

1986

Hugh P. Ruhsam, Jr. v. Janet Elizabeth Ruhsam : Brief of Appellant

Utah Supreme Court

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Pete N. Vlahos; Vlahos & Sharp; attorney for respondent.

B.L. Dart, John D. Parken; Dart, Adamson & Parken; attorney for appellant.

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UTAH COURT OF APPEALS
BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

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HUGH P. VONZELL RUHSAM, JR., :

Respondent, :

v. :

JANET ELIZABETH RUHSAM, :

Appellant. :

260128-CA
Call No. 20727

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APPELLANT'S BRIEF

Appeal from the Judgment of the Second District Court
in and for Weber County
The Honorable John F. Wahlquist Presiding

B. L. Darr
John D. Parken
DART, ADAMSON & PARKEN
Suite 1330, 310 South Main
Salt Lake City, Utah 84101

Attorneys for Appellant

Pete N. Vlahos
VLAHOS & SHARP
2447 Kiesel Avenue
Ogden, Utah 84401

Attorney for Respondent

FILED

AUG 2 1985

Clerk, Supreme Court, Utah

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HUGH P. VONZELL RUHSAM, JR.,	:	
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John D. Parken
DART, ADAMSON & PARKEN
Suite 1330, 310 South Main
Salt Lake City, Utah 84101

Attorneys for Appellant

Pete N. Vlahos
VLAHOS & SHARP
2447 Kiesel Avenue
Ogden, Utah 84401

Attorney for Respondent

TABLE OF CONTENTS

	<u>Page</u>
IDENTITY OF PARTIES	1
ISSUES PRESENTED	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
SUMMARY OF ARGUMENTS	6
ARGUMENT	9
POINT I	
THE EVIDENCE FAILS TO SUPPORT, INDEED IT REFUTES, THE TRIAL COURT'S FINDINGS AS TO MR. RUHSAM'S HEALTH.	9
POINT II	
THE ALIMONY AWARDED BY THE TRIAL COURT IS NOT ADEQUATE.	11
POINT III	
THE TRIAL COURT ABUSED ITS DISCRETION IN FASHIONING THE PROPERTY DISTRIBUTION IN THIS CASE.	16
A. The Trial Court Erred In Ordering That The Occupancy Of And The Prerogative To Sell The Parties' Principal Residence Cycle Back And Forth Between The Parties Every Six Months.	16
B. The Trial Court's Totally Arbitrary Distribution Of The Parties' Personal Property Constitutes An Abuse of Discretion.	18
POINT IV	
IN THIS EQUITABLE ACTION, THIS COURT MAY REVIEW ALL ASPECTS OF THE TRIAL COURT'S RULINGS.	19
CONCLUSION	20

CASES CITED

	<u>Page</u>
Fletcher v. Fletcher 615 P.2d 1218 (Utah 1980)	12
Gramme v. Gramme 587 P.2d 144 (Utah 1979)	13
Jones v. Jones -- P.2d -- , 8 Utah Adv. Rep. 14 (1985)	14-15
Wiese v. Wiese 24 Utah 2d 236, 469 P.2d 504 (1970)	19
Wilson v. Wilson 5 Utah 2d 79, 296 P.2d 977 (1956)	13-14

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APPELLANT'S BRIEF

IDENTITY OF PARTIES

The only interested parties are named in the caption.

ISSUES PRESENTED

1. Is there any evidence to support the trial court's Finding that the health of the Respondent Husband is "precarious" and that he has "heart problems"?

2. In view of the Appellant Wife's ill health and minimal earning capacity compared with the Respondent Husband's demonstrated substantial earning capability, is the trial court's alimony award of \$600 per month adequate?

3. Did the trial court abuse its discretion by arbitrarily ordering the parties to divide their personal property by sequentially selecting items from a list without any review by the Court or consideration of the nature and types of assets involved?

4. Did the trial court abuse its discretion in ordering that the right to "control the sale" and the occupancy of the parties' primary residence shift back and forth between the parties every six months until it was sold?

STATEMENT OF THE CASE

This is a divorce action involving a fourteen-year marriage. There were no children born during the marriage so there is no issue as to custody. A one-day hearing was held before the Honorable John F. Wahlquist on January 3, 1985, after which the court entered a Memorandum Decision (R. at 95-102 infra at A-2 through A-9), Findings of Fact and Conclusions of Law (R. at 104-14, infra at A-10 through A-20), and a Decree of Divorce (R. at 115-20 infra at A-21 through A-26). Thereafter, a Motion to Alter or Amend (R. at 121-24) and a Supplemental Motion to Alter or Amend (R. at 127-30) were filed by Appellant Janet Ruhsam. These Motions were heard by the trial court on May 13, 1985, and an Order was entered on May 16, 1985, (R. at 143-44)

making minor technical changes in the original Findings and Decree but otherwise denying the motion. Amended Findings of Fact and Conclusions of Law (R. at 145-54 infra at A-27 through A-36) and an Amended Decree of Divorce (R. at 155-60 infra at A-37 through A-42) were signed and entered by the trial court. This appeal is from the alimony and property distribution provisions of the Amended Decree.

STATEMENT OF FACTS

The parties were married on December 18, 1970, and no children were born as issue of this marriage. Defendant-Appellant Janet Elizabeth Ruhsam (hereinafter "Mrs. Ruhsam") is forty-nine years of age (R. at 248) and a high school graduate (R. at 249). Prior to her marriage, she was employed as a beautician (R. at 224); however, upon her marriage to Plaintiff-Respondent Hugh P. Vonzell Ruhsam, Jr. (hereinafter "Mr. Ruhsam"), he insisted that she give up her work (R. at 249), it being the intention of the parties that she would be an "Air Force wife" and follow her husband around as his duty was transferred (R. at 243, 250). During the marriage, Mrs. Ruhsam had no real employment other than as a saleslady for Avon Products (R. at 243), from which endeavor she earned only \$1,600 in 1984 (R. at 255) and never earned more than \$4,000 per year (Id.).

Unfortunately, Mrs. Ruhsam's health has been extremely poor. In 1977, she was diagnosed as having cancer of the left breast and underwent a radical mastectomy in Texas. (R. at 189.) In 1984, she was diagnosed as having cancer of the right breast (R. at 254), and underwent a modified radical mastectomy of the right breast (R. at 189). According to the testimony of her physician, Dr. Lyle Archibald, in addition to enduring the considerable pain and emotional stress inherent in such surgery, Mrs. Ruhsam is at risk for a further recurrence of the cancer that has already necessitated two major surgeries in the past seven years. (R. at 189.) Dr. Archibald also testified that Mrs. Ruhsam must have frequent and expensive check-ups to monitor her condition (R. at 189) and is a candidate for reconstructive surgery (R. at 193). Because of her prior problems, Mrs. Ruhsam is unable to procure any health insurance (R. at 275).

While her doctor feels that Mrs. Ruhsam could physically handle some light, sedentary activities (R. at 197), she continues to suffer pain from her surgeries, sinus headaches, migraine headaches, and "shooting pain" up and down her right arm. (R. at 256.) Mrs. Ruhsam's lower jaw is decaying seriously (R. at 256) and she has been advised that she will have to incur substantial expenses in the treatment of that condition (R. at

284). Additionally, she has an arthritic condition in both hands (R. at 256) and bursitis in her left knee (R. at 257).

Obviously, Mrs. Ruhsam's realistic expectations of income from future employment must be severely limited.

Mr. Ruhsam, on the other hand, is fifty-six years of age (R. at 226) and in generally very good health. Although the trial court found (Memorandum Decision, R. at 97-98 infra at A-4 through A-5 and Findings ¶10, R. at 149-50 infra at A-31 through A-32) that he has "heart problems," Mr. Ruhsam's testimony--the only evidence on the point--was that he had "no heart problem" (R. at 219). Mr. Ruhsam retired from the Air Force as a full colonel (R. at 216) and receives \$2,941 per month in retirement and disability pay (R. at 239). He is also employed by Jetway (R. at 209), the company that manufactures the walkways that lead from airport passenger gates to the aircraft. He holds the position of marketing manager and is responsible for sales throughout Europe and the Middle East. (R. at 225.) At the time of trial, he was earning \$2,915 per month exclusive of fringe benefits (R. at 219), bringing his total monthly income to more than \$5,850.

While Mr. Ruhsam is eligible for VA mortgage financing, Mrs. Ruhsam is not (R. at 232); moreover, Mrs. Ruhsam could not purchase a home through conventional mortgage financing because

of her lack of income (R. at 274). The trial court ordered that the parties' principal residence and a second, smaller home in Roy, Utah, both be sold and the proceeds divided equally between the parties. Although the trial court made no findings as to the value of either of these major assets, the evidence is that the principal residence has a market value of approximately \$98,000 (R. at 178) and a mortgage encumbrance of approximately \$41,400 (R. at 206), leaving a net equity of approximately \$53,600, while the smaller home in Roy, Utah, has a market value of not more than \$55,000 (R. at 181) and a mortgage encumbrance of \$39,700 (Exhibit 8-D) leaving a net equity of \$15,000 or less. Thus, after realtors' commissions and costs of sale have been paid, Mrs. Ruhsam will receive considerably less than \$30,000 for her share of these homes.

