

2005

Greg J. Hansen v. Julie Ann Kik, fka Hansen : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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GREG J. HANSEN,

Petitioner and Appellant,

vs.

JULIE ANN KIK, fka HANSEN,

Respondent and Appellee.

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Case No. 20050464-CA

NO ORAL ARGUMENT

BRIEF OF APPELLANT

APPEAL FROM THE AMENDED ORDER ON ORDER TO
SHOW CAUSE AND JUDGMENT ENTERED BY THE SIXTH
JUDICIAL DISTRICT COURT FOR THE COUNTY OF SANPETE IN
THE STATE OF UTAH THE HONORABLE PAUL LYMAN PRESIDING

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FILED
UTAH APPELLATE COURTS

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STATEMENT OF JURISDICTION

Jurisdiction is conferred upon this Court by Utah Code Ann., Section 78-2a-3(2)(h), and by Rules 3, and 4, of the Utah Rules of Appellate Procedure.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

The issues presented upon this appeal are as follows:

a. Was the Respondent's action and the trial court's judgment to enforce the payment and personal property provisions of the Decree of Divorce beyond the eight (8), year statute of limitations provided by Utah Code Annotated, Section 78-12-22? The issue was preserved at *R.80-85, and Tr. 1-3, 11, 61-65.*

b. Was the Respondent guilty of laches preventing enforcement of the Decree of Divorce where the Petitioner's evidence was lost or destroyed thus prejudicing the Petitioner in presenting his proof at the evidentiary hearing? The issue was preserved at *R.80-85, and Tr. 1-3,11, 43-51, 61-65, 70.*

c. Was there insufficient evidence as to the value of the personal property to justify a judgment against the Petitioner in the amount of \$8,172.00? The issue was preserved at *Tr.1-2, 7-34, 37-41, 64-65, 66-67.*

d. Is the Petitioner entitled to an award of his costs and attorney fees incurred in defense of the Respondent's Motion for Order to Show Cause and upon this appeal? The issue was preserved at *R. 84, and Tr. 51-52.*

STANDARD OF REVIEW

The standard of review for the issue of whether a statute of limitation has expired is a question of law which the Court of Appeals reviews for correctness, giving no particular deference to the lower court. Gramlich v. Munsey, 838 P.2d 1131, 1132 (Utah 1992), Kessimakis v. Kessimakis, 977 P.2d 1226 (Utah App. 1999), Stewart v. State By and Through Deland, 830P.2d 306 (Utah App. 1992).

The standard of review for the issues involving factual determinations is that the trial court's findings of fact are given deference and will not be overturned unless they are clearly erroneous. Rule 52(a) of the Utah Rules of Civil Procedure, Ashton v. Ashton, 733 P.2d 147, 150 (Utah 1987), and Barnes v. Barnes, 857 P.2d 257 (Utah App. 1994).

STATEMENT OF THE CASE

The Petitioner and Appellant, Greg J. Hansen, and the Respondent and Appellee, Julie Ann (Hansen) Kik, were married on June 27, 1976, and were divorced by a Decree of Divorce entered in the Sixth Judicial District

Court for Sanpete County within the State of Utah on November 15, 1994, after over 18 years of marriage. *R. 1-3, 60-66.*

The decree awarded the Respondent, Julie (Hansen) Kik, \$4,000.00, to be paid by the Petitioner, Greg Hansen, as consideration for her equity in a trailer and real property. The decree also awarded the Respondent, Julie (Hansen) Kik, certain items of personal property identified on Exhibit 1, attached to the Decree of Divorce. *R. 60-66.*

Nearly ten (10), years' later, on September 30, 2004, the Respondent, Julie Kik, filed her Motion for Order to Show Cause with the trial court requesting that the Petitioner, Greg J. Hansen, be held in contempt for non-compliance with the orders of the Decree of Divorce that he pay her \$4,000.00, for her equity in the marital residence and deliver certain personal property to her. *R. 67-79.*

On October 20, 2004, the Respondent, Greg J. Hansen, filed his Affidavit of Greg J. Hansen asserting his payments to the Respondent and the delivery of the personal property, the eight year statute of limitations upon the enforcement of the decree, the equitable defense of laches, prejudice because of the Respondent's ten (10), year delay in bringing her

claims, inability to acquire records from his credit union and employer to prove that he had paid the Respondent, and that he should be awarded his costs and attorney fees for having to defend the Respondent's meritless and frivolous motion which violated the eight year statute of limitations. *R. 80-85.*

On October 22, 2004, the trial court heard the testimony of Julie Ann (Hansen) Kik and Greg J. Hansen, and their adult daughter, Christie. *R. 86-87.*

On May 5, 2005, the trial court entered its Amended Order on Order to Show Cause and Judgment awarding judgment to the Respondent and against Mr. Greg Hansen, the Petitioner, for \$4,000.00, together with interest for her equity in the trailer and real property, and \$6,855.00, for personal property. *R. 125-129.*

On May 18, 2005, the Petitioner, Greg J. Hansen, filed his Notice of Appeal to the Utah Court of Appeals. *R. 139-140.*

STATEMENT OF THE FACTS

a. The Petitioner and Appellant, Greg J. Hansen, and the Respondent and Appellee, Julie Ann (Hansen) Kik, were married on June 27, 1976, and were divorced by a Decree of Divorce entered in the Sixth Judicial District Court for Sanpete County within the State of Utah on November 15, 1994, after over 18 years of marriage. *R. 1-3; 60-66.*

b. Paragraph 4, of the Decree of Divorce entered on November 15, 1994, provided that the Petitioner, Greg J. Hansen, pay the Respondent, Julie Ann (Hansen) Kik, the sum of Four Thousand Dollars (\$4,000.00), for her interest in a mobile home and real property. *R.61.*

c. Paragraph 7, of the Decree of Divorce entered on November 15, 1994, awarded each of the parties' ownership of certain personal property and ordered the Petitioner to store certain items of the personal property, identified on Exhibit 1, to the Decree, awarded to the Respondent at the marital residence until the Respondent could remove it. There was no Exhibit 1, which was attached to the Decree of Divorce. *R. 62; 65-66.*

d. On September 30, 2004, at the behest of the Respondent, Julie Ann (Hansen) Kik, the trial Court issued it's Order to Show Cause requiring the

