Approved April 1, 1986
Date

MINUTES OF THE House COMMITTEE ON Judiciary.

The meeting was called to order by Chairman Joe Knopp at
Chairperson

3:30 ~~a.m.~~/p.m. on March 6, 1986 in room 313-S of the Capitol.

All members were present except:

Representatives Bideau, Harper, Luzzati, Shriver, Snowbarger and Teagarden were excused

Committee staff present:
Jerry Donaldson, Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Jan Sims, Committee Secretary

Conferees appearing before the committee:
Rep. Jim Patterson
Richard Maxfield, Kansas Psychological Association
Mike Ireland, Jