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STATE OF INDIANA }
COUNTY OF LAKE } SS:

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SUPERIOR COURT OF LAKE COUNTY,
CIVIL DIVISION, ROOM 2,
EAST CHICAGO, INDIANA

JUN - 14 1981

IN RE THE MARRIAGE OF:
WILLIAM J. RZEPKA
AND
JOYCE A. RZEPKA

Edward A. Subanick
CLERK LAKE SUPERIOR COURT

CAUSE NO. 280-971

ORDER

The Court, having heretofore taken under advisement the determination of the issues in this cause relative to custody, support and visitation of the parties' children and disposition of parties' assets and liabilities, and having received and considered the parties' "Stipulation" essentially with relation to the petitioner's present circumstances, and additional data relative to attorneys' fees, being now fully advised, enters its following Findings and Judgment.

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FINDINGS

1. During the parties' previous marriage to one another, which was formalized on the 25th day of August, 1958, and dissolved on the 29th day of January, 1974, 3 children were born, of whom one, Tammy Jean Rzepka, born the 1st day of September, 1959, is now emancipated. The remainder reside at home with the respondent:

(A) William Scott Rzepka, born the 21st day of December, 1962, a Senior at Crown Point High School during the course of the final hearing and by now presumably graduated, he has applied to Purdue University and would remain in the home.

(B) Jody Lynn Rzepka, born the 7th day of March, 1964, a student at Crown Point High School.

DULY ENTERED FOR TAXATION SUBJECT TO:
FINAL ACCEPTANCE FOR TRANSFER.

APR 29 1991

Anna N. Antos
AUDITOR LAKE COUNTY

STATE OF INDIANA / S.S. RO.
LAKE COUNTY
FILED
APR 29 2 31 PM '91
ROBERT W. BOG
RECORDER

310 E Clark St ✓
Crown Point IN 46307

40.00

1693

The children have been raised continuously by their mother from birth and, (including the two-and-a-half-odd year period between the parties' marriages when, pursuant to Court Order, she was granted custody) with her, have resided in the present family home continuously since it was obtained in May of 1969.

The respondent's continuing custody, and the petitioner's reasonable visitation, are not contested issues in this cause, and the Court concurs that that arrangement satisfies the best interests of the unemancipated children.

The respondent is not pregnant.

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The petitioner is 42 years of age, the respondent 41.

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the Lake County Recorder since he was 19, initially as

a Carpenter, thereafter continuously in the Construction field.

In 1965, he and the respondent were in their own such business; however, things went poorly and, eventually, he had to declare

Bankruptcy. For some 4 years preceding the 23rd day of November,

1980, he had been employed as a Construction Project Manager for

Tonn and Blank, Inc., an employment, however, which terminated at

that time by reason of the slow-down in that industry. With that

company, he earned gross annual income of approximately \$31,000.00.

For some 4 months thereafter, he was out of work, a difficult period

during which he continuously sought employment, and one punctuated

by a health problem apparently since resolved. Since then, however,

the parties have stipulated:

(1) In about mid-March, 1981, the petitioner moved and changed his permanent residence to St. Cloud, Minnesota, and since the 25th day of March, 1981, has been employed as a Project Construction Manager by Jim W. Miller Construction, Inc, St. Cloud, Minnesota.

(2) He shall receive from that employment a gross weekly salary

of \$325.00.

(3) That employer provides him with the use of an automobile for business expenses without charge; however, he must pay the expenses relating to his personal use thereof.

(4) His compensation arrangement with that employer includes a commission of a percentage of gross profits on completed projects, with the percentage of commission varying with the amount of gross profits but, ordinarily, approximating 10% of gross profits, and he has received no commissions to date, while his receipt of commissions in the future is speculative; however, he anticipates commencement of work on a project within 30 days of the 20th day of May, 1981, and which is scheduled for completion by the Fall of 1981. Should that project be completed on schedule and on budget, he would anticipate receiving a commission of \$5,000.00.

(5) The petitioner's average monthly expenses, exclusive of his current support payments, total \$962.70.