Petitioner, Greg J. Hansen, appear and show cause why he should not be held in contempt for non-compliance with the orders of the Decree of Divorce entered almost ten (10), years before. *R. 67-79.*

e. The Respondent's motion and the Order to Show Cause also requested a judgment against the Petitioner and that he be ordered to pay the Respondent Four Thousand Dollars (\$4,000.00), together with interest, for her equity in the real property pursuant to the order in paragraph 4, of the Decree of Divorce. *R. 67-79.*

f. The Respondent's motion and the Order to Show Cause also requested the Respondent's personal property awarded her pursuant to the order in paragraph 7, of the Decree of Divorce, or in the alternative, a money judgment together with interest, for the value of the personal property awarded the Respondent by the Decree of Divorce. *R. 67-79.*

g. The Petitioner filed his Affidavit of Greg J. Hansen in response and objecting to the Respondent's affidavit and Motion for Order to Show Cause asserting that the judgment was entered almost ten (10), years before and the action was barred by the eight year period of limitations upon the enforcement of the decree and the collection of said sums and personal

properties. *R. 81.* Mr. Hansen asserted the equitable defenses of laches because the Respondent had waited nearly ten (10), years to make her claims prejudicing him in his proof because he could no longer obtain the records from his credit union to prove his payments to her. *R. 82.* Mr. Hansen asserted payment and set offs and that he had delivered the Respondent's personal property to her. *R. 80-84.* Mr. Hansen requested costs and attorney fees based upon the Respondent's untimely action (beyond the eight year statute of limitations) and thus meritless action against him. *R. 84.*

h. The Respondent's hearing on her Motion for Order to Show Cause was held before the Honorable Paul D. Lyman on October 22, 2004, and the parties and their daughter, Christie, testified at the hearing as to the claims and defenses, including the statute of limitations, laches, and the delivery and values of the personal property the Respondent claimed she had not received from Mr. Hansen. *R.86-88; Tr. 1-71.*

i. The Respondent, Julie Hansen Kik, testified that she and the Petitioner, Greg J. Hansen, were divorced on November 15, 1994. *Tr. 4, 11.* She testified that she had called Mr. Hansen on the telephone and had once,

six years before the hearing, sent him a letter requesting the \$4,000.00, in equity and that she had not been paid the money. *Tr. 5-7, 35.*

j. Ms. (Hansen) Kik testified that she, or her attorney, had retyped a list of the personal property she had not received, and to the values of the personal property. *Tr. 7-11, 19, 14-33, trial Exhibit 1.* She testified that the values she had assigned to each of the items of personal property the day before the hearing were a “guess”. *Tr. 17(\$3,500 china cupboard), Tr. 17-18(\$40 Indian picture), Tr. 18(\$40 Elk, \$40 Eagle, \$40 Indian pictures), Tr. 20-21(\$150 sheets and bedding), Tr. 21(\$50 towels and washcloths), Tr. 22-24(\$200 pots, pans, cookie sheets, glassware), Tr. 25,(\$75 bowls, saucers, plates), Tr. 25-26(\$300 18 1/2 year old bed), Tr. 27-28(\$500 16 year old freezer with meat), Tr. 28-29(\$100 Christmas ornaments), Tr. 30-31(\$1,600 Kirby vacuum), Tr. 31-32 (\$1,000 bibs, winter coats, yearbooks, clothing), Exhibit 1, inter alia, (\$200 Books of Choice)(\$50 Items of Choice from Old House & Tin Shed)(Plants)(\$100 Bar Stools & Half of Lawn Chairs). All of the items of personal property several years old and well used at the time of the parties’ divorce in November, 1994. *Tr. 14-33.**

k. Ms. (Hansen) Kik testified that the reason she waited 10 years to bring this matter to the court was because "I did not want to get my children involved first of all, and he intimidates me and he always has throughout my whole marriage." *Tr.* 34. She had remarried in 1997, and was again divorced in March, 2004. *Tr.* 34-35.

l. The Petitioner, Greg J. Hansen, testified to the payments he had made to the Respondent by checks on his accounts at and by direct deposit by his employer to the Moroni Feed Credit Union. He testified that he had paid Ms. Kik her equity. *Tr.* 43-47, 52. Mr. Hansen had gone to the credit union attempting to acquire records to prove his payments to the Respondent only to learn that the records do not exist and are only kept for seven years. Mr. Hansen testified that he had gone to his employer to obtain records of his payments to the Respondent and the records of his direct deposits no longer existed. *Tr.* 42-47, 52-58.

m. The Petitioner, Greg Hansen, testified that he had been prejudiced by the Respondent's failure to make her claims for nearly ten (10), years because he could not acquire the records to prove that he had paid her. *Tr.* 42-47, 50, 52-53.

n. The Petitioner, Greg Hansen, testified as to the disposition and the values of the personal property. *Tr. 38-42, 47-51.* Mr. Hansen testified that he had stored the Respondent's personal property at his trailer for four to five years when he boxed the items up and put them in a storage unit at Universal Storage in Mt. Pleasant, Utah. The cost of the storage unit to Mr. Hansen was \$55.00, each month. The Respondent's personal property remained in the storage unit for nearly two years. *Tr. 47-48.* Then the parties' daughter, Christy, married and purchased a new home and Mr. Hansen asked her if he could move the personal property to her garage and he did. *Tr. 46-47.*

o. The parties' daughter, Christy Dawn Mickelson, testified that her father, Mr. Hansen, had brought her mother's personal property to her home and put it into half of her garage, after she was married, over 5 years ago. She testified that she could not remember much of what had happened after the divorce because it had been "too long ago." Christy testified that she called her mother and had asked her to come and take her personal property. She testified that her mother had taken the personal property from her garage to a yard sale. *Tr. 58-61.*

p. The trial Court concluded that no judgment had been entered by the Decree of Divorce and that no deadline had been set therein for the payment of the Respondent's equity. *Tr. 67*. The trial court made did not make findings upon the values of the personal property the Respondent claimed she had not received. *Tr. 66-69*. The trial court made oral findings on the issue of laches. *Tr. 70*.

q. On the 5th day of May, 2005, the trial court entered it's Amended Order on Order to Show Cause and Judgment awarding judgment against the Petitioner, Greg J. Hansen, and for the Respondent in the amount of \$6,855.00, for the value of the personal property and the amount of \$4,000.00, together with interest for the Respondent's equity in the mobile home and real property. *R. 125-129*.

r. The Petitioner, Greg J. Hansen, filed his Notice of Appeal in the trial court on the 18th day of May, 2005. *R. 139*.

