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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ROBERT HANAN,) Civil Action No. 93-643
)
Petitioner,)
)
v.) **DECREE OF DIVORCE:**
) **EQUITABLE DISTRIBUTION**
) **OF MARITAL ESTATE**
VELMA CELESTINE HANAN,)
)
Respondent.)
_____)

This matter came before the Court for trial on May 5, 1994, on the Petition of Petitioner Dr. Robert Hanan for divorce from Respondent Velma Celestine Hanan. Though the parties do not contest the grounds for divorce, they disagree as to the equitable distribution of property. Mr. Hanan argues that he and his wife have been separated since 1978 and asserts that they made an informal property division at that time, obviating the need for any redistribution now. Mrs. Hanan denies that any exchange took place or that the marital relationship terminated in 1978. She asserts a marital property interest in Mr. Hanan's assets at the time of trial and requests equitable distribution.

FOR PUBLICATION

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I. FACTUAL BACKGROUND

The parties married in 1946, when Dr. Hanan was still in medical school. They had five children, all of whom are now emancipated adults. The parties agree that they began to live separately most of the time in approximately 1972, when Dr. Hanan directed his wife to live on a sailboat at various locations in the Caribbean Sea while he continued his pathology practice in Oxnard, California. Mrs. Hanan testified that she moved to Hawaii in 1975, again at Dr. Hanan's direction, while he continued to live in California. According to Dr. Hanan, he was unable to live with his wife and informed her of this on many occasions. However, he never told her he wanted a divorce, because he "feared her reaction." Mrs. Hanan denied that her husband told her he could no longer live with her. Her stated belief was that if she kept the marriage functioning "on whatever level [Dr. Hanan] would accept," he would eventually return to her to live.

The bulk of the Hanans' assets came from the income from Dr. Hanan's work as a pathologist.^{1/} In 1975, the Hanans executed joint wills and an inter vivos trust to dispose of their property at death. Dr. Hanan testified that in 1978, he exchanged a quitclaim deed to a home in Maui, Hawaii, for Mrs. Hanan's quitclaim deed to the family home in Oxnard, California. In his mind, this exchange of deeds was "symbolic" of the end of their relationship. Mrs. Hanan denied ever having executed any deed to

^{1/} The only other sources of the parties' assets were: 1) an inheritance worth \$170,000 that Dr. Hanan received in 1970, which he spent on family vacations, his children's school expenses, and sailing; and 2) several unimproved parcels of land in Kentucky, Arizona, New Mexico and Florida that Mrs. Hanan inherited at some time prior to trial and which she still owns.

1 the Oxnard home or having received any deed to the Maui home from
2 her husband, either in 1978 or at any other time.^{2/} The parties
3 do agree that, in 1978, Dr. Hanan owned a pathology practice and
4 a pathology laboratory in Oxnard, a plot of land in the Bahamas,
5 and other cash assets of unknown value, and that none of these
6 assets were ever subject to division.^{3/}

7 Since 1978, Dr. and Mrs. Hanan continued to live apart but
8 remained in fairly regular contact. Dr. Hanan visited his wife on
9 Maui several times between 1978 and 1983, and they corresponded
10 during the period. In 1986, Mrs. Hanan lived with Dr. Hanan for
11 a period in Ventura, California.^{4/} The parties filed joint tax
12 returns until 1986. In 1987, Dr. Hanan gave his wife a
13 condominium in Maui and a yacht to sell, and she retained the
14 proceeds, although the balance of a promissory note on the yacht
15 sale remains uncollected. Since 1986, Mrs. Hanan claims she has
16 seen her husband between one and three times per year.

17 In 1991, Dr. Hanan moved from his home in Prescott, Arizona
18 to Saipan, where he began work as a pathologist at Commonwealth
19 Health Center (CHC). Mrs. Hanan had left Hawaii in 1989 for
20 health reasons. Near the time of Dr. Hanan's departure for
21

22 ^{2/} Although neither deed was produced during trial, Dr. Hanan
23 did produce after trial a quitclaim deed to the Oxnard home,
24 signed by Mrs. Hanan on January 19, 1978, from the files of the
County Recorder of Ventura County, California. No quitclaim deed
to the Maui property was ever produced.

25 ^{3/} On cross-examination, Dr. Hanan agreed that he probably
26 held at least \$30,000 in cash or other investments at this time.
However, he was otherwise completely unable to recall the total
amount of these other assets.