SUMMARY OF ARGUMENTS

There is simply no evidence to support the trial court's Finding that Mr. Ruhsam is in "precarious health" and has "heart problems." His own testimony was to the contrary and, when compared with the chronic and severe ill health unfortunately experienced by Mrs. Ruhsam, his health can only be considered excellent. Similarly, the trial court's Finding that Mr. Ruhsam's income is between \$2,000 and \$3,000 per month fails

to adequately recognize that, in fact, he is earning at least \$2,915 per month from his employment and receiving an additional \$2,941 per month from his military retirement pay. On the other hand, Mrs. Ruhsam earned only \$1,600 in all of 1984, is in ill health, and has not worked, in effect, in the fourteen years of her marriage. The trial court's Findings with respect to Mr. Ruhsam's health are contrary to the evidence and the trial court's award of \$600 per month in alimony is totally inadequate based upon the needs of Mrs. Ruhsam and the demonstrated income potential of Mr. Ruhsam.

The property distribution ordered by the trial court is in abuse of discretion. The trial court failed to place values on the parties' two homes, their most substantial assets. Instead, the trial court ordered that both be sold. The sale of both of these assets will result in less than \$30,000 to Mrs. Ruhsam, who is ineligible for VA mortgage financing and cannot qualify for conventional mortgage financing because of her very limited income. Thus, she is deprived of any means to acquire housing, other than to rent, which will deplete her assets further. Moreover, the trial court ordered that the both "control of the sale" and the occupancy of the principal residence vacillate back and forth every six months. The moving

expenses and logistical problems created by such an arrangement are unworkable and will further exhaust and deplete Mrs. Ruhsam's very limited assets.

Also an abuse of discretion is the trial court's ruling that the parties alternately select items of personal property from a list. While it was convenient for the trial court since it obviated any need to actually consider the distribution of these assets, it wholly fails to fulfill the trial court's most important function in a domestic relations case: the equitable distribution of the parties' assets so as to maximize the parties' financial resources. Since the trial court has failed to give any consideration whatsoever to the nature of the items, to which party has most need for the items, or to how the items can most effectively be divided, the trial court has utterly failed to fulfill its most important function. The procedure fashioned by the trial court is entirely arbitrary and it is a gross abuse of the trial court's discretion. It is truly as fallacious as King Solomon's Biblical custody determination.

ARGUMENT

POINT I. THE EVIDENCE FAILS TO SUPPORT, INDEED IT REFUTES, THE TRIAL COURT'S FINDINGS AS TO MR. RUHSAM'S HEALTH.

Both the Memorandum Decision (R. at 95-102, infra at A-2 through A-9) and the Findings of Fact and Conclusions of Law (as amended) (R. at 145-54, infra at A-27 through A-36) appropriately emphasize that the "physical health and earning capacity of each of the parties is important" to the determination of alimony. Having correctly noted the importance of the health and earning capacity of the parties, the trial court then erroneously found that Mr. Ruhsam's health was "precarious" and that he had a "heart condition and other health problems." In fact, Mr. Ruhsam's only health problem of which there is any evidence in this case is that he has "a mild case of hypertension." (R. at 218.) Despite a leading question suggesting that he had "heart problems," Mr. Ruhsam testified that he did not:

Mr. Vlahos: Hugh, would you tell the Court, if you would please, what is the--what is the status of your health at this point?

Answer: Well, I have a mild case of hypertension. And other than that it's fairly good, I assume. I'm due for a physical tomorrow and I can find out more.

Question: Do you have high blood pressure?

Answer: Yes, I do.

Question: Are you being treated for that?

Answer: Yes, I take medication.

Question: And are you also having some heart problem?

Answer: Other than the high blood pressure, no heart problems.

R. at 218-19. Simply stated, this evidence, the only evidence relating to Mr. Ruhsam's health, fails to support the trial court's finding that his health is "precarious" and that he has "heart problems." The trial court's findings in these critical areas are totally without support in the evidence adduced at the trial.

Similarly misleading is the trial court's finding that Mr. Ruhsam's earning capacity "is somewhere between \$2,000 and \$3,000 per month." (Memorandum Decision, R. at 98, infra at A-5 and Findings ¶4, R. at 151, infra at A-33.) In fact, Mr. Ruhsam's earnings (without considering fringe benefits) from his employment as the International Marketing Manager for Jetway is \$2,915 per month (R. at 219), and when his additional \$2,941 per month in retirement pay is considered (R. at 239), his income is almost \$6,000 per month.

In these important areas, the trial court's Findings can only be characterized as erroneous and without evidentiary support of any nature whatsoever.

POINT II. THE ALIMONY AWARDED BY THE TRIAL COURT IS NOT ADEQUATE.

In this case, the husband is in good health and earning approximately \$3,000 per month (exclusive of fringe benefits) from his employment as the international marketing manager for Jetway. In addition, he receives almost another \$3,000 per month on account of his full colonel's retirement pay from the United States Air Force. In all, his monthly income is in excess of \$5,850 per month. On the other hand, Mrs. Ruhsam was able to earn only \$1,600 during all of 1984. She has not worked during the fourteen years of this marriage other than as a saleslady for Avon Products. Additionally, she has had two major cancer surgeries in the last seven years, resulting in two modified radical mastectomies. She has, naturally, had a great deal of pain from these operations and continues to have "shooting pain" up and down her right arm. She suffers from sinus headaches and migraine headaches. Her lower jaw is decaying, she has an arthritic condition in both of her hands, and bursitis in her left knee. While her doctor feels that she may be able to handle some "light, sedentary activity," it is apparent that her earning capacity is severely limited. In light of these circumstances, the trial court's award of \$600 per month in alimony, even when

coupled with her 15.55% share of Mr. Ruhsam's retirement pay, is clearly inadequate. This is particularly true in view of the fact that she can reasonably anticipate heavy medical expenses in the future and is unable to obtain medical insurance due to her poor health. Under the circumstances of this case, such a paltry alimony award constitutes an abuse of the trial court's discretion.

As this Court has frequently recognized, it is the necessary function of alimony to provide support for the wife as nearly as possible at the standard of living she enjoyed during the marriage. For example, this Court noted in Fletcher v. Fletcher, 615 P.2d 1218 (Utah 1980), that:

The function of alimony is to provide support for the wife as nearly as possible at the standard of living she enjoyed during the marriage and to prevent the wife from becoming a public charge. Criteria considered in determining a reasonable award of support include the financial condition and needs of the wife, the ability of the wife to provide a sufficient income for herself, and the ability of her husband to provide support.

615 P.2d at 1223 (footnote citation omitted). In this case, Mr. Ruhsam continues to enjoy his demonstrated ability to provide a lucrative income. On the other hand, Mrs. Ruhsam, who is now fifty years of age, has not been employed to any significant degree since prior to this marriage fourteen years ago. These

factors militate strongly in favor of a substantial alimony award. Moreover, in view of the duration of the marriage, a very substantial alimony award is not only appropriate but essential to an equitable decree. This is particularly true in this case since Mrs. Ruhsam gave up her earning capacity as part of her commitment to the marriage and her willingness to fulfill the role of 'an Air Force wife.'

Similarly, in Gramme v. Gramme, 587 P.2d 144 (Utah 1979), this Court observed that the function of alimony

is to provide support for the wife as nearly as possible at the standard of living she enjoyed during the marriage Important criteria in determining a reasonable award for support and maintenance are the financial condition and needs of the wife, considering her station in life; her ability to produce sufficient income for herself; and the ability of her husband to provide support.

587 P.2d 147 (footnote citation omitted). Likewise, in Wilson v. Wilson, 5 Utah 2d 79, 296 P.2d 977 (1956), this Court, faced with a fifteen-year marriage, held that:

The Court's responsibility is to endeavor to provide a just and equitable adjustment of [the parties'] economic resources so that the parties can reconstruct their lives on a happy and useful basis. In doing so, it is necessary for the Court to consider . . . an appraisal of all of the attendant facts and circumstances; the duration of the marriage; the ages of the parties; their social positions and standards of living; their health; considerations relative to children: the money and property they possess

and how it was acquired; their capabilities and training and their present and potential incomes.

296 P.2d at 979-80 (footnote citation omitted). Each of these factors demands a substantial alimony award for Mrs. Ruhsam in view of the length of this marriage, her questionable employability, the demonstrated earning potential of Mr. Ruhsam, and the fact that, during this marriage, she was expected to live, and has grown accustomed to, a life filled with social activity, charitable works, and little remunerative employment. It is not reasonable--and it is not consistent with the law of this state--that this woman should now be compelled literally to fend for herself regardless of her ill health and her lack of earning capacity.

