1986

Maxwell v. Maxwell : Brief of Appellant

Utah Court of Appeals

Pete N. Vlahos; Vlahos & Sharp; Attorney for Appellant.
M. Don Young; Mohlman & Young; Attorney for Defendant.

860267-CA

IN THE COURT OF APPEALS

STATE OF UTAH

DAVID A. MAXWELL, Plaintiff-Appellant, vs. ANGELINE B. MAXWELL Defendant-Respondent.	BRIEF OF APPELLANT CASE NO: 860267-CA PRIORITY: 14b

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IN THE COURT OF APPEALS

STATE OF UTAH

DAVID A. MAXWELL, Plaintiff-Appellant, vs. ANGELINE D. MAXWELL, Defendant-Respondent.	BRIEF OF APPELLANT CASE NO: 860267-CA PRIORITY NO: 14b

Appeal from the Judgment of the District Court of Tooele County, State of Utah, Honorable John A. Rokich, Judge

STATEMENT OF JURISDICTION

The Judicial Code of the Utah Code Annotated § 78-2a-3 entitled "Court of Appeals Jurisdiction" effective through December 31, 1987, states as follows:

> (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:
>
> ...
>
> (g) appeals from district court involving domestic relations cases including, but not limited to, divorce, annulment, property division, child custody, support and visitation, adoption, and paternity; and ...

This appeal is from the District Court of Tooele County and involves a domestic relations case, therefore, it is properly before this Court, which has appellate jurisdiction.

STATEMENT OF NATURE OF THE PROCEEDINGS

This is an action wherein the Plaintiff-Appellant, who was the husband, brought an action for divorce against the wife, who is the Defendant-Respondent, in the Third Judicial District Court of Tooele County, granting a Decree of Divorce to the parties and awarding one-half of Appellant's military retirement to Respondent and alimony to Respondent, all from which the Appellant appeals.

STATEMENT OF THE ISSUES

The issues presented by this appeal are:

1. Did the Third Judicial District Court of Tooele County, State of Utah, retain jurisdiction over Appellant to make a "further determination" as to the issues of the retirement benefit division and alimony?

2. Did the Court abuse its discretion in its judgment and order awarding one-half of Appellant's retirement benefits to Respondent?

3. Did the Court abuse its discretion in its judgment and order awarding Respondent $100.00 per month as and for alimony for an indeterminable period of time?

STATEMENT OF THE CASE

Appellant and Respondent were married on the 23rd day of June, 1964, in Elko, Nevada, and there was born one (1) child of their marriage, to-wit: Natalie Nichole Maxwell, born on November 29, 1968. (R 5) The Appellant filed for divorce on June 24, 1983, in the Third Judicial District Court of Tooele County, State of Utah. (R 5) The attorney at that time representing Appellant was Kirk C. Lusty who obtained a Decree of Divorce for the Appellant on the 27th day of June, 1983, which was entered by the Honorable District Court Judge, Scott Daniels, on the 8th day of July, 1983, settling all matters between the parties and awarding to the Respondent custody of the minor child and specific rights of visitation to the Appellant. The lower court further awarded to the Respondent the sum of $300.00 per month as and for child support for the minor child of the parties. No alimony was awarded to either party. Appellant was awarded his military retirement. (R 16,17) The divorce was to become effective ninety (90) days from the date of the hearing. (R 16)

Thereafter Defendant-Respondent filed a Motion to set aside the Decree of Divorce, which Motion was heard on the 22nd day of August, 1983, pursuant to notice. (R 18) The Court entered its Order September 15, 1983, by and through the Honorable Judith M. Billings, Judge Presiding, following the hearing, which set aside portions of the previously entered Decree of Divorce concerning the parties' property and alimony, and retaining the remainder of the Decree, including but not limited to, the divorce granted to Plaintiff and the child support granted to Defendant. (R 26,27) A trial on the issues raised by the Order that were set aside, including the parties' property and alimony, was to take place within ninety (90) days of the Order. (R 26) Concurrently the parties, by and through their respective attorneys, Kirk C. Lusty for Plaintiff, and Rick Higgins for Defendant, stipulated to a Motion to extend the time in which the Divorce Decree and the matter would become final from October 8, 1983 to January 1, 1984. (T 31) The Stipulation was so ordered and granted by the Tooele District Court on October 3, 1983, such that the Divorce Decree did not become final until January 1, 1984. (R 34)