27 ^{4/} Mrs. Hanan claims this visit lasted several months. Dr.
28 Hanan counters that it lasted only a couple of weeks, and that he
allowed his wife to live with him only because she had a temporary
job in the area and no place to sleep.

1 Saipan, Mrs. Hanan requested that she be allowed to live in his
2 home in Arizona, and he agreed, on the condition that she move out
3 upon his return. She lives there presently. Also in 1991, Mrs.
4 Hanan executed a holographic will just before undergoing surgery.
5 **See Petitioner's Exhibit 1.** That will revoked prior wills and
6 requested that Dr. Hanan "forfeit" his share of her estate so that
7 it could be distributed directly to their children. **Id.**

8 Since 1978, in addition to the Prescott home, Dr. Hanan has
9 purchased land in Australia (**see Respondent's Exhibit H**), bought
10 and sold a condominium in Oregon for which he still receives
11 payments, holds various cash assets and securities, and owns two
12 vehicles and assorted home furnishings. Mrs. Hanan retains the
13 Maui home, the note on the yacht, and moneys held in various
14 checking and savings accounts, in addition to real estate she
15 inherited. **See Respondent's Proposed Findings of Fact and**
16 **Conclusions of Law, at 5-7.**

17 Dr. Hanan presently receives monthly income of approximately
18 \$7,000 and has expenses of under \$1,000. Mrs. Hanan's monthly
19 income was disputed: Mrs. Hanan claimed to receive \$686 per month,
20 while Dr. Hanan asserted that her monthly income was over \$1,200
21 per month once the full amount of the rental from her Maui home
22 was included. Mrs. Hanan's monthly expenses run to \$2,896,
23 primarily because of the cost of health insurance policies and
24 medications required to control her diabetes and heart condition.
25 **See Respondent's Exhibit J.**

1 **II. DECREE OF DIVORCE**

2 The parties do not contest either the jurisdiction of this
3 Court or the grounds for divorce. Dr. Hanan has resided in the
4 Commonwealth since approximately April 1, 1991. He is employed on
5 Saipan and has filed taxes in the commonwealth since 1991. He
6 testified at trial that he has no present intention to leave. He
7 therefore fulfills the two-year residency requirement of 8 CMC §
8 1332. Moreover, the evidence is undisputed that the parties have
9 lived separately and apart for two consecutive years. Thus, good
10 grounds exist for a decree of divorce pursuant to 8 CMC § 1331(h).
11 Dr. Hanan's petition is GRANTED.

12
13 **III. EQUITABLE DISTRIBUTION OF MARITAL ESTATE**

14 **A. DETERMINATION DATE**

15 At the outset, the Court must determine whether under
16 Commonwealth law there is a marital estate to distribute. Section
17 7(f) of the Marital Property Act ("the Act"), codified at 8 CMC §
18 1820(f), provides that "[p]roperty owned by a spouse at the
19 determination date is individual property." The "determination
20 date" is in turn defined as the later of: 1) the date of marriage;
21 2) the date of establishment of Commonwealth domicile; or 3) the
22 date of passage of the Act. 8 CMC § 1813(e). Here, Petitioner
23 points out that the applicable determination date is February 22,
24 1991, the date of passage of the Act, and that nearly all of the
25 property at issue here was acquired prior to that date.
26 Petitioner thus argues that the entire marital estate is Dr.
27 Hanan's separate property.

1 Petitioner's argument overlooks 8 CMC § 1833(a), which
2 provides that in a divorce proceeding, all property owned by the
3 parties "that was acquired during the marriage and before the
4 determination date which would have been marital property [...] if
5 acquired after the determination date must be treated as if it
6 were marital property." *Hofschneider v. Hofschneider*, Civil
7 Action No. 91-994, slip op. at 3 (Super. Ct. Mar. 1, 1994); see
8 also House Standing Committee Report No. 7-17A, (Sept. 4, 1990)
9 ("Property already owned when the Act becomes effective [...] will
10 take on the characteristics of marital property only at death or
11 marital dissolution"). Thus, this Court has jurisdiction to
12 distribute as marital property all property owned by the parties
13 which would have been marital property if the Act had been in
14 force when the property was acquired.

