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REC'D & FILED

1 Case No. 97-00506D

2 Dept. No. 2

'99 NOV 22 P4:36

ALAN GLOVER
BY: *[Signature]* CLERK
DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY

8 -o0o-

9 CHRISTY SHELDON,
10 Plaintiff,

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND JUDGMENT

11 vs.

12 BRIAN SHELDON,
13 Defendant.

14 _____/

15 This matter came on regularly for trial on the merits on
16 August 23, 24 and 25, 1999. Thereafter counsel stipulated to
17 submit simultaneous closing argument briefs. Plaintiff, Christy
18 Sheldon ("Christy") was personally present with her counsel, Lee
19 T. Hotchkin, Esq., and Defendant Brian Sheldon ("Brian") was
20 personally present with his counsel, Peter B. Jaquette, Esq.
21 Both oral and documentary evidence was provided. The Court,
22 after taking the matter under submission, does hereby enter its
23 Findings of Fact, Conclusions of Law and Judgment as follows:

24 FINDINGS OF FACT

25 1. Both parties at the time this divorce action was filed
26 on March 28, 1997 were and still are residents of and domiciled
27 in the State of Nevada.

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1 2. The parties were married on August 28, 1991 in Carson
2 City, Nevada. They first separated for a few months late in
3 1995. They reconciled in December 1995 and then separated
4 permanently in March 1997.

5 3. The parties are incompatible and there is no chance of
6 reconciliation.

7 4. There are two (2) minor children born of this marriage;
8 Danica who was born April 25, 1992 and Darian who was born
9 February 22, 1994.

10 5. In July 1997 the parties stipulated to share equal
11 physical custody of the children with Brian paying \$200.00 per
12 month temporary child support due to the disparity in income of
13 the parties. This Court approved that stipulation pending the
14 trial of this case. Christy testified that she was coerced to
15 sign the stipulation by her former attorney.

16 6. The evidence presented by the parties as to whether
17 sharing equal custody of the children is in their best interest
18 was conflicting. The recommendation that custody be divided,
19 with each parent having physical custody of one child is not
20 supported by the evidence as being in their best interest.
21 Christy is 31 years old and 15 years younger than Brian. The
22 children are both young girls aged 7 and 5. Christy has been
23 clean and sober for over 4 years, and her commitment to her
24 sobriety is an asset not a detriment. Both parents obviously
25 love and care for the children and have made substantial
26 sacrifices to accommodate their needs. Brian has been negatively
27 characterized as controlling and rigid. His own testimony
28 supports that allegation when he admitted the girls are not

1 allowed to enter the kitchen without his permission. This Court
2 finds that joint legal custody is appropriate, however, joint
3 physical custody is not in the children's best interest. Christy
4 clearly is the parent who can best provide these girls with their
5 essential needs for the long term. Christy should therefore be
6 awarded primary physical custody of the children with Brian
7 having liberal and reasonable visitation rights.

8 7. Brian's reasonable rights of visitation shall be
9 defined as those agreed upon by the parties, but not less than
10 alternate weekends from 5:00 p.m. Friday until 8:00 p.m. Sunday.
11 If the weekend falls on the occurrence of a 3-day weekend because
12 of a legal holiday, Brian shall have the extra day until the same
13 time. In addition, Brian shall have the girls one day during
14 each week which, unless the parties agree otherwise, shall be
15 from the time he gets off work on Wednesday until 8:00 p.m.
16 Thanksgiving and Christmas shall be alternated with Brian having
17 Thanksgiving 1999 and Christy having Christmas 1999. Brian shall
18 also be allowed to have the children for 3 weeks each summer
19 vacation. Christy shall be given at least 45 days advance notice
20 of the date of said visitation.

21 8. Christy is entitled to child support in the amount of
22 25% of Brian's gross income with a cap of \$500.00 per month per
23 child. Based upon Brian's income from the State of Nevada, his
24 support obligation is at least \$410.00 per month, per child. If
25 extra income is earned by Brian as in the past through side work,
26 it shall be taken into consideration and the support increased
27 until the cap is reached. Brian shall be required to provide
28 Christy or her attorney a copy of his federal income tax return

1 pay off the loan. The present mortgage debt is \$74,556.00 which
2 when subtracted from the value fixed leaves \$85,444.00.
3 Deducting Brian's separate property contribution of \$20,000.00
4 leaves an equity of \$65,444.00 for the community or \$32,722.00
5 each. Brian is awarded the home and required to sell or
6 refinance it to pay Christy her share of the equity. An
7 additional \$500.00 shall be deducted from Christy's share for the
8 benefit of Brian for her failure to pay previously imposed court
9 sanctions. Christy's share shall bear interest at the statutory
10 rate and should she not be reimbursed within 90 days, Brian must
11 give her a deed of trust to protect her interest.