Thereafter on or about the 17th day of October, 1983, notice of a trial scheduled for November 21, 1983, had been sent to the respective parties' counsel on the remaining

issues of property and alimony. (R 30) Thereafter the respective parties, by and through their counsel, did stipulate to a Motion to Continue before the Court for a continuance of the November 21, 1983, trial concerning the remaining issues of the property of the parties and alimony without date inasmuch as the parties were uncertain of the need of a trial or further litigation in the action. (R 32,33) The lower Court on November 14, 1983, ordered that the trial currently set for November 21, 1983, be and was thereby continued without date, leaving counsel to certify when the matter was ready if a trial became necessary. (R 32)

In the meantime, Appellant accepted a job through the United States Air Force as an employer in Okinawa, Japan, in February of 1984. In September of 1984, Respondent moved to Okinawa, Japan, in an attempt to "reconcile". (Tr. 15) In February of 1985, the parties decided to proceed with a "full divorce" in Okinawa. (Tr. 15, 16) Respondent retained an attorney in Okinawa and had divorce papers prepared divorcing the parties and deciding all issues of property settlement and alimony. (Tr. 16, 29) Respondent then returned to the United States in January of 1986, and sometime thereafter retained present counsel for Respondent, M. Don Young, as her attorney, who entered his appearance as

her counsel on the 11th day of March, 1986, in this proceeding, also requesting Appellant to obtain counsel for further proceedings in the Lower Court, sending notice to Appellant in Japan to appoint new counsel, even though Plaintiff's counsel had not withdrawn. (R 35,36,37)

On the 2nd day of July, 1986, Respondent, by and through her attorney, filed a Motion for Sanctions for Appellant's failure to answer Respondent's Request for Production of Documents that was mailed to the Plaintiff in Okinawa, Japan. The Motion was noticed for hearing for the 28th day of July, 1986. (R 54,55,56) Appellant replied by retaining Pete N. Vlahos to enter a Special Appearance ONLY for purposes of attacking jurisdiction and to dismiss the pending matters, and to dismiss the Motion for Sanctions based on the grounds of res judicata and lack of jurisdiction. (R 62-67,75-77)

On August 11, 1986, after a continuance was granted, (R 80,21) the Honorable John A. Rokich, Judge Presiding, entered an Order and Finding on Plaintiff's Motion for Dismissal and Defendant's Motion for Sanctions, finding that the Lower Court had granted the parties a Decree of Divorce and any after-accruing Decree of Divorce without a remarriage had no validity or force or effect to grant the parties a divorce as the same had been granted and by virtue

of other Orders had become final on the 1st day of January, 1984. (R 83-85) The Court further found that by virtue of the Order the Lower Court had reserved jurisdiction over the issues of property division and alimony, and ordered that the matter be set on the Court calendar for September 12, 1986, for an evidentiary hearing to resolve the remaining issues of division of the parties' property, including the division of Appellant's military retirement and whether and how much alimony should be awarded to the Respondent. (R 83-85)

The hearing was held on Friday, September 12, 1986, before the Honorable John A. Rokich, Judge Presiding. Testimony was proffered by the parties' respective counsel. (Tr. 13) Defendant was present, but the Plaintiff was unable to attend from Japan due to his employment and Plaintiff's counsel was denied an earlier request for continuance of the evidentiary hearing until the end of September, 1987 in order for Plaintiff to attend. (Tr. 13, 27)

