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IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
FAMILY COURT DIVISION

BEDEBII M. WOODRUFF,)	Civil Action No. 97-51
)	
Plaintiff,)	
)	
v.)	ORDER
)	
STEPHEN CARL WOODRUFF,)	
)	
Defendant.)	

THIS MATTER came on for hearing at 10:00 a.m., March 2, 1998, in courtroom E Plaintiff and her attorney, Stephen J. Nutting, Esq. appeared before the Court as did defendant who appeared pro se. The issue before the Court is twofold: (1) whether, as a matter of law, defendant's law degree and license to practice law constitute marital property, or (2) if they are not marital property, whether a form of equitable compensation is available to plaintiff for supporting and assisting defendant attain a law degree and a license to practice law.

A. FACTS AND PROCEDURAL HISTORY.

Plaintiff and defendant were married on December 28, 1988 and were living in Saipan.' The parties have three minor children, ages ten, eight and seven.' In 199 1, the family moved to

FOR PUBLICATION

*Nutting, Esq.
Woodruff (pro se)
Esq.*

¹ Compl. at 1; Answer & Countercl. at 2.
² Compl. at 2; Answer & Countercl. at 2

1 Hawaii when defendant was admitted to law school. The family moved back to Saipan in 1994
2 after defendant graduated from law school.

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4 On January 14, 1997, plaintiff filed a complaint for abandonment and separate
5 maintenance. On February 14, 1997, defendant filed his answer and counterclaimed for voidable
6 divorce, divorce and custody. On October 21, 1997, divorce was expressly granted under §
7 CMC § 133 1 (a) leaving the remaining issues related to permanent custody, support and property
8 distribution for trial.

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10 On November 18, 1997, at a hearing to determine temporary custody of the minor
children, the parties moved the Court for a ruling as to whether defendant's law degree and
11 license to practice law constitute a marital asset and subject to distribution under the
12 Commonwealth Marital Property Act of 1990 ("the MPA"), codified as 8 CMC § 181 1 et seq.
13 The court ordered the parties to brief the issue and set the matter for argument on March 2, 1998.
14 At the March 2, 1998 hearing, both parties argued the issue of whether plaintiff is entitled to
15 reimbursement or restitution alimony for supporting defendant while he attended law school and
16 sought a license to practice law, in addition to whether the law degree and license constitute
17 marital property. The issues are properly before the Court to consider as a matter of law.

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21 **B. A LAW DEGREE AND LICENSE TO PRACTICE LAW AS MARITAL PROPERTY.**

22 Whether defendant's law degree and license to practice law constitute marital property, or,
23 in the alternative, whether reimbursement or restitution alimony is available to plaintiff for
24 supporting defendant during law school and the attainment of a license to practice law are issues
25 of first impression in the Commonwealth. The MPA, 8 CMC § 18 11 et seq., and 8 CMC § 13 11
26 govern the distribution of marital property upon dissolution. Defendant argues that "property" as
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defined in the MPA does not include a law degree or a license to practice law.³

2 In construing the MPA, the Court is aided by the principles of law, equity and local
3 custom, except as provided by the MPA. 8 CMC § 18 17. *See generally*, 7 CMC § 3401. The
4 Court must give language its plain meaning. Estate of Faisao v. Tenorio, 4 N.M.I. 260 (1995). If
5 the meaning of a statute is clear, the Court will not construe it contrary to its plain meaning.
6 Office of the Attorney General v. Deala, 3 N.M.I. 110 (1992). The MPA defines “property” as
7 “an interest, present or future, legal or equitable, vested or contingent, in real or personal
8 property.” 8 CMC § 1813(o). It is not clear from this definition or other provisions of the MPA
9 whether property includes a law degree or license. Nor does the MPA’s scant legislative history
10 shed light on what may or may not constitute property.⁴ Because the statute is ambiguous and the
11 parties have not presented evidence of local custom to the contrary, the Court looks to the
12 decisions of other jurisdictions that have dealt with the issue. 7 CMC § 3401.