12 11. Brian requests that he be reimbursed for Christy's
13 waste of community assets to fund her drug and alcohol habit. He
14 denies any knowledge of the problem until their separation in
15 late 1995. Upon separation Christy entered treatment and Brian
16 became fully aware of her addiction. Brian and Christy
17 reconciled after he had knowledge of her addiction and no
18 conditions or mention of waste of assets were mentioned prior to
19 reconciliation. They separated permanently approximately 16
20 months later and at that time a claim of waste did not arise. By
21 the parties reconciliation without conditions, Brian has condoned
22 Christy's waste of community assets and therefore is not entitled
23 to reimbursement.

24 12. Christy has requested an award of spousal support to,
25 among other reasons, enable her to get a college degree and
26 become a social worker. Her desire to better her education and
27 employability is admirable. However, she was a waitress before
28 and during marriage and after separation until just recently.

1 Brian has been a contractor of sorts before marriage, and
2 although he now works for the State of Nevada, he is still doing
3 the same type of handyman work. Each party is in relatively the
4 same position they were in before marriage. The marriage was of
5 relatively short duration until permanent separation,
6 approximately 5 1/2 years. An award of spousal support is
7 therefore not appropriate.

8 13. Brian became employed by the State of Nevada after the
9 marriage and has now vested in the Public Employees Retirement
10 System. Christy is entitled to a Qualified Domestic Relations
11 Order fixing her share as 1/2 of the pension benefit earned from
12 the date of Brian's employment to the date of the divorce.

13 14. Each party had items of separate property either
14 brought into the marriage or in Brian's case, inherited from his
15 father. Those items are confirmed to each of them as their
16 separate property as set forth in Exhibits 11 and 12.

17 15. The additional items of community property not
18 heretofore taken possession of by Christy from the marital
19 residence include the stereo, the barbecue and the blue couch.
20 These items are awarded to Christy. Otherwise the division of
21 property already completed by the parties is confirmed.

22 16. Christy claims a disparity in value of items of
23 community property received by her compared to those received by
24 Brian. To equalize this disparity she is awarded the 1993 Subaru
25 and Brian is awarded the travel trailer which is of less value
26 than the Subaru. Each party shall assume responsibility for the
27 debt, if any, on the items of property awarded to them.

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1 17. The only debts not already covered above include credit
2 card debts to Visa of \$4,922.96 and GM of \$1,644.30. These debts
3 were incurred to provide essentials to Christy and the children
4 during marriage and are the equal responsibility of each party.
5 Brian testified that his mother had loaned him \$11,000.00,
6 however, no other evidence of the debt or any repayment
7 requirement was produced. This obligation, if it exists, shall
8 be the sole responsibility of Brian.

9 18. Each party testified to having purchased life insurance
10 prior to marriage and paying premiums thereon during marriage.
11 The policies are set aside to the party insured by them, however,
12 because of the child custody finding, Brian is directed to make
13 the children his beneficiary on his whole life insurance policy
14 rather than his sister.

15 19. Christy has incurred substantial attorney fees in
16 bringing this action. The fees were higher than expected because
17 of her change of attorneys. She is entitled to some contribution
18 on those fees from Brian. This Court awards her \$7,000.00.

19 20. If any of the above Findings of Fact be deemed
20 conclusions of law this Court so concludes.

21 CONCLUSIONS OF LAW

22 1. This Court has jurisdiction over the parties to this
23 divorce action.

24 2. This Court has jurisdiction over the minor children of
25 the parties.

26 3. NRS 125.480 provides in relevant part that the Court
27 must make custody decisions regarding minor children which are in
28 their best interests.

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1 4. NRS 125A.290 provides that any rights of visitation of
2 the minor children must be defined with sufficient particularity
3 to ensure the rights of the parties can be enforced. The parties
4 may, however, mutually agree upon changes to this schedule.

5 5. NRS 125B.080 provides for minimum and maximum levels of
6 support to be awarded by a Court unless specific findings are
7 made which alter those levels. This Court concludes those levels
8 of not less than \$100 nor more than \$500 per child are
9 appropriate.

10 6. NRS 125.150 provides that the Court shall make an award
11 of spousal support as appears just and equitable and make an
12 equal disposition of the community property of the parties. It
13 further allows an award of attorney fees as deemed appropriate.

14 7. If any of these conclusions of law be deemed findings
15 of fact, this court so finds.

16 JUDGMENT

17 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED
18 as follows:

19 1. That Christy be and hereby is granted an absolute
20 divorce from Brian upon the ground of incompatibility; that the
21 bonds of matrimony heretofore and now existing between the
22 parties be and hereby are dissolved and each of the parties is
23 released from all duties and obligations of the marriage and each
24 is restored to the status of an unmarried person.

25 2. That the parties are awarded joint legal custody of the
26 two minor children, Danica born April 25, 1992, and Darian born
27 February 22, 1994.

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1 3. That the primary physical custody of the two children
2 be awarded to Christy.

3 4. That Brian is granted reasonable rights of visitation,
4 which shall, unless agreed upon otherwise by the parties, be
5 defined as follows:

6 a. Alternate weekends from 5:00 p.m. Friday until
7 8:00 p.m. Sunday. If the weekend falls on a 3-day weekend
8 because of a legal holiday on Monday, Brian shall have the extra
9 day until the same time.

