

The Order of the Court is stated below:

Dated: May 18, 2016
11:22:06 AM

/s/ David Hamilton
District Court Judge



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**DISTRICT COURT OF THE STATE OF UTAH
SECOND JUDICIAL DISTRICT
DAVIS COUNTY
FARMINGTON DEPARTMENT**

EMILY TOLTON, Petitioner, vs. KEVIN TOLTON, Respondent.	DECREE OF DIVORCE Case No. 144700491 Judge Hamilton Commissioner Dillon
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THIS MATTER having come before the Court on the Stipulation For Final Settlement of Custody Issues filed on February 11, 2015, and the Stipulation For Partial Settlement of Financial Issues filed on June 25, 2015; thereafter a trial on the remaining issues of the parties' incomes, child support, alimony, a remaining issue from an Order to Show Cause, and attorney fees was held before The Honorable David R. Hamilton on the 18th day of December, 2015; the parties having presented their written Closing Trial Briefs by January 15, 2016; the Court having issued its ruling on February 29, 2016; and the Court being fully advised in the premises:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as to the stipulated issues as follows:

1. Petitioner is over the age of 21 and is a resident of Davis County, Utah and has been a Utah resident for greater than the past six consecutive months.

2. Respondent is over the age of 21 and is a resident of Davis County, Utah and has been a Utah resident for greater than the past six consecutive months.

3. Petitioner and Respondent were married on May 21, 1999, in Salt Lake County, Utah and are currently husband and wife.

4. During the course of the marriage, the parties have experienced difficulties that cannot be reconciled.

5. During the marriage, the parties had four children, all of whom are currently minors: L.T., J.T., D.T., and W.T. (collectively, the "minor children").

6. This Court has subject matter jurisdiction over this matter and the minor children pursuant to Utah Code Ann. § 30-3-1 and § 78B-13-201, as Utah is the home state of the minor children.

7. The parties have stipulated to personal jurisdiction and venue in this court.

8. There are no known proceedings concerning custody of the minor children. Neither Petitioner nor Respondent has been a witness in any such proceeding.

9. No prior actions for domestic violence or child abduction exist concerning either party.

10. Neither party has been arrested for a crime related to domestic violence, stalking,

or child abuse or neglect.

11. Neither party is in active military service; each is present in Utah.

CHILD CUSTODY

12. Child Custody. Petitioner and Respondent shall be awarded joint legal custody of their four minor children, with Petitioner having primary physical custody. The parties understand that the goal is that the parent time will be exercised with all four children. Respondent shall be awarded parent time on alternating weekends beginning on Thursdays at 5:30 p.m. (or after school if Respondent is available and provides 24 hours notice so the minor children know where they are going after school) on school days and 9:00 a.m. on non-school days through Sundays at 8:00 p.m. Respondent shall be awarded a Tuesday mid-week visit from 5:30 p.m. to 8:00 p.m., and a Thursday overnight visit. In the summers, Respondent shall be awarded four weeks of uninterrupted parent time, for a period of no longer than two weeks at a time separated by at least two weeks. Petitioner shall be entitled to all other time, except as granted to Respondent in the holiday schedule referenced below. Respondent shall give notice by May 1 of each year of the weeks he intends to exercise as extended summer parent time. Petitioner shall designate her two weeks of uninterrupted parent time by May 15. If either party fails to timely designate, the other may make summer plans for their parent time and the children. The parties may deviate from the above-described parent time if they agree in advance in writing. The parties shall operate under a joint calendar, such as Google. Petitioner shall create the calendar and will input data, including the date, activity, address or other information and also provide Respondent with the contact information of teachers and coaches. The parties

shall use a sole custody worksheet. The parties shall work together to develop a joint parenting plan.

13. School/Homework/Activities. The parties shall ensure that the minor children are taken to school on time and that homework is completed by the children on time. The parties shall transport the minor children to music and all other extracurricular activities on time during their parent time. The issue of whether any of the minor children shall be permitted to play football shall be reserved for later determination, by mediation, or by this court.

14. Computer Use. Each parent shall reasonably monitor the computer and electronic device use of the minor children and shall install safeguards within 14 days of execution of the Stipulation For Final Settlement of Custody Issues on any computer to which the minor children have access that prohibit access to material that is not suitable for minors. Nothing in this section shall allow either party to access, discover or monitor the computer or electronic devices of the other.

15. Phone Contact. The parties shall allow reasonable telephone contact with the minor children by the other parent when that parent is not with the minor children.

16. Exchanges of Minor Children. Unless the parties agree otherwise, Respondent shall pick up the minor children and drop the minor children off.