(B) The respondent was employed during only the first year of the parties' first marriage. During the period intervening the parties' marriages, she obtained her degree in Nursing as a Registered Nurse and became a staff Surgical Nurse at Broadway Methodist Hospital. She is presently an Operating Room Supervisor. Her 1979 gross income was \$19,420.96 (with a net after deductions for Taxes and FICA of \$15,036.27), and her 1980 gross income was \$21,118.34 (with a net income, after deductions for Taxes and FICA, of \$16,198.42).

(C) It is uncontroverted that the monthly expense attributable to the unemancipated children is \$871.47.¹

¹That sum is exclusive of William Scott Rzepka's College Tuition, concerning which it is anticipated he will be able to obtain scholarship assistance and, in addition to which, he has a \$3,000.00 fund accumulated through 2 summers of employment.

4(A) The parties are the owners in fee, as tenants by the entireties, of the family home and real estate located at 310 E. Clark Street, in the City of Crown Point, Indiana, and it represents the only substantial asset of the marriage. The Court heard extensive evidence with respect to the various homes owned by the parties during their first marriage and the details concerning the acquisition of the present home. Given the present state of statutory Law, however, it is sufficient to state that the present home was brought into the marriage by the respondent, having been conveyed to her as a gift by her parents during the Summer of 1976 (and, thus prior to the parties' marriage). At the time of the marriage, the mortgage balance was approximately \$12,600.00. The home needed substantial improvement, however, financing for which came from a new mortgage loan which necessitated establishing fee ownership thereof in the parties as tenants by the entireties. That loan, taken in the sum of \$25,000.00 (from the First National Bank of Crown Point), paid off the existing mortgagee and provided the necessary funds for improvements. Its current balance is approximately \$23,500.00.

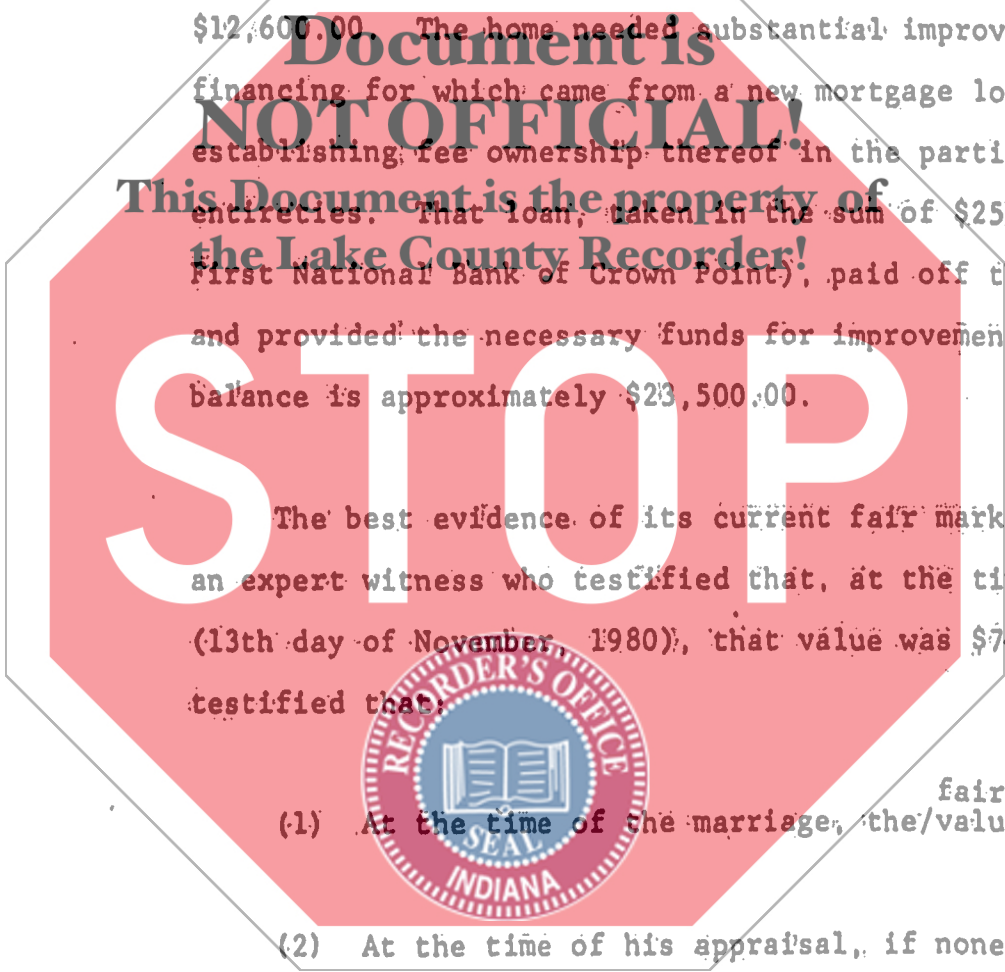
The best evidence of its current fair market value came from an expert witness who testified that, at the time of his appraisal (13th day of November, 1980), that value was \$75,000.00. He further testified that:

(1) At the time of the marriage, the fair market value was \$32,000.00.

(2) At the time of his appraisal, if none of the improvements rendered after the marriage had been made, its value would have been \$43,000.00.

(3) The home was built in 1897.

75,000	32,000
<u>23,500</u>	<u>12,600</u>
41,500	19,400
<u>19,400</u>	
22,100	
<u>11,050</u>	



(4) At the time of the marriage, it consisted of 1,560 square feet; at the time of the appraisal, 1,960 square feet.

4(B) Substantial improvements were performed upon the residence (originally purchased by the respondent's parents in 1969 for \$15,000.00), some 60% of the physical labor by the petitioner (essentially after working his regular job during the day), other family members: 20%. In the process, during which the home was, over a period of 18 months, virtually gutted, there was added a new garage, roof, siding, driveway, windows, porch, family room, breakfast nook, fireplace and chimney. The concrete and carpentry work was essentially done by the petitioner. Landscaping, completed during the Spring of 1980, was paid out of joint earnings.

4(C) Given the respondent's custody, it is appropriate that she have the use, as well as the ownership, thereof, subject to liens in favor of the petitioner to the extent of his interest as determined by this Court, and the parties' respective attorney's fees, payable upon the occurrence of specified contingencies.

5. The parties' home is essentially furnished. The petitioner estimates the value thereof to be \$7,000.00, although acknowledging his opinion to be inexperienced and to reflect what those items might be sold for. The respondent, by her Court Room testimony, estimated that value to be between \$3,000.00 and \$4,000.00, an opinion likewise acknowledged by her to be without expertise, and on the basis of what they would bring if presently sold. Her/Interrogatories, however, suggested that value to approximate \$1,000.00. Those Answers further demonstrated the average age thereof to be 5 years.

has
While the petitioner/requested some of those items, the evidence as a whole reflects that the respondent has the greater need therefor and that, accordingly, those articles of household furnishings, goods and appliances presently in the home should be exclusively hers,

the petitioner retaining those he has heretofore removed.

6. The status of the parties automobiles is as follows:

(A) A 1979 Chevrolet El Camino, in the joint names of the parties, and driven exclusively by the petitioner.

(B) A 1968 Chevrolet Malibu automobile, in the joint names of the parties, and driven exclusively by the parties' daughter, Tammy, who is also paying its credit installments.

(C) A 1979 Chevrolet Caprice, in the respondent's name and driven exclusively by her. It is subject, however, to the lien of the bank through which its purchase was financed.

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The use status of those vehicles should continue, with titles transferred to correspond therewith.

STOP

7. But for the home mortgage, there is no evidence of any joint credit indebtedness.

8(A) The respondent has pension benefits derived from her employment, which reflect her contributions (principal and interest) to total \$2,091.59, her employer's (principal and interest) \$4,515.69, a total account balance of \$6,607.28, as of the 29th day of December, 1980. There is no evidence which suggests the extent to which vesting has occurred and what portion thereof may be immediately withdrawn. The Court cannot therefore make distribution thereof but, rather, is limited to a consideration of this asset in its overall determination of a just and reasonable disposition of the marital assets.

(B) The petitioner was a participant in the Tonn and Blank,,

Inc., "Employees Profit Sharing Plan", to which only the company contributed. On the 9th day of January, 1981, the petitioner testified the face value of that account to be \$7,024.00, with a present value of \$2,100.00. Cross-examination revealed, however, that he had requested, and received, his entitlement thereto some 4 weeks earlier, and in the sum of \$2,800.00. He satisfactorily explained the disposition thereof, however, for purposes related to support², airplane maintenance and installment credit payments, and his personal maintenance and indebtedness.