SUMMARY OF THE ARGUMENTS

The Respondent's claims to enforce paragraphs four and seven of the Decree of Divorce, filed September 30, 2004, nearly ten years after the entry of the decree on November 15, 2005, and the Judgment entered by the trial court against Mr. Hansen upon the Respondent's claims violated the eight year statute of limitations embodied in Utah Code Ann., Section 78-12-22(1). The judgments should be reversed and vacated. The Respondent's enforcement claims should be dismissed with prejudice as time barred.

The claims of the Respondent on September 30, 2004, to equity and to personal property awarded her by the Decree of Divorce entered nearly ten years before was dilatory and Ms. (Hansen) Kik was guilty of laches.

The judgment of the trial court should be reversed and vacated because of the delay of the Respondent in bringing her claims to the trial court and because her delay disadvantaged and prejudiced the Petitioner, Greg Hansen, in his proof.

The trial court in this action clearly abused its discretion when it awarded Ms. (Hansen) Kik a judgment for the value of personal property based upon evidence that admittedly was a guess, and thus based upon

speculation and conjecture, ten years after the entry of the Decree of Divorce.

The trial court's judgment for the Respondent, Ms. (Hansen) Kik and against the Petitioner, Greg Hansen, should be reversed and vacated. The Respondent's claim for the value of the property should be dismissed.

The Respondent and her counsel had no reasonable factual or legal basis for pursuing their motion, nor to compel Mr. Hansen to pursue this appeal in order to vacate the judgment they obtained by their frivolous motion. The motion was unwarranted under the law existing at the time of the motion. The Respondent and her counsel have no reasonable factual or legal basis to oppose the reversal of the trial court's judgment arising out of their frivolous motion for order to show cause and the pursuit of their claims both before and after trial. *O'Brien v. Rush*, 744 P.2d 306 (Utah Ct. App. 1987), *Backstrom Family Ltd. Partnership v. Hall*, 751 P.2d 1157, (Utah Ct. App. 1988), *Maughan v. Maughan*, 770 P.2d 156 (Utah Ct. App. 1989).

The Petitioner, Greg J. Hansen, should be awarded his damages, costs and attorney fees suffered by him in the trial court below and upon this appeal.

ARGUMENT

THE RESPONDENT'S ACTION AND THE JUDGMENT WAS PROHIBITED BY AND VIOLATED THE STATUTE OF LIMITATIONS, UTAH CODE ANNOTATED, SECTION 78-12-22.

The judgment entered against Greg J. Hansen by the trial court, at the demand of the Respondent, Julie (Hansen) Kik, is against the law and time barred because the Respondent's claims were not brought by her until a date beyond the running of the eight year statute of limitations embodied in Utah Code Annotated, Section 78-12-22. The trial court's judgment should be reversed.

The issue of whether a statute of limitations has expired is a question of law and the Court of Appeals reviews the conclusion for correctness, giving no particular deference to the trial court. *Kessimakis v. Kessimakis*, 977 P.2d 1226 (Utah App. 1999); *Gramlich v. Munsey*, 838 P.2d 1131, 1132 (Utah 1992); *State v. Pena* 869 P.2d 932, 936 (Utah 1994).

Utah Code Annotated, Section 78-12-22, provides:

An action may be brought within eight years . . . upon a judgment or decree of any court of the United States, or of any state . . . within the United States.

In this action, the Decree of Divorce was entered in the trial court on November 15, 1994. *R. 60-66*. The case file reflects that no pleadings were filed in the action following the entry of the decree until September 30, 2004, when Julie Kik first filed her motion for order to show cause requesting Mr. Hansen be held in contempt, requesting judgment for her equity in the marital residence and the return of personal property awarded to her or, in the alternative, a money judgment for the value of the personal property. *R. 67-75*.

The statute of limitations expired on the claims of Julie (Hansen) Kik for \$4,000.00, equity in the marital residence and upon her claim for personal property on Exhibit 1, to the Decree of Divorce, on November 14, 2002.¹

Generally, "Statutes of limitation are intended to compel the exercise of a right of action within a reasonable time and to suppress stale and fraudulent claims so that claims are advanced while evidence to rebut them is still fresh." *Horton v. Goldminer's Daughter*, 785 P.2d 1087, 1091 (Utah

¹ The Decree of Divorce does not have an Exhibit 1, attached to it in the trial court's file, identifying items of personal property which the Respondent can now enforce. The Exhibit 1, offered by the Respondent and admitted at trial was "retyped" the day before the hearing and the Respondent "guessed" as to the value of the personal property identified thereon. *Tr. 7, 19, 14-31*.

1989). Statutes of limitations “are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.” *Becton Dickinson & Co. v. Reese*, 668 P.2d 1254, 1257 (Utah 1983).

It has been a long held proposition of law that a decree of divorce is subject to the eight year statute of limitations found in Utah Code Annotated, Section 78-12-22. Utah R. Civ. P. 54(a), defines a “judgment” as “including a decree and any order from which an appeal lies.”

In *Seeley v. Park*, 532 P.2d 684 (Utah 1975), the Utah Supreme Court directly visited the issue of whether the eight year statute of limitations applies to decrees and orders in divorce actions and reviewed decades old precedent establishing that the limitation applies. See *Beesley v. Badger*, 240 P. 458 (Utah 1925), *Openshaw v. Openshaw*, 144 P.2d 528 (Utah 1943).

The rule has been recently reaffirmed by this Court in *Kessimakis v. Kessimakis*, 977 P.2d 1226 (Utah App. 1999), when the Court had occasion to consider facts nearly identical to those in this case. In *Kessimakis*, *id.*, the former wife requested enforcement of a provision of the decree of divorce

ordering her former husband to execute and deliver appropriate documents evidencing transfer of her interest in a closely held corporation. This Court, in determining that the former wife's enforcement claims were barred by the eight year statute of limitations stated:

Ms. Kessimakis's action also presents a request for enforcement of the decree's requirement that Mr. Kessimakis "execute and deliver appropriate instruments evidencing the transfer" of an interest in the Corporation to Ms. Kessimakis. This provision of the decree created a judgment in Ms. Kessimakis's favor. *See* Utah R. Civ. P. 54(a) (defining "judgment" as "includ[ing] a decree and any order from which an appeal lies") Ms. Kessimakis's action is thus subject to the eight year statute of limitations. *See* Utah Code Ann. Section 78-12-22(1)(1996) ("An action may be brought within eight years . . . upon a judgment or decree of any court of the United States, or of any state . . . within the United States.")