In its very recent decision in Jones v. Jones, -- P.2d -- , 8 Utah Adv. Rep. 14 (Utah 1985), this Court reversed as insufficient a \$1,000 per month alimony award. In that case, this Court noted that "other than the assets awarded to her in the property distribution, the wife has no assets and no outside income." -- P.2d at -- , 8 Utah Adv. Rep. at 16. This observation is equally true in the case now before this Court. In Jones, this Court also noted:

The wife has no independent income. It is entirely unrealistic to assume that a woman in her mid-50's with no substantial work experience or training will be able to enter the job market and support herself in anything even resembling the style to which the couple had been living.

-- P.2d at -- , 8 Utah Adv. Rep. at 16. This Court then went on to hold, in language equally applicable to the present case, that

The foregoing analysis leads inexorably to the conclusion that the trial court's alimony award was inequitable The wife is in her mid-50's, possesses few marketable job skills, and has little hope of retraining. This is simply not the sort of situation in which a decreasing rehabilitative alimony award is appropriate. The husband operates a financially successful business, built up over twenty years of marriage through the joint efforts of both husband and wife. These facts clearly call for some sort of continuing spousal maintenance. The original award must be more substantial [than the \$1,000 per month awarded by the trial court], considering the husband's real discretionary income, and should continue at that level for the foreseeable future.

-- P.2d at -- , 8 Utah Adv. Rep. at 17. The \$600 per month awarded by the trial court in this case is even more disproportionate than was the wife's award in Jones. The \$600 awarded by the trial court is inequitable and insufficient and must be increased.

POINT III. THE TRIAL COURT ABUSED ITS DISCRETION IN FASHIONING THE PROPERTY DISTRIBUTION IN THIS CASE.

A. The Trial Court Erred In Ordering That The Occupancy Of And The Prerogative To Sell The Parties' Principal Residence Cycle Back And Forth Between The Parties Every Six Months.

The Decree entered by the trial court in this action provides that both the parties' principal residence and their Roy, Utah home be sold and the proceeds divided. (Decree at ¶6, R. at 157, infra at A-39.) The Decree also provides, however, that the occupancy of the principal residence, as well as the prerogative to "have control over the sale" of that residence, shall be vested in Mrs. Ruhsam for a period of six months and then, if the sale has not been accomplished in that time, Mr. Ruhsam shall have the occupancy and "the right to effect the sale for the next six months." (Decree at ¶7, R. at 157-58, infra at A-39 through A-40.) This aspect of the property distribution constitutes an abuse of discretion on the part of the trial court for two reasons.

First, the vacillation of the occupancy and right to sell the residence is absurd and serves no useful purpose. Rather, it will cost the parties a great deal of money to move their belongings in and out of the residence every six months

until it is sold. Additionally, the concept of vesting in one party the right to control the sale of the residence, without the concurrence of the other or without any limitation upon the discretion, can only serve as a constant source of unrest and antagonism between these parties. In short, there is no evidence to support such a provision, it is economically unwise, and it is an abuse of discretion.

Second, the order by the trial court that both of the parties' residences be sold is an abuse of discretion because it fails to take into consideration the total inability of Mrs. Ruhsam to qualify for mortgage financing to purchase alternate housing for herself. Her income during the last twelve months was \$1,600 and her income during the last two years combined was \$5,600. She has chronic and serious health problems and no substantial work experience in the last one and one-half decades. She is not legally entitled to VA financing and she clearly does not qualify for conventional financing since she has no substantial source of income. Yet the trial court has ordered that both of the parties' residences be sold. This decision condemns Mrs. Ruhsam to renting her housing for the rest of her life. It is economically unwise, it is not necessitated by the financial circumstances of the parties, and it is an abuse of the trial court's discretion.

B. The Trial Court's Totally Arbitrary Distribution Of The Parties' Personal Property Constitutes An Abuse Of Discretion.

Both parties proposed to the trial court distribution schemes for their personal property. (Exhibits 6D & 7D and 13P.) The trial court found both of these proposals to be unsatisfactory and entirely rejected them. (Memorandum Decision ¶4 at R. at 98, infra at A-5.) Rather than fashioning a workable distribution of the parties' personal property, the trial court arbitrarily elected to require the parties to sequentially select items from a list of the personal property. (Decree ¶12, R. at 158-59, infra at A-40 through A-41.) The only precedential support for such a procedure is found in the Biblical custody determination of King Solomon and the trial court's decision in this case is no more appropriate and is equally abusive of its discretion.

The procedure utilized by the trial court utterly fails to fulfill the most important purpose of the property distribution: to ensure that the parties' resources are maximized to the greatest extent possible. The trial court has utterly failed to make any attempt to place these parties in the best possible position to continue with their lives. There can be no justification for such a procedure. It is a clear abuse of discretion.

**POINT IV. IN THIS EQUITABLE ACTION, THIS COURT MAY
REVIEW ALL ASPECTS OF THE TRIAL COURT'S RULINGS.**

While due deference must be extended to the views of the trial judge who had a personal opportunity to observe the witnesses, this Court is by no means bound by the express or implicit Findings of Fact reached by the trial court. This is a domestic matter and, therefore, highly equitable in nature. In such an action, it is the duty of this Court to review and consider questions both of fact and of law. As noted in Wiese v. Wiese, 24 Utah 2d 236, 469 P.2d 504 (1970):

This is an equitable matter, and upon appeal the binding effect of the Findings made by the trial court differs from that in a law matter. We may here review questions of both law and fact; and after making due allowance for the advantaged position of the trial judge to observe the demeanor of witnesses upon the stand, we may be persuaded that a Finding is against the preponderance of the evidence to such an extent that we would be justified in disapproving it or even making a Finding of our own.

469 P.2d at 505 (numerous citations omitted). In that case, this Court rejected the trial court's determination and reversed the trial court. Likewise in the present case, this Court cannot let the alimony and property distribution stand; they must be either reversed or remanded.

CONCLUSION

The alimony and property distribution ordered by the trial court in this action are unfair to Mrs. Ruhsam. The trial court, in granting only \$600 per month in alimony, bases its decision upon the perception that Mr. Ruhsam is in "precarious health" and has heart problems. In fact, there is no evidence to support either Finding and the evidence overwhelmingly demonstrates that Mr. Ruhsam's health is far superior to that of Mrs. Ruhsam, who has had two major cancer surgeries in the past seven years and has numerous chronic medical problems. Additionally, Mr. Ruhsam's demonstrated earning capability is far in excess of that of Mrs. Ruhsam. The award of \$600 per month for alimony is so insubstantial as to constitute an abuse of discretion, particularly in view of the fact that it is based upon factual determinations unsupported by any evidence.

Additionally, the trial court's decision that both of the parties' residences be sold and that the occupancy and right to sell the principal residence vacillate back and forth between the parties on a six-month cycle is extremely prejudicial to Mrs. Ruhsam and constitutes an abuse of discretion. Not only is Mrs. Ruhsam unable to qualify for mortgage funds to purchase

replacement housing, she must move in and out of the house every six months until it can be sold. As a practical matter, she is, therefore, also deprived of any practical use of the house until it is sold.

Similarly, the trial court's arbitrary order that the parties sequentially select items from a list of all their items of personal property is ill-founded and constitutes an abuse of discretion. The role of the trial court is to maximize the economic resources of the parties but this arbitrary approach accomplishes nothing other than a physical separation of the assets. It results in a random distribution of the parties' assets rather than a logical distribution from which the parties may enjoy the greatest possible benefit.

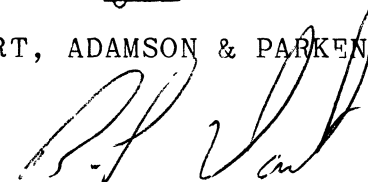
Defendant-Appellant Janet Elizabeth Ruhsam respectfully requests that this Court augment the alimony awarded to her and reverse the property distribution entered by the trial court. In the alternative, Mrs. Ruhsam requests that this Court remand this case to the trial court for the entry of an appropriate and augmented alimony award and with instructions to hear evidence and give consideration to the needs and circumstances of the parties and fashion a property distribution that will permit

Mrs. Ruhsam a place in which to live and maximize the economic resources of the parties.

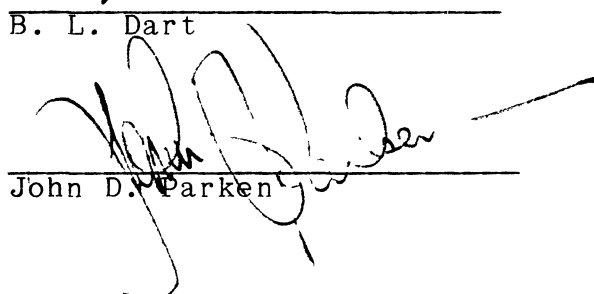
RESPECTFULLY SUBMITTED this 20 day of August, 1985.

