

2003

David J. Allen v. Thomas K. Hall and Homecomings Financial Network, Inc. : Brief of Appellee

Utah Court of Appeals

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Thomas K. Hall; Sarah Satterfield Allen; James G. Swensen; Swensen and Andersen.

Bruce J. Nelson; Nelson Christensen and Helsten.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 20030633-CA

IN THE UTAH COURT OF APPEALS

DAVID J. ALLEN, an individual,

Plaintiff/Appellant,

vs.

THOMAS K. HALL, an individual, and
HOMECOMINGS FINANCIAL
NETWORK, INC., a Delaware
corporation,

Defendants/Appellees.

**BRIEF OF APPELLEE
HOMECOMINGS FINANCIAL
NETWORK, INC.**

Case No. 20030633-CA

Appeal from Order and Decree Quieting Title
Entered July 3, 2003, by The Honorable Tyrone E. Medley
of the Third Judicial District Court of Salt Lake County, State of Utah

Thomas K. Hall
448 East Golden Pheasant
Draper, UT 84020
Defendant *Pro Se*

Sarah Satterfield Allen
130 Glenburnie Lane #1-104
Durham, NC 27704-3072
Third-Party Defendant *Pro Se*

James G. Swensen, Jr.
SWENSEN & ANDERSEN PLLC
136 South Main Street, Suite 318
Salt Lake City, UT 84101
Telephone: (801) 364-7500
Attorneys for Plaintiff/Appellant

Bruce J. Nelson (2380)
NELSON CHRISTENSEN & HELSTEN
68 South Main Street, Suite 600
Salt Lake City, UT 84101
Telephone: (801) 531-8400
Attorneys for Defendant/Appellee
Homecomings Financial Network, Inc.

FILED **FILED**
Utah Court of Appeals Utah Court of Appeals
JAN 22 2004 JAN 20 2004
Paulette Stagg Paulette Stagg
Clerk of the Court Clerk of the Court

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SWENSEN & ANDERSEN PLLC
136 South Main Street, Suite 318
Salt Lake City, UT 84101
Telephone: (801) 364-7500
Attorneys for Plaintiff/Appellant

Bruce J. Nelson (2380)
NELSON CHRISTENSEN & HELSTEN
68 South Main Street, Suite 600
Salt Lake City, UT 84101
Telephone: (801) 531-8400
Attorneys for Defendant/Appellee
Homecomings Financial Network, Inc.

BRIEF OF APPELLEE

Appellee/Defendant Homecomings Financial Network, Inc. submits this Brief of Appellee.

LIST OF PARTIES TO THE PROCEEDING:

The following are the parties in interest to this appeal:

The Appellant:

Plaintiff, David J. Allen

The Appellees:

Defendant, Thomas K. Hall

Defendant, Homecomings Financial Network, Inc.

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RULES:

None cited

STATUTES:

§ 78-2-2(3)(j), *Utah Code Annotated* 1

§ 78-2-2(4), *Utah Code Annotated* 1

§ 78-2a-3(2)(j), *Utah Code Annotated* 1

STATEMENT OF JURISDICTION

This is an appeal from a July 3, 2003 Order and Decree Quietening Title of Judge Tyrone E. Medley of the Third Judicial District Court of Salt Lake County, State of Utah. Appeals from final decisions can be made as a matter of right to the Utah Supreme Court pursuant to § 78-2-2(3)(j) of the *Utah Code Annotated*. The Notice of Appeal was filed with the Utah Supreme Court on July 31, 2003. On September 15, 2003, and pursuant to § 78-2-2(4) of the *Utah Code Annotated*, the Utah Supreme Court exercised its discretion to transfer this case to the Utah Court of Appeals. Thereafter, the Court of Appeals has jurisdiction over this case pursuant to § 78-2a-3(2)(j) of the *Utah Code Annotated*.

ISSUES FOR REVIEW AND STANDARD OF REVIEW

Issue for Review: Whether the trial court properly gave effect to the intent and purpose of the previous Decree of Divorce in holding that Plaintiff Allen had no interest in the prior marital home of the parties.

Standard of Review: The standard of review for this issue is that the trial court's interpretation of a contract be accorded no particular deference by the appellate court, but that they are reviewed for correctness. *Green River Canal Co. v. Thayn*, 2003 WL 22519635 (Utah) (November 7, 2003); *Trujillo v. Jenkins*, 840 P.2d 778-79 (Utah 1992); *Wade v. Stangl*, 869 P.2d 9, 12 (Utah App. 1994).

RULES RELEVANT FOR REVIEW

Not applicable.

STATEMENT OF THE CASE

Nature of Case, Course of Proceedings, and Disposition in Lower Court

In a 1990 divorce, Plaintiff Allen's former spouse was awarded the family marital residence located in Sandy, Utah (the "**Sandy Property**"). The Decree of Divorce (the "**Decree**"), later recorded with the Salt Lake County Recorder, awarded Sarah Satterfield Allen ("**Sarah**") such property "as her sole and separate property subject to no claim by the plaintiff . . .", but with a contingent right of reversion in favor of Plaintiff Allen in the event Sarah moved from Salt Lake City at any time before their youngest child reached the age of 18.

Sarah subsequently mortgaged the Sandy Property on several occasions and ultimately sold the Sandy Property in January 1999 to Defendant Thomas K. Hall. Thereafter, Sarah resided in another home within the Salt Lake City area.

Before the youngest child reached the age of 18, Sarah moved out of state.

Plaintiff Allen seeks strict enforcement of the contingent reversionary interest in the Sandy Property based upon the Decree provision intended to give him one-half the home's equity in the event Sarah should move more than 50 miles from Salt Lake City, Utah. Plaintiff Allen alleges that he owns the Sandy Property free and clear of any mortgages or interests of Defendants.

Plaintiff Allen filed this action in the Third Judicial District Court of Salt Lake County, State of Utah, on May 18, 2000.

On May 20, 2003, trial in this matter was held before the lower court, the Honorable Tyrone E. Medley presiding.

Following the trial, Judge Medley issued Findings of Fact and Conclusions of Law on June 10, 2003. Judge Medley found that Plaintiff Allen had no interest in the Sandy Property due to the facts presented at trial. A copy of such Findings of Fact and Conclusions of Law is attached as Addendum “A”.

On July 3, 2003, Judge Medley entered his Order and Decree Quieting Title, ruling that Plaintiff Allen had no interest in the Sandy Property and that Defendant Hall owned the same subject to the lien of Defendant Homecomings. A copy of such Order and Decree Quieting Title is attached hereto as Addendum “B”.

Plaintiff Allen filed a Notice of Appeal on July 31, 2003.

Statement of Facts

The facts of this case are virtually undisputed. However, the following facts are relevant to the case before this Court:

1. Plaintiff Allen and Sarah were divorced on May 17, 1990, pursuant to the Decree entered in the Third Judicial District Court of Salt Lake County, State of Utah. Plaintiff Allen was the plaintiff in such case. [R. at 7, 530.]