15
16 **B. DURATION OF MARRIAGE FOR PURPOSES OF PROPERTY DIVISION**

17 The Act codifies a presumption that all property of spouses
18 is marital property. In particular, "[i]ncome earned or accrued
19 by a spouse or attributable to property of a spouse during
20 marriage [...] is marital property." 8 CMC § 1820(d). Here, with
21 only minor exceptions,^{5/} the parties' property was acquired with
22 the proceeds of income Dr. Hanan earned from his pathology
23 practice since 1947.

24 However, because the parties began to live apart in the
25 1970's, inquiry into the meaning of "during marriage" is required
26 to resolve the parties' central dispute: whether the fruits of Dr.
27 Hanan's labor since 1978 is marital or individual property.

28

^{5/} See Note 1, *supra*, detailing the parties' inheritances.

1 Dr. Hanan first argues that the parties entered into an
2 informal property agreement in 1978 by exchanging quitclaim deeds
3 to their principal residences. The Court rejects this claim for
4 two reasons. First, Dr. Hanan failed to produce one of the deeds
5 in question, casting doubt on whether such an exchange took place.
6 Second, even if such an exchange did take place, the evidence is
7 undisputed that it did not distribute the parties' entire marital
8 estate at the time. Title 8 CMC § 1830 requires that a property
9 agreement between spouses be (1) in writing, and (2) fairly and
10 equitably disclose and distribute the marital assets of the
11 parties. The asserted 1978 deed exchange fails both of these
12 requirements.

13 Next, Dr. Hanan claims that his post-1978 earnings are
14 individual property because he was separated from his wife during
15 this period. The Act defines the phrase "during marriage" as:

16 a period from the date of marriage to the date of
17 separation, dissolution, or the death of a spouse.
18 "Date of separation" requires inquiry into the
19 subjective nature of the parties' separation. A
20 temporary separation for economic or social reasons is
not enough. There must be a true breakdown of the
marriage relationship, with the parties living
separately and apart and with no present intent to
resume the marriage relationship.

21 8 CMC § 1813(h). The House Committee on Judiciary and
22 Governmental Operations added this definition of "date of
23 separation" to the draft of the Marital Property Act in order to
24 reflect its concern "with the common practice in the Commonwealth
25 of parties separating and living apart after the breakdown of the
26 marriage without recourse to the court procedures of either legal
27 separation or divorce." Standing Committee Report No. 7-17A,
28 supra, at 5.

1 The language of this "date of separation" definition also
2 tracks judicial interpretations of California's Family Code § 771,
3 which mandates that earnings of a spouse while living separate and
4 apart from the other spouse are that spouse's separate property.
5 See *In re Marriage of Von Der Nuell*, 28 Cal. Rptr. 2d 447, 448
6 (Cal. App. 1994) (reviewing cases).^{6/} According to these
7 California decisions, the fact that the parties maintain separate
8 residences does not determine the issue. Rather, a court must
9 look to the parties' conduct to see whether it evidences a
10 "complete and final break" in the marital relationship. *Von Der*
11 *Nuell*, supra; *In re Marriage of Marsden*, 181 Cal. Rptr. 910 (Cal.
12 App. 1982). Relevant evidence can include the filing of joint tax
13 returns, joint attendance of social functions, joint visits or
14 vacations, and efforts at reconciliation. As one court put it,
15 "many marriages are on the rocks for protracted periods of time
16 and it may be many years before the spouses decide to formally
17 dissolve their legal relationship." *Id.* at 450 (citing *In re*
18 *Marriage of Umphrey*, 267 Cal. Rptr. 218 (1990)). This evidence is
19 weighed against the presumption of marital property, which is
20 "fundamental to the community property system." *Von Der Nuell*,
21 supra, 28 Cal. Rptr. 2d at 449. This presumption of marital
22 property is also a foundation of family law in the Commonwealth.
23 *Ada v. Sablan*, 1 N.M.I. 415, 428 (1990); 8 CMC 1813(a).

24 Here, the parties began spending the bulk of their time apart
25 in 1974 and ceased having sexual relations some time before that.
26

27 ^{6/} Where the text of a statute is based on the jurisprudence
28 of another jurisdiction, decisions from that jurisdiction are
persuasive authority in construing the statute. *Singer, Statutes*
and Statutory Construction, § 52.02 (1992).

