.2d 843, 847 (Utah Ct. App. 1994) ("[E]ach party should, in general, receive the real and personal property he or she brought to the marriage or inherited during the marriage." (Quoting Mortensen, 760 P.2d at 306.) (Alteration in original.) (Other citations omitted)).

commingling or exchanges or where the acquiring spouse has made a gift of an interest therein to the other spouse.

Mortensen, 760 P.2d at 380 (emphasis in original).

¶24 In this case, the record is clear, and the trial court found, that Mr. Bradford conveyed his interest in the home to himself and his wife as "joint tenants with full rights of survivorship and not as tenants in common." According to the trial testimony, Mr. Bradford intended at that time to give a one-half interest in the home to his wife.<sup>3</sup> Nothing in the trial court's findings or the record indicates otherwise. We therefore conclude the transfer of Mr. Bradford's separate property to his wife as a joint tenant with himself effectively transformed the subject property from Mr. Bradford's separate property into marital property.

### III. Property Award

¶25 Our determination regarding the property's nature does not end our inquiry, for we must also decide whether the trial court properly awarded the home, even though marital property, entirely to Mr. Bradford.

"We afford the trial court 'considerable latitude in adjusting financial and property interests, and its actions are entitled to a presumption of validity.' Accordingly, changes will be made in a trial court's property division determination in a divorce action 'only if there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error, the evidence clearly preponderated against the

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3. Mr. Bradford testified as follows:

- Q: What do you remember about [your discussion with your daughter concerning the joint tenancy]? Did you ever have a concern that [Mrs. Bradford] would get all of the property if you died first?
- A: No, I didn't.
- Q: You never worried about that?
- A: Well, I signed it expecting that--her name on there expecting that she would only get half of it.
- Q: And that was your intention, wasn't it?
- A: Yes.

findings, or such a serious inequity has resulted as to manifest a clear abuse of discretion.'"

Thomas v. Thomas, 375 Utah Adv. Rep. 23, 25 (Utah Ct. App. 1999) (quoting Watson v. Watson, 837 P.2d 1, 5 (Utah 1992) (quoting Naranjo v. Naranjo, 751 P.2d 1144, 1146 (Utah Ct. App. 1988))).

¶26 Generally, in a divorce proceeding "[e]ach party is presumed to be entitled to all of his or her separate property and fifty percent of the marital property." Id. (alteration in original) (citations and additional quotation marks omitted). This presumptive rule of thumb, however, does not supersede the trial court's broad equitable power to distribute marital property, regardless of who holds title. See Finlayson, 874 P.2d at 849 ("Both this court and the Utah Supreme Court have long held that once a court has determined something is marital property, the court may distribute it equitably, notwithstanding which party's name appears on the title." (Citation omitted.)); Haumont, 793 P.2d at 424 n.1 ("[T]he trial court may, in the exercise of its broad discretion, divide the property equitably, regardless of its source or time of acquisition."); Naranjo, 751 P.2d at 1146 ("There is no fixed formula upon which to determine a division of properties in a divorce action."). A trial court may elect to distribute marital property unequally when the circumstances and needs of the parties dictate a departure from the general rule (e.g., to enable one party to fulfill an alimony or child support obligation). See Thomas, 375 Utah Adv. Rep. at 25; see also Burke v. Burke, 733 P.2d 133, 135 (Utah 1987) (holding trial courts should be guided by general purpose of property division, "which is to allocate the property in a manner which best serves the needs of the parties and best permits them to pursue their separate lives"); Newmeyer v. Newmeyer, 745 P.2d 1276, 1279 n.1 (Utah 1987) ("In determining whether a certain division of property is equitable, . . . the relative abilities of the spouses to support themselves after the divorce are pertinent to an equitable . . . division of the fixed assets of the marriage."); Cox v. Cox, 877 P.2d 1262, 1269-70 (Utah Ct. App. 1994) (affirming award to husband of marital home previously owned by husband but conveyed to wife in joint tenancy just before marriage; trial court found marriage was of short duration, no children were born, and couple married later in life).

¶27 An unequal division of marital property, however, is only justified when the trial court "memorialize[s] in commendably detailed findings" the exceptional circumstances supporting the distribution. Thomas, 375 Utah Adv. Rep. at 25; see also Haumont, 793 P.2d at 425 (holding property division must be supported by adequate factual findings). In this case, the trial

court's only finding justifying the award of the home to Mr. Bradford was that "the house and property is in fact not partitionable as it contains a residence, road and river frontage. If an interest were to be conveyed the house would have to be refinanced or sold."<sup>4</sup> This finding is insufficient, by itself, to support an award of the marital home entirely to Mr. Bradford. Trial courts often order a sale of marital property and equitably divide the proceeds between the parties. See, e.g., Workman v. Workman, 652 P.2d 931, 933 (Utah 1982). A trial court may also allow one spouse to "buy out" the other spouse's interest in marital property. See, e.g., id. The trial court made no adequate finding explaining why either of these two remedies was not appropriate for the parties in this case. Accordingly, we reverse the trial court's award of the marital home solely to Mr. Bradford.

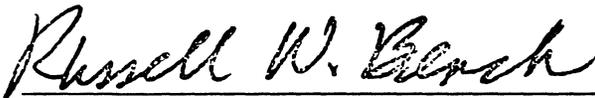
¶28 Nevertheless, our role is not to supplant the trial court's function in making a property distribution; the trial court is in a much better position to determine a proper remedy. Moreover, an award of the subject property in this case has an integral relationship to the trial court's other orders concerning alimony and other property. We therefore remand this case to the trial court to determine these matters in light of our conclusion that the subject property is marital, not separate, property.



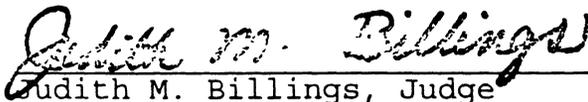
Pamela T. Greenwood,  
Associate Presiding Judge

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¶29 WE CONCUR:



Russell W. Bench, Judge



Judith M. Billings, Judge

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4. We note, also, that the parties at one time, at least, contemplated development and sale of the property and had enlisted Mr. Demita's assistance in doing so.

IN THE SUPREME COURT OF THE STATE OF UTAH

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George R. Bradford,

Plaintiff and Appellee,

v.

Case No. 981745-CA

Andrea O. Bradford and  
James A. Demita,

Defendant and Appellant.

**ORDER**

This matter is before the court upon petitioners' motion filed on January 18, 2000, for a thirty (30)-day enlargement of time to file a petition for writ of certiorari.

IT IS HEREBY ORDERED that the motion for enlargement of time to file a petition for writ of certiorari is granted pursuant to Rule 48(e) of Utah Rules of Appellate Procedure. The petition for writ of certiorari is due to be filed with the Utah Supreme Court on or before February 16, 2000.

For The Court:

Date January 20, 2000

  
Pat H. Bartholomew  
Clerk of Court

CERTIFICATE OF MAILING

I hereby certify that on January 21, 2000, a true and correct copy of the foregoing ORDER was deposited in the United States mail to the party(ies) listed below:

HOWARD CHUNTZ  
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and a true and correct copy of the foregoing ORDER was hand delivered to a personal representative of the court(s) listed below:

FOURTH DISTRICT, PROVO DEPT  
ATTN: DEBBIE HESSING  
125 N 100 W  
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By   
Deputy Clerk

Case No. 981745-CA  
FOURTH DISTRICT, PROVO DEPT, 974401237