2. The written Decree was prepared by Plaintiff Allen’s attorney. [R. at 7, 531-2 pp. 33.]

3. Pursuant to the Decree, Sarah was awarded the Sandy Property located at 10159 Flanders Road, Sandy, Utah, “as her sole and separate property subject to no claim by the plaintiff [David J. Allen] . . .” [R. at 9.] A copy of the Decree of Divorce is attached as Addendum “C” hereto.

4. The Decree further provided in paragraph 10:

The defendant [Sarah] shall be responsible for all indebtedness and expenses therefrom, holding the plaintiff [David J. Allen] harmless therefrom. The plaintiff shall provide the defendant with a Quit-Claim Deed within 30 days of the divorce becoming final, with said Quit-Claim Deed to contain the provisions that it is contingent upon the defendant maintaining current house payments and not moving from the Salt lake City area before the last child reaches age 18. If the defendant shall become more than 60 days in arrears in the payments for said house, the plaintiff shall have the option of paying the mortgage payment directly to the lender in lieu of child support, and sending the difference, if any, to the defendant. If the defendant shall move more than 50 miles from Salt Lake City, Utah, before the last child reaches age 18, ownership of the marital residence shall revert to the plaintiff, who will then sell the home and divide the proceeds equally with the defendant, and who will be responsible for all indebtedness thereon until the house is sold. These provisions are to ensure that the children have a suitable residence during their minority, are structured to provide a benefit to the defendant if she shall continue to reside in Salt Lake City, Utah, in the form of all of the equity in said home, and a detriment if she shall move, in the form of the loss of one-half of the equity.

[R. at 9.]

5. Thereafter, instead of quit-claiming his interest in the Sandy Property to Sarah as required by the Decree, Plaintiff Allen quit-claimed his interest in the Sandy Property to his mother, Norma Jean Allen, on February 15, 1991. The intended purpose was to conceal or protect his interest in the Sandy Property. [R. at 532, 564 p. 67.]

6. Norma Jean Allen subsequently quit-claimed the Sandy Property back to Plaintiff Allen. [R. at 532.]

7. Finally, on October 18, 1993, Plaintiff Allen quit-claimed the Sandy Property to Sarah, as had been required by the Decree to occur within 30 days of the May 17, 1990, Decree becoming final. [R. at 532, 564 p. 35.]

8. The Decree is silent about any restrictions upon, or effect of, Sarah's subsequent refinancing or selling the Sandy Property. There is no requirement in the Decree that Plaintiff Allen consent to any refinance or sale of the Sandy Property. [R. at 531.]

9. Plaintiff Allen is employed in real estate development and is knowledgeable of real estate matters [R. at 532, 564 pp. 54-5] and knew the Decree permitted Sarah to sell or encumber the Sandy Property [R. at 532].

10. Sarah refinanced the Sandy Property on several occasions subsequent to the divorce. [R. at 533-4.]

11. Plaintiff Allen was aware of such financings and even assisted in the financing of one of the loans by executing an affidavit for the title company who handled the closing. [R. at 534.]

12. Plaintiff Allen never objected to any financing of the Sandy Property by Sarah. [R. at 537.]

13. Plaintiff Allen knew of the refinancing actions of Sarah for approximately nine years but took no action regarding the same until bringing this action. [R. at 537.]

14. The Sandy Property was sold by Sarah to Defendant Hall on contract on January 19, 1998, for the price of \$146,000. [R. at 534.] To pay such price, Defendant Hall agreed to pay the existing first and second mortgages encumbering the Sandy Property (totalling approximately \$139,000) and also paid Sarah \$7,000. [R. at 534.]

15. Sarah moved from the Sandy Property in January 1998 following a sale of the property to Defendant Hall. Sarah then continued to reside in the Salt Lake City area in another home.

16. Plaintiff Allen was aware of the purchase of the Sandy Property by Defendant Hall at or about the time of the sale. [R. at 535.]

17. Plaintiff Allen never objected to the sale of the Sandy Property to Defendant Hall. [R. at 535.]

18. In March of 1998, Sarah filed bankruptcy. [R. at 536.]

19. The Bankruptcy Court subsequently determined that Sarah had no equity in the Sandy Property and sales contract and released the Sandy Property from further Bankruptcy Court control. [R. at 536.]

20. Defendant Hall subsequently refinanced the Sandy Property with Defendant Homecomings in the amount of \$151,900, the proceeds of which repaid the two prior, outstanding mortgages of Sarah. The refinance was closed on June 7, 1999. [R. at 536.]

21. Plaintiff Allen filed a Petition to Modify the Decree in June 1999. The Petition sought no modification of the provisions regarding the Sandy Property. [R. at 537.]

22. Sarah moved from Utah on or about July 15, 1999, and the move was more than 50 miles from Salt Lake City, Utah. [R. at 537.]

23. An Order of Modification in the divorce matter was entered on September 12, 1999, and did not address any issues regarding the Sandy Property. [R. at 537.]

24. On May 18, 2000, Plaintiff Allen brought this action in the Third Judicial District Court seeking to enforce his claimed reversionary right to ownership of the Sandy Property, subject to the requirement to subsequently sell the Sandy Property and then equally divide the equity, if any, with Sarah. [R. at 1.]

25. Plaintiff Allen has not joined Sarah as a party to this action and has not herein claimed that she is responsible for any monies to Plaintiff Allen. [R. at 564 p. 59.]

26. On January 12, 2002, Plaintiff Allen executed a Stipulation to Modify the Decree an additional time, and such Stipulation failed to address any issues regarding the Sandy Property, including his contingent reversionary interest therein. [R. at 537-8.]

27. On May 20, 2003, trial in this matter was held before the lower court, the Honorable Tyrone E. Medley presiding. [R. at 530.]

28. Following the trial, Judge Medley issued Findings of Fact and Conclusions of Law. Judge Medley found that Plaintiff Allen had no interest in the Sandy Property due to the facts presented at trial. A copy of such Findings of Fact and Conclusions of Law is attached as Addendum “A”.

29. On July 3, 2003, Judge Medley issued his Order and Decree Quieting Title, ruling that Defendant Hall owned the Sandy Property subject to the lien of Defendant Homecomings. Judge Medley further ruled that Plaintiff Allen had no interest in the Sandy Property. A copy of such Order and Decree Quieting Title is attached hereto as Addendum “B”.

SUMMARY OF ARGUMENT

Plaintiff Allen’s claimed interest in the Sandy Property arises out of the provisions of the 1990 Decree, drafted entirely by Plaintiff Allen’s attorney. As a result, the Decree should be interpreted against Plaintiff Allen in the event of a dispute over its terms.

The Decree does not restrict Sarah from mortgaging or selling the Sandy Property.

Plaintiff Allen acquiesced in the post-divorce mortgaging of the Sandy Property by Sarah, made no claim to an interest in the Sandy Property when the it was sold by Sarah, failed to make any claim for his contingent reversionary interest in the Sandy Property in two subsequent divorce modification proceedings, and thereby waived any claim to such interest. There was no equity in the Sandy Property at the time the reversionary interest was allegedly triggered.