Tonn and Blank, Inc., further provided him \$1,900.00 in vacation pay, likewise utilized for the foregoing purposes.

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As earlier found, the petitioner had no regular employment income at the time he received the foregoing amounts.
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9. In May of 1979, the petitioner purchased an airplane for \$35,000.00 (via downpayment and mortgage), title to which was taken in the joint names of the parties. During the course of his employment with Tonn and Blank, Inc., he negotiated the lease thereof to it, an arrangement which provided an average annual gross income of \$10,000.00. On or about the 10th day of January, 1981, however, it had been sold by a broker and, after payment of commissions, gasoline, rental and maintenance expenses, his net/net receipts were between \$700.00 to \$800.00, monies he had on hand as of the final hearing in this cause of the 20th day of January, 1981.

²Over the course of these proceedings, he was required to provide varying amounts of support and maintenance, pursuant to various Provisional Orders.

10. Some 3 years preceding the final hearing in this cause, the petitioner and 3 others purchased a 200 acre, wooded and hilly, parcel of real estate in Michigan, for approximately \$35,000 to \$36,000 dollars, with a down payment of approximately \$2,300.00 or \$2,400.00 (to which each tenant equally contributed), the balance financed by mortgage. Thereafter, each tenant paid \$95.00 monthly toward the mortgage installment, the current balance of which is approximately \$19,000.00. The petitioner, however, last paid his monthly installment thereof in June of 1980, and, in August of 1980, he received from one of his co-tenants a notice of forfeiture, a default of which the petitioner failed to inform the respondent. He has since taken no remedial steps.

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11. In August of 1979, the petitioner and his brother purchased a 16 foot bass boat, with outboard motor, for \$4,050.00, each taking a half interest. Early last year, however, the petitioner "verbally" transferred one half of his interest to the parties' son (without financial consideration), and without ^{prior} consultation with the respondent, ostensibly to minimize insurance costs.

STOP
12. As earlier found, the parties' son earned \$3,000.00 over 2 summers' employment, monies placed from time-to-time (without consultation with the respondent) in various accounts jointly with the petitioner because, according to the latter, his son was then under 18 years of age. The account currently exists in saving certificates at the Northern Trust and Savings, in Valparaiso, Indiana, in their joint names, with a maturity date of mid-1982.

That fund should be used exclusively for the higher education expenses of that child.

13. The respondent has 6 United States Savings Bonds, each with a face value of \$50.00.

14. The respondent's attorney has incurred fees herein (after

all credits, if any) of \$2,700.00, and expenses of \$600.00.

The petitioner's attorney has incurred fees and expenses herein (after credits) of \$2,043.14.

Each attorney should be secured by lien against the parties' real estate.

JUDGMENT

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED, that:

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1. The petitioner have the exclusive custody of the parties unemancipated minor children, William Scott Rzepka and Jody Lynn Rzepka, subject only to the petitioner's right of visiting them at reasonable hours and frequencies upon first giving the respondent at least 24 hours notice of his intention so to do.

2. The petitioner pay to the respondent, toward the support of those children, the sum of \$75.00 each week, commencing the 12th day of June, 1981. Thereafter, on the 1st day of January, 1982, his obligation therefor shall increase, without further Order of this Court, to \$100.00 per week.

The parties shall equally share the uninsured medical, dental, hospital and prescription expenses attributable to those children.

3(A) All right, title and interest in and to the following described real estate, to-wit:

Key # 9-87-14

The East 63 feet of Lot 13 and the West 7 feet of Lot 15 in Smith's Addition to Crown Point, as per plat thereof, recorded in Deed Record "F", page 244 in the Office of the Recorder of Lake County, Indiana,

Also:

Part of Lot 6 in Commissioner's Addition to the City of Crown Point, as per plat thereof, recorded in Deed Record "D", page 323, in the Office of the Recorder of Lake County, Indiana, more particularly described as follows: Beginning at a point 3 feet East of the Northwest corner of Lot 13 in Smith's Addition to Crown Point; thence North 16 feet; thence East 70 feet; thence South 16 feet, thence West 70 feet to the place of beginning.

more commonly known as 737 Scott Court, Crown Point, Indiana,

of the petitioner be, and the same is hereby, divested of and from him and vested in the respondent.