DART, ADAMSON & PARKEN

By


B. L. Dart

By


John D. Parken

CERTIFICATE OF SERVICE

I hereby certify, as counsel for Appellant, that four (4) true and correct copies of the foregoing Appellant's Brief were served upon counsel for Respondent by mailing on the 2nd day of August, 1985, addressed as follows:

Pete N. Vlahos, Esq.
VLAHOS & SHARP
2447 Kiesel Avenue
Ogden, Utah 84401



Counsel for Appellant

ADDENDUM

	<u>Page</u>
Memorandum Decision (18 Jan 85)	A-2
Findings of Fact and Conclusions of Law (11 Mar 85)	A-10
Decree of Divorce (11 Mar 85)	A-21
Amended Findings of Fact and Conclusions of Law (16 May 85)	A-27
Amended Decree of Divorce (16 May 85)	A-37

IN THE DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH

HUGH P. VON ZELL RUHSAM, SR.,

Plaintiff,

vs.

JANET ELIZABETH RUHSAM,

Defendant.

MEMORANDUM DECISION

Case No. 88670
88756

The two files (88670 and 88756) have been combined together for the purpose of this trial. The older one is the husband's prayer for a divorce; the newer one is the wife's prayer for divorce. By stipulation, the parties have agreed that the two files would be combined into this one trial. The Court considers that they are combined into the older file.

The parties stipulated that each of them would limit their evidence to a minimum showing of grounds for divorce. It may be that the reason for this stipulation was to limit further hard feelings and animosities. The parties have followed this stipulation during the trial. It is clear at the time of trial that each of the parties does intend to abandon this marriage relationship. It is also clear that neither party is willing to make the concessions necessary for any possible reconciliation at this time. The Court, on the state of the evidence before it, must conclude that the divorce is the result of equal fault on both sides, and that the fault does not justify for any reason a change in property awards or alimony than would have been proper in a general case of parties in their situation divorcing one another because of equal fault.

FACTS

1. Each of the parties have grounds for divorce and each is awarded a divorce to become final of the expiration of the statutory waiting period. The grounds for divorce is mental cruelty. The cruelty is the abandonment of the marriage.

2. Mr. Ruhsam had been married before and had three children. Mrs. Ruhsam had been married, but had no children. The parties met and married while Mr. Ruhsam continued to pay his child support. This was fully anticipated by both parties at the time of the marriage. The fact that some of the resources were used to pay his child support should neither increase nor decrease the property awarded at this time to either party.

3. The parties have been married for approximately 14 years. Most of the property accumulated or that now exists is the result of the earnings of the husband. This fact should neither increase nor decrease the award to either party. At the time of the marriage it was anticipated that she would follow him at the various air force bases and be an air force wife. Such plan would normally interfere with her earning power. The parties merge together their resources, and the Court views the conduct of the parties to be that which would be deemed to have created what is tantamount to a partnership from that day forward. Neither party preserved the rights in any of the properties which they held before their marriage as against the other, and each earning an equal share of anything accumulated.

This was their continued arrangement until unhappiness ensued and until after the husband left the air force. Since his leaving of the armed forces, his earnings have continued to be the principal source of the accumulation of properties, but she has also made an effort that was in accordance with her ability at that time. The Court deems the situation to be one in which each of the parties are entitled to approximately an equal division of the properties accumulated. The husband has earned a pension as a result of his service in the armed forces. The portion of the pension that he earned before this marriage should be regarded as his and his alone. There is some evidence that a period of courtship existed before the marriage took place but there is no evidence as to whether he was or was not married at that time, nor is there any evidence of a partnership arrangement involved in the property. This persuades the Court that it should not be regarded a partnership before the time of the actual marriage. His pension to the degree it was earned after the marriage should be viewed as joint property, with each party entitled to an equal share, in accordance with principles enunciated in previous Utah decisions. She is awarded her share on that basis and he should be ordered to sign the necessary papers and/or allotments to cause that sum to be paid to her directly. The physical health and earning capacity of each of the parties is important in the Court's determination on the issue of the award of alimony. His health is somewhat precarious, in that he is clearly the older of

the two. His health is also precarious in the sense that he has a heart condition and other health problems. His earning capacity at this time is somewhere between \$2,000 and \$3,000 per month. Her earning capacity would normally be enhanced by the fact that she is younger, in fact the findings of fact should recite the age of each. However, her health in the last four years has made her less employable. She has had cancer in one breast, which necessitated surgery, and a few years later in the other breast, which again resulted in surgery. She has also jaw and teeth problems. All of these events have produced a degree of stress that has, up to the date of trial, limited her earning capacity to about \$200 per month. The degree to which her earning capacity would return to that which she previously enjoyed as an educated woman is speculative at this time. The alimony award here made is made on the hypothesis that his earnings will be between \$2,000 to \$3,000 per month and her earnings will be in the neighborhood of \$200 per month both for the foreseeable future. Any gross material change in the earning capacity of these parties might well result in a change in the alimony award here made. The Court fixes the alimony here awarded at \$600 per month, that should be taxable to her as income and should continue until further order of the Court.

4. The Court has considered at length how the division of properties might be made. The Court deems the suggested division of each side to be plagued by self-interest. The Court

encourages the parties to attempt to negotiate the details of the division during the next 30 days. If they have not arrived at a detail split in accordance with the general principle that everything is to be divided equally, the Court will attempt to make such an outline. This division is predicated on the Court's conclusion as indicated below:

(a) The husband's testimony is correct insofar as it describes the division of property which was made to make the holdings safe from his former wife. The division which he has testified to as having occurred up to this time as an equal split of the properties then considered is accepted by the Court.

(b) The division of the real property should be made in an equal basis on the principle of that which can be finally realized after sale. The Court orders both properties sold, she may control the sale of the home she now lives in for the next six months, if she has not completed the sale by then, the husband may have occupancy and a right to effect the sale for the next six months. The husband may control the sale of the other real estate. The total resulting from all of the real estate shall be credited equally to each party.

(c) All cash reserves as they existed on the day of the trial are to be divided equally.

(d) The division of the automobiles presents a particular difficulty. The Court concludes that the division is to be as follows: he is to declare the value that he puts upon the

automobile which he now controls, and his share will be charged with that figure, unless she deems that figure to be unfair. In which case she may take over the car and she will be charged with the figure. She shall enjoy the use of the car she is now driving, but must declare within ten days what is its value. She may keep that vehicle as her share of that figure, less share paid after separation, unless the husband, within ten days after that, declare the figure is inappropriate, in which case he may take over the vehicle and have his share charged with that percentage.

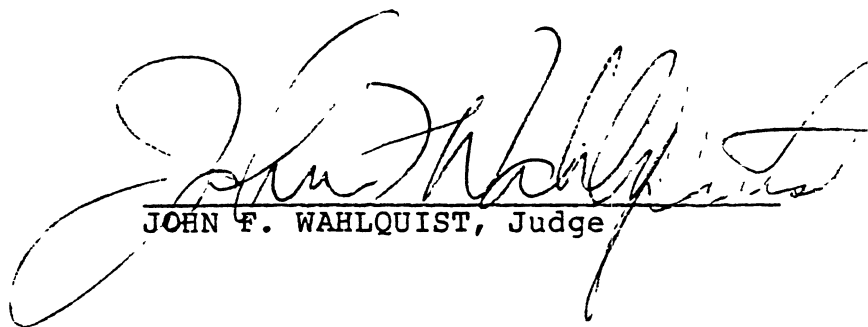
(e) Each of the parties are expected by the Court to attempt to establish independent households and, therefore, have an approximately equal right to the furniture and fixtures that they have accumulated during their marriage or which were merged into their general holdings during their marriage. The Court, therefore, grants to each of the parties their individual wearing apparel and jewelry, makeup, and sporting goods equipment. She is awarded the pets. The Court next directs that what shall occur is that the lists of personal property submitted to the Court by Mrs. Ruhsam shall be used as the base. She may chose one item, regardless of what that is, that is on the list she submitted which includes both what she thinks should be awarded to her and that which she thinks should be awarded to him, then that item will be awarded to her. He shall then have a right to chose one item from said list which shall be his. This procedure shall be followed until the list of property is exhausted. If

the parties cannot do this without supervision, the Court will order them to appear at the court at a time set and the selections will be monitored by either the Court or one of the court personnel designated to monitor the choosing.

(f) It appears to the Court that each party will have resources from which they could pay their attorney. Each party must compensate their own attorney. The debts that existed at the time of their separation shall be paid from the joint assets of the parties. Each party will pay those debts which they have accumulated since the filing of the divorce.

(g) The Court orders that before the distribution of the cash reserves are made, there shall be charged against the husband the sum of \$6,500 which is to be represented as the membership in the Ogden Golf and County Club, which he is awarded.

DATED this 18 day of January, 1985.