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16 The MPA was modeled after the “Uniform Marital Property Act” (“UMPA”).⁵ Besides
17 the Commonwealth, as far as the Court can ascertain, only Wisconsin has substantially adopted
18 the UMPA.⁶ However, the Court has not found, nor have the parties provided the Court with any
19 cases from Wisconsin construing property under Wisconsin’s marital property act as including a
20 professional degree or license. This is because, prior to the Wisconsin legislature’s adopting the
21 UMPA, Wisconsin followed the majority of jurisdictions that have held that marital property did
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24 ³ Def’ s. Resp. to Pl’s. Mem. Re: Property Division at 3.

25 ⁴ House Committee on Judiciary and Governmental Operation, Seventh Northern Marianas
Commonwealth Legislature, Standing Committee Report No. 7-17A, at 2 (September 4, 1990).

26 ⁵ *Id.* See also Uniform Marital Property Act, (U.L.A.) § 1 et seq.

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28 ⁶ Uniform Marital Property Act, (U.L.A.) at 97, 102 (noting that the effective date of the Wisconsin act
was January 1, 1986).

1 not include a law degree or the “potential” for increase in future earning capacity made possible
2 by the law degree and license to practice law, DeWitt v. Dewitt, 296 N.W.2d 761 (Wis.App.
3 1980). However, the Wisconsin courts recognized that compensation for a person who supported
4 his or her spouse while the spouse was in school can be achieved through both property division
5 and maintenance payments after considering a number of factors⁷ set forth under Wisconsin’s
6 property distribution and maintenance statutes. *Id.*; In Re Marriage of Lundberg, 318 N.W.2d
7 918 (Wis. 1982) (holding that even though the wife was not in need she might be awarded
8 maintenance to compensate her for her contribution to the husband’s education, training and
9 enhanced earning capacity); Roberto v. Brown, 318 N.W.2d 358 (Wis. 1983); Haugan v. Haugan,
10 343 N.W.2d 796 (Wis. 1984).

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13 In the often cited case of Graham v. Graham, 574 P.2d 75 (Colo. 1978), the Supreme
14 Court of Colorado was similarly faced with the novel issue of whether in a marriage dissolution
15 proceeding a master’s degree in business administration (“M.B.A.”) constituted marital property
16 which is subject to division by the court. In defining the term “property”, the Graham court
17 stated that “there are necessary limits upon what may be considered “property,” and we do not
18 find any indication in the [Uniform Dissolution of Marriage] Act that the concept as used by the
19 legislature is other than that usually understood to embodied within the term.” *Id.*, at 76-77. The
20 Graham court even found helpful the definition from Black’s Law Dictionary 1382 (rev. 4th ed.
21 1968) that property is “everything that has an exchangeable value or which goes to make up
22 wealth or estate.” *Id.*, at 77.

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24 Only a handful of jurisdictions have found that a professional degree or license constitute

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28 ⁷ See, e.g., part D, *infra*; note 1, In Re Marriage of Lundberg, 318 N.W.2d 918 at 922 (Wis. 1982) and
note 2, *Id.* 923; see **also** note 4, Hauaan v. Haugan, 343 N.W.2d 796 at 800 (Wis. 1984) and note 5, *Id.* at 801.

1 marital property, either because a statutory basis permits such classification, or to rule otherwise
2 would result in the unjust enrichment of the degreed or licensed spouse, or it would be inequitable
3 to deny the supporting spouse some form of compensation or reimbursement for her investment
4 while the other spouse attended school.’ However, the majority of jurisdictions, including
5 Wisconsin as mentioned earlier, have rejected the contention that a professional degree or license
6 is property for substantially the same reasons the Supreme Court of Colorado stated in describing
7 the nature of an educational degree:
8

9 An educational degree such as an M.B.A. is simply not
10 encompassed even by the broad views of the concept of “property.”
11 It does not have an exchange value or any objective transferable
12 value on an open market. It is personal to the holder. It terminates
13 on death of the holder and is not inheritable. It cannot be assigned,
14 sold, transferred, conveyed or pledged. An advanced degree is a
15 cumulative product of many years of previous education, combined
16 with diligence and hard work. It may not be acquired by the mere
17 expenditure of money. It is simply an intellectual achievement that
18 may potentially assist in the future acquisition of property. In our
19 view, it has none of the attributes of property in the usual sense of
20 that term.