1 However, they continued to have regular interaction, including the
2 creation of a joint will and trust in 1975 which was not revoked
3 until 1991, the filing of joint tax returns until 1986, and
4 various gifts of real and personal property by Dr. Hanan to his
5 wife during 1987. Since 1991, Mrs. Hanan has been living in Dr.
6 Hanan's home with his permission. It is true that Dr. Hanan
7 testified that he told his wife repeatedly, beginning in 1978,
8 that he would never live under the same roof with her again.
9 Nevertheless, he allowed her to come live with him for some period
10 of time in 1986 at his home in Ventura, California. Moreover, he
11 testified that he never told Mrs. Hanan he wanted a divorce prior
12 to March 1992, allegedly because he "feared her reaction." From
13 the demeanor of the parties, it appears to the Court that the
14 "reaction" Dr. Hanan feared was Mrs. Hanan's final realization
15 that the marriage was over.

16 Dr. Hanan places great emphasis on an asserted exchange in
17 1978 of quitclaim deeds, only one of which is before this Court.
18 In view of the conflict of testimony regarding these deeds, and
19 Petitioner's failure to produce one of the documents, the Court
20 views with skepticism Dr. Hanan's claim that the parties
21 considered this exchange the "symbolic" end of their marriage.
22 Rather, viewing the testimony of the parties and the evidence
23 presented as a whole, the Court finds that there was no final
24 breakdown of the parties' marital relationship until Dr. Hanan
25 asked Mrs. Hanan for a divorce. Until that time, Mrs. Hanan was
26 attempting to maintain whatever level of marital connection Dr.
27 Hanan would accept, and Dr. Hanan had not communicated to her that
28 he wanted no marital relationship at all.

1 The position of the parties here is fundamentally different
2 from that in *Pearson v. Pearson*, 359 P.2d 386, 388 (Nev. 1961),
3 relied upon by Petitioner. There, the Nevada Supreme Court
4 reversed a denial of a divorce where the wife sincerely believed
5 reconciliation was possible after an eleven-year separation. The
6 court found that, if one party was unwilling to be reconciled, no
7 reconciliation was possible and divorce was proper. Here, the
8 issue is whether property during a given period should be deemed
9 marital or separate. If one spouse believes the marriage is still
10 functional, and conducts herself accordingly without the other
11 spouse informing her of the contrary, then she is continuing to
12 contribute to the marital community, even if that contribution is
13 limited to keeping herself emotionally available to the other
14 spouse. As long as a spouse continues such contributions, she is
15 entitled to her share of her spouse's property.

16 In sum, the Court finds that the parties¹ marriage, for
17 purposes of the Marital Property Act, did not terminate in 1978,
18 but continued until Dr. Hanan wrote to his wife in March 1992
19 requesting a divorce. Accordingly, the Court finds that all
20 property of the parties acquired prior to March 1992, except
21 property acquired by inheritance, is marital property subject to
22 equitable distribution in this proceeding.

23 24 **C. VALUATION OF THE MARITAL ESTATE**

25 1. The Maui and Prescott Homes. The parties currently own
26 two homes: one on Maui, Hawaii, and the other in Prescott,
27 Arizona. There is no dispute that both homes were purchased prior
28

1 to March 1992, primarily with Dr. Hanan's income, a marital
2 asset.^{1/} The parties disputed the value of these two homes. Dr.
3 Hanan claimed that the Maui home is worth "at least \$300,000."
4 Mrs. Hanan pointed out that the house violates local setback
5 ordinances and would have to be moved by any new owner. The cost
6 of this move is estimated at \$40,000. She claimed that the house
7 was worth only \$175,000. See Property Declaration. However, Mrs.
8 Hanan also admitted that a realtor had told her the house, located
9 on a beachfront lot, would soon be worth \$400,000. Weighing all
10 of this evidence, the Court finds that the Maui home is worth
11 \$260,000.^{2/}

12 The parties' estimates of the Prescott home's value were not
13 as disparate as the Maui estimates. Dr. Hanan testified that the
14 Prescott property was worth between \$140,000 and \$150,000. Mrs.
15 Hanan estimated its value as \$175,000. She claimed to base this
16 value on a recent conversation with a realtor. The Court finds
17 neither of these estimates more credible than the other; thus, it
18 will adopt their average, or \$157,500.