Statutes of limitations reflect our understanding that a party will generally choose to pursue a valid claim, rather than waiting indefinitely to do so. *See* 51 Am. Jur.2 *Limitation of Actions* Section 17 (1970). They "attempt to protect against the difficulties caused by lost evidence, faded memories and disappearing witnesses." *Lund v. Hall*, 938 P.2d 285, 291 (Utah 1997) (quoting *Byrne v. Ogle*, 488 P.2d 716, 718 (Alaska 1971)). In this case, the passage of time has created precisely those difficulties: the parties possess little evidence, documentary or otherwise, and several potential witnesses have died.

.....
We agree with the trial court that Ms. Kessimakis's effort to require Mr. Kessimakis to deliver documents of title showing her interest in the Corporation is barred by the eight year statute of limitations. *See* Utah Code Ann. Section 78-12-22(1) (1996).

In this action the Decree of Divorce was entered on November 15, 1994, nearly 10 years before Ms. (Hansen) Kik chose to file her claim against Mr. Hansen for the \$4,000.00, equity in the marital residence and her claim for unidentified items of personal property. She filed her enforcement action on September 30, 2004.

Mr. Hansen paid Julie (Hansen) Kik for her equity in the marital residence soon after the divorce and when served with the Respondents motion attempted to obtain his checks and other records from the Moroni Feed Credit Union which would prove his payments to her. The records did not exist because the Moroni Feed Credit Union only keeps such records for seven years.

Mr. Hansen went to his employer to prove the payroll deductions to Ms. (Hansen) Kik's account but his employer no longer had the records of his payroll deductions.

The trial court in this action incorrectly concluded that the Court's decree entered on November 15, 1994, that Mr. Hansen pay Julie (Hansen) Kik \$4,000.00, for her equity in the marital residence was not a judgment and thus not subject to the eight year statute of limitations because "... there

was no deadline to pay. It was not a judgment.” *Tr. 67. Utah R. Civ. P. 54(a), id.*

The trial court also incorrectly concluded that the Respondent, Julie (Hansen) Kik, was entitled to judgment against the Petitioner, Greg Hansen, for the value of personal property awarded to her by the non-existent Exhibit 1, to the Decree of Divorce, entered nearly 10, years before on November 15, 1994.

Mr. Hansen, after the divorce, had stored his ex-wife’s personal property at his trailer for four to five years, and then moved it to the Universal Storage at a cost to him of \$55.00, per month for almost two years. He then moved it to the parties’ daughter’s garage where Ms. Kik apparently retrieved some of her personal property and took it to a yard sale. The personal property was well used and several years old at the time of the divorce on November 15, 1994.

The reasons for the statute of limitations barring enforcement of the personal property provision of the decree are just as compelling as those for barring enforcement of the payment of the equity provision of the decree of divorce. Personal property, such as clothing, coats, bibs, glasses, plates,

bowls and saucers, pots and pans, choice of books, Christmas ornaments, the vacuum, pictures, towels, washcloths, sheets and quilts, Lawn chairs, Items of Choice in the Old House & Tin Shed, get lost or broken, reduce in value and disappear over time. Choices disappear. The parties' have no way of accurately determining the value of personal property that no longer exists, or has been lost or destroyed. The Tin Shed falls down. The parties' and the witnesses' memories had faded concerning the items that were put in Christy's garage and retrieved by the Respondent. The Respondent failed to exercise reasonable diligence in bringing the matter to the trial court's attention, or otherwise seek timely relief and enforcement of the decree.

Assuming that the personal property was not delivered to the Respondent, how long should have Mr. Hansen kept Julie Kik's personal property in his home for her? How long may the Respondent wait before she chooses to enforce the decree's personal property provision in the trial court? If the Respondent's and the trial court's premise that the decree in this case was "not a judgment" because no time limits were set, and thus not subject to the eight year statute of limitations, the Respondent could have

waited not ten, but twenty or thirty years to enforce the decree and file her claim for personal property and her equity in the marital residence.

The Respondent's claims to enforce paragraphs four and seven of the Decree of Divorce, filed September 30, 2004, nearly ten years after the entry of the decree on November 15, 2005, and the Judgment entered by the trial court against Mr. Hansen upon the Respondent's claims violated the eight year statute of limitations embodied in Utah Code Ann., Section 78-12-22(1). The judgments should be reversed and vacated. The Respondent's enforcement claims should be dismissed with prejudice as time barred.

THE RESPONDENT WAS GUILTY OF LACHES PREVENTING ENFORCEMENT OF THE DECREE OF DIVORCE BECAUSE THE PETITIONER'S EVIDENCE WAS LOST OR DESTROYED PREJUDICING THE PETITIONER IN PRESENTING HIS PROOF.

Similar in purpose and legal elements to codified statutes of limitations is the equitable defense of laches. In this action the Respondent, Julie (Hansen) Kik was guilty of laches because she waited ten years to bring her claims for enforcement of the equity and personal property provisions of the Decree of Divorce entered on November 15, 1994, after the documentary evidence of Greg Hansen's payments to her no longer existed.

The equitable defense or doctrine of laches is based upon the equitable premise that “a court of equity is reluctant to reward a party who has been dilatory in seeking his remedy. As is sometimes said, equity aids the vigilant.” *Jacobson v. Jacobson*, 557 P.2d 156 (Utah 1976). See 30 C.J.S. Equity Section 100; *Arnold v. Melani*, 449 P.2d 800 (Wash. 1968). “Laches must involve a delay and because of the delay there has resulted some disadvantage to the other party. *Jacobson*, id. *Papanikolas Bros. v. Sugarhouse Shopping Center*, 535 P.2d 1256 (Utah 1975).

Ms. (Hansen) Kik did not exercise reasonable diligence in bringing her claims before the trial court. She testified that the reason she waited 10 years to bring this matter to the court was because “I did not want to get my children involved first of all, and he intimidates me and he always has throughout my whole marriage.” *Tr.* 34. She had remarried in 1997, and was again divorced in March, 2004. *Tr.* 34-35.

The Petitioner, Greg J. Hansen, testified to the payments he had made to the Respondent by checks on his accounts at, and by direct deposit by his employer to, the Moroni Feed Credit Union. He testified that he had paid Ms. Kik her equity. *Tr.* 43-47, 52.