21 Graham v. Graham, 574 P.2d 75, 77 (Col. 1978). In addition, assigning a dollar value to a
22 professional degree or the enhanced earning capacity derived thereby has proved too speculative
23 because the future value to the holder rests on factors which are at best too difficult to anticipate
24 or measure. Dewitt, supra, at 768. Instead, the courts in these jurisdictions have relied, for the
25 most part, on their equitable powers to recognize and compensate the non-student spouse for her

26 ⁸ See O’Brien v. O’Brien, 498 N.Y.S.2d 743 (Ct.app.1985); Woodworth v. Woodworth, 126 Mich.App.,
27 337 N.W.2d 332 (1983); In Re Marriage Hortsmann, 263 N.W.2d 885 (Iowa 1978); Inman v. Inman, 578 S.W.2d
28 266 (Ky.Ct.App. 1979) *modified* 8F.L.R. 2329 (1982), *rev’d*, 648 S.W.2d 847 (Ky. 1982); In Re Marriage of
DeLaRosa, 309 N.W.2d 755 (Minn. 1981).

1 contributions and investment in the marriage while the other spouse attended school.⁹

2 Thus, a law degree and license to practice law can be said to be inherently unique to the
3 holder because they terminate at the death of the holder, are not transferable, inheritable, or easily
4 subject to valuation as are other more conventionally understood forms of property. Therefore,
5 the Court agrees with the majority of jurisdictions holding that a professional degree and license
6 do not constitute property subject to distribution upon marriage dissolution, but recognizing that
7 equity, where proper, will compensate the non-degreed spouse who assisted the student spouse
8 acquire his degree or license. Accordingly, this Court concludes that the MPA does not apply
9 with respect to such degree or license.
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12 C. EQUITABLE COMPENSATION.

13 Plaintiff contends that, in the event the Court determines that defendant's law degree and
14 license do not constitute marital property, she should still be entitled to some form of equitable
15 compensation, such as reimbursement alimony or restitution alimony, for supporting and
16 assisting defendant in acquiring his law degree and license to practice law. In support of her
17 contention, plaintiff relies on Hubbard v. Hubbard, 603 P.2d 747 (Okl. 1979), in which the court
18 agreed with the Graham decision that a professional degree or license do not constitute marital
19 property subject to distribution, but allowed the supporting spouse equitable compensation in lieu
20 of property division. *Id.* at 750. The court in Hubbard reasoned as follows:
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24 ⁹ See e. g., Pveatte v. Pveatte 661 P.2d 196 (Ariz.App. 1982); In Re Marriage of Olar, 747 P.2d 676 (Colo.
25 1987); Church v. Church, N.M.App., 630 P.2d 1243; Petersen v. Petersen, 737 P.2d 237 (UtahApp. 1987); Inman v.
26 Inman, 648 S.W.2d 847 (Ky. 1982); Washburn v. Washburn, 677 P.2d 152 (Wash. 1984); Aleshire v. Aleshire,
27 Tenn.App., 642 S.W.2d 729; Stevens v. Stevens, 492 N.E.2d 131 (1986); Lord v. Lord, 454 A.2d 830 (Me. 1983);
28 Archer v. Archer, 493 A.2d 1074 (Md. 1985); In Re Marriage of DelaRosa, 309 N.W.2d 755 (Minn. 1981); In Re
Marriage of Weinstein, 470 N.W.2d 59 (Iowa 1989); Mahoney v. Mahoney, 453 A.2d 527 (1982); Lehmicke v.
Lehmicke, 489 A.2d 782 (Pa.Super. 1985); Helm v. Helm, 345 S.E.2d 720 (S.C. 1986); Wehrkamp v. Wehrkamp,
375 N.W.2d 264 (S.D. 1984); Haugan v. Haugan, 343 N.W.2d 796 (Wis. 1984). *See generally*, 24 Am Jur 2d,
Divorce and Separation, § 898; 4 ALR 4th 1294.