Proffered testimony from Defendant indicated that the "marriage" started having problems and that Plaintiff insisted upon Defendant obtaining a divorce because Defendant could not stay on base or continue with her job without some sort of divorce paperwork being processed or otherwise

she would have to return without a job to the United States. (Tr. 16) The parties then obtained a divorce in Japan through the services of a Japanese attorney. (Tr. 16)

Defendant's attorney then proffered testimony that Defendant had consulted with the staff Judge Advocate at the Air Force Base in Okinawa indicating that by Defendant consenting to the divorce she would receive paperwork that would enable her to maintain separate housing but it would not affect any rights concerning the alimony or property division. (Tr. 17) Plaintiff's counsel was not given an opportunity to cross examine. Defendant's counsel further proffered testimony that the Plaintiff was in the military for 19 years of their marriage. (Tr. 22) Following the proffered testimony without cross examination, the lower Court ordered that Defendant was entitled to one-half of Plaintiff's military retirement but then reconsidered that order indicating that he would follow the formula established by the Utah Supreme Court for award of military retirement benefits. (Tr. 33) ... but ultimately awarded to Defendant one-half of Plaintiff's military retirement benefits without reference to any type of formula. (R 87)

Testimony was also proffered by Defendant's counsel in regards to an award of alimony to which the lower Court Judge responded that he was not inclined at this juncture to

make a substantial award of alimony, (Tr. 31) and ultimately awarded Defendant $100.00 per month for an indeterminable amount of time. (R 87)

The lower Court's final judgment and order found that that Court had reserved and retained jurisdiction of the matters of property division including the Plaintiff's retirement and Defendant's right to alimony from Plaintiff, and that the purported Japanese divorce had no effect and was void ab initio because the Utah divorce had been entered in the matter and became final on January 1, 1984. (R 92,93,94) The lower Court awarded to the Defendant 50% of the Plaintiff's disposable military retirement pay, paid directly to Defendant and further awarded to Defendant the sum of $100.00 per month as and for alimony. (R 92,93,94)

SUMMARY OF ARGUMENTS

POINT I.

The lower Court did not retain jurisdiction of Appellant to make a further determination as to the issues of retirement and alimony.

POINT IA.

The principal of "Comity" denies the lower Court any further jurisdiction over Appellant or Respondent to make a further determination as to the issues of retirement and alimony because the foreign Court of Japan had already made

a final determination as to those issues and are entitled the doctrine of res judicata as much as any other foreign Decree.

POINT IB.

Appellant's counsel entered a Special Appearance solely for purposes of contesting jurisdiction and raising the affirmative defense of res judicata and not to litigate the issue of property division and alimony which were ultimately decided by the Court on September 12, 1986, constituting an abuse of discretion.

POINT II.

The lower Court abused its discretion and ruled contrary to Utah law in awarding to Respondent 50% of Appellant's military retirement benefits, especially in light of the Woodward formula and a lack of evidence as to Appellant's time in the military as compared to his time in the military while married.

POINT III.

The lower Court abused its discretion by awarding to the Respondent $100.00 per month as and for alimony for an indeterminable amount of time based on the needs of the spouse, her ability to work, and the ability of the paying spouse to pay the alimony.

ARGUMENTS

POINT I.

THE LOWER COURT DID NOT RETAIN JURISDICTION OVER APPELLANT TO MAKE A "FURTHER DETERMINATION" AS TO THE ISSUES OF RETIREMENT AND ALIMONY.

POINT IA.

THE PRINCIPAL OF "COMITY" DENIES THE LOWER COURT ANY FURTHER JURISDICTION OVER APPELLANT OR RESPONDENT TO MAKE A "FURTHER DETERMINATION" AS TO THE ISSUES OF RETIREMENT AND ALIMONY.