JOHN F. WAHLQUIST, Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 18 day of January, 1985,
a true and correct copy of the foregoing Memorandum Decision was
served upon the following:

Pete N. Vlahos
VLAHOS & SHARP
Attorney for Plaintiff
2447 Kiesel Avenue
Ogden, Utah 84401

Jane A. Marquardt
MARQUARDT, HASENYAGER & CUSTEN
Attorney for Defendant
2661 Washington Boulevard
Ogden, Utah 84401



PAULA CARR, Secretary

1001 1-24-85
J. N. Sharp

PETE N. VLAHOS
VLAHOS & SHARP
Attorney for Plaintiff
Legal Forum Building
2447 Kiesel Avenue
Ogden, Utah 84401
Telephone: 621-2464

IN THE DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

HUGH P. VON ZELL RUHSAM, SR,)	FINDINGS OF FACT AND CONCLUSIONS OF LAW
Plaintiff,)	
vs)	
JANET ELIZABETH RUHSAM,)	CONSOLIDATED CIVIL NOS. 88670 & 88756
Defendant.)	
)	

This matter having come on regularly for trial on the 3rd day of January, 1985, before the Honorable John F. Wahlquist, one of the Judges of the above-entitled Court, sitting without a jury, and the Plaintiff appearing in person and with his attorney, Pete N. Vlahos, and the Defendant appearing in person and with her attorney, Jane A. Marquardt, and it having been shown that each of the parties had filed a Complaint in the above-entitled matter, and the Defendant's Complaint having served as an Answer and Counterclaim, and the parties having stipulated that the two cases be consolidated and that the parties would limit

evidence to grounds to a divorce to a minimum in order to eliminate hard feelings and animosities, and each of the parties having been sworn and testifying in their own behalf, exhibits having been offered and received, and the Court having taken said matter under advisement and having rendered its memorandum decision in writing, and the Court being fully cognizant of all matters pertaining therein, enters the following:

FINDINGS OF FACT

1. That the Plaintiff has been an actual and bona fide resident of Weber County, State of Utah for at least three (3) months prior to the commencement of this action.

2. That Plaintiff and Defendant were married in Colorado Springs, Colorado, on or about the 18th day of December, 1970, and ever since said time, have been and still are husband and wife.

3. That there are no children born as issue of this marriage and none are expected.

4. That the Defendant has treated the Plaintiff cruelly, and that the Plaintiff has treated the Defendant cruelly, in that both parties have argued, are unable to get along and that each has given up on saving the marriage, rendering further marital relations between the parties herein intolerable.

5. That during the course of the marriage, the parties herein have acquired a home, located at 1686 Mohawk

Lane in Ogden, Weber County, Utah; a rental home located at 2079 West 3900 South in Roy, Utah, said home presently up for sale; household furniture and furnishing, appliances, a 1981 Oldsmobile Cutlass automobile, which Defendant estimates has a value of \$5,987.50, and a 1976 Datsun truck and shell, valued at \$1,725.00; membership at the Ogden Golf and Country Club, valued at \$6,500.00, exclusive of transfer fee; a home located at 1865 East 5775 South in South Ogden, Utah, which has been sold and that the parties have previously divided gold coins, silver coins, silver bullion, old bullion, E.F. Hutton cash reserve and that each of the parties have these items in their possession.

6. That during the course of the marriage, the parties herein have incurred a debt due and owing on the family home located at 1686 Mohawk Lane in Ogden, Utah; the mortgage due and owing on the home located at 2079 West 2900 South in Roy, Weber County, Utah, and that the parties have each incurred debts and obligations since the separation.

7. That the Plaintiff is retired from the United States Air Force, having retired on April 30, 1979, with 26 years, 11 months, or a total of 323 months, and that the parties were married 8 years, 4½ months, or 100 months during the time the Plaintiff was in the military, or approximately 31.1% while Plaintiff was in the military.

8. That the Plaintiff had been married before, and had three children. That the Defendant had been married,

but had no children. The parties met and married while the Plaintiff continued to pay his child support. This was really anticipated by both parties at the time of the marriage. The fact that some of the resources were used to pay his child support, should neither increase nor decrease the property awarded by the Court.

9. That the parties have been married for approximately 14 years. Most of the property accumulated or that which now exists is a result of the earnings of the husband. This fact should neither increase nor decrease the award to either party. At the time of the marriage, it was anticipated that the Defendant would follow the Plaintiff at the various air force bases, and be an air force wife. Such plan would normally interfere with the Defendant's earning power. The parties merged together their resources, and the Court views that the conduct of the parties to be that which would be deemed to have created what is tantamount to a partnership from that day forward. Neither party preserved the rights of any of the properties which they held before this marriage as against the other, and each earning an equal share of anything accumulated. This was the parties continued arrangement until unhappiness ensued and until after the Plaintiff left the air force. Since the Plaintiff's leaving of the air force, his earnings have continued to be the principal source of the accumulation of properties, but the Defendant has also made an effort that was

in accordance with her ability at that time. The Court deems the situation to be one in which each of the parties are entitled to approximately an equal division of the properties accumulated. The Plaintiff has earned a pension as a result of his service in the armed forces. That portion of the pension that Plaintiff earned before this marriage should be regarded as his and his alone, said portion being 68.9%, and 31.1% of the retirement accumulated in the marriage. There is some evidence that a period of courtship existed before the marriage took place but there is no evidence as to whether he was or was not married at the time, nor is there any evidence of a partnership arrangement involved in the property. The Court is persuaded that it should not be regarded as a partnership for the time of the actual marriage. Plaintiff's pension to the degree was earned after the marriage should be viewed as joint property, with each party entitled to any equal share, said portion being 31.1% and should be shared in accordance with the principles enunciated in the Utah decisions specifically Woodward v. Woodward. Defendant is awarded her share on that basis, and Plaintiff should be ordered to sign the necessary papers and/or allotments to cause that sum to be paid to her directly.

10. The physical health and earning capacity of each of the parties is important in the Court's determination on the issue of alimony. Plaintiff's health is somewhat

precarious, in that he is clearly the older of the two, his health is also precarious in the sense that he has a heart condition and other health problems. The Plaintiff's earning capacity at this time is somewhere between \$2,000.00 and \$3,000.00 per month. That Defendant's earning capacity would normally be enhanced by the fact that she is younger, that Plaintiff was born on January 1, 1929, and that the Defendant was born on August 21, 1935, making the Plaintiff 56 years of age, and the Defendant 49 years of age.

11. The Defendant's health in the last four years has made the Defendant less employable in that she has had cancer in one breast, which necessitated surgery, and a few years later, in the other breast, which again resulted in surgery. Defendant has also jaw and teeth problems. All of these events have produced a degree of stress that has, up to the date of trial, limited her earning capacity of about \$200.00 per month.

12. The degree to which her earning capacity would return to that which she previously enjoyed as an educated woman, is speculative at this time. The alimony awarded here being made is made on the hypothesis that Plaintiff's earnings would be between \$2,000.00 and \$3,000.00 per month, and her earnings would be in the neighborhood of \$200.00 per month, both for the foreseeable future. The Court finds that any gross material change in earning capacity of these parties might well result in the change in the alimony award

A-15

here made. That from the above and foregoing Findings of Fact, the Court arrives at the following:

CONCLUSIONS OF LAW

1. That the Plaintiff, HUGH P. RUHSAM, is entitled to a Decree of Divorce from the Defendant, JANET ELIZABETH RUHSAM, and the Defendant, JANET ELIZABETH RUHSAM, is entitled to a Decree of Divorce from the Plaintiff, HUGH P. RUHSAM, same to become final 3 months from the signing and entry with the Court.

2. That the Defendant is awarded 15.5% of the Plaintiff's Military retirement as her sole and separate property, and the Plaintiff is to sign whatever papers are necessary so that the allotment may be paid directly to the Defendant.

3. That if the taxes are taken out of Plaintiff's retirement, then Defendant will receive 15.5% net, and if Defendant receives 15.5% of the gross, she will be responsible for her own taxes.

4. That the Defendant is granted the sum of \$600.00 per month as and for alimony, said alimony shall continue until the further order of the Court and shall be taxable to the Defendant as income, said alimony being based on the Plaintiff's earnings of between \$2,000.00 and \$3,000.00 per month, and the Defendant's earnings being \$200.00 per month, and any gross material change in the earning capacity of

these two parties, may well result in a change in the alimony award made.

5. That the items of gold, silver and cash reserve management accounts that have already been divided, shall be accepted by the Court and considered as each having received 1/2 of those assets.

6. That the real property shall be made in the equal basis or principal of that which can be finally realized after sale.

7. The Court orders both the family homes located at 1686 Mohawk Lane in Ogden, Weber County, Utah, and 2079 West 3900 South in Roy, Weber County, Utah be sold, and after paying the mortgage and costs of sale, the proceeds shall be divided equally.

8. That the Defendant shall have control over the sale of the home where she now lives, which is 1686 Mohawk Lane in Ogden, Weber County, Utah, for a period of 6 months, and if the sale has not been completed by then, the Plaintiff shall have occupancy of the home for 6 months and the right to effect the sale for the next 6 months.

9. That the Plaintiff shall have control of the sale of the other real estate and the proceeds from the sale of both homes shall be divided equally.

10. That all cash reserves as they existed as of the date of trial, shall be divided equally between the parties.

11. That the Plaintiff is shall be awarded the 1976 Datsun truck and shell, valued at \$1,725.00, and the Defendant is hereby awarded the 1981 Oldsmobile which the Defendant values at \$5,987.00, and that each of the parties shall be charged with the values of these sums, unless either feels the figure is unfair, and that each must declare within 10 days what is its value, which both have done, and that the Plaintiff may keep his car as his share of the assets, and Defendant keep her car as her share of the assets towards the total distribution of the assets on a fifty-fifty basis.