19 2. Other Real Property. Mrs. Hanan submitted evidence of
20 the value of Dr. Hanan's unimproved real estate in Australia,
21 which was purchased with Dr. Hanan's income prior to 1992. See
22 Respondent's Exhibit H. According to this evidence, in October
23 1993 the parcel was worth between \$20 and \$25 per acre in
24

25 ^{1/} To the extent that Dr. Hanan's 1970 inheritance was used
26 to purchase a prior home, the proceeds of which were used to
27 purchase the Maui home, the Court finds that this separate
28 inheritance was so commingled with marital property as to be
untraceable, and was thus converted to marital property. See 8
CMC § 1829(a).

^{2/} This figure is derived from Dr. Hanan's estimate of
\$300,000 minus the \$40,000 moving cost.

1 Australian dollars." The Court takes judicial notice of the
2 current exchange rate of 1.3298 Australian dollars per United
3 States dollar. *See International Herald Tribune* (November 17,
4 1994). The parcel is comprised of 2,203 acres. Taking the
5 average of the estimates listed on Respondent's Exhibit H, the
6 Court finds that the Australia property is worth \$37,290.

7 The parties also purchased a plot in the Bahamas in 1967.
8 Neither party presented any credible knowledge of its current
9 value. However, Respondent's Exhibit A, which purports to be a
10 statement of Dr. Hanan's financial condition as of November 30,
11 1987, lists the value of the property as \$5,000. In the absence
12 of other evidence, the Court adopts this estimate of value.

13 3. Bank Accounts and Notes.

14 a. Held in Petitioner's Name. Dr. Hanan testified that he
15 currently holds certificates of deposit at the Bank of America
16 worth \$25,000, and that he has an Individual Retirement Account at
17 Charles Schwab worth \$37,000. According to the testimony and
18 documents presented, both accounts date from before March, 1992.
19 Therefore, both are marital property.

20 Dr. Hanan also holds a promissory note on the sale of a
21 condominium in Oregon. Dr. Hanan's income and expense declaration
22 lists the value of this note at \$52,300, and the trial testimony
23 did not rebut this estimate. The Court therefore values the note
24 at \$52,300

25 Third, Dr. Hanan holds a retirement account with the Northern
26 Marianas Retirement Fund (NMRF) worth \$13,000. According to 8 CMC
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28 ^{2/} Respondent's Proposed Findings of Fact erroneously adopts
these figures in American Dollars.

1 § 1828(b),^{10/} retirement benefits accrued during marriage are
2 marital property. The statute does not distinguish between vested
3 and non-vested benefits. Id; see also In re Marriage of Gillmore,
4 629 P.2d 1, 3 (Cal. 1981). Here, Dr. Hanan began acquiring NMRF
5 benefits in April 1991 and continues to acquire them. However,
6 only those benefits acquired as of March 1992 represent community
7 property. Section 1828(b) directs the Court to determine the
8 community property share of this asset by multiplying it by a
9 fraction where: the numerator is the time spent acquiring the
10 benefits during marriage (in this case, the eleven months from
11 April 1991 until March 1992); and the denominator is the total
12 time over which the benefit is acquired (here, the thirty-seven
13 months from April 1991 until the time of trial). Performing these
14 calculations, the Court finds that \$3,865 of Dr. Hanan's
15 retirement benefits are marital property.

16 Lastly, Dr. Hanan holds a savings account with the Bank of
17 Guam which at the time of trial contained \$160,000. The funds in
18 this account appear to be derived from the various income streams
19 Dr. Hanan has received since arriving on Saipan in 1991: his
20 salary from CHC, his Social Security benefits, the payments on the
21 note from the sale of the Oregon condominium, and the mandatory
22 withdrawals from his IRA account. While Dr. Hanan's salary since
23 March 1992 and his Social Security benefits are his separate
24 property, his salary prior to that date, his IRA benefits and the
25 Oregon note payments are marital property. It is also unclear

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27 ^{10/} Section 1828(b) speaks in terms of benefits earned after
28 the determination date. However, as discussed in Part III(B)
above, application of § 1833(a) renders this distinction
meaningless for the purpose of classifying property at
dissolution.

1 whether other proceeds from other assets^{G/} were deposited into
2 the account.