While it is true that Dr. Hubbard's license to practice medicine is his own to do with as he pleases, it is nonetheless also true that Ms. Hubbard has an equitable claim to repayment for the investment she made in his education and training. To hold otherwise would result in the unjust enrichment of Dr. Hubbard. . .[Ms. Hubbard] would leave the marriage without either a return on her investment or an earning capacity similarly increased through joint efforts. *Id* at 750-751.

Without her direct and indirect contributions to his education, training and support, Dr. Hubbard would have been forced to either prolong his education or go deeply in debt. . . Ms. Hubbard's sacrifices in Mr., now Dr., Hubbard's behalf were made with the anticipation that she and the family would ultimately benefit from the increased earning potential that would accompany her husband's license to practice. That anticipation was not without a basis in fact, for few persons in our current society reap greater financial rewards for their services than medical doctors. *Id* at 75 1

There is no reason in law or equity why Dr. Hubbard should retain the only valuable asset which was accumulated through joint efforts, i. e., his increased earning capacity, free of claims for reimbursement by his wife. *Id* at 751.

If the parties had remained married for a period of time after Dr. Hubbard began practicing and had accumulated tangible property by means of his increased earning capacity, Ms. Hubbard would have been entitled to have her contributions to his education considered and compensated. *Id* at 75 1.

We are not rendered impotent to do equity between these parties simply because the divorce occurred immediately preceding the start of Dr. Hubbard's professional career. *Id* at 75 1.

22 The Hubbard court ultimately awarded relief to Ms. Hubbard by means of a cash award in
23 lieu of a property division, but limited the factors determining that award to fair compensation for
24 her past investment, rather than a "vested interest" in his future earnings. *Id* at 752. The trial
25 court was instructed to determine Ms. Hubbard's contributions to Dr. Hubbard's direct support
26 and school and professional training expenses, plus reasonable interest and adjustments for
27 inflation as and for property division alimony. *Id.* at 752.
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1 Other courts have taken different approaches when fashioning relief under facts similar to
2 the case at bar. The court in Drapeck v. Drapeck, 503 N.E.2d 946 (Mass. 1987), concluded that
3 there was statutory basis broad enough to permit the trial court to consider increased earning
4 potential engendered by a professional degree in determining an award of alimony. In Saint-
5 Pierre v. Saint-Pierre, 357 N.W.2d 250 (S.D. 1984), the court determined that although a medical
6 degree did not constitute property subject to division in a divorce action, the trial court, in the
7 proper case, should award alimony as reimbursement to supporting spouse for contribution to
8 non-working spouse's obtaining of advanced training, but such reimbursement was properly
9 denied where the husband did not forego any career plans or advancement as a consequence of
10 moving in order to be with his wife during her medical education.

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13 Another case providing a spouse "equitable reimbursement" is Bold v. Bold, 574 A.2d
14 552 (Pa. 1990), in which the wife, although she did not actually pay for any of her husband's
15 educational expenses. In Bold vs. Bold, the court found the wife was entitled to equitable
16 reimbursement in the form of cash payments because there was insufficient marital property from
17 which to compensate her. However, in Sweeney v. Sweeney, 534 A.2d 1290 (Mass. 1987), the
18 court, after ruling that the husband's medical license earned during the marriage was not property
19 within the meaning of the equitable distribution statute, denied the wife reimbursement alimony
20 since, in the latter years of their 13 year marriage, she had received benefits of husband's medical
21 license, namely, the acquisition of marital property through husband's increased earning capacity.
22 The challenge is to strike a balance somewhere between subjecting defendant to a life of
23 professional servitude and leaving plaintiff in near "penury", without sufficient financial
24 resources with which to improve her station in life. Stevens v. Stevens, 492 N.E.2d 131 at 133
25 (Ohio 1986).