The intent of the Decree should control the outcome of this matter, not a technical reading of the recording statutes. The Decree intended to give Plaintiff Allen one-half of any equity in the Sandy Property in the event Sarah moved from Salt Lake City. Unfortunately, there was no equity in the Sandy Property when such event occurred in 1999.

Plaintiff Allen seeks a windfall which contravenes the purpose and intent of the Decree. If Plaintiff Allen were to prevail, he would theoretically receive one-half of the value of the Sandy Property sold by Sarah in 1999 for \$146,000 inasmuch as Plaintiff Allen would take title to the Sandy Property without being subject to Defendant Hall's ownership or Defendant Homecoming's Trust Deed.

ARGUMENT

I.

The Decree Of Divorce Did Not Restrict Post-Divorce Mortgaging Or Selling Of The Sandy Property

The Decree, entered on May 17, 1990, between the parties failed to provide any language which restricted Sarah from refinancing the Sandy Property. The Decree

specifically provided that Sarah was awarded the Sandy Property “as her sole and separate property subject to no claim by the plaintiff . . .” Plaintiff Allen was obviously aware of such fact. Sarah financed or refinanced the Sandy Property several times between May 17, 1990, and November 19, 1996. On at least one occasion, Plaintiff Allen assisted in the refinance process by signing an affidavit for the title company handling the transaction.

There is no language in the Decree prohibiting Sarah from mortgaging or selling the Sandy Property, nor indicating what effect such actions may have on Plaintiff Allen’s contingent reversionary interest in such property. Plaintiff Allen was experienced in real estate matters. In the event Plaintiff Allen intended or desired that there be some restriction regarding refinancing, he had the responsibility to incorporate within the Decree appropriate language precluding such action or otherwise providing for the effect thereof on his contingent reversionary interest.

In deciding how to interpret ambiguous or unclear terms of a contract, “we look to the writing itself to ascertain the parties’ intentions, and we consider each contract provision . . . in relation to all of the others with a view toward giving effect to all and ignoring none.” *Green River* citing *WebBank v. American Gen. Annuity Svc. Corp.*, 54 P.3d 1139 (Utah 2002). “If the language within the four corners of the contract is unambiguous, the parties’ intentions are determined from the plain meaning of the contractual language and the contract may be interpreted as a matter of law.” *Id.* citing *Cent. Fla. Invests., Inc. v. Parkwest Assoc.*, 40 P.3d 599 (Utah 2002).

“If the contract is found to be ambiguous, the court may consider extrinsic evidence of the parties’ intentions.” *Peterson v. The Sunrider Corp.*, 48 P.3d 918, 925 (Utah 2002), citing *Winegar v. Froerer Corp.*, 813 P.2d 104, 108 (Utah 1991).

From the actions of Plaintiff Allen, it is obvious that he intended to allow Sarah the right to mortgage the Sandy Property following the divorce, and likewise that such financing would not be subordinate to his contingent reversionary right because:

1. Plaintiff Allen was experienced in real estate matters;
2. Plaintiff Allen’s attorney drafted the Decree;
3. The Decree does not prohibit such post-divorce financing;
4. Plaintiff Allen was aware of such financings and even assisted Sarah in obtaining one of the loans;
5. Plaintiff Allen never objected to such post-divorce financing;
6. Plaintiff Allen entered into two post-divorce Decree modifications without raising any Sandy Property financing issues; and
7. Any claim that Plaintiff Allen’s contingent reversionary interest would have priority over subsequent mortgages would, from a practical standpoint, clearly prohibit any post-divorce dealings with the property by Sarah – something the Decree appears to allow.

The Decree was prepared by Plaintiff Allen’s attorney. Any ambiguity therein must be construed against the drafter – Plaintiff Allen. *See Edwards & Daniels Architects, Inc. v. Farmers’ Properties, Inc.*, 865 P.2d 1382, 1386 (Utah App. 1993). The Utah courts “interpret a divorce decree according to established rules of contract interpretation. . . . ‘To demonstrate ambiguity, the contrary positions of the parties must each be tenable’ (citation

omitted). . . . [W]hether a contract is ambiguous is a question of law.” *Taylor v. Hansen*, 958 P.2d 923, 928 (Utah App. 1998), citing *Whitehouse v. Whitehouse*, 790 P.2d 57, 60 (Utah App. 1990). See also *Ward v. Intermountain Farmers Ass’n*, 907 P.2d 264 (Utah 1995); *Interwest Const. v. Palmer*, 923 P.2d 1350, 1358-59 (Utah 1996).

Consequently, Defendant Homecomings should not suffer damages as a result of Plaintiff Allen’s omission in the Decree. Defendant Homecomings paid off the first and second mortgages against the Sandy Property incurred by Sarah. Defendant Homecomings’ Trust Deed should remain a valid lien against the Sandy Property and should be superior to any claim of Plaintiff Allen.

II.
The Lower Court Properly Enforced The
Intent Of The Decree Of Divorce Over
A Technical Application Of The Recording Statute

Plaintiff Allen relies solely upon the constructive notice provisions of Utah’s recording statutes in his argument that his contingent reversionary interest in the Sandy Property should have priority over any other interest in such property. To do so ignores the purpose and intent of the Decree and would give Plaintiff Allen a windfall.

Plaintiff Allen claims that he takes title with no liens to Defendant Homecomings and no interest to Defendant Hall. In other words, he seeks ownership of a home sold in 1999 for \$146,000 free and clear (subject to the obligation to sell and give one-half of the equity to Sarah). This would frustrate the purpose of the Decree, circumvent the intent of the

divorce court's ruling, and give Plaintiff Allen a windfall. He would be unjustly enriched. Plaintiff Allen's claims must be viewed with the intent and purpose of the Decree in mind.

As stated in the Decree, one of the purposes of the Sandy Property arrangement was clearly "to ensure that the children [of the parties] have a suitable residence during their minority." To effectuate such result, Sarah clearly needed the right to deal independently with the Sandy Property, including the right to mortgage the same. Sarah was responsible to make the mortgage payments on the Sandy Property.

In the event the Sandy Property was returned to Plaintiff Allen, the Decree specifically provides that Plaintiff Allen would be responsible for the indebtedness owed on such property at such time. Defendant Homecomings took a Trust Deed on the Sandy Property on June 26, 1999. Sarah moved from Utah on or about July 15, 1999. If the Sandy Property is determined to have reverted to Plaintiff Allen on July 15, 1999, Plaintiff Allen accordingly became responsible for the indebtedness owed on the Sandy Property and, more specifically, the indebtedness owed to Defendant Homecomings.

Otherwise, Plaintiff Allen would be unjustly enriched at the expense of Defendant Homecomings.

The Supreme Court of the State of Utah in *Desert Miriah, Inc. v. B & L Auto, Inc.*, 12 P.3d 580 (Utah 2000), has provided that a claim for unjust enrichment must meet three elements:

"(1) there must be a benefit conferred on one person by another; (2) the conferee must appreciate or have knowledge of the benefit; and (3) there must be the acceptance or retention by the conferee of the benefit under such circumstances as to make it inequitable for the conferee to retain the benefit without payment of its value."