3 The Act provides that mixed property is converted to marital
4 property unless the separate property component can be traced.
5 8 CMC § 1829(a). Strict application of this statute would require
6 the Court to deem the entire Bank of Guam account to be marital
7 property. However, because the parties did not present any
8 evidence or legal authorities on the question, and because of the
9 likelihood that the account is comprised primarily of Dr. Hanan's
10 separate earnings since 1992, the Court will allow the parties to
11 submit supplemental evidence showing the sources of these funds
12 both before and after March 1992. The parties may present such
13 evidence via affidavit and documents alone, subject to the
14 opposing party's right to request an evidentiary hearing to cross-
15 examination regarding this evidence. Upon receiving these
16 supplemental submissions and hearing any rebuttal testimony, the
17 Court will render a decision regarding this asset.^{12/}

18 b. Accounts Held in Respondent's Name. At the time of
19 trial, Mrs. Hanan held bank accounts at Bank of Hawaii (\$3,550),
20 and a savings account at Farmers Bank of Kentucky (\$21,882). From
21 the testimony taken at trial, the Farmers Bank account contains
22 proceeds from the sale of a condominium in Hawaii given to Mrs.
23

24 ^{11/} For example, Dr. Hanan testified that his Security
25 Pacific Bank (now Bank of America) account may have held as much
26 as \$140,000 in 1991. Dr. Hanan was unable to account for the
present whereabouts of these funds.

27 ^{12/} Similarly, the Court will reserve judgment on the
28 characterization of Dr. Hanan's monthly receipts of \$220 in "bank
interest" as listed on his income and expense declaration. In
their supplemental evidentiary submissions, the parties should
indicate which accounts produce this interest.

1 Hanan by Dr. Hanan. The Bank of Hawaii account contains rental
2 proceeds from the Maui home, a marital asset. These accounts are
3 therefore marital property.

4 The parties did not present evidence as to the source of the
5 funds in Mrs. Hanan's other accounts at Bank One (\$3,5881, Wedbush
6 Securities (\$1,906), and a checking account at Farmers Bank
7 (\$5,768). Mrs. Hanan has received Social Security benefits and
8 has earned a salary since March 1992; thus, the funds in these
9 accounts may well have come from a non-marital source.
10 Accordingly, the Court will allow the parties to submit further
11 evidence as to the source of the funds in these two accounts prior
12 to rendering its final decision.

13 Mrs. Hanan also owns a note on the sailing vessel "Blue
14 Planet," executed in June 1987, for the sum of \$46,750. See
15 *Petitioner's Exhibit 3*. The Court has no difficulty finding that
16 this note constitutes marital property. However, the evidence is
17 unclear as to the value of the note as of the time of trial. The
18 note provided for monthly payments of \$395 and interest of 10% per
19 year until 1990, at which point the balance of the note was
20 payable in full. *Id.* Mrs. Hanan testified that she had received
21 approximately \$13,000 in payments on the note, but that the
22 balance was outstanding. On cross-examination, she admitted that
23 this \$13,000 may have included a down payment of \$8,250. See
24 *Petitioner's Exhibit 4*. If the down payment is not included in
25 the \$13,000, the note's current value, including accrued interest,
26 is approximately \$50,000. If the down payment is included in Mrs.
27 Hanan's total of payments received, the current value including
28 interest is approximately \$65,000. Mrs. Hanan stated that because

1 of her health problems and her current residence in Arizona, she
2 has been unable to collect on the balance. The Court finds that
3 this fact does not render the note uncollectible, but simply
4 increases Mrs. Hanan's costs of collection. The Court therefore
5 adopts the value of \$42,500 for the promissory note, as the
6 average of the two estimates of current value minus potential
7 costs of collection and/or foreclosure and resale.

8 4. Personal Property.

9 The parties' joint personal property consists of the
10 furnishings in the Arizona house and two vehicles. The parties
11 valued these assets at approximately \$12,500. The Court adopts
12 these values.

13 5. Summary.