Mr. Hansen had gone to the credit union attempting to acquire records to prove his payments to the Respondent, after the Respondent filed her motion, only to learn that the records do not exist and are only kept for seven years. *Tr. 42-47, 52-58.*

Mr. Hansen had gone to his employer to obtain records of his payments to the Respondent almost ten years earlier and the records of his direct deposits no longer existed. *Tr. 42-47, 52-58.*

The Petitioner, Greg Hansen, testified that he had been prejudiced by the Respondent's failure to make her claims for nearly ten (10), years because he could not acquire the records to prove that he had paid her. *Tr. 42-47, 50, 52-53.*

The Petitioner, Greg Hansen, testified as to the disposition and the values of the personal property. *Tr. 38-42, 47-51.* Mr. Hansen testified that he had stored the Respondent's personal property at his trailer for four to five years when he boxed the items up and put them in a storage unit at Universal Storage in Mt. Pleasant, Utah. The cost of the storage unit to Mr. Hansen was \$55.00, each month. The Respondent's personal property remained in the storage unit for nearly two years. *Tr. 47-48.* Then the

parties' daughter, Christy, married and purchased a new home and Mr. Hansen asked her if he could move the personal property to her garage and he did. *Tr. 46-47.*

The parties' daughter, Christy Dawn Mickelson, testified that her father, Mr. Hansen, had brought her mother's personal property to her home and put it into half of her garage, after she was married, over 5 years ago. She testified that she could not remember much of what had happened after the divorce because it had been "too long ago." She could not remember but some of the property of her mother's that her father had put in her garage. Christy testified that she called her mother and had asked her to come and take her personal property. She testified that her mother had taken the personal property from her garage to a yard sale. *Tr. 58-61.*

In the circumstances of this case, Ms. (Hansen) Kik was dilatory in seeking her remedy. She did not act with reasonable diligence and approach the trial court to enforce the equity and personal property provisions of the decree in a timely manner. Her delay prejudiced the Petitioner, Mr. Greg Hansen, in his proof that he had paid the equity to her because the Moroni Feed Credit Union only kept cancelled checks and account records for seven

years. He was disadvantaged by her delay in bringing her claims because his employer no longer had the documentary evidence of the direct deposits.

If Ms. (Hansen) Kik had been vigilant, and brought her claims within a reasonable time, perhaps six years after the decree, Mr. Hansen would have been able to support his testimony that he had paid her with documentary proof of his payments. Mr. Hansen was prejudiced and disadvantaged at the hearing because he could not produce his proof because of the long passage of time between the entry of the Decree of Divorce and Ms. (Hansen) Kik's claims for the equity and personal property on September 30, 2004. The memory of the witnesses had faded because the events had taken place "too long ago," as the parties' daughter, Christy, had testified. *Papanikolas Bros. v. Sugarhouse Shopping Center*, 535 P.2d 1256 (Utah 1975). Moreover, precisely the events and difficulties contemplated by *Kessimakis, id.*, and *Horton, id.*, and *Lund, id.*, occurred in this case: lost evidence, faded memories, and stale claims.

Indeed, the Respondent's claims to personal property were also stale. No Exhibit 1, to the Decree of Divorce existed in the trial court's file. The Respondent, Ms. (Hansen) Kik, and her attorney "retyped" (created) their

own Exhibit 1, and Ms. Kik "guessed" as to the values of the items on the exhibit the day prior to the hearing. Ten years following the entry of the decree, it is unreasonable to believe that Mr. Hansen could remember the personal property items on Exhibit 1, to the Decree of Divorce (which apparently was not filed.) It is unreasonable to believe that Ms. (Hansen) Kik could place a fair and reasonable value, not based upon conjecture or "guesses," upon personal property she had not cared to obtain nor seen for nearly ten years. The actual values, and Ms. Kik's perception of those values, arguably had changed over ten years.

The claims of the Respondent on September 30, 2004, to equity and to personal property awarded her by the Decree of Divorce entered nearly ten years before was dilatory and Ms. (Hansen) Kik was guilty of laches.

The judgment of the trial court should be reversed and vacated because of the delay of the Respondent in bringing her claims to the trial court and because her delay disadvantaged and prejudiced the Petitioner, Greg Hansen, in his proof.

**THE EVIDENCE OF THE VALUE OF THE PERSONAL
PROPERTY WAS BASED UPON CONJECTURE AND A
GUESS AND THUS WAS INSUFFICIENT TO ENTER A
JUDGMENT THEREFORE AGAINST THE PETITIONER**

“The trial court in a divorce action is permitted considerable discretion in adjusting the financial and property interests of the parties, and its actions are entitled to a presumption of validity. *Savage v. Savage*, 658 P.2d 1201, 1203 (Utah 1983). In particular the “[d]etermination of the value of assets is a matter for the trial court which will not be reviewed in the absence of a clear abuse of discretion.” *Turner v. Turner*, 649 P.2d 6 (Utah 1982).” *Argyle v. Argyle*, 688 P.2d 468, 470 (Utah 1984).

Even so, an award of damages based upon insufficient and incompetent evidence cannot be sustained. *Terry v. Panek*, 631 P.2d 896, (Utah 1981). “A finding of damages cannot properly be based upon speculation or conjecture. *Lindsay v. Gibbons and Reed*, 497 P.2d 28 (Utah 1972); *Sumsion v. Streater-Smith, Inc.*, 132 P.2d 680 (Utah 1943).” *DUNN v. McKAY, BURTON, McMURRAY & THURMAN*, 584 P. 2d 894, 896 (Utah 1978).

The damages awarded Ms.(Hansen) Kik by the trial court for the value of personal property purportedly awarded her by the Decree of Divorce on November 15, 1994, were based upon conjecture. Nearly ten years had passed since Ms. Kik was awarded the personal property. Ms. Kik had made no claim for the personal property during that entire period of time indicating the importance and value of the personal property to her. All of the items of personal property were acquired throughout the parties' 18 year marriage and had been well used. These important and un-refuted factors bear directly upon the reliability, and competency of the values claimed by Ms. (Hansen) Kik.

Another fact of importance is the lack of Exhibit 1, to the Decree of Divorce in the trial court's file. No valid order existed respecting particular items of personal property. Mr. Hansen cannot be compelled to deliver personal property to his ex-wife which he had not been ordered to deliver by the Decree of Divorce, and a judgment should not be awarded against him for failure to deliver it to Ms. Kik. Mr. Hansen testified he had never seen the Respondent's trial Exhibit 1, and that it was created by Ms. (Hansen)

Kik. The Respondent's counsel had "retyped" the exhibit the day before the hearing.