The Court of Appeals of the State of Oregon in the case of Redfox and Redfox, 542 P.2d 918 (Or. App. 1975) held that a divorce consummated in an Indian tribal court although not entitled to the same "full faith and credit" accorded decrees rendered in sister states, was "entitled to the same deference shown decisions of foreign nations as a matter of comity". That Court further held as follows:

> The rule of general application is that a judgment rendered by a court of a foreign nation is entitled to recognition to the same extent and with as broad a scope as it has by law or usage in the courts of jurisdiction where rendered if: (1) the foreign court actually had jurisdiction over both the subject matter and the parties; (2) the decree was not obtained fraudulently; (3) the decree was rendered under a system of law reasonably assuring the requisites of an impartial administration of justice - due notice and a hearing; and (4) the judgment did not contravene the public policy of the jurisdiction in which it is relied upon.

The Appellant and the Respondent in order to once and for all finally terminate any relation they had between them, and make a final disposition of all claims between them, sought a divorce in the foreign courts of the nation of Japan with assistance of a Japanese attorney and the Staff Judge Advocate with the United States Air Force stationed in Japan. Respondent retained the attorney. Affidavits and documents submitted by Appellant's counsel in the lower Court, particularly a letter from Respondent's attorney in Japan, Mr. Makoto Tanizoe, indicates that the Respondent hired him herein and was the petitioner in the foreign divorce action and that Respondent was repeatedly asked about any and all desires she had at that time in regards to any alimony or monetary claims that she had from the Appellant in this action, David A. Maxwell.

In her response to her Japanese attorney's request and repeated questions by the Judge as to whether or not there were any other conditions she would like to ask the Court, aside from the stipulations and the mutual consent agreement, the Appellant and Respondent on April 1, 1985, mutually consented that both parties waived any alimony or monetary claims from each other, including Appellant's military retirement benefits which is property.

The lower Court in 1983 at Respondent's request and by and through her attorney at that time, was granted a Motion to Set Aside the Decree of Divorce allowing her to proceed contrary to her previous wishes, for a portion of the property of the parties including Appellant's military retirement benefits and alimony. Thereafter in April of 1985, for a second time, Respondent after consultation with her Japanese attorney and repeated questioning by the Japanese Judge, consented to waive any rights in alimony or any other monetary claims that she may have had against Appellant David A. Maxwell. Respondent through proffered testimony indicated in the trial record pages 16 and 17, that both her Japanese attorney and the Judge Advocate indicated that the divorce in Japan would have no effect on any rights concerning the alimony or property division because the Japanese Court had no jurisdiction over them. The mutual consent agreement presented to the Japanese Court and reviewed by its Judge, and the letter from Respondent's attorney as Petitioner, indicate exactly to the contrary that alimony and any monetary claims were settled by that Court.

Approximately one (1) year after the Japanese divorce, Respondent returns to the United States, hires another attorney in Tooele County and again pursues a division of

the property and claims of alimony against the Appellant asking the lower Court to void and declare null any and all proceedings held in the foreign Court to which she had fully consented and actually petitioned the Court there for a determination as to alimony and monetary claims.

Once again, the Respondent is in effect asking the lower Court in this matter to set aside a Decree of Divorce that has made a further determination as to alimony and monetary claims between the parties, having changed her mind once again, and requesting alimony and a division of all marital properties almost three (3) years after the parties determined that a trial would not be necessary to settle those issues in the lower Court because they would be resolved between the parties.

"Comity" is simply a recognition that one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard to both international duty and convenience, and to their rights of its own citizens or other persons who are under the protection of its laws as stated in Redfox and Redfox, supra, at 921. The requirements of comity have been met in this matter, both parties were on notice and mutually agreed to the effects of the foreign Decree settling the issue of alimony and monetary claims, and for the lower Court to deny

or declare that Decree void ab initio as to all aspects is a clear abuse of the lower Court's discretion and denies the application and principle of comity as accorded to foreign nations.

POINT IB.

APPELLANT'S COUNSEL ENTERED A SPECIAL APPEARANCE SOLELY FOR PURPOSES OF CONTESTING JURISDICTION AND NOT TO LITIGATE THE ISSUES OF PROPERTY DIVISION AND ALIMONY.