17. Holidays and Other Special Occasions. Beginning February 1, 2015, the parties shall abide by the holiday and special occasion schedule stated in Utah Code Ann. § 30-3-35. This schedule shall take precedence over the parent time identified above in paragraph 12.

18. Special Functions. Special consideration shall be given by each parent to make the

minor children available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the lives of the children or in the life of either parent that may inadvertently conflict with the parent-time schedule.

19. Change of Contact Information. To the extent either party relocates or changes a phone number or e-mail address, the parties shall provide notice within 24 hours of said change.

20. Child Care. If either party incurs any work-related child care cost, that cost shall be shared equally by the parties, as set forth in Utah Code Ann. § 78B-12-214. Each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the other parent with the name, current address, and telephone number of all surrogate care providers.

21. Health Insurance, Medical Expenses. The parties shall ensure that the minor children are covered by Respondent's medical and dental insurance. The per capita cost of the insurance and all reasonable and necessary uninsured costs shall be shared by the parties equally as set forth in Utah Code Ann. § 78B-12-212.

22. Emergencies. If one of the minor children becomes significantly ill or lost or significantly injured, the party with parent-time at the time shall notify the other immediately and shall follow the directions of any medical professionals treating the child.

23. Mutual Respect, Sharing of Information. The parties shall encourage and foster the relationship of the minor children with the other parent. The parties shall promptly share all information regarding the minor children, including but not limited to schooling, medical

treatment, extracurricular activities, and the like. Both parties shall have equal access to school reports, medical records, and the like. The parties shall continue to use Dr. McManemin as a therapist for the minor children and both parents shall be involved as the therapist sees fit.

24. Non-Disparagement/Communication About Proceedings. Neither party shall disparage the other to the minor children for as long as they are minors or in front of the minor children for as long as they are minors, nor allow a third party to disparage either parent in the presence of the minor children for as long as they are minors, nor shall either party discuss these court proceedings with the minor children for as long as they are minors. All communication shall be civil and respectful. Neither party will disparage the other and all communications will be strictly limited to issues involving the minor children. Neither party shall make negative editorial remarks. The minor children shall not be used to pass messages between the parties for as long as they are minors. The parties shall communicate with each other about matters related only to the children and shall do so in a respectful manner, free of insults or other inappropriate commentary.

FINANCES

25. Real Property. Petitioner and Respondent own real property, which may be titled in the names of either of them or in a business entity that they control. Regardless of the name in which title is held, the parties' real property shall be divided as follows.

- a. *Plum Tree Court.* The Plum Tree Court lot shall be listed for sale within 21 days from execution of the Stipulation For Partial Settlement of Financial Issues. The parties shall work together in agreeing upon a list

price, and agreeing on a sale price within 10 days. The initial list price shall be between \$450,000.00 and \$550,000.00, unless the parties otherwise agree or the agent recommends otherwise. The parties shall follow the recommendations of the real estate agent in making counter offers and adjusting the price over time with the goal of selling the property. The initial real estate agent shall be Mike Lindsey. shall the parties be unable to agree on any of these issues, Nathan D. Alder, Esq. is appointed as a special master pursuant to Utah R. Civ. P. 53, and he shall make the final decision as to these issues. Any fees and costs due to Mr. Alder shall be shared equally by the parties, and if not timely paid to Mr. Alder upon his invoice, shall be paid to Mr. Alder directly from the title company at the Plum Tree Court closing. The gross proceeds of the sale shall first be utilized to retire any and all mortgages and liens on the property. The remaining proceeds, less commissions, closing costs, and other reasonable and necessary costs of sale, shall be shared by the parties as follows: 51.8% to Petitioner; 48.2% to Respondent.

- b. *Aspen Park.* The Aspen Park property and all corresponding water rights shall be awarded to Petitioner. Petitioner shall be solely responsible for all attorney's fees, engineering fees, cleanup fees, and similar fees related to this property.
- c. *Alta.* The Alta property and all corresponding water rights shall be

awarded to Respondent. Respondent shall be solely responsible for all attorney's fees, engineering fees, cleanup fees, and similar fees related to this property.

d. *Leo Lot.* The Leo Lot property and all corresponding water rights shall be awarded to Respondent. Respondent shall be solely responsible for all attorney's fees, engineering fees, cleanup fees, and similar fees related to this property.

e. *Cardiff (approx. 33.44 acres).* The Cardiff property shall be partitioned by the parties in an equitable manner with the cost of the partition divided equally, including but not limited to government fees. Respondent will suggest a division and Petitioner will choose one portion of the division. The parties understand that there is the potential for regulatory and development problems (including, without limitation, elimination of certain vested interests) in partitioning the property and that the parties shall attend mediation in an attempt to resolve the problems before engaging Nathan Alder. Should the parties be unable to agree on any matter related to partition the property or any other issue related to the property or any other issue related to the property, and are unable to resolve it in mediation, the parties agree to appoint Nathan D. Alder, Esq. as a special master pursuant to Utah R. Civ. P. 53, who shall make the final decision as to the partition. Neither party will be responsible for the

other party's attorney's fees, engineering fees, cleanup fees and similar fees related to this property after the partition. Any fees and costs due to Mr. Alder shall be shared equally by the parties.