12. The Court grants to each of the parties, their individual wearing apparel, jewelry, makeup, and sporting goods equipment, with the Defendant to be awarded the pets.

13. That the Court then directs that the lists of personal property submitted to the Court by Mrs. Ruhsam, the Defendant, shall be used as the basis, dividing said property as follows: That the Defendant may choose one item, regardless of what that is, that is on this list which includes both what she things should be awarded to her, that which she believes should be awarded to the Plaintiff, and that item will be awarded to her. The Plaintiff will then have a right to chose one item from said list, which shall be his. This procedure shall be followed until the list of property is exhausted. If the parties cannot do this without supervision, the Court will order them to appear at

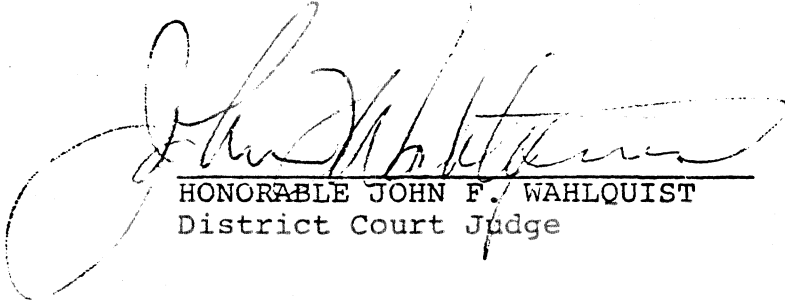
the Court at a time set, and the selections will be monitored by either the Court, or one of the Court personnel designated to monitor the choosing. That the Plaintiff shall be awarded the Ogden Golf and Country Club membership, valued at \$6,500.00, and shall be charged that sum prior to the distribution of the cash reserves, so that each will share equally.

14. That those debts that existed at the time the parties separated, shall be paid from the joint assets of the parties, but that each of the parties shall pay those debts that they have accumulated since the filing of the divorce.

15. That each of the parties must assume and pay their own attorney fees and costs.

DATED this 17 day of March, 1985.

BY THE COURT:


HONORABLE JOHN F. WAHLQUIST
District Court Judge

APPROVED AS TO FORM:

ATTORNEYS AT LAW
LEGAL FORUM BUILDING
2447 KIESEL AVENUE
OGDEN, UTAH 84401

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of March, 1985,
I mailed a true and correct copy of the above and foregoing
FINDINGS OF FACT AND CONCLUSIONS OF LAW by placing same in
the United States Mail postage prepaid and addressed :

Jane A. Marquardt
Attorney for Defendant
2661 Washington Blvd.
Ogden, Utah 84401

Karen Humphreys
SECRETARY

PETE N. VLAHOS
VLAHOS & SHARP
Attorney for Plaintiff
Legal Forum Building
2447 Kiesel Avenue
Ogden, Utah 84401
Telephone: 621-2464

IN THE DISTRICT COURT OF WEBER COUNTY
STATE OF UTAH

HUGH P. VON ZELI RUHSAM, Sr.

Plaintiff,

vs

JANET ELIZABETH RUHSAM

Defendant.

DECREE OF DIVORCE

CONSOLIDATED CIVIL NOS.
98670 & 88756

This matter having come on regularly for trial on the 3rd day of January, 1965, before the Honorable John F. Wahlquist, one of the Judges of the above-entitled Court, sitting without a jury and the Plaintiff appearing in person and with his attorney, Pete N. Vlahos, and the Defendant appearing in person and with her attorney, Jane A. Marquardt, and it having been shown that each of the parties had filed a complaint in the above-entitled matter, and the Defendant's Complaint having served as an Answer and Counterclaim, and the parties having stipulated that the two cases be consolidated and that the parties would limit

evidence to grounds to a ~~divorce to a~~ ^{indexed} minimum in order to eliminate hard feelings and animosities, and each of the parties having been sworn and testifying in their own behalf, exhibits having been offered and received, and the Court having taken said matter under advisement and having rendered its memorandum decision in writing, and the Court being fully cognizant of all matters pertaining therein, and having made its Findings of Fact and Conclusions of Law, separately stated in writing.

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the Plaintiff, HUGH P. RUHSAM, is hereby granted a Decree of Divorce from the Defendant, JANET ELIZABETH RUHSAM, and the Defendant, JANET ELIZABETH RUHSAM, is hereby granted a Decree of Divorce from the Plaintiff, HUGH P. RUHSAM, same to become final 3 months from the signing and entry with the Court.

IT IS HEREBY FURTHER ORDERED, ADJUDGED as follows:

1. That the Defendant is hereby awarded 15.5% of the Plaintiff's Military retirement as her sole and separate property, and the Plaintiff is to sign whatever papers are necessary so that the allotment may be paid directly to the Defendant.

2. That if the taxes are taken out of Plaintiff's retirement, then Defendant will receive 15.5% net, and if

Defendant receives 15.5% of the gross ~~the gross~~ ^{she} will be responsible for her own taxes.

3. That the Defendant is hereby granted the sum of \$600.00 per month as and for alimony, said alimony shall continue until the further order of the Court and shall be taxable to the Defendant as income, said alimony being based on the Plaintiff's earnings of between \$2,000.00 and \$3,000.00 per month, and the Defendant's earnings being \$200.00 per month, and any gross material change in the earning capacity of these two parties, may well result in a change in the alimony award made.

4. That the items of gold, silver and cash reserve management accounts that have already been divided, shall be accepted by the Court and considered as each having received 1/2 of those assets.

5. That the real property shall be made in the equal basis or principal of that which can be finally realized after sale.

6. The Court hereby orders both the family homes located at 1686 Mohawk Lane in Ogden, Weber County, Utah, and 2079 West 3900 South in Roy, Weber County, Utah be sold, and after paying the mortgage and costs of sale, the proceeds shall be divided equally.

7. That the Defendant shall have control over the sale of the home where she now lives, which is 1686 Mohawk Lane in Ogden, Weber County, Utah, for a period of 6 months,

and if the sale has not been ~~completed~~ ^{completed} by then, the Plaintiff shall have occupancy of the home for 6 months and the right to effect the sale for the next 6 months.

8. That the Plaintiff shall have control of the sale of the other real estate and the proceeds from the sale of both homes shall be divided equally.

9. That all cash reserves as they existed as of the date of trial, shall be divided equally between the parties.

10. That the Plaintiff is hereby awarded the 1976 Datsun truck and shell, valued at \$1,725.00, and the Defendant is hereby awarded the 1981 Oldsmobile which the Defendant values at \$5,987.00, and that each of the parties shall be charged with the values of these sums, unless either feels the figure is unfair, and that each must declare within 10 days what is its value, which both have done, and that the Plaintiff may keep his car as his share of the assets, and Defendant keep her car as her share of the assets towards the total distribution of the assets on a fifty-fifty basis.

11. The Court hereby grants to each of the parties, their individual wearing apparel, jewelry, makeup, and sporting goods equipment, with the Defendant to be awarded the pets.

12. That the Court hereby directs that the lists of personal property submitted to the Court by Mrs. Ruhsam, the Defendant, shall be used as the basis, dividing said

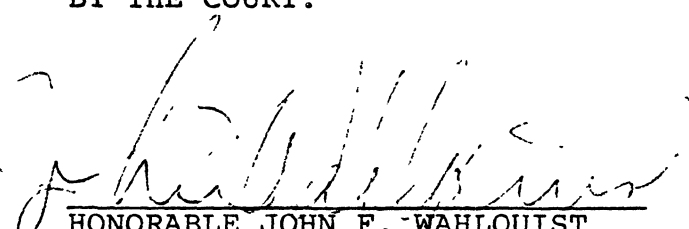
property as follows: That the Defendant shall choose one item, regardless of what that is, that is on this list which includes both what she things should be awarded to her, that which she believes should be awarded to the Plaintiff, and that item will be awarded to her. The Plaintiff shall then have a right to chose one item from said list, which shall be his. This procedure shall be followed until the list of property is exhausted. If the parties cannot do this without supervision, the Court will order them to appear at the Court at a time set, and the selections will be monitored by either the Court, or one of the Court personnel designated to monitor the choosing. That the Plaintiff shall hereby be awarded the Ogden Golf and Country Club membership, valued at \$6,500.00, and shall be charged that sum prior to the distribution of the cash reserves, so that each will share equally.

13. That those debts that existed at the time the parties separated, shall be paid from the joint assets of the parties, but that each of the parties shall pat those debts that they have accumulated since the filing of the divorce.

14. That each of the parties are ordered to assume and pay their own attorney fees and costs.

DATED this 7 day of March, 1985.