10 b. In addition, Brian shall have the girls one day
11 during each week from the time he gets off work on Wednesday
12 until 8:00 p.m.

13 c. Thanksgiving and Christmas shall be alternated
14 with Brian having Thanksgiving 1999 and Christy having Christmas
15 1999.

16 d. Brian shall also be allowed to have the children
17 for three weeks each summer vacation. Christy shall be given at
18 least 45 days advance notice of the date of said visitation.

19 5. PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION,
20 CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS
21 PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.310.
22 NRS 200.359 provides that every person having a limited right of
23 custody to a child or any parent having no right of custody to
24 the child who willfully detains, conceals or removes the child
25 from a parent, guardian, or other person having lawful custody or
26 a right of visitation of the child in violation of an order of
27 this court, or removes the child from the jurisdiction of the
28 court without the consent of either the court or all persons who

1 have the right to custody or visitation is subject to being
2 punished for a Category D felony as provided in NRS 193.130. The
3 terms of the Hague Convention of October 25, 1980, adopted by the
4 14th Session of the Hague Conference on Private International
5 Law, apply if a parent abducts or wrongfully retains a child in a
6 foreign country.

7 6. That Brian shall pay Christy child support in the
8 amount of 25% of his gross income with a cap of \$500 per month,
9 per child. Based upon Brian's income from the State of Nevada,
10 his support obligation is at least \$410 per month, per child. If
11 extra income is earned through side work, the support shall be
12 increased until the cap is reached. Support is due and payable
13 on the first of each month unless the parties agree otherwise and
14 shall terminate for each child upon emancipation, reaching 18
15 years of age, if no longer enrolled in high school, otherwise
16 upon reaching 19 years of age.

17 7. That Brian shall be required to maintain health
18 insurance for the children through his state employment, and the
19 parties shall share equally all uncovered medical, dental, or
20 optical costs for the children.

21 8. That Brian shall be required to provide Christy or her
22 attorney a copy of his federal income tax return for each year.
23 In tax year 1999 each party is allowed one child as a dependent
24 deduction. Beginning in the year 2000 Brian shall be entitled to
25 both children as dependent deductions.

26 9. That Brian, as the parent responsible for paying
27 support, is subject to NRS 31A.020 to NRS 31A.230, inclusive, and

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1 section 2 and 3 of this act regarding the withholding of wages
2 and commissions for delinquent payment of child support.

3 10. That Brian is awarded the residence located at 3606
4 Cherokee which is valued at \$160,000.00. That the mortgage debt
5 on the home is \$74,556.00. That the equity in said residence is
6 \$85,444.00 and Brian has separate property interest which is
7 fixed at \$20,000.00. That Christy owes Brian \$500 for an unpaid
8 court sanction. The remaining community property equity is
9 divided by awarding Brian \$33,222.00 and Christy \$32,222.00.

10 11. That Brian is ordered to pay Christy her share of the
11 equity in the residence by either selling or refinancing the
12 home. Christy's share shall bear interest at the statutory rate
13 and should she not be reimbursed within 90 days, Brian must give
14 her a deed of trust to protect her interest.

15 12. That Brian is entitled to no reimbursement of the
16 community for claimed waste of community assets.

17 13. That because of the relatively short duration of the
18 marriage and because the parties are in relatively the same
19 position they were in before and during the marriage, Christy is
20 not entitled to alimony or spousal support.

21 14. That Christy is entitled to a Qualified Domestic
22 Relations Order fixing her share of Brian's vested pension
23 benefit with the Public Employees Retirement System. Her share
24 is 1/2 of the pension benefit earned from the date of Brian's
25 employment to the date of this divorce.

26 15. That the separate property of each party as set forth
27 in Exhibits 11 and 12 are confirmed to said party.

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1 16. That Christy is awarded the community property in her
2 possession plus the stereo, barbecue and the blue couch. To
3 equalize her claimed disparity in value of items received by her
4 as compared to those received by Brian, she is awarded the 1993
5 Subaru and Brian is awarded the less valuable travel trailer.
6 Each party is to assume responsibility for the debt, if any, on
7 the items of property awarded to them.

8 17. The credit card debt to Visa of \$4,922.96 and the GM
9 card of \$1,644.30 is ordered to be the equal responsibility of
10 each party.

11 18. The life insurance policies purchased prior to marriage
12 but paid upon during marriage are set aside to the party insured
13 by them. However, Brian is ordered to change his beneficiary on
14 his whole life policy to his children rather than his sister.

15 19. That Christy is awarded a reasonable attorney fee in
16 the amount of \$7,000.

17 Dated this 22nd day of November, 1999.

18
19 
20 _____
21 DISTRICT JUDGE
22

23
24 **CERTIFIED COPY**

25 The document to which this certificate is attached
is a full true and correct copy of the original on file
in my office.

26 Jan 6 2000
27 _____
28 Chamber Deputy

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29 REQUESTED BY
Jan Manczuk
30 IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

2000 JAN -6 PM 2: 12

LINDA SLATER
RECORDER

\$ 17.00 PAID ks DEPUTY

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