- f. *Easements*. All easements owned by the parties shall be awarded to Respondent, except for easements on the Cardiff property, if any exist.

26. Business Interests. The parties' business interests shall be divided as follows.

- a. *Great Western Mining Company*. The parties own a 25% interest in Great Western Mining Company. Each party shall be awarded a 12.5% interest in the company. Further, it is understood that Great Western Mining Company may be able to be sold to a third party for a gross price of \$1.7 million. Regarding the sale of Great Western Mining Company, Respondent shall make his best efforts to cancel the existing option agreement in place. If any disputes between the parties arise as to the cancellation of the option or the sale of the property as between Petitioner and Respondent, Nathan D. Alder, Esq. is appointed as a special master pursuant to Utah R. Civ. P. 53, who shall make the final decision as to the partition. Any fees and costs due to Mr. Alder shall be shared equally by the parties.
- b. *Ribomed (f.k.a Designer Genes)*. The parties own shares of a corporation known as Ribomed. The parties understand these shares to be valueless. Each party shall be awarded half of the shares to utilize as a tax write-off.

- c. *Ridgeview Investment Company*. Petitioner is awarded her interest in Ridgeview Investment Company.
- d. *Kevin Tolton, M.D., P.C.* Respondent is awarded a 100% interest in Kevin Tolton, M.D., P.C., as well as any corresponding interest in Mountain West Anesthesia, LLC.

27. Water Shares. All of the parties' water shares not awarded above or interests in water companies shall be awarded to Respondent.

28. Vehicles. Petitioner and Respondent own vehicles, which shall be distributed as follows:

- a. *Cadillac Escalade*. The Cadillac Escalade shall be awarded to Petitioner, who shall be solely responsible for any and all debt associated with this vehicle without contribution from Respondent.
- b. *Jeep Wrangler*. The Jeep Wrangler shall be awarded to Respondent, who shall be solely responsible for any and all debt associated with this vehicle without contribution from Petitioner.

29. Retirement Accounts. Each party is awarded his or her retirement accounts, free and clear of any claim by the other, except that, within 30 days of the entry of this Decree of Divorce, Respondent shall transfer \$25,000.00 in retirement funds to one of Petitioner's retirement accounts via a qualified domestic relations order.

30. Snowmobile. The snowmobile and associated trailer shall be awarded to Respondent, who shall be solely responsible for any and all associated debt without contribution

from Petitioner.

31. Minks. The parties' interest in live minks shall be awarded to Respondent, who shall be solely responsible for any and all debt associated with the minks, without contribution from Petitioner.

32. UESP Accounts. The parties' UESP accounts shall be liquidated, and all of the proceeds from the liquidation shall be used to pay towards the parties' tax arrearages identified below.

33. Debts.

- a. *Debts Allocated Above*. The parties shall each be awarded the debts that are addressed in prior paragraphs of this agreement on the terms set forth therein.
- b. *Tax Debt*. The parties have federal and state tax debts for 2013 and 2014. Respondent shall be responsible for these tax debts, without contribution from Petitioner. The parties shall each file separate state and federal tax returns for 2014 and 2015 and shall pay any and all taxes due without contribution from the other.
- c. *Key Bank Lines of Credit*. Respondent shall be responsible for any and all Key Bank lines of credit, without contribution from Petitioner. Petitioner shall not use any of these credit lines in the future. Respondent shall remove Petitioner's name within 180 days. Petitioner shall cooperate in

signing all documents necessary to effectuate this provision.

- d. *401(k) Loan*. Respondent shall be responsible for this debt without contribution from Petitioner.
- e. *Hans Cerney*. Respondent shall be responsible for this debt without contribution from Petitioner.
- f. *Magleby & Greenwood, P.C.* Respondent shall be responsible for this debt without contribution from Petitioner.
- g. *Judy Maack*. Respondent shall be responsible for this debt without contribution from Petitioner.
- h. *Other Debts*. The parties affirm that there are no other joint debts. Each party may have other debts, including attorney's fees, incurred in his or her own name. For all such debts, the party in whose name the debt exists shall be solely responsible for the debt without contribution from the other, subject to paragraph 36 below.