The Utah Supreme Court in the case of Dennett v. Powers, 536 P.2d 135 (Utah 1975), held that the Defendants did not reconfer jurisdiction on the Court when they appeared specially by counsel to move that a Complaint be dismissed.

In the instant case, Appellant retained the services of Pete N. Vlahos to enter his Special Appearance to attack the grounds of jurisdiction over the Appellant and assert the defense of res judicata in that the issue of alimony and monetary claims had been previously decided by a foreign Court. The lower Court after denying Appellant's counsel's request for a continuance so that Appellant could be in attendance at a later hearing, continued its appearance at the September 12, 1986, hearing to continue to contest jurisdiction and assert the defense of res judicata only on a Special Appearance basis. The lower Court found at that

hearing that the foreign Decree was void ab initio, finding the Court had jurisdiction over the Appellant, and then further found that Respondent was entitled to one-half of Appellant's military retirement and $100.00 per month as and for alimony. The Court had stated at the conclusion of the August 11, 1986, hearing on Appellant's Motion to Dismiss and Defendant's Motion for Sanctions, that the Court wanted to know the facts with regard to what was done in the Okinawa proceeding so that he could know whether or not Respondent had at any time before the Court said "I waive all my rights and any I may have with regards [to alimony or Appellant's military retirement benefits]". The Court further indicated that if at any time they agreed to waive all of that then the Court could see no way that he could impose sanctions and that the lower Court didn't think it could make a ruling without knowing all of the facts in the case. The Court then continued the matter to September 12, 1986, for a determination as to those motions and not for a determination as to an actual division of the property and alimony.

The lower Court abused its discretion in assuming it had jurisdiction to award a property division and alimony to Respondent at the September 12, 1986, hearing when Appellant was not present in person and was only represented by

counsel on a Special Appearance basis to contest jurisdiction and raise the defense of res judicata.

POINT II.

THE LOWER COURT ABUSED ITS DISCRETION AND RULED CONTRARY TO UTAH LAW IN AWARDING TO RESPONDENT 50% OF APPELLANT'S MILITARY RETIREMENT BENEFITS.

The Utah Supreme Court in the case of Woodward v. Woodward, 656 P.2d 431 (Utah 1982), held in regards to a division of government retirement benefits at page 433 through 434 as follows:

> "... Thus, the wife is entitled to share in that portion of the benefits to which the rights accrued during the marriage...
>
> The order should be modified for the wife to receive one-half of the benefits accrued during the marriage, regardless of the length of time the husband continues in the same employment. [Emphasis added] Whenever the husband choses to terminate his government employment, the marital property subject to distribution is a portion of the retirement benefits represented by the number of years of the marriage divided by the number of the years of the husband's employment. The wife is entitled to one-half of that portion pursuant to the award of the trial judge in this case, which our modification is intended to sustain."

In the instant case, testimony was proffered to the Court that the parties were married during 19 years of the

total time Appellant spent in the military. No evidence was taken under oath and no cross examination was allowed. The record is void as to the actual amount of time the Appellant spent in the military, which is presumably more than the 19 years because 20 years are required for retirement and may have been considerably more than that time period, but because of the lower Court's refusal to allow continuance of the matter until such time as the Appellant could appear in person, and again, contrary to the Special Appearance basis of Appellant's counsel, neither the lower Court nor this Court could use the Woodward formula to calculate the actual military retirement benefits to which the Respondent would be entitled.

The lower Court indicated at the time of the September 12, 1986, hearing on page 33 of the trial record, that he would make an Order entitling Respondent to one-half and then he rephrased it indicating "I think there's a formula for that case, a formula with regard to division", and that the lower Court Judge would consider that formula referring to the Woodward case in making an award of the retirement benefits.

Ultimately the lower Court Judge rendered a Minute Entry at page 87 of the record by simply awarding Respondent

one-half of the retirement of Appellant without any reference to a formula.