1 Likewise, this Court is not constrained to do equity between the parties in this case,
2 simply because defendant's law degree and license are not property subject to distribution under
3 the MPA. The Court has broad equitable powers "to make orders . . . for support of either party,
4 and for the disposition of either or both parties' interest in any property in which both have
5 interests, as it deems justice and the best interests of all concerned may require." 8 CMC § 1311
6 Our Supreme Court in Thornburgh v. Thornburgh, No. 96-050, (N.M.I. Nov. 24, 1997) (slip op.
7 at 6), stated that the trial court judge under 8 CMC § 1311 is given wide discretionary authority to
8 award spousal support in the "best interests" of the parties."
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11 Defendant argues that this Court, under Thornburgh v. Thornburgh, Appeal No. 96-050
12 (N.M.I. S.Ct., filed Nov. 24, 1997), *slip op.* at 4, lacks the authority to grant the type of relief
13 requested because plaintiff did not cite to a sufficient number of cases allowing for
14 "reimbursement alimony" to show that it is part of the common law as generally understood and
15 applied in the United States."
16 Consequently, defendant concludes that the Court is constrained to
17 award alimony only as it is conventionally understood in the United States." Defendant decries
18 the allegedly insufficient number of authorities cited by plaintiff, but he himself cites to only one
19 other case, Postema v. Postema, 471 N.W.2d 912 (Mich.Ct.App. 1991), for the proposition that
20 the type of award plaintiff seeks is not really alimony at all. Yet, defendant does not describe the
21 nature of the relief plaintiff seeks, concluding only that "reimbursement alimony" is not available
22 in the Commonwealth.* The Court finds the decisions cited herein, in addition to those cited by
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26 ¹⁰ Def s. Resp. to Pl's. Mem. Re: Property Division at 8.

27 ¹¹ Def s. Resp. to Pl's. Mem. Re: Property Division..

28 ¹² ***Id.***

plaintiff, to be ample authority on which the Court's conclusions are based.

2 Defendant insists that the Commonwealth is no longer an equitable distribution
3 jurisdiction because the Court's power to equitably distribute property under 8 CMC § 13 1 1 has
4 been "supplanted" by the MPA. Def' s. Response to Pl's. Mem. Re: Property Division, at 4.
5 Unless a statute is declared invalid or unconstitutional, only the legislature can "supplant"
6 existing laws. The Court does not regard the MPA as rendering 8 CMC § 13 1 1 inoperable, or
7 that one is inconsistent with the other. While defendant is correct in stating that the legislature
8 has the authority to statutorily permit a spouse to be compensated for his or her contribution to
9 the acquisition of a professional degree or license by the other spouse "in the absence of such
10 statute. the Court is by no means powerless under 8 CMC § 13 1 1 to fashion appropriate relief "as
11 it deems justice and the best interests of all concerned may require. Thornburgh v. Thornburgh,
12 Appeal No. 96-050 (N.M.I. S.Ct., filed Nov. 24, 1997) *slip op.*

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16 D. CONCLUSION.

17 Based on the foregoing, the Court concludes that defendant's law degree and license to
18 practice law do not constitute property as defined by the MPA and, therefore, are not subject to its
19 provisions. However, the Court has the authority under 8 CMC § 13 1 1 to consider all relevant
20 factors in fashioning such equitable relief in the form of spousal support, as would reimburse or
21 equitably compensate plaintiff for her efforts and contributions that went to the support of the
22 family and defendant while he acquired his law degree and license. For example, such factors
23 may include, but are not limited to, the following:
24

- 25 1. The relative earning abilities of the parties, including a spouse's enhanced earning
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28 ¹³ *Id.*

1 capacity by virtue of a professional degree or license;

2 2. The ages, and the physical and emotional conditions of the parties;

3 3. The retirement benefits of the parties;

4 4. The expectancies and inheritances of the parties;

5 5. The duration of the marriage;

6 6. The extent to which it would be inappropriate for a party, because he will be
7
8 custodian of a minor child of the marriage, to seek employment outside the home;

9 7. The standard of living the parties were accustomed to during the marriage;

10 8. The parties' level of education;


11 9. The relative assets and liabilities of the parties;

12 10. The property brought into the marriage by either party; and

13 11. The contribution of a spouse as homemaker.

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16 The issue of whether plaintiff is entitled to equitable compensation and, if so, in what
17 amount is reserved for trial. Any order providing for equitable compensation is subject to
18 modification under 8 CMC § 13 11.

19 SO ORDERED this 18th day of August, 1998.

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23 VIRGINIA SABLAN ONERHEIM
24 Associate Judge
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