Ms. (Hansen) Kik testified that she, or her attorney, had retyped a list of the personal property she had not received, and she testified to her guesses as to the values of the personal property. *Tr. 7-11, 19, 14-33, trial Exhibit 1.* She testified that the values she had assigned to each of the items of personal property the day before the hearing were a "guess". *Tr. 17 (\$3,500 china cupboard), Tr. 17-18 (\$40 Indian picture), Tr. 18 (\$40 Elk, \$40 Eagle, \$40 Indian pictures), Tr. 20-21 (\$150 sheets and bedding), Tr. 21 (\$50 towels and washcloths), Tr. 22-24 (\$200 pots, pans, cookie sheets, glassware), Tr. 25 (\$75 bowls, saucers, plates), Tr. 25-26 (\$300 18 1/2 year old bed), Tr. 27-28 (\$500 16 year old freezer with meat), Tr. 28-29 (\$100 Christmas ornaments), Tr. 30-31 (\$1,600 Kirby vacuum), Tr. 31-32 (\$1,000 bibs, winter coats, yearbooks, clothing), Exhibit 1, inter alia, (\$200 Books of Choice)(\$50 Items of Choice from Old House & Tin Shed) (Plants) (\$100 Bar Stools & Half of Lawn Chairs).* All of the items of personal property several years old and well used at the time of the parties' divorce on November 15, 1994. *Tr. 14-33.*

A “guess” as to value of property (purportedly awarded ten years ago by the court and at the time used and many years old) is mere conjecture and is an insufficient basis for an award of damages. It does not meet, and here Ms. Kik did not meet, her burden to prove the values of the items of personal property by a preponderance of the evidence. A “guess” is mere speculation and speculation and conjecture are an insufficient basis for the determination of damages. *DUNN, id.* The values placed on the particular items by Ms. Kik on her “retyped” Exhibit 1, bemoan the unreliable, inflated and unreasonable “guess” of the value of a particular item. For example, Ms. Kik testified that the Kirby vacuum had been purchased new several years prior to the marriage for \$1,600.00, had been well used during the marriage and yet is still worth \$1,600, based upon her “guess.” The values “guessed” as by Ms. Kik for used and mix-matched washcloths, dishtowels, plates, saucers, unspecified clothing, sheets, pillow cases, glassware, pans and cookie sheets, bed, an old freezer, choice of books, and the other items were extremely high and unreasonable given the nature and the age of the property. *Exhibit 1.*

The Petitioner, Greg Hansen, testified that he had been prejudiced by the Respondent's failure to make her claims for nearly ten (10), years. *Tr.* 42-47, 50, 52-53.

The Petitioner, Greg Hansen, testified as to the disposition and the values of the personal property. *Tr.* 38-42, 47-51. Mr. Hansen testified that he had stored the Respondent's personal property at his trailer for four to five years when he boxed the items up and put them in a storage unit at Universal Storage in Mt. Pleasant, Utah. The cost of the storage unit to Mr. Hansen was \$55.00, each month. The Respondent's personal property remained in the storage unit for nearly two years. *Tr.* 47-48. Then the parties' daughter, Christy, married and purchased a new home and Mr. Hansen asked her if he could move the personal property to her garage and he did. *Tr.* 46-47.

The parties' daughter, Christy Dawn Mickelson, testified that her father, Mr. Hansen, had brought her mother's personal property to her home and put it into half of her garage, after she was married, over 5 years ago. She testified that she could not remember much of what had happened after the divorce because it had been "too long ago." Christy testified that she

called her mother and had asked her to come and take her personal property. She testified that her mother had taken the personal property from her garage to a yard sale. *Tr. 58-61.*

Mr. Hansen testified that the values of the personal property claimed by his ex-wife, Julie (Hansen) Kik, on her trial Exhibit 1, were not fair. He testified that the personal property was not listed in the Decree of Divorce and that trial Exhibit 1, was created by her. *Tr. 38.* Many of the items of personal property the Respondent claimed were given to her by Mr. Hansen. *Tr. 38-42.* Ten years after the decree and the exchange of personal property between the Petitioner and the Respondent, Ms. (Hansen) Kik, claims her personal property was not given to her. She has been not been reasonably diligent, and has been very dilatory which has prejudiced the Petitioner in his proof of the values of the personal property. Most of the property no longer existed, or was given to Ms. Kik. *Tr. 38-42.*

Notwithstanding the equitable powers of the trial court in interfamily controversies in divorce matters, the trial court cannot act arbitrarily or on supposition or conjecture as to facts upon which to justify its order and judgment. *Iverson v. Iverson*, 526 P.2d 1126 (Utah 1972).

The trial court in this action clearly abused its discretion when it awarded Ms. (Hansen) Kik a judgment for the value of personal property based upon evidence that admittedly was a guess, and thus based upon speculation and conjecture, ten years after the entry of the Decree of Divorce.

The trial court's judgment for the Respondent, Ms. (Hansen) Kik and against the Petitioner, Greg Hansen, should be reversed and vacated. The Respondent's claim for the value of the property should be dismissed.

THE PETITIONER IS ENTITLED TO SANCTIONS, COSTS AND ATTORNEY FEES INCURRED UPON RESPONDENT'S MOTION AND UPON APPEAL BECAUSE THE MOTION WAS FRIVOLOUS.

The Petitioner, Greg J. Hansen, is entitled to sanctions against the Respondent and her counsel because her motion for order to show cause was filed well after the running of the statute of limitations. The Respondent's claims before the trial court, and in compelling the Petitioner to pursue this appeal, are without reasonable and factual basis.

The Petitioner, Greg J. Hansen, requested below and requests herein the award of his costs and attorney fees in the trial court on the basis that the

Respondent's actions was frivolous, and the eight year statute of limitations had run upon the enforcement of the trial court's order entered by the Decree of Divorce. *R. 84.*

Rule 33(a), of the Utah Rules of Appellate Procedure provides:

(a) Damages for delay or frivolous appeal. Except in an first appeal of right in a criminal case, if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs, as defined in Rule 34, and/or reasonable attorney fees, to the prevailing party. The court may order that the damages be pad by the party or by the party's attorney.

(b) Definitions. For the purposes of these rules, a frivolous appeal, motion, brief, or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law. An appeal, motion, brief, or other paper interposed for the purposes of delay is one interposed for any improper purpose such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit only the party filing the appeal, motion, brief, or other paper.