The lower Court's decision awarding one-half of Appellant's retirement to Respondent without reference to the formula or the Woodward case is contrary to well established law and clearly an abuse of discretion of the Court and should be reversed and remanded to the lower Court for further testimony to properly establish a formula.

POINT III.

> THE LOWER COURT ABUSED ITS DISCRETION BY AWARDING TO THE RESPONDENT $100.00 PER MONTH AS AND FOR ALIMONY FOR AN INDETERMINABLE AMOUNT OF TIME.

The Utah Supreme Court in the case of Jeppson v. Jeppson, 684 P.2d 69 (Utah 1984), held that the criteria to be considered in awarding alimony include:

> The financial conditions and needs of the wife, considering her station in life; her ability to produce sufficient income for herself; and the ability of the husband to provide support.

The recent Utah Supreme Court case of Paffel v. Paffel, 732 P.2d 96 (Utah 1986), reiterated this by stating the following:

> "In deciding whether or not to award spousal support and, if so, in what amount, the trial court must consider the financial condition and needs of the spouse claiming support, the ability of that spouse to provide sufficient income for him or herself, and the ability of

> the responding spouse to provide the support. Failure to consider these factors constitutes an abuse of discretion."

There is no testimony proffered or on record indicating what the actual income of the Appellant is other than that offered by Respondent. Appellant's counsel did request a continuance of the September 12th hearing until the end of September at which time Appellant could be present in person to testify, but that request for continuance was denied. This left the Court with the proffered testimony of the Respondent as to her income and the estimated and guessed income of the Appellant.

The Respondent, through her attorney, proffered testimony that her income was $1,555.73 gross with a net income of $1,137.28. (Tr. 18) She had also worked for a period of 26 years. (Tr. 21) Respondent was only 49 years of age and though she was suffering from certain nervous and psychological disorders, she was currently employed.

The Utah Supreme Court in the case of Delatore v. Delatore, 680 P.2d 27 (Utah 1984), held that an award to the Plaintiff-wife of $200.00 per month alimony for a period of 24 months was not an abuse of discretion and affirmed that order. That case involved a Defendant husband who had been employed with the same employer for 34 years, had gained valuable seniority, and at the time of the trial was making

approximately $27,200.00 annually in gross wages, and additionally had minor sources of additional income from the sale of property and rents. The Defendant-wife was found to be employable and in fact had been employed during part of the marriage, but at the time she was unemployed and was suffering from several health problems. During the marriage one of her kidneys had been removed, she was presently under a doctor's care for disorders in the other kidney and her stomach, she had no medical or hospital insurance, she had no place of her own to live and was residing with one of her children. She did anticipate obtaining employment but at her last job had earned only $4.25 per hour and the award of alimony of $200.00 per month for two (2) years was given to her to cushion her return to employment and self-sustaining status.

In the instant case, the Appellant/husband has also been employed for several years, has an income annually as well as a pension income from military retirement. The Respondent is presently working, is only 49 years of age, and has health problems as did the Plaintiff in Delatore. Additionally, the Respondent in this case is employed, has a gross income of over $1,500.00 per month and is not working for $4.25 per hour.

The lower Court has abused its discretion in failing to consider all three (3) factors in arriving at a decision as to alimony. The lower Court failed to properly consider the ability of the Respondent to provide sufficient income for herself, and especially in light of an award of one-half of the Appellant's military retirement benefits. Therefore the decision to award $100.00 per month as and for alimony to the Respondent for an indeterminable amount of time should be reversed.