Defendant Homecomings paid off the first and second mortgages which were incurred by Sarah. Plaintiff Allen clearly had knowledge of Defendant Homecomings' payment of such indebtedness and will clearly appreciate its benefit if Plaintiff Allen took the Sandy Property free and clear from any claim by Defendant Homecomings. It would clearly be inequitable to allow Plaintiff Allen to claim the Sandy Property free and clear of any claim by Defendant Homecomings.

Furthermore, Plaintiff Allen should be estopped from making such a claim due to his drafting of the terms of the Decree, his awareness and even assistance in Sarah's post-divorce mortgaging of the Sandy Property and his failure to address the contingent reversionary interest in the two post-divorce modification matters.

In the case of *State, Dept. of Human Services, ex rel. Parker v. Irizarry*, 945 P.2d 676, 680 (Utah 1997), the Utah Supreme Court stated the following:

“The elements essential to invoke the doctrine of equitable estoppel are: (1) an admission, statement or act inconsistent with the claim afterwards asserted, (2) action by the other party on the faith of such admission, statement or act, and (3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement or act.”

Plaintiff Allen had numerous opportunities to (1) object to Sarah's post-divorce mortgaging of the Sandy Property or (2) inform mortgage companies and Defendant Hall of the provision within the Decree giving Plaintiff Allen a contingent reversionary interest in the Sandy Property. Failure to do so in the circumstances of this case should estop Plaintiff Allen from now claiming that others interests are void. The elements of estoppel having been established within the present case, the interest of Defendant Homecomings is superior to that of Plaintiff Allen under the doctrine of estoppel.

Finally, Plaintiff Allen's claims should be barred by the doctrine of laches. The Utah Supreme Court in *DOIT, Inc. v. Touche, Ross & Co.*, 926 P.2d 835, 845 (Utah 1995), has stated, "[a] defendant may successfully assert this defense [laches] when a plaintiff seeking equity unreasonably delays in bringing an action and this delay prejudices the defendant" (citation omitted).

Plaintiff Allen became aware of his former spouse incurring debt on the Sandy Property as early as November 1996. Plaintiff Allen would have had the opportunity from November 1996 until June 1999 to address the issue of the incurred indebtedness with his former spouse. Plaintiff Allen further became aware of the sale of the Sandy Property in January 1998 but failed to take any action until May 2000. During the period between January 1998 and May 2000, Defendant Homecomings paid off Sarah's first and second mortgages on the Sandy Property. If Plaintiff Allen had commenced an action against Sarah in November 1996 due to the increased indebtedness being taken against the Sandy Property, and further if Plaintiff Allen had commenced an action against Defendant Hall shortly after January 1998, Defendant Homecomings would not have paid off Sarah's first and second mortgages on the Sandy Property and would not be involved in the present litigation. Defendant Homecomings will be prejudiced if Plaintiff Allen is allowed to obtain the Sandy Property free and clear from any claim by Defendant Homecomings.

Furthermore, Plaintiff Allen has had approximately seven years within which to address the issues on the Sandy Property with his former spouse. In addition, during that same period of time, Plaintiff Allen filed two petitions to modify Decree, during which Plaintiff Allen could have addressed the indebtedness incurred against the Sandy Property

by Plaintiff Allen's former spouse. The indebtedness incurred against the Sandy Property is a result of the actions of Sarah and Plaintiff Allen's failure to include appropriate language within the Decree prohibiting Sarah from incurring additional indebtedness against the Sandy Property. Accordingly, Plaintiff Allen should have addressed the issue within the divorce action and sought damages against his former spouse for the additional debt taken against the Sandy Property, if Plaintiff Allen felt entitlement to additional rights under the Decree. Defendant Homecomings has done nothing more than to pay off the indebtedness incurred by Plaintiff Allen's former spouse. If the Sandy Property had been returned to Plaintiff Allen prior to Defendant Homecomings paying off the prior first and second mortgages, Plaintiff Allen would have received the Sandy Property, subject to the first and second mortgages in the sum of approximately \$139,000 incurred by Sarah. Therefore, if Plaintiff Allen believed his former spouse had inappropriately incurred debt against the Sandy Property, then he should have sought damages under the divorce action.

III. **The Utah Occupying Claimants Act Issue Is Moot**

Plaintiff Allen seeks to have this Court set aside the lower court's finding that the Utah Occupying Claimants Act would apply, even if Plaintiff Allen's reversionary interest were upheld to void the interest of Defendants Homecomings and Hall. The lower court specifically found such ruling to be moot in light of the ruling quieting title in the name of Defendant Hall. Although Defendant Homecomings is not directly affected by such observation by the lower court, it agrees with the same. However, inasmuch as the lower

court found that portion of the lower court's ruling to be moot in light of the circumstances, Defendant Homecomings does not address such issue in this brief.

CONCLUSION

The Decree of Divorce did not prohibit Sarah from mortgaging or selling the Sandy Property, nor give Plaintiff Allen priority over such transactions in the event his contingent equity interest was ever triggered. The Decree of Divorce should be construed against Plaintiff Allen, drafter of the same.

Plaintiff Allen seeks a windfall in contravention to the intent and purpose of the 1990 Decree of Divorce. Plaintiff Allen relies upon a technical reading of the recording statute to elevate his claimed interest in the Sandy Property over the interests of Defendants Hall and Homecomings.

The lower court properly enforced the intent and purpose of the Decree of Divorce which was structured to give Plaintiff Allen a contingent interest in equity, if any existed, in the Sandy Property in the event Sarah should move from Salt Lake City, Utah. No equity existed in the Sandy Property when such event occurred.

The Utah Occupying Claimants Act was determined to be moot by the trial court in light of its ruling and is not relevant to this appeal. Furthermore, such issue does not affect Defendant Homecomings.

The lower court ruling was proper and should be upheld by this Court.

RESPECTFULLY SUBMITTED this 20th day of January, 2004.

NELSON CHRISTENSEN & HELSTEN

By: _____


Bruce J. Nelson, Esq.

Attorneys for Defendant/Appellee Homecomings
Financial Network, Inc.