BY THE COURT:


HONORABLE JOHN F. WAHLQUIST
District Court Judge

APPROVED AS TO FORM:

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 7th day of March, 1985,
I mailed a true and correct copy of the above and foregoing
DECREE OF DIVORCE by placing same in the United States Mail
postage prepaid and addressed :

Jane A. Marquardt
Attorney for Defendant
2661 Washington Blvd.
Ogden, Utah 84401


SECRETARY

ATTORNEYS AT LAW
LEGAL FORUM BUILDING
2447 KIESEL AVENUE
OGDEN, UTAH 84401

ATTORNEYS AT LAW
LEGAL FORUM BUILDING
2447 KIESEL AVENUE
OGDEN, UTAH 84401

PETE N. VLAHOS
VLAHOS & SHARP
Attorney for Plaintiff
Legal Forum Building
2447 Kiesel Avenue
Ogden, Utah 84401
Telephone: 621 2464

MAY 16 4 43 PM '85
FILED
WEBER COUNTY CLERK
RICHARD R. GREENE

IN THE DISTRICT COURT OF WEBER COUNTY
STATE OF UTAH

HUGH P. VON ZELL RUHSAM, SR.,)	AMENDED
Plaintiff,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
v.)	
)	
JANET ELIZABETH RUHSAM,)	Consolidated Civil Nos.
)	88670 & 88756
Defendant.)	

This matter having come on regularly for trial on the 3rd day of January, 1985, before the Honorable John F. Wahlquist, one of the Judges of the above-entitled Court, sitting without a jury, and the Plaintiff appearing in person and with his attorney, Pete N. Vlahos, and the Defendant appearing in person and with her attorney, Jane A. Marquardt, and it having been shown that each of the parties had filed a Complaint in the above-entitled matter, and the Defendant's Complaint having served as an Answer and Counterclaim, and the parties having stipulated that the two cases be consolidated and that the parties would limit evidence to grounds to a divorce to a minimum in order to

A-27

FINDINGS OF FACT,
CONCLUSIONS OF LAW

eliminate hard feelings and animosities, and each of the parties having been sworn and testifying in their own behalf, exhibits having been offered and received, and the Court having taken said matter under advisement and having rendered its memorandum decision in writing, and the Court being fully cognizant of all matters pertaining therein, and the Court having previously entered Findings of Fact, Conclusions of Law and a Decree of Divorce, now enters the following Amended Findings and Conclusions in order to reflect the court's orders of May 13, 1985:

FINDINGS OF FACT

1. That the Plaintiff has been an actual and bona fide resident of Weber County, State of Utah for at least three (3) months prior to the commencement of this action.

2. That Plaintiff and Defendant were married in Colorado Springs, Colorado, on or about the 18th day of December, 1970, and ever since said time, have been and still are husband and wife.

3. That there are no children born as issue of this marriage and none are expected.

4. That the Defendant has treated the Plaintiff cruelly, and that the Plaintiff has treated the Defendant cruelly, in that both parties have argued, are unable to get along and that each has given up on saving the marriage, rendering further marital relations between the parties herein intolerable.

5. That during the course of the marriage, the parties herein have acquired a home, located at 1686 Mohawk

Lane in Ogden, Weber County, Utah; a rental home located at 2079 West 3900 South in Roy, Utah, said home presently up for sale; household furniture and furnishings, appliances, a 1981 Oldsmobile Cutlass automobile, which Plaintiff estimates has a fair market value of \$6,350.00 and Defendant estimates has a value of \$5,987.00, and a 1976 Datsun truck with shell, valued at \$1,725.00; membership at the Ogden Golf and Country Club, valued at \$6,500.00, exclusive of transfer fee; a home located at 1865 East 5775 South in South Ogden, Utah, which has been sold and that the parties have previously divided gold coins, silver coins, silver bullion, old bullion, E.F. Hutton cash reserve and that each of the parties have these items in their possession.

6. That during the course of the marriage, the parties herein have incurred a debt due and owing on the family home located at 1686 Mohawk Lane in Ogden, Utah; the mortgage due and owing on the home located at 2079 West 3900 South in Roy, Weber County, Utah, and that the parties have each incurred debts and obligations since the separation.

7. That the Plaintiff is retired from the United States Air Force, having retired in April 30, 1979, with 26 years, 11 months, or a total of 323 months, and that the parties were married 8 years, 4½ months, or 100 months during the time the Plaintiff was in the military, or approximately 31.1% while Plaintiff was in the military.

8. That the Plaintiff had been married before, and had three children. That the Defendant had been married

but had no children. The parties met and married while the Plaintiff continued to pay his child support. This was fully anticipated by both parties at the time of the marriage. The fact that some of resources were used to pay his child support, should neither increase nor decrease the property awarded by the Court.

9. That the parties have been married for approximately 14 years. Most of the property accumulated or that which now exists is a result of the earnings of the husband. This fact should neither increase nor decrease the award to either party. At the time of the marriage, it was anticipated that the Defendant would follow the Plaintiff at the various air force bases, and be an air force wife. Such plan would normally interfere with the Defendant's earning power. The parties merged together their resources, and the Court views that the conduct of the parties to be that which would be deemed to have created what is tantamount to a partnership from that day forward. Neither party preserved the rights of any of the properties which they held before this marriage as against the other, and each earning an equal share of anything accumulated. This was the parties continued arrangement until unhappiness ensued and until after the Plaintiff left the air force. Since the Plaintiff's leaving of the air force, his earnings have continued to be the principal source of the accumulation of properties, but the Defendant has also made an effort that was

A-30

in accordance with her ability at that time. The Court deems the situation to be one in which each of the parties are entitled to approximately an equal division of the properties accumulated. The Plaintiff has earned a pension as a result of his service in the armed forces. That portion of the pension that Plaintiff earned before this marriage should be regarded as his and his alone, said portion being \$68.9%, and 31.1% of the retirement accumulated in the marriage. There is some evidence that a period of courtship existed before the marriage took place but there is no evidence as to whether he was or was not married at the time, nor is there any evidence of a partnership arrangement involved in the property. The Court is persuaded that it should not be regarded as a partnership before the time of the actual marriage. Plaintiff's pension to the degree it was earned after the marriage should be viewed as joint property, with each party entitled to any equal share, said portion being 31.1% and should be shared in accordance with the principles enunciated in the Utah decisions specifically Woodward v. Woodward. Defendant is awarded her share on that basis, and Plaintiff should be ordered to sign the necessary papers and/or allotments to cause that sum to be paid to her directly.

10. The physical health and earning capacity of each of the parties is important in the Court's determination on the issue of alimony. Plaintiff's health is somewhat

precarious, in that he is clearly the older of the two, his health is also precarious in the sense that he has a heart condition and other health problems. The Plaintiff's earning capacity at this time is somewhere between \$2,000.00 and \$3,000.00 per month. That Defendant's earning capacity would normally be enhanced by the fact that she is younger, that Plaintiff was born on January 1, 1929, and that the Defendant was born on August 21, 1935, making the Plaintiff 56 years of age, and the Defendant 49 years of age.

11. That Defendant's health in the last four years has made the Defendant less employable in that she has had cancer in one breast, which necessitated surgery, and a few years later, in the other breast, which again resulted in surgery. Defendant has also jaw and teeth problems. All of these events have produced a degree of stress that has, up to the date of trial, limited her earning capacity to about \$200.00 per month.

12. The degree to which her earning capacity would return to that which she previously enjoyed as an educated woman, is speculative at this time. The alimony awarded here being made is made on the hypothesis that Plaintiff's earnings would be between \$2,000.00 and \$3,000.00 per month, and her earnings would be in the neighborhood of \$200.00 per month, both for the foreseeable future. The Court finds that any gross material change in earning capacity of these parties might well result in the change in the alimony award

here made. That from the above and foregoing Findings of Fact, the Court arrives at the following:

CONCLUSIONS OF LAW

1. That the Plaintiff, HUGH P. RUHSAM is entitled to a Decree of Divorce from the Defendant, JANET ELIZABETH RUHSAM, and that the Defendant, JANET ELIZABETH RUHSAM is entitled to a Decree of Divorce from the Plaintiff, HUGH P. RUHSAM, said divorce to become final three months from the signing and entry.

2. That the Defendant is awarded 15.55% of the Plaintiff's Military retirement as her sole and separate property, and the Plaintiff is to sign whatever papers are necessary so that the allotment may be paid directly to the Defendant.

3. That if the taxes are taken out of Plaintiff's retirement, then Defendant will receive 15.55% net, and if Defendant receives 15.55% of the gross, she will be responsible for her own taxes.

4. That the Defendant is granted the sum of \$600.00 per month as and for alimony, said alimony shall continue until the further order of the Court and shall be taxable to the Defendant as income, said alimony being based on the Plaintiff's earnings of between \$2,000.00 and \$3,000.00 per month, and the Defendant's earnings being \$200.00 per month, and any gross material change in the earning capacity of

these two parties, may well result in a change in the alimony award made.

5. That the items of gold, silver and cash reserve management accounts that have already been divided, shall be accepted by the Court and considered as each having received 1/2 of those assets.

6. That the real property shall be made in the equal basis or principal of that which can be finally realized after sale.

7. The Court orders both the family homes located at 1686 Mohawk Lane in Ogden, Weber County, Utah, and 2079 West 3900 South in Roy, Weber County, Utah be sold, and after paying the mortgage and costs of sale, the proceeds shall be divided equally.