In this action, the Respondent and her counsel were both personally aware of and direct knowledge of the entry of the Decree of Divorce on November 15, 1994. *R. 20-28, 43-50, 52-66.*

Respondent and her counsel, Mr. Neeley, are charged with knowledge of the eight year statute of limitations upon the enforcement of the trial

court's orders and judgments and the Rule 54(a), of the Utah Rules of Civil Procedure. Mr. Neeley certified by his signature on his motion "that to the best of his knowledge, information, and belief, formed after an inquiry reasonable under the circumstances. the complaint is well grounded in fact and is warranted by existing law." *Rule 11, Utah R. Civ. P.*

On September 30, 2004, nearly ten years after the entry of the Decree of Divorce, the Respondent and her counsel file a motion for order to show cause demanding that the Petitioner, Greg Hansen, be held in contempt of court, that Ms. (Hansen) Kik be awarded judgment of \$4,000.00, together with interest, her personal property or a money judgment therefore, and that she be awarded her costs and attorney fees incurred in the misguided effort to enforce the trial court's order of November 15, 1994. *R. 67-75.*

On October 20, 2004, the Petitioner, Greg J. Hansen, filed his affidavit in the trial court, serving the Respondent and her counsel, asserting the bar to the Respondent's claims because of the eight year statute of limitations upon the enforcement of the trial court's orders. *R. 80-85.*

Despite the Respondent's and her counsel's knowledge of the entry of the Decree of Divorce ten years before, and the assertion by Greg Hansen of

the eight year statute of limitations governing the enforcement of the trial court's orders and judgments, the Respondent and her counsel proceeded to pursue their claims in the trial court at the evidentiary hearing on October 22, 2004. *R. 86-87.*

On October 22, 2004, the Respondent and her counsel, Mr. Neeley, wrongly persuaded the trial court that the order embodied by the Decree of Divorce was enforceable after the running of the eight year statute of limitations. *Tr. 1-3, 61-62, 67.*

The Respondent and her counsel's motion before the trial court was not grounded in fact nor warranted by existing law. Reasonable inquiry by counsel into the issue of the application of the eight year statute of limitations to the facts of this case would have quickly revealed to anyone looking, especially a reasonable lawyer, that the action to enforce the payment and personal property provisions of the Decree of Divorce was barred. A reasonable inquiry by counsel would have revealed the *Kessimakis, id.*, case and the rule of law which directly applies to the facts of his case.

The Respondent and her counsel chose to pursue their frivolous motion in spite of and after the assertion of the eight year statute of limitations defense by Greg Hansen in his affidavit responding to the motion and after nearly ten years following the entry of the Decree of Divorce in this matter. The Respondent and her counsel knowingly chose to argue to the trial court that the decree was enforceable despite having knowledge that it was not because of the running of the eight year statute of limitations. Their conduct was egregious and Mr. Greg Hansen has been compelled by their conduct to expend several thousand dollars defending their frivolous claims against him.

The Respondent and her counsel had no reasonable legal or factual basis for pursuing their motion, nor to compel Mr. Hansen to pursue this appeal in order to vacate the judgment they obtained by their frivolous motion. The Respondent and her counsel have no reasonable factual or legal basis to oppose the reversal of the trial court's judgment arising out of their frivolous motion for order to show cause and the pursuit of their claims both before and after trial. *O'Brien v. Rush*, 744 P.2d 306 (Utah Ct. App. 1987),

Backstrom Family Ltd. Partnership v. Hall, 751 P.2d 1157, (Utah Ct. App. 1988), *Maughan v. Maughan*, 770 P.2d 156 (Utah Ct. App. 1989).

The Petitioner, Greg J. Hansen, should be awarded his damages, costs and attorney fees suffered by him in the trial court below and upon this appeal.

CONCLUSION

The Respondent's claims to enforce paragraphs four and seven of the Decree of Divorce, filed September 30, 2004, nearly ten years after the entry of the decree on November 15, 2005, and the Judgment entered by the trial court against Mr. Hansen upon the Respondent's claims violated the eight year statute of limitations embodied in Utah Code Ann., Section 78-12-22(1). The judgments should be reversed and vacated. The Respondent's enforcement claims should be dismissed with prejudice as time barred.

The claims of the Respondent on September 30, 2004, to equity and to personal property awarded her by the Decree of Divorce entered nearly ten years before was dilatory and Ms. (Hansen) Kik was guilty of laches.

The judgment of the trial court should be reversed and vacated because of the delay of the Respondent in bringing her claims to the trial court and because her delay disadvantaged and prejudiced the Petitioner, Greg Hansen, in his proof.

Notwithstanding the equitable powers of the trial court in interfamily controversies in divorce matters, the trial court cannot act arbitrarily or on supposition or conjecture as to facts upon which to justify its order and judgment. *Iverson v. Iverson*, 526 P.2d 1126 (Utah 1972).

The trial court in this action clearly abused its discretion when it awarded Ms. (Hansen) Kik a judgment for the value of personal property based upon evidence that admittedly was a guess, and thus based upon speculation and conjecture, ten years after the entry of the Decree of Divorce.

The trial court's judgment for the Respondent, Ms. (Hansen) Kik and against the Petitioner, Greg Hansen, should be reversed and vacated. The Respondent's claim for the value of the property should be dismissed.

The Respondent and her counsel's motion before the trial court was not grounded in fact nor warranted by existing law. Reasonable inquiry by counsel into the issue of the application of the eight year statute of limitations to the facts of this case would have quickly revealed to anyone looking, especially a reasonable lawyer, that the action to enforce the payment and personal property provisions of the Decree of Divorce was barred. A reasonable inquiry by counsel would have revealed the *Kessimakis, id.*, case and the rule of law which directly applies to the facts of his case.

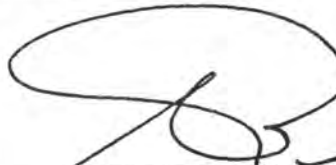
The Respondent and her counsel chose to pursue their frivolous motion in spite of and after the assertion of the eight year statute of limitations defense by Greg Hansen in his affidavit responding to the motion and after nearly ten years following the entry of the Decree of Divorce in this matter. The Respondent and her counsel knowingly chose to argue to the trial court that the decree was enforceable despite having knowledge that it was not because of the running of the eight year statute of limitations. Their conduct was egregious and Mr. Greg Hansen has been compelled by

their conduct to expend several thousand dollars defending their frivolous claims against him.

The Respondent and her counsel had no reasonable legal or factual basis for pursuing their motion, nor to compel Mr. Hansen to pursue this appeal in order to vacate the judgment they obtained by their frivolous motion. The Respondent and her counsel have no reasonable factual or legal basis to oppose the reversal of the trial court's judgment arising out of their frivolous motion for order to show cause and the pursuit of their claims both before and after trial. *O'Brien v. Rush*, 744 P.2d 306 (Utah Ct. App. 1987), *Backstrom Family Ltd. Partnership v. Hall*, 751 P.2d 1157, (Utah Ct. App. 1988), *Maughan v. Maughan*, 770 P.2d 156 (Utah Ct. App. 1989).