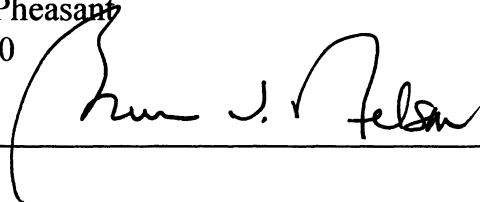
CERTIFICATE OF SERVICE

The undersigned certifies that on 20th day of January, 2004, I caused to be hand delivered two (2) true and correct copies of the foregoing Brief of Appellee Homecomings Financial Network, Inc. to the following:

James G. Swensen, Jr., Esq.
Swensen & Andersen PLLC
136 South Main Street, Suite 318
Salt Lake City, UT 84101

with two (2) true and correct copies to be mailed, addressed as follows:

Thomas K. Hall
448 East Golden Pheasant
Draper, UT 84020



Addendum A

Findings of Fact and Conclusions of Law

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DAVID J. ALLEN, an individual,	:	FINDINGS OF FACT AND
Plaintiff,	:	CONCLUSIONS OF LAW
vs.	:	CASE NO. 000904054
THOMAS K. HALL, an individual,	:	
and HOMECOMINGS FINANCIAL	:	
NETWORK, INC., a Delaware	:	
corporation,	:	
Defendants.	:	

The above-entitled matter having come before the Court for trial on the 20th day of May, 2003, before the Honorable Tyrone E. Medley; plaintiff appearing in person and by his attorney, James G. Swensen, Jr.; defendant, Thomas K. Hall, appearing in person and by his attorney, Kay M. Lewis; and defendant, Homecomings Financial Network, Inc., appearing through its attorney, Matthew N. Olsen; plaintiff and defendants having presented evidence and testimony to the Court, and the Court being fully advised in the premises, now makes the following:

FINDINGS OF FACT

1. That plaintiff, David J. Allen, and Sarah Satterfield Allen were divorced on May 17, 1990, pursuant to a Decree of Divorce entered in this Court.

2. That pursuant to the Decree of Divorce entered on May 17, 1990, Sarah Satterfield Allen, the former spouse of plaintiff, was awarded the property located at 10159 S. Flanders Road, Sandy, Utah, "as her sole and separate property subject to no claim by the plaintiff." The Decree further provided:

The defendant shall be responsible for all indebtedness and expenses therefrom, holding the plaintiff harmless therefrom. The plaintiff shall provide the defendant with a Quit-Claim Deed within 30 days of the divorce becoming final, with said Quit-Claim Deed to contain the provisions that it is contingent upon the defendant maintaining current house payments and not moving from the Salt Lake City area before the last child reaches age 18. If the defendant shall become more than 60 days in arrears in the payments for said house, the plaintiff shall have the option of paying the mortgage payment directly to the lender in lieu of child support, and sending the difference, if any, to the defendant. If the defendant shall move more than 50 miles from Salt Lake City, Utah, before the last child reaches age 18, ownership of the marital residence shall revert to the plaintiff, who will then sell the home and divide the proceeds equally with the defendant, and who will be responsible for all indebtedness thereon until the house is sold. These provisions are to ensure that the children have a suitable residence during their minority, are structured to provide a benefit to the defendant if she shall continue to reside in Salt Lake City, Utah, in the form of all of the equity in said home, and a detriment if she shall move, in the form of the loss of one-half of the equity.

3. That the Decree of Divorce did not restrict Sarah Satterfield Allen from refinancing or selling the property. Under the Decree David Allen's consent is not necessary in order for Sarah Allen to mortgage, refinance or sell the home. That David

Allen's attorney prepared the Decree and David Allen, employed in real estate development, is knowledgeable of real estate matters and knew the Decree permitted Sarah Allen to sell or encumber the property, yet failed to take proper steps to correct this problem or alternatively accepted the consequences resulting therefrom. Plaintiff David Allen in fact testified that on numerous occasions Sarah Allen threatened to sell the home because she was entitled to do so under the Decree.

4. That on about February 15, 1991, plaintiff, David J. Allen, quit-claimed the property located at 10159 S. Flanders Road, Sandy, Utah, to his mother, Norma Jean Allen, instead of quit-claiming the property to Sarah Allen as required by the Decree. Plaintiff's transfer of the property to his mother was intended to conceal or protect his interest in that he testified that he could have taken the property out of his mother's name at any time.

5. That on or about October 25, 1993, Norma Jean Allen quit-claimed the property back to the plaintiff, David J. Allen.

6. That plaintiff quit-claimed the property located at 10159 S. Flanders Road, Sandy, Utah, to his former spouse, Sarah Satterfield Allen, on October 28, 1993.

7. That Sarah Satterfield Allen recorded the Quit-Claim Deed to the property on May 11, 1994.

8. That on or about June 24, 1994, Sarah Satterfield Allen refinanced the property located at 10159 S. Flanders Road, Sandy, Utah, with CFC Mortgage Corporation, a California corporation, for the sum of \$75,227.

9. That on or about July 14, 1994, Sarah Satterfield Allen again refinanced the property located at 10159 S. Flanders Road, Sandy, Utah with CFC Mortgage Corporation, a California corporation, for the sum of \$75,196.

10. That on or about February 25, 1995, Sarah Satterfield Allen took a second mortgage against the property located at 10159 S. Flanders Road, Sandy, Utah, with Pacific Rim Financial Services for the sum of \$7,000.

11. That on or about July 28, 1995, Sarah Satterfield Allen refinanced the second mortgage on the property located at 10159 S. Flanders Road, Sandy, Utah, with United Companies Lending Corporation for the sum of \$29,300.

12. That on or about October 31, 1995, Sarah Satterfield Allen refinanced the first and second mortgages on the property located at 10159 S. Flanders Road, Sandy, Utah, with UMG Funding Group, Inc., for the sum of \$109,600.

13. That on or about April 11, 1996, Sarah Satterfield Allen again refinanced the property located at 10159 S. Flanders Road, Sandy, Utah, with CTX Mortgage company for the sum of \$120,000.

14. That on or about November 19, 1996, Sarah Satterfield Allen took a second mortgage on the property located at 10159 S. Flanders Road, Sandy, Utah, with the Equi-Credit Corporation for the sum of \$21,400.

15. That on or about November, 18, 1996, the plaintiff had knowledge of Sarah Satterfield Allen taking a second mortgage on the property and assisted Sarah Satterfield Allen by executing an Affidavit for Academy Title Company.

16. That on or about January 19, 1998, defendant Thomas K. Hall purchased the subject property from Sarah Allen pursuant to a residential purchase agreement executed between them. That on or about January 19, 1998, Sarah Allen quit-claimed the real property located at 10159 S. Flanders Road, Sandy, Utah, to the defendant, Thomas K. Hall.

17. The agreement shows a sales price of \$146,000. Hall paid this price in the form of \$7,000 cash directly to Sarah Allen and assumption of the outstanding first and second mortgages with balances of a total of approximately \$139,000. The mortgage payments were to be made by Hall directly to Sarah Allen who was to forward them on to the appropriate mortgage company.

18. At the time defendant Hall purchased the home, he inquired of Sarah Allen whether there were outstanding liens or

other encumbrances against the property and was told that there were none.

19. Within two days after purchasing the subject property and taking possession, defendant Hall returned home to find plaintiff David Allen in the house. When he inquired why David Allen had forcibly entered the home, plaintiff David Allen told Hall that he had learned the house had been sold and that he was merely picking up some property that allegedly belonged to himself and his children. David Allen then left Hall's house, making no comment or giving any other indication to Hall that he, David Allen, still had or claimed to have an interest in the house or that he had any objection to the fact that Sarah Allen had sold the home.