CONCLUSION

It is submitted to this Honorable Court that the husband has suffered a clear abuse of discretion of the Court as evidenced by the judgment of the Court as set forth hereinabove in this brief. This Court also has an obligation to extend the principal of "comity" to a foreign nation, especially under the circumstances where the parties as citizens of this country with the intention of settling any and all claims to alimony and other monetary aspects in good faith consulted foreign divorce Court with counsel from a local Japanese attorney and assistance from a U.S. Judge Advocate. To decide otherwise would be to deny well established principals of "comity". The Appellant appeared before this Court through his counsel only on a Special Appearance basis to contest jurisdiction and argue a defense

of res judicata, while the lower Court declared the foreign Decree void ab initio, and further, determination in the absence of Appellant after having requested a continuance until Appellant could be present in person, awarded one-half of Appellant's military retirement benefits contrary to existing State law without the use of a formula or the figures to use in that formula, and further abused its discretion in awarding to Respondent $100.00 per month as and for alimony for an indeterminate amount of time when the Respondent was capable of employment, was employed, had an income and was only 49 years of age.

The decision of the lower Court due to its abuse of discretion should be reversed, or in the very least, remanded to the lower Court for further testimony and a proper determination as to military retirement benefits and alimony if this Court should fail to recognize the mutually agreed to foreign Decree as having been a final determination as to alimony and any monetary claims the parties had between them.

RESPECTFULLY SUBMITTED this 8 day of September, 1987.

VLAHOS & SHARP

By _____
PETE N. VLAHOS, of the Firm
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8 day of September, 1987, I mailed four (4) true and correct copies of the above and foregoing BRIEF OF APPELLANT by placing same in the U.S. Mail postage prepaid and addressed to the following:

M. Don Young
MOHLMAN & YOUNG
Attorney for Respondent
250 South Main Street
Tooele, Utah 84074

PETE N. VLAHOS
Attorney for Appellant

ADDENDUM

Findings of Fact and Conclusions of Law attached.
Order and Judgment attached.

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Telephone: 882-1618

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR TOOELE COUNTY, STATE OF UTAH

---ooOoo---

DAVID A. MAXWELL,	:	
Plaintiff,	:	FINDINGS OF FACT AND
vs.	:	CONCLUSIONS OF LAW
ANGELINE B. MAXWELL,	:	Civil No. 83-224
Defendant.	:	

---ooOoo---

This matter came on for hearing before the Honorable John A. Rokich, Judge of the above-entitled Court on the 12th day of September, 1986, the Court having previously entered its Findings and Order that the above-entitled Court reserved and retained jurisdiction of the matters of property division including the plaintiff's retirement and the defendant's right to alimony from the plaintiff and that a purported Japanese divorce had no effect and was void ab initio because the Utah divorce which was entered in the above-entitled matter was entered and became final 1st day of January, 1984 which was prior to the purported Japanese divorce; which later Japanese divorce was unecessary because

the parties never remarried after the Utah divorce. However, because the Utah Court had not resolved the issues of property and alimony and retaining and reserving jurisdiction of these issues, these issues had to be resolved by the above-entitled Court, for which purpose this hearing had been scheduled. The plaintiff was not present but was represented by F. Kim Walpoe, Esq., for and in behalf of Pete N. Vlahos. The defendant was present and represented by M. Don Young. Both counsels proferred testimony and made argument and being fully advised in the premises, the Court enters the following:

FINDINGS OF FACT

1. The plaintiff's present address is: Kadena Air Base; Okinawa, Japan; PSC1 Box 28102; APO San Francisco 96230; and his Social Security Number is 459-62-3001.

2. The defendant's present address is: P.O. Box 288; Eureka, Utah 84628.

3. The plaintiff and defendant were married at Elko, Elko County, Nevada on the 23rd day of June, 1964 and their divorce became final on the 1st day of January, 1984, but, though granting a divorce, the Court previously had not resolved the issues of property division and alimony and the Court retained jurisdiction of these matters to resolve them.

4. During the course of the marriage, the plaintiff served approximately nineteen years in military service and retired from military service shortly before the divorce of the parties became final. The plaintiff qualified for and accumulated military retirement benefits as a result of

serving twenty or more years in military service.

5. Said military retirement benefits, as allowed by federal law, are marital property subject to division by the above-entitled Court.