8. That the Defendant shall have control over the sale of the home where she now lives, which is 1686 Mohawk Lane in Ogden, Weber County, Utah for a period of 6 months, and if the sale has not been completed by then, the Plaintiff shall have occupancy of the home for 6 months and the right to effect the sale for the next 6 months.

9. That the Plaintiff shall have control of the sale of the other real estate and the proceeds from the sale of both homes shall be divided equally.

10. That all cash reserves as they existed as of the date of trial shall be divided equally between the parties

II. That the Plaintiff shall be awarded the 1976 Datsun truck and shell, valued at \$1,725.00, and the Defendant shall be awarded the 1981 Oldsmobile which the Plaintiff values at \$6,350.00, and the Defendant values as \$5,987.00, and that each of the parties shall be charged with the values of these sums, unless either feels the figure is unfair, and that each must declare within 10 days what is its value, which both have done, and that the Plaintiff may keep his car as his share of the assets, and Defendant keep her car as her share of the assets towards the total distribution of the assets on a fifty-fifty basis.

12. The Court grants to each of the parties, their individual wearing apparel, jewelry, makeup, and sporting goods equipment, with the Defendant to be awarded the pets.

13. That the Court then directs that the lists of personal property submitted to the Court by Mrs. Ruhsam, the Defendant, shall be used as the basis, dividing said property as follows: That the Defendant may choose one item, regardless of what that is, that is on this list which includes both what she thinks should be awarded to her, that which she believes should be awarded to the Plaintiff, and that item will be awarded to her. The Plaintiff will then have a right to choose one item from said list, which shall be his. This procedure shall be followed until the list of property is exhausted. If the parties cannot do this without supervision, the Court will order them to appear at the

Court at a time set, and the selections will be monitored by either the Court, or one of the Court personnel designated to monitor the choosing. That the Plaintiff shall be awarded the Ogden Golf and Country Club membership, valued at \$6,500.00, exclusive of transfer fee, and shall be charged that sum prior to the distribution of the cash reserves, so that each will share equally.

14. That those debts that existed at the time of the parties separation, shall be paid from the joint assets of the parties, but that each of the parties shall pay those debts that they have accumulated since the filing of the divorce.

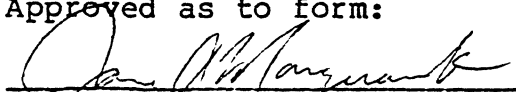
15. That each of the parties must assume and pay their own attorney fees and costs.

DATED this 16 day of May, 1985

BY THE COURT:


JOHN F. WAHLQUIST
District Court Judge

Approved as to form:


JANE A. MARQUARDT
Attorney for Defendant


PETE N. VLAHOS
Attorney for Plaintiff

LEGAL FORUM BUILDING
2447 KIESEL AVENUE
OGDEN, UTAH 84401

PETE N. VLAHOS
VLAHOS & SHARP
Attorney for Plaintiff
Legal Forum Building
2447 Kiesel Avenue
Ogden, Utah 84401
Telephone: 621 2464

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FILED
WEBER COUNTY CLERK
RICHARD R. GREENE

IN THE DISTRICT COURT OF WEBER COUNTY
STATE OF UTAH

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HUGH P. VON ZELL RUHSAM, SR.,)	
Plaintiff,)	DECREE OF DIVORCE
v.)	AMENDED NUNC PRO TUNC
JANET ELIZABETH RUHSAM,)	
Defendant.)	Consolidated Civil Nos.
	88670 & 88756

This matter having come on regularly for trial on the 3rd day of January, 1985, before the Honorable John F. Wahlquist, one of the Judges of the above-entitled Court, sitting without a jury, and the Plaintiff appearing in person and with his attorney, Pete N. Vlahos, and the Defendant appearing in person and with her attorney, Jane A. Marquardt, and it having been shown that each of the parties had filed a Complaint in the above-entitled matter, and the Defendant's Complaint having served as an Answer and Counterclaim, and the parties having stipulated that the two cases be consolidated and that the parties would limit evidence to grounds to a divorce to a minimum in order to



eliminate hard feelings and animosities, and each of the parties having been sworn and testifying in their own behalf, exhibits having been offered and received, and the Court having taken said matter under advisement and having rendered its memorandum decision in writing, and the Court being fully cognizant of all matters pertaining therein, and having made its Amended Findings of Fact and Conclusions of Law, separately stated in writing, now enters the following Decree of Divorce, amended nunc pro tunc:

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the Plaintiff, HUGH P. RUHSAM, is hereby granted a Decree of Divorce from the Defendant, JANET ELIZABETH RUHSAM, and the Defendant, JANET ELIZABETH RUHSAM, is hereby granted a Decree of Divorce from the Plaintiff, HUGH P. RUHSAM, same to become final 3 months from the signing and entry with the Court.

IT IS HEREBY FURTHER ORDERED as follows:

1. That the Defendant is hereby awarded 15.55% of the Plaintiff's Military retirement as her sole and separate property, and the Plaintiff is to sign whatever papers are necessary so that the allotment may be paid directly to the Defendant.

2. That if the taxes are taken out of Plaintiff's retirement, then Defendant will receive 15.55% net, and if Defendant receives 15.55% of the gross, she will be responsible for her own taxes.

3. That the Defendant is hereby granted the sum of \$600.00 per month as and for alimony, said alimony shall continue until the further order of the Court and shall be taxable to the Defendant as income, said alimony being based on the Plaintiff's earnings of between \$2,000.00 and \$3,000.00 per month, and the Defendant's earnings being \$200.00 per month, and any gross material change in the earning capacity of these two parties, may well result in a change in the alimony award made.

4. That the items of gold, silver and cash reserve management accounts that have already been divided, shall be accepted by the Court and considered as each having received 1/2 of those assets.

5. That the real property shall be made in the equal basis or principal of that which can be finally realized after sale.

6. That the Court hereby orders both the family homes located at 1686 Mohawk Lane in Ogden, Weber County, Utah, and 2079 West 3900 South in Roy, Weber County, Utah be sold, and after paying the mortgage and costs of sale, the proceeds shall be divided equally.

7. That the Defendant may have control over the sale of the home where she now lives, which is 1686 Mohawk Lane in Ogden, Weber County, Utah, for a period of 6 months, and if the sale has not been completed by then, the Plaintiff

2553
Indexed

shall have occupancy of the home for 6 months and the right to effect the sale for the next 6 months.

8. That the Plaintiff shall have control of the sale of the other real estate and the proceeds from the sale of both homes shall be divided equally.

9. That all cash reserves as they existed as of the date of trial, shall be divided equally between the parties.

10. That the Plaintiff is hereby awarded the 1976 Datsun truck and shell, valued at \$1,725.00, and the Defendant is hereby awarded the 1981 Oldsmobile, which the Plaintiff values at \$6,350.00, and the Defendant values it as \$5,987.00, and that each of the parties shall be charged with the values of these sums, unless either feels the figure is unfair, and that each must declare within 10 days what is its value, which both have done, and that the Plaintiff may keep his car as his share of the assets, and Defendant keep her car as her share of the assets towards the total distribution of the assets on a fifty-fifty basis.

11. The Court hereby grants to each of the parties, their individual wearing apparel, jewelry, makeup, and sporting goods equipment, with the Defendant to be awarded the pets.

12. That the Court hereby directs that the lists of personal property submitted to the Court by Mrs. Ruhsam, the Defendant, shall be used as the basis, dividing said prop-

1353
Indexed

erty as follows: That the Defendant shall choose one item, regardless of what that is, that is on this list which includes both what she thinks should be awarded to her, that which she believes should be awarded to the Plaintiff, and that item will be awarded to her. The Plaintiff shall then have a right to choose one item from said list, which shall be his. This procedure shall be followed until the list of property is exhausted. If the parties cannot do this without supervision, the Court will order them to appear at the Court at a time set, and the selections will be monitored by either the Court, or one of the Court personnel designated to monitor the choosing. That the Plaintiff shall hereby be awarded the Ogden Golf and Country Club membership, valued at \$6,500.00, exclusive of transfer fee, and shall be charged that sum prior to the distribution of the cash reserves, so that each will share equally.

13. That those debts that existed at the time of the parties separation, shall be paid from the joint assets of the parties, but that each of the parties shall pay those debts that they have accumulated since the filing of the divorce.

14. That each of the parties are ordered to assume

2554
Indexed

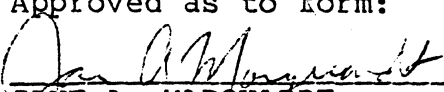
and pay their own attorney fees and costs.

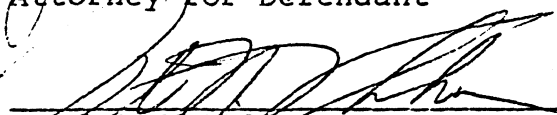
DATED this 16 day of May, 1985

BY THE COURT:


JOHN F. WAHLQUIST
District Court Judge

Approved as to form:


JANE A. MARQUARDT
Attorney for Defendant


PETE N. VLAHOS
Attorney for Plaintiff