20. Defendant, Thomas K. Hall, reasonably believing that he was the owner of the home because of the purchase agreement and the deed he had received from Sarah Allen, defendant Hall then initiated and completed considerable work to clean up, improve and remodel the home. Defendant Hall expended \$42,279 to improve the home, an additional \$10,000 for labor, plus real property taxes for years 1998 through 2002 in the sum of \$6,974.67.

21. As he agreed to do when he purchased the home, Hall made the first and second mortgage payments directly to defendant Sarah Allen for several months. However, he then discovered that she was

not forwarding these payments on as agreed and that the house was in danger of foreclosure.

22. In March of 1998, Sarah Allen filed bankruptcy which forestalled the foreclosure of the home.

23. Defendant Hall then sought and obtained financing from Homecomings Financial Network, Inc., to pay off the existing mortgages in order to forestall the foreclosure, and obtained the appropriate relief and consent to do so from both Sarah Allen and the United States Bankruptcy Court.

24. In her bankruptcy petition, Sarah Allen stated that the value of the home was \$147,000; based on this valuation, the property was released from the bankruptcy as having no equity for the benefit of Sarah Allen's creditors.

25. With the proceeds of the loan from Homecomings, defendant Hall paid approximately \$124,631.32 to Fleet Mortgage for the first mortgage, and approximately \$22,336.69 to Equi-credit for the second mortgage for a total of \$145,784. That Homecomings Financial Network, Inc., secured the loan with a Trust Deed that was recorded on the property located at 10159 S. Flanders Road, Sandy, Utah, on June 26, 1999.

26. When added to the \$7,000 defendant Hall paid to Sarah Allen for her equity at the time of the initial transaction, defendant Hall has paid \$6,784 in excess of the purchase price due

to Sarah Allen's failure to forward the mortgage payments to the lenders as agreed thus incurring significant late fees and interest charges.

27. Defendant Hall continued to reside in the home until a few months ago when, because of this litigation, he rented it out to third parties.

28. Plaintiff David Allen knew of the refinancing by Sarah Allen for approximately nine years yet did nothing until bringing this lawsuit against defendant Hall. Plaintiff David Allen, after learning of the sale of the home to defendant Hall, again waited for over two years before filing this lawsuit.

29. That plaintiff David Allen filed a Petition to Modify the Decree of Divorce on June 18, 1999, and failed to address any issues regarding the property located at 10159 S. Flanders Road, Sandy, Utah.

30. That Sarah Satterfield Allen left the state of Utah on or about July 15, 1999.

31. That an Order of Modification was entered on September 23, 1999, and again failed to address any issues regarding the property located at 10159 S. Flanders Road, Sandy, Utah.

32. That the plaintiff executed a Stipulation to Modify the Decree of Divorce on January 12, 2002, and that on January 12,

2002, Sarah Satterfield Allen executed a Quit-Claim Deed in favor of plaintiff as to the subject property.

CONCLUSIONS OF LAW

1. Sarah Allen and plaintiff David Allen were divorced on May 17, 1990. That the Decree of Divorce awarded Sarah Allen the subject property as her sole and separate property subject to no claim from David Allen, except as set forth in paragraph 10 of the Decree.

2. That the Decree is interpreted according to the established rules of contract interpretation. That the Decree is ambiguous in that the indebtedness referenced in paragraph 10 can be interpreted to mean the amount of indebtedness at the time of entry of the Decree as asserted by plaintiff or the amount of indebtedness at the time of the effective date of plaintiff's reversionary interest. The Court concludes that pursuant to the Decree plaintiff is responsible for all indebtedness on the subject property in the event the property was returned to plaintiff. Plaintiff, with the assistance of counsel, drafted and negotiated the Decree, therefore the Decree is construed against plaintiff. That defendant, Homecomings Financial Network, Inc., maintains a Trust Deed against the real property in the principal amount of \$148,291.33, which Trust Deed is superior to any claim of the plaintiff. The Court cannot find that it was the intention of the

Allens to enter a Decree that can be interpreted to produce an extraordinary inequitable result by returning the property to plaintiff free and clear of all debt allegations despite the constructive notice resulting from plaintiff's recorded reversionary interest.

3. The Decree negotiated and drafted by plaintiff in 1990 did not preclude Sarah Allen from mortgaging, refinancing, selling or liquidating her equity in the subject property. Sarah Allen refinanced and mortgaged the subject property several times with plaintiff's knowledge and at least on one occasion with his active consent and participation therein. The Decree was entered on May 1990 and for at least ten years plaintiff failed to protect and clarify his interest in the property.

4. Plaintiff Allen drafted and negotiated a Decree which, with his years of experience in real estate development, had to have known was unclear, ambiguous and potentially harmful to innocent third parties who may purchase the property or take the property as security for loans. Plaintiff had full knowledge of Sarah Allen's encumbering and refinancing of the property even though the encumbrances under the Decree would reduce his beneficial reversionary interest. Plaintiff's failure to protect this interest for ten years by not clarifying the Decree and his conduct of participating in allowing Sarah Allen to refinance and

sell the property to defendant Hall is inconsistent with his current claim that he is entitled to the property free and clear of all claims and indebtedness.

5. In January 1998, with plaintiff Allen's full knowledge and apparent consent, Sarah Allen sold the subject property to defendant Hall at its fair market value for approximately \$146,000. Defendant Hall purchased the property in good faith without actual knowledge of plaintiff Allen's claimed interest except for the constructive notice provided by David Allen's recorded interest. Plaintiff Allen had full knowledge of the sale of the subject property to defendant Hall yet remained silent as to his reversionary interest even though plaintiff Allen had sufficient reason to believe defendant Hall was unaware of the beneficial reversionary interest. Plaintiff had to have known based upon his years in real estate development that defendant Hall would establish or assume mortgage obligations, property tax obligations and make substantial improvements to the property as set forth hereinbefore, yet plaintiff Allen remained silent and waited approximately two years after notice of the sale before initiating this lawsuit and never taking any action in the divorce case to clarify his interest, all to the detriment of defendants Homecomings Financial and Hall and to the benefit of plaintiff. The Court finds plaintiff's Allen's silence, delay and inactivity

to be intentional and designed to enhance the value and equity of the subject property to the detriment of defendants Homecomings Financial and Hall. To quiet title in plaintiff Allen under these circumstances free and clear from all claims and indebtedness asserted by defendants Homecoming Financial and Hall would be unjust, inequitable and intolerable.

6. Title to the subject property is quieted in defendant Hall, subject to the financial claims of defendant Homecomings Financial, free and clear from any claim or interest of plaintiff Allen, whose claim is hereby disallowed based upon laches, estoppel and unjust enrichment.

7. The Court further finds that on or about July 15, 1999, when Sarah Allen moved from the state of Utah, plaintiff Allen's reversionary interest which was designed to return ownership to plaintiff Allen for the sole purpose of selling and dividing equity as set forth in paragraph 10 of the Decree is extinguished based upon release of the property from Sarah Allen's bankruptcy upon the grounds that the property was heavily encumbered with zero equity. Therefore, any reversionary interests solely for the purpose of dividing equity is nullified.