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(B) The Clerk of this Court, the Auditor of Lake County and the Recorder of Lake County, respectively, shall, with respect thereto, timely perform the duties imposed upon them pursuant to I.C. (Burns 1971) 6-1.1-5-6, upon payment by the respondent of the costs to which each is entitled therefor.

(C) As between the parties, the respondent shall henceforward be exclusively responsible for payment of the mortgage, taxes, insurance and all other expenses attributable thereto, holding the petitioner wholly free and harmless from any liability thereon.

(D) The petitioner have and recover of and from the respondent the sum of \$15,000.00, said Judgment to constitute a lien against the respondent's above-described property, provided, however, that execution thereon is hereby stayed until said premises are sold, each of the parties' remaining children are emancipated, the respondent's death, her re-marriage, or she voluntarily causes other interests, of a security nature or otherwise, to attach thereto, including the re-financing of her present mortgage, whichever of the foregoing con-

tingencies shall first occur.

4(A) The respondent have the exclusive ownership of the parties' household furnishings, goods and appliances located in and about the premises above-described, free and clear of any claim thereto of the petitioner.

(B) The petitioner have the exclusive ownership of those articles of household furnishings, goods and appliances presently in his possession, free and clear of any claim thereto of the respondent.

5(A) The petitioner have the exclusive ownership of the parties' 1979 Chevrolet El Camino automobile, and the respondent shall forthwith transfer all of her interest therein by appropriate execution of the certificate of title thereto.

(B) The respondent have the exclusive ownership of her 1979 Chevrolet Caprice automobile, and that she be exclusively obligated in the payment of the credit balance due thereon.

(C) The respondent have the exclusive ownership of the parties' 1968 Chevrolet Malibu automobile, and that the petitioner forthwith transfer all of his interest therein by appropriate execution of the certificate of title thereto.

6. The petitioner retain the receipts of his Tonn and Blank, Inc., "Employees Profit Sharing Plan", free and clear of any claim thereto of the respondent.

7. The petitioner retain the receipts of the sale of the parties' airplane, free and clear of any claim thereto of the respondent.

8. The petitioner retain the ownership of his interest in his Michigan real property, free and clear of any claim thereto of the respondent.

9. The petitioner retain his current interest in his 16 foot bass boat and motor, free and clear of any claim thereto of the respondent.

10. The respondent have the exclusive interest in her United States Savings Bonds, free and clear of any interest therein of the petitioner.

11. The petitioner's interest in his son's Savings Certificates, totalling \$3,000.00 (and accrued interest, if any) be, and the same is now hereby, that of Trustee, those funds to be used exclusively for the higher education expenses of that child.

12. Ronald T. Spangler, the petitioner's attorney herein, have a lien against the real estate hereinabove set over to the respondent, for the balance of his fees and expenses incurred in this proceeding in the sum of \$2,043.14, and that Thomas Greenburg, the respondent's attorney herein, have a lien against those premises for the unpaid balance of his attorney's fees and expenses in these proceedings in the sum of \$2,300.00, payable only upon the conditions set forth in rhetorical paragraph 3(D) of this Judgment.

13. The costs of this action are paid.

ALL SO ORDERED AND DECREED this 4th day of June, 1981.


Morton B. Kanz, Judge

MBK/ss

STATE OF INDIANA }
COUNTY OF LAKE } SS:

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SUPERIOR COURT OF LAKE COUNTY,
CIVIL DIVISION, ROOM 2,
EAST CHICAGO, INDIANA

RECEIVED

IN RE THE MARRIAGE OF:
WILLIAM J. RZEPKA
AND
JOYCE A. RZEPKA

MAR 24 1952

CAUSE NO: 280-971

Edward A. Lubanski
CLERK LAKE SUPERIOR COURT

ORDER

The Court, having heretofore heard argument on the respondent's Consolidated Motion to Correct Errors, Motion for Relief from Judgment, and Motion for Allowance of Attorney Fees, having thereafter deferred its determination thereof pending receipt of the petitioner's Affidavit with respect to the issue raised in rhetorical paragraph 5 of the respondent's said Motions, and receipt of the respondent's Counter-Affidavit, if filed, and the Affidavit and Counter-Affidavit, with accompanying Motion to Strike, having thereafter been filed, being now fully advised, finds that:

1. The parties stipulated to correction of the errors alleged in rhetorical paragraphs 1, 2 and 3 of the respondent's Consolidated Motion, a stipulation the Court now accepts, and the decree should be corrected accordingly.