6. It is fair and equitable that, pursuant to federal law and state law, that the defendant should be awarded fifty percent (50%) of the plaintiff's disposable military retirement pay and that the same should be paid directly to the defendant from the appropriate military service finance center as allowed by federal law in the case of a military service marriage in excess of ten years as this marriage was.

7. The Court further finds that the defendant has serious medical problems including chronic bulimia and chronic anexoria nervosa that are likely to require continued medical attention which may in the future jeopardize her employment. However, at the present time, the defendant has a good job with a gross income from her employment of $1,555.03 per month. Based on the fact that this is a long-term marriage and on defendant's present income, the Court should award the defendant the nominal sum of $100.00 per month as and for alimony with the possibility that the same may be modified or terminated in the future depending on the circumstances of the parties.

From the foregoing findings of fact, the Court issues the following:

CONCLUSIONS OF LAW

1. The defendant should be awarded fifty percent (50%) of the plaintiff, David A. Maxwell's, disposable military retirement pay and the same

& YOUNG
AT LAW
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should be paid directly to her by the appropriate military financial center as follows: Angeline B. Maxwell, P.O. Box 288, Eureka, Utah 84628 or such other address as she shall designate from time to time.

2. The plaintiff should be further ordered to pay to the defendant the sum of $100.00 per month as and for alimony, the same to be due and payable on or about the 1st day of each month with the first payment due on or about the 1st day of October, 1986.

Dated this 15 day of October, 1986.

BY THE COURT

John A Rokich
JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing to Pete N. Vlahos, Vlahos & Sharp, 2447 Kiesel Avenue, Ogden, Utah 84401, this 24th day of September, 1986.

Rosanne O. Hyatt

C/FF

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IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR TOOELE COUNTY, STATE OF UTAH

---ooOoo---

DAVID A. MAXWELL,	:	
Plaintiff,	:	JUDGMENT AND ORDER
vs.	:	
ANGELINE B. MAXWELL,	:	Civil No. 83-224
Defendant.	:	

---ooOoo---

This matter came on for hearing before the Honorable John A. Rokich, Judge of the above-entitled Court on the 12th day of September, 1986, the Court having previously entered its Findings and Order that the above-entitled Court reserved and retained jurisdiction of the matters of property division including the plaintiff's retirement and the defendant's right to alimony from the plaintiff and that a purported Japanese divorce had no effect and was void ab initio because the Utah divorce which was entered in the above-entitled matter was entered and became final 1st day of January, 1984 which was prior to the purported Japanese divorce; which later Japanese divorce was unecessary because

the parties never remarried after the Utah divorce. However, because the Utah Court had not resolved the issues of property and alimony and retaining and reserving jurisdiction of these issues, these issues had to be resolved by the above-entitled Court, for which purpose this hearing had been scheduled. The plaintiff was not present but was represented by F. Kim Walpoe, Esq., for and in behalf of Pete N. Vlahos. The defendant was present and represented by M. Don Young. Both counsels proferred testimony and made argument and being fully advised in the premises, and the Court having heretofore entered its Findings of Fact and Conclusions of law, it is:

ORDERED, ADJUDGED AND DECREED

1. The defendant is awarded fifty percent (50%) of the plaintiff, David A. Maxwell's, disposable military retirement pay and the same is to be paid directly to her by the appropriate military financial center as follows: Angeline B._Maxwell, P.O. Box 288, Eureka, Utah 84628 or such other address as she shall designate from time to time.

2. The plaintiff is further ordered to pay to the defendant the sum of $100.00 per month as and for alimony, the same to be due and payable on or about the 1st day of each month with the first payment due on or about the 1st day of October, 1986.

Dated this 15 day of October, 1986.

BY THE COURT

John A Rokich

.N & YOUNG
NEY AT LAW
TH MAIN
UTAH 84074

JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing to Pete N. Vlahos, Vlahos & Sharp, 2447 Kiesel Avenue, Ogden, Utah 84401, this 24th day of September, 1986.

Rosanne O. Hyatt

C/J