8. Plaintiff's condition subsequent reversionary interest which results in a forfeiture are not favored in the law and are strictly construed. Paragraph 10 of the Decree is ambiguous and

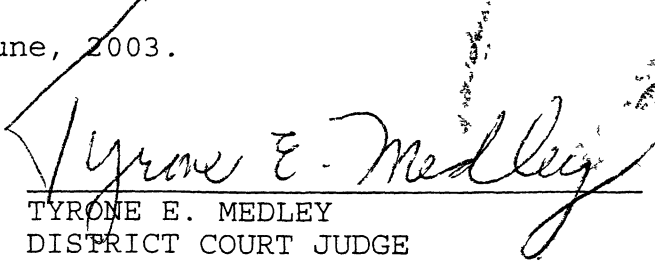
unclear and not clearly expressed making performance impossible without substantial inequitable harm to innocent third parties therefore the interest is extinguished. Minneapolis Machine Co. v. Hanson, 101 Minn. 260; 112 N.W. 217 (1907).

9. But for having quieted title to the property in defendant Thomas K. Hall's name subject to Homecomings Financial Network, Inc.'s financial interests, and free and clear from any interest of plaintiff, David Allen, defendant Hall pursuant to Section 57-6-1, Utah Occupying Claimants Act, would be entitled to be reimbursed from plaintiff, David Allen, for improvements in the sum of \$42,279.36, plus labor in the sum of \$10,000, plus the real property taxes between 1998 and 2002 in the sum of \$6,974.67. This alternative claim is now moot.

10. Defendant Thomas K. Hall's claim to damages for excess interest payments is denied.

11. Counsel for defendants Hall and Homecomings Financial are instructed to submit an Order and Judgment consistent with this Court's Findings of Fact and Conclusions of Law.

Dated this 10 day of June, 2003.


TYRONE E. MEDLEY
DISTRICT COURT JUDGE

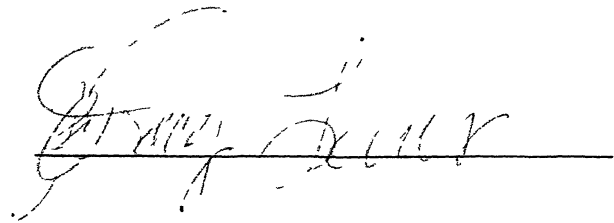
MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Findings of Fact and Conclusions of Law, to the following, this 10 day of June, 2003:

James G. Swensen, Jr.
Attorney for Plaintiff
136 S. Main, Suite 318
Salt Lake City, Utah 84101

Kay M. Lewis
Attorney for Defendant Hall
320 South 300 East, Suite 100
Salt Lake City, Utah 84111

Matthew N. Olsen
Attorneys for Defendant Homecomings Financial
8142 S. State Street
Midvale, Utah 84047

A handwritten signature in black ink, appearing to read "James G. Swensen, Jr.", is written over a horizontal line.

Addendum B

Order and Decree Quieting Title

IMAGED

FILED DISTRICT COURT
Third Judicial District

JUL - 2 2003

By [Signature]
SALT LAKE COUNTY
Deputy Clerk

Kay M. Lewis (Bar No. 1944)
JENSEN & LEWIS, P.C.
Attorneys for Defendant
and Third Party Plaintiff
Thomas K. Hall
320 South 300 East, Suite 100
Salt Lake City, Utah 84111
Telephone: 328-4981

THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH


DAVID J. ALLEN, an individual,)
)
)
 Plaintiff,)
)
 vs.)
)
 THOMAS K. HALL, an individual, and)
 HOMECOMINGS FINANCIAL NETWORK,)
 INC., a Delaware corporation,)
)
 Defendants.)
)
 THOMAS K. HALL, an individual,)
)
 Third Party Plaintiff,)
)
 vs.)
)
 SARAH SATTERFIELD ALLEN,)
)
 Third Party Defendant.)

ENTERED IN REGISTRY
OF JUDGMENTS
DATE 07/07/03

ORDER AND DECREE
QUIETING TITLE

Civil No. 00-0904054

JUDGE MEDLEY

Order and Decree Quieting Title @J

000904054 JD12959905 HALL, THOMAS K JD

The above-entitled matter came on regularly for trial before the Honorable Tyron E. Medley on May 20, 2003. Plaintiff appeared in person and by his attorney, James G. Swensen, Jr. Defendant Thomas K. Hall appeared in person and by his attorney, Kay M. Lewis. Defendant

Homecomings Financial Network, Inc., appeared through its attorney, Matthew N. Olsen. Third Party Defendant Sarah Satterfield Allen did not appear either in person or by counsel.

The court having reviewed the evidence and heard the testimony presented by the parties, and having made and entered its Findings of Fact and Conclusions of Law, now enters its:

ORDER AND DECREE

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Paragraph 10 of the Decree of Divorce entered between the Plaintiff and Third Party Defendant is ambiguous and, therefore, is construed against the Plaintiff, any claim to ownership by the Plaintiff Allen arising from the Decree is extinguished, and any reversionary interest solely for the purpose of dividing equity is nullified.

2. The claims of Plaintiff Allen to quiet title and for unjust enrichment to the hereinafter described real property are denied.

3. Title to the following described real property situate in Salt Lake County, Utah, is hereby quieted in favor of Thomas K. Hall, subject to the financial claims of Defendant Homecomings Financial, and free and clear of any claims of the Plaintiff, whose claim is hereby disallowed based upon laches, estoppel and unjust enrichment.

4. The claims of Defendant Hall under the Utah Occupying Claimants' Act (§57-6-1, Utah Code Annotated (1953, as amended)) for improvement, labor and real property taxes are moot as title to the property is quieted in Defendant Hall.

5. The claim of Defendant Hall for damages for excess interest is denied.

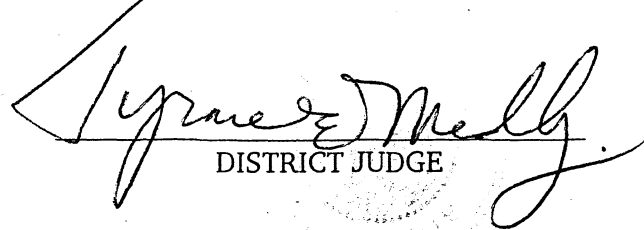
6. The real property which is the subject of this order is more particularly described as follows:

28-09-381-012

Lot 3, WHITE CITY NO. 41, according to the official plat thereof, as recorded in the office of the Salt Lake County Recorder.

DATED this 2 day of July, 2003.