2. Rhetorical paragraph 4 of the respondent's Motion to Correct Errors (Motion) and the petitioner's Response (Response) thereto, indicate, at the least, the disparate views that parties in interest to a given marital estate may have with respect to its just and reasonable distribution. The Court in this case considered several factors:

(A) The fact that almost 75% of the equity in the parties' real estate was attributable to its improvements, improvements which

... marriage.

(B) Sixty percent of the foregoing improvements were attributable to the petitioner's exclusive efforts.

(C) The value of the net marital estate (exclusive of the vehicles, the values of which, as the Court distributed them, essentially balanced out, and exclusive as well, of course, of the respondent's pension), approximated \$66,300.00. The petitioner received some \$24,550.00 thereof (not quite the \$25,600.00 his Response argued for), while the respondent received the balance, less both attorneys' fees, or a net value of approximately \$36,400.00. A ratio, then, of approximately 3 to 2. The evidence demonstrates that the parties' respective earnings ability essentially approximate that proportion (the petitioner, presumably earning to his ability, for the 4 years preceding November 25, 1950, had yearly income of approximately \$31,000.00, the respondent, earning to her ability, some 2/3 thereof).

(D) The Court further considered the fact that the respondent has pension benefits, a non-distributable "property", just as it considered the intangible of the effect upon her, her earnings and her assets, in having custody of the parties' remaining two children.

(E) The Court considers as speculative the presumed expenses of sale of the parties' family home.

3. The Court therefore committed no error in the distribution of the parties' property.

4. Given the ratio that the parties' respective incomes bear to one another, and there being no clear evidence establishing to whom the responsibility should fall for the short fall of tax, the parties'

... should be paid such that the petitioner pays 60% thereof, the respondent 40%.

5. With respect to unpaid real estate taxes, referred to in the respondent's Affidavit attached to her subject Motion, the same should be paid by them on the same relative basis their property was distributed between them; hence, the petitioner should pay 1/3 thereof, the respondent, 2/3.

6. The Court finds no impropriety upon the part of the petitioner such that there is justification for assessing any portion of the respondent's attorney's fees in this matter against him. Accordingly, each party should pay his own.

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IT IS, THEREFORE, ORDERED, that:

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1. The judgment and decree in this cause of the 4th day of June, 1981, be, and it is hereby, corrected in the following manner:

(A) Rhetorical paragraph 1 thereof state that:

"1. The respondent have the exclusive custody of the parties' unemancipated ^{minor} children, William Scott Rzepka and Jody Lynn Rzepka, subject only to the petitioner's right of visiting them at reasonable hours and frequencies upon first giving the respondent at least 24 hours notice of his intention so to do."

(B) Rhetorical paragraph 3(A) thereof state, instead, that:

"3(A) All right, title and interest in and to the following described real estate, to-wit:

The East 63 feet of Lot 13 and the West 7 feet of Lot 15 in Smith's Addition to Crown Point, as per Plat thereof, recorded.

in Deed Record "F", page 244 in the Office
of the Recorder of Lake County, Indiana,

Also:

Part of Lot 6 in Commissioner's Addition to
the City of Crown Point, as per Plat thereof,
recorded in Deed Record "D", page 323, in the
Office of the Recorder of Lake County, Indiana,
more particularly described as follows:
Beginning at a point 3 feet East of the Northwest
corner of Lot 13 Smith's Addition to Crown Point;
thence North 16 feet; thence East 70 feet;
thence South 16 feet, thence West 70 feet to
the place of beginning,

more commonly known as 310 East Clark Street,
Crown Point, Indiana,

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of the petitioner be, and the same is hereby, divested of and from
him and vested in the respondent."