The Petitioner, Greg J. Hansen, should be awarded his damages, costs and attorney fees suffered by him in the trial court below and upon this appeal.

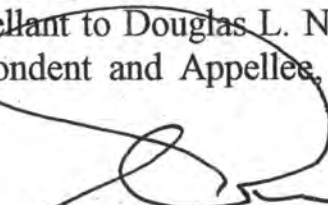
RESPECTFULLY SUBMITTED this 28th day of November, 2005.




ANDREW B. BERRY, JR.,
Attorney for Greg J. Hansen,
Petitioner and Appellant

CERTIFICATE OF SERVICE AND MAILING

I HEREBY CERTIFY that on this 28th day of November, 2005, I served upon and mailed, postage prepaid and by first class mail, a true and correct copy of the foregoing Brief of Appellant to Douglas L. Neeley, Attorney for Julie Ann (Hansen) Kik, the Respondent and Appellee, at 1st South Main Street, Ste. 205, Manti, Utah 84642.





ADDENDUM

**A. AMENDED ORDER ON ORDER TO SHOW CAUSE AND
JUDGMENT**

FILED
 SANPETE COUNTY, UTAH
 2005 MAY 5 PM 4 17
 KRISTINE [unclear]
 SANPETE COUNTY CLERK
 BY dnelson DEPUTY

DOUGLAS L. NEELEY 6290
 Attorney for Respondent
 1st South Main, Suite 205
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IN THE SIXTH JUDICIAL DISTRICT COURT OF SANPETE COUNTY

STATE OF UTAH

GREG J. HANSEN	:	AMENDED
Petitioner,	:	ORDER ON ORDER TO
	:	SHOW CAUSE & JUDGMENT
vs.	:	Civil No. 944600366
JULIE ANN KIK, fka HANSEN	:	JUDGE PAUL D. LYMAN
Respondent.	:	

The above-entitled matter came on for hearing on Friday, the 22nd day of October, 2004, the Honorable Judge Paul D. Lyman presiding. The Respondent appeared in person and was represented by her attorney, Douglas L. Neeley. The Petitioner appeared in person and was represented by his attorney, Andrew Berry. The Court, having received sworn testimony and other evidence, having heard argument of counsel, and being otherwise fully advised in the premises, now makes the following:

FINDINGS OF FACT

1. That this Court has jurisdiction in this matter and that pursuant to the parties' decree and findings, the Petitioner was ordered to pay the Respondent \$4,000 for equity in the real property and to give the Respondent certain items of personal property.

2. That the Court finds that there are major inconsistencies in the Petitioner's testimony and most of what he has testified to is questionable. The Petitioner's sworn affidavit is inconsistent with his testimony before the Court. For example, the Petitioner's affidavit suggests that he paid the Respondent \$75 per month and \$125 per month to the parties' daughter as payments for the \$4,000 equity. Today, the Petitioner testifies that he paid the Respondent \$3,500 by check and \$500 in cash.

3. The Court finds that the Petitioner's daughter (Ms. Mickelson), who testified today, had no recollection of any large items of personal property being delivered to her home for the Respondent. Ms. Mickelson recalls only seeing Christmas decorations and a lamp.

4. That from the evidence presented to the Court, the \$4,000 was never paid to the Respondent.

5. The Court finds that the items listed on Exhibit No. 1 are the personal property items that were awarded to the Respondent, but not given to her by the Petitioner, except for the Christmas decorations and the lamp.

6. That the Court finds that the values that accompany each item of personal property on Exhibit No. 1 to be the reasonable and the credible values for the property. The Petitioner stated the values are unreasonable, and since the Court is left to decide the values, the Respondent's values are more reasonable, and the Court finds the values to be as stated on Exhibit No. 1 being \$8,175 (subtracting \$255 for the decorations and the lamp). The Court simply does not believe the Petitioner's testimony in regards to the value of these items.

7. The Court finds that the Respondent made reasonable efforts and demands for the personal property items from the Petitioner. That she in fact contacted him 2-3 times each year, demanded that he make the items of personal property available, and that he pay her for her equity.

8. The Petitioner failed, neglected, or refused to make the items available to her when he simply could have delivered them to her. The Petitioner did store the Respondent's personal property in a storage unit for 24 months and paid \$55 a month for a total of \$1,320.

9. The Respondent should be awarded judgment for the value of the personal property items on Exhibit No. 1 for a total of \$8,172. The Petitioner should receive a credit against this sum for the reasonable costs for the storage of the items in the sum of \$1,320. The Respondent should then be awarded a judgment against the Petitioner in the sum of \$6,855, which represents the value of the personal property awarded to her in the decree.

10. The Respondent should be awarded judgment against the Petitioner in the sum of \$4,000 for the equity from the real property of the parties pursuant to the Decree of Divorce.

11. Each party should bear their own attorney's fees in this matter.

12. That the Court simply does not believe the Petitioner's story in regards to the efforts he claims to have made to deliver the personal property. Even if the Court were to believe his story, it still took over five (5) years for him to deliver the property, which is still unreasonable.

Based upon the foregoing findings,

IT IS HEREBY ORDERED:

1. The Respondent is awarded judgment for the value of the personal property items on Exhibit No. 1 for a total of \$8,172. The Petitioner shall receive a credit against this sum

for the reasonable costs for the storage of the items in the sum of \$1,320. The Respondent is then awarded the judgment against the Petitioner in the sum of \$6,855, which shall bear interest at the statutory rate until paid in full, which represents the value of the personal property awarded to her in the decree.

2. The Respondent is awarded judgment against the Petitioner in the sum of \$4,000 for the equity from the real property of the parties pursuant to the Decree of Divorce, which shall bear interest at the statutory rate until paid in full.

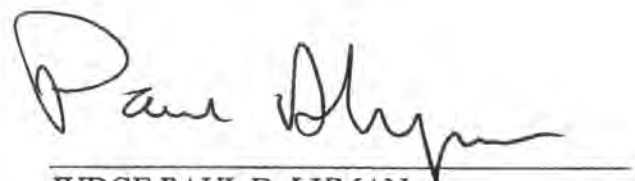
3. Each party will bear their own attorney's fees in this matter.

4. And it is further ordered that these judgments shall be augmented in the amount of reasonable costs and attorney's fees expended in collecting said judgements by execution or otherwise as established by affidavit.

5. This Amended Order On Order To Show Cause & Judgment is retroactive back to the date of the original Order To Show Cause & Judgment of November 16, 2004.

DATED this 5th day of May, 2005.





JUDGE PAUL D. LYMAN
District Court Judge