14 Viewing the records on file and weighing the evidence
15 presented at trial, the Court has established that the following
16 assets are marital property subject to distribution, and has fixed
17 the following values to those assets:

| | | | |
|----|---------------------------------|----|-----------------|
| 18 | Prescott Home | -- | \$157,500 |
| | Maui Home | -- | \$260,000 |
| 19 | Australia property | -- | \$37,290 |
| | Bahamas property | -- | \$5,000 |
| 20 | Oregon Condo note | -- | \$52,300 |
| | "Blue Planet" ^u note | -- | \$42,500 |
| 21 | NMRF retirement | -- | \$3,865 |
| | Charles Schwab IRA | -- | \$37,000 |
| 22 | Bank of America CD | -- | \$25,000 |
| | Farmers Bank Savings | -- | \$21,882 |
| 23 | Bank of Hawaii | -- | \$3,550 |
| | <u>Personal Property</u> | -- | <u>\$12,500</u> |

24 TOTAL -- \$658,387

25 However, the Court has not yet determined whether part or all of
26 Dr. Hanan's Bank of Guam account constitutes marital property.
27 Likewise, the Court lacks sufficient information to characterize
28 Mrs. Hanan's Wedbush Securities, Farmers Bank checking, and Bank

1 One accounts. The Court cannot make a final equitable distribution
2 of the marital estate without this information. Accordingly, the
3 Court hereby defers final distribution of the marital estate until
4 it receives the parties' supplemental evidentiary submissions.

5
6 **D. SPOUSAL SUPPORT**

7 In a dissolution proceeding, 8 CMC § 1311 empowers the Court
8 to make orders for the support of either party and for minor
9 children, "as it deems justice and the best interests of all
10 concerned may require." Here, the parties' children are all
11 emancipated adults; therefore, the Court need only consider an
12 award of spousal support. The parties' income and expenses, which
13 were not subject to serious dispute, indicate that an award of
14 spousal support to Mrs. Hanan is in order.

15 Mrs. Hanan submitted an income and expense declaration, as
16 modified at trial, which showed a monthly income of \$689. Upon
17 cross-examination, she admitted that the declaration considerably
18 understated her gross income from the rental of the Maui home.^{13/}
19 The Court therefore finds her correct gross monthly income to be
20 \$1,209. On the other hand, Dr. Hanan did not materially rebut
21 Mrs. Hanan's claimed monthly expenses of \$2,896, the bulk of which
22 are attributable to health insurance policies and medication
23 costs. In view of Mrs. Hanan's multiple health conditions, the
24 Court does not consider such expenses unreasonable.

25 Trial testimony generally supported the income and expense
26 figures Dr. Hanan provided in discovery. His monthly salary from

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28

^{13/} While her declaration lists this amount as \$260, she
admitted this was a net figure after expenses are paid. At trial,
she admitted that her gross monthly rental income is \$780.

1 CHC is roughly \$6,000, and he receives Social Security payments of
2 \$933 per month.^{14/} His monthly expenses, as adjusted at
3 trial,^{15/} totaled \$940.

4 In view of Mrs. Hanan's medical condition and needs, the
5 Court finds that she needs an additional \$1,687 to meet her
6 monthly expenses. The Court therefore awards monthly spousal
7 support in this amount to Mrs. Hanan for the remainder of her
8 life.^{16/}

9 **IV. CONCLUSION**

10 For the foregoing reasons, the Court hereby ORDERS:

11 1. Petitioner Robert Hanan's petition for divorce pursuant
12 to 8 CMC § 1332 is hereby GRANTED.

13 2. Both parties shall submit, within thirty days of this
14 Order, supplementary affidavits and exhibits showing the sources
15 of the funds contained in Dr. Hanan's savings account at the Bank
16 of Guam and Mrs. Hanan's Wedbush Securities and Bank One accounts.
17 Either party may submit rebuttal affidavits or evidence or request
18 an evidentiary hearing on these submissions within ten days of
19 their filing. The Court will order the distribution of the
20 marital estate based on these supplemental submissions.

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^{14/} Dr. Hanan's monthly receipts from the Oregon promissory
24 note his bank interest have already been discussed and are not
considered here.

25 ^{15/} As Respondent's counsel correctly observes, the testimony
26 at trial showed that Mrs. Hanan pays the taxes on the Arizona
27 house. Dr. Hanan's monthly expenses are revised downwards to
reflect this fact.

28 ^{16/} Like all support orders of this type, this Order is
subject to modification if either party presents evidence of
changed circumstances to the Court.

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3. Dr. Hanan shall pay to Mrs. Hanan monthly spousal support in the amount of \$1,687, commencing on January 1, 1995. Such payments must be postmarked by the first of each month.

So ORDERED this 1 day of December, 1994.


EDWARD MANIBUSAN, Associate Judge