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(C) Rhetorical paragraph 12 thereof state, instead, that:

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"12. Ronald T. Spangler, the petitioner's attorney herein,
have a lien against the real estate hereinabove set over to the
respondent, for the balance of his fees and expenses incurred in this
proceeding in the sum of \$2,043.14, payable only upon the conditions
set forth in rhetorical paragraph 3 (D) of this Judgment."

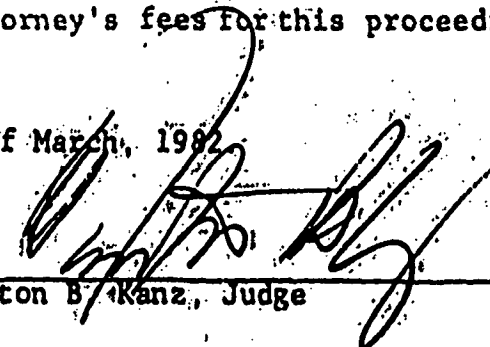
2. The respondent's Motion to Correct Errors and/or her Motion
for Relief from Judgment, and the petitioner's Response to Motion to
Correct Errors, insofar as each allege error in the distribution by the
Court of the parties' marital estate, be, and they are hereby, denied.

3. The parties' 1980 Federal Income Tax liability, including
principal, interest and penalty, be paid in the following manner: 60%
by the petitioner, 40% by the respondent.

... real estate liability, including principal,
interest, and penalties, be paid in the following manner: 2/3 thereof
by the respondent, 1/3 by the petitioner.

5. Each party pay his own attorney's fees for this proceeding.

ALL SO ORDERED this 23rd day of March, 1982


Morton B. Kanz, Judge

MBK/ss

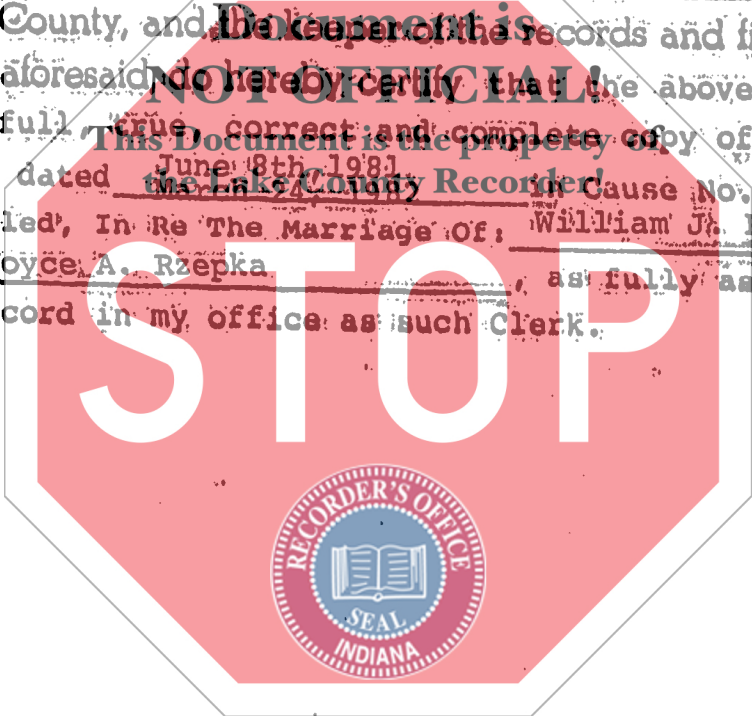


The United States of America



STATE OF INDIANA, COUNTY OF LAKE, ss:

I, the undersigned, Clerk of the Lake SUPERIOR Court of Lake County, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify that the above and foregoing is a full, true, correct and complete copy of the Order of Court dated June 18th 1981, Cause No. 280-971 entitled, In Re The Marriage Of: William J. Rzepka and Joyce A. Rzepka, as fully as the same appears of record in my office as such Clerk.



IN WITNESS WHEREOF, I have herunto set my hand and affixed the seal of said Court, at my office in EAST CHICAGO, INDIANA, in the said County, this 25th day of April, A. D. 1981.

Robert C. Entlich

Clerk Lake SUPERIOR Court.

By *Virginia H. Haughey*
Deputy