34. Tax Exemptions For Minor Children. The tax exemptions for the minor children shall be shared equally as follows.

- a. *When There Are Four Available Exemptions*. Petitioner shall be entitled to claim L.T and J.T. and Respondent shall be entitled to claim D.T. and W.T.
- b. *When There Are Three Available Exemptions*. The parties shall alternate claiming W.T. such that Respondent will be entitled to claim W.T. and

receive the extra deduction in even tax years and Petitioner will be entitled to claim W.T. and receive the extra deduction in odd tax years.

c. *When There Are Two Available Exemptions.* In the event there is a time where there are two available exemptions, Petitioner shall be entitled to claim the older child and Respondent shall be entitled to claim W.T.

d. *When There Is One Available Exemption.* The parties shall alternate claiming W.T. such that Respondent will be entitled to claim W.T. in even tax years and Petitioner will be entitled to claim W.T. in odd tax years.

35. Personal Property. Each party shall be awarded personal property pursuant to Exhibit A to the settlement agreement filed June 25, 2015.

36. Nondisclosure of Material Asset. Should it be determined that either party failed to disclose a material asset in these divorce proceedings, the asset shall be awarded to the opposing party.

37. Cooperation. The parties shall cooperate to effectuate all documents necessary to effectuate this order.

DISPUTE RESOLUTION

38. Mediation Required. Should any dispute arise concerning anything related to the parties' settlement agreements or this Decree of Divorce, and the parties are unable to agree on a resolution, the parties shall attend mediation in good faith to attempt to resolve the dispute. If the dispute is not resolved by mediation, either party shall be able to apply to the Court for a determination.

TRIAL ISSUES

39. Bonds of Matrimony. That the bonds of matrimony heretofore existing between Petitioner, Emily Tolton, and Respondent, Kevin Tolton, are hereby be dissolved.

40. Parties' Incomes. Respondent's income is stipulated to be \$41,268.00 per month, and the Court imputed Petitioner's income at \$38,870.00 per year or \$3,239.00 per month.

41. The Court assigns no income to either party associated with the parties' respective investments. The investments do not appear to be income producing at this time.

42. Child Support. Based on Petitioner's income of \$3,239.00 per month and Respondent's income of \$41,268.00 per month, Respondent shall pay to Petitioner child support in the sum of \$6,173.00 per month (see Child Support Obligation Worksheet filed contemporaneously herewith).

43. Alimony. Commencing March 2016, Respondent shall pay to Petitioner alimony in the sum of \$1,813.00 through February 2022, subject to the standard conditions of Petitioner's remarriage, cohabitation, or the death of either party.

44. Order to Show Cause. Petitioner's request for judgment against Respondent in the sum of \$1,400.00 for alimony from November 2014 is denied in that the matter was resolved by way of the Stipulation For Partial Settlement of Financial Issues on June 23, 2015.

45. Restoration of Maiden Name. Petitioner's maiden name of Emily Christensen shall be restored to her.

46. Attorney Fees. Respondent shall contribute the sum of \$13,177.63 toward

Petitioner's attorney fees payable within thirty (30) days from entry of the Decree of Divorce, or said sum shall become a judgment against Respondent.

In accordance with the Utah State District Court's Efiling Standard No. 4, and URCP Rule 10(e), this Order does not bear the handwritten signature of the Judge, but instead displays an electronic signature at the upper right-hand corner of the first page of this Order.

APPROVED AS TO FORM:

/s/ Benjamin W. Lieberman
With permission of
BENJAMIN W. LIEBERMAN
Attorney for Respondent
Via email on April 25, 2016

**NOTICE PURSUANT TO RULE 7(j) OF THE UTAH RULES
OF CIVIL PROCEDURE TO THE PARTIES AND THEIR COUNSEL**

NOTICE IS HEREBY GIVEN that pursuant to Rule 7(j) of the Utah Rules of Civil Procedure, this Decree of Divorce prepared by Petitioner shall be the Order of the Court unless you file an objection in writing within seven (7) days from the date of the service of this notice.

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of April, 2016, I mailed a true and correct copy of the foregoing **DECREE OF DIVORCE** by regular United States Mail, with postage prepaid thereon, to the following:

Ben W. Lieberman
LIEBERMAN LAW FIRM
1371 East 2100 South, Suite 200
Salt Lake City, Utah 84105
Attorney for Respondent

/s/ Patrice E. Carmody
PATRICE E. CARMODY