BY THE COURT:

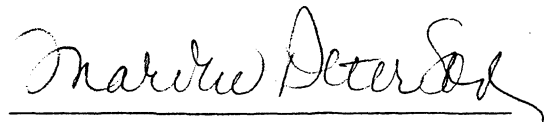

DISTRICT JUDGE

I hereby certify that I mailed a copy of the foregoing Order, postage prepaid, this 20th day of June, 2003, to:

James G. Swensen, Jr.
Attorney for Plaintiff
136 South Main Street, Suite 318
Salt Lake City, Utah 84101

Matthew Olsen
Attorney for Defendants Homecomings
Financial Network, Inc.
8142 South State Street
Midvale, Utah 84047

Sarah Satterfield Allen, pro se
1300 Shepherd Street
Durham, North Carolina 27707



Addendum C

Decree of Divorce

MAY 17 1990

Jane Allen, Bar #45
Attorney for plaintiff
8 East 300 South, Suite 735
Salt Lake City, Utah 84111
(801) 355-1300

By B. Stanworth

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

DAVID JOHN ALLEN,)	
plaintiff,)	DECREE OF DIVORCE
vs.)	2156809
)	5-17-90 8:31 am
SARAH SATTERFIELD ALLEN,)	Civil No. 89490 3635
defendant.)	Judge John A. Rokich

This matter came on for hearing the 17th day of May, 1990. The plaintiff was present with his attorney, Jane Allen. The defendant was not present, having executed and filed with the court an appearance, consent, and waiver in which she agreed that her default may be entered. Based upon the testimony of the plaintiff, the file herein, good cause appearing therefor, and the court having made and entered the findings of fact and conclusions of law, it is hereby ordered, adjudged, and decreed:

DECREE OF DIVORCE

1. The plaintiff is awarded a decree of divorce, the same to become final upon entry.
2. The plaintiff has been a resident of Salt Lake County for the three months immediately prior to the filing of this Complaint for Divorce.
3. The parties were married on May 31, 1988 in Chatanooga,

Tennessee, and are now and have been since that time husband and wife.

4. The parties suffer from irreconcilable differences.

5. There have been four children born of this marriage, to wit: Ashley Angier, born January 24, 1981; Samuel David Allen, born August 13, 1982; Peter Kale Allen, born October 12, 1982; and William John, born August 25, 1985.

6. The defendant is a fit and proper person to be awarded the care, custody and control of the minor children of the parties subject to the plaintiff's reasonable and liberal rights of visitation, upon reasonable notice to the defendant.

7. The plaintiff shall pay child support to the defendant in the amount of \$200.00 per child, \$800.00 total for the four children until said child reaches age 18 or graduates from high school with his or her class, whichever comes last.

8. The defendant shall be entitled to mandatory income withholding relief should the plaintiff become more than 30 days in arrears in his child support obligation.

9. The plaintiff shall keep in force any policy of health and accident insurance available through his employment or pay the cost to provide insurance through the defendant's employment, for the benefit of the minor children of the parties, with the plaintiff to pay any non-routine medical, dental, optical, or orthodontic expenses incurred by the minor children of the parties which is not covered by insurance. The plaintiff shall bear the cost of said insurance, which presently is \$60.00 per month.

10. The plaintiff is purchasing the house and lot located at

10159 Flanders Road, Sandy, Utah which shall be awarded to the defendant as her sole and separate property subject to no claim by the plaintiff except as set forth in this paragraph. The defendant shall be responsible for all indebtedness and expenses therefrom, holding the plaintiff harmless therefrom. The plaintiff shall provide the defendant with a quit-claim deed within 30 days of the divorce becoming final, with said quit-claim deed to contain the provisions that it is contingent upon the defendant maintaining current house payments and not moving from the Salt Lake City area before the last child reaches age 18. If the defendant shall become more than 60 days in arrears in the payments for said house, the plaintiff shall have the option of paying the mortgage payment directly to the lender in lieu of child support, and sending the difference, if any, to the defendant. If the defendant shall move more than 50 miles from Salt Lake City Utah before the last child reaches age 18, ownership of the marital residence shall revert to the plaintiff, who will then sell the home and divide the proceeds equally with the defendant, and who will be responsible for all indebtedness thereon until the house is sold. These provisions are to ensure that the children have a suitable residence during their minority, and are structured to provide a benefit to the defendant if she shall continue to reside in Salt Lake City, Utah in the form of all of the equity in said home, and a detriment, if she shall move, in the form of the loss of one-half of the equity.

11. The personal property of the parties has been divided equitably between them and each party shall retain the property presently in his or her possession, with the party retaining an item

to be responsible for all indebtedness thereon.

12. The plaintiff shall pay alimony to the defendant at the rate of \$800.00 per month beginning May 1, 1990 and continuing until April 31, 1991, at which time it shall decrease to \$400.00 per month. If the defendant shall earn more than \$12,000 per year in the first year following the divorce, the alimony shall immediately decrease to \$400.00 per month. Said alimony shall terminate upon the death of either party or by operation of law. Child support and alimony payments are due in two equal payments on the 1st and 15th of each month.

13. The plaintiff shall retain the automobile presently in his possession and the defendant shall retain the Volkswagen with the plaintiff to be responsible for all indebtedness and maintenance expenses, holding the defendant harmless therefrom, for his automobile, and also the Volkswagen and he shall make all car payments and maintain insurance coverage until such time as the automobile is sold by the defendant or paid for in full, at which time the plaintiff shall deliver title to said automobile to the defendant and this obligation shall cease. This obligation shall terminate on the death of the defendant, or when paid in full whichever comes first, and shall be considered alimony for tax purposes.

14. The plaintiff shall pay the debt for the Volkswagen. The defendant shall pay all student loans in her name alone. Each party shall be solely responsible for all debts incurred in his or her own name after December, 1988, holding the other party harmless therefrom. The plaintiff knows of no unpaid marital debts.

15. The plaintiff shall maintain a life insurance policy on his life in the amount of \$250,000, the proceeds of which shall be payable into a trust of which all of the parties' children are the beneficiaries, which shall be maintained until the youngest child reaches age 22 or graduates from college with his class, whichever occurs later.

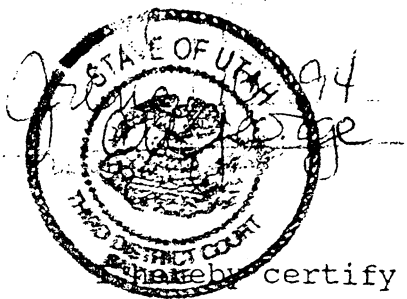
16. The defendant shall claim all of the children as dependents for income tax purposes.

17. The plaintiff shall provide for the childrens' college educations if he is financially able in an amount not more than his child support obligation, on the condition that they maintain at least a "B" average and attend school full time. Said support shall end at age 22 or upon graduation from college with an undergraduate degree, whichever comes first.

18. The plaintiff has paid all attorneys's fees and costs incurred in this action to date.

DATED this 17 day of May, 1990.

BY THE COURT:



John A. Rokich
Judge John A. Rokich

CERTIFICATE OF MAILING

certify that I mailed a true and correct copy of the foregoing decree of divorce to Sarah Satterfield Allen, 10159 Flanders Road, Sandy, Utah 84070, postage prepaid this 17 day of May, 1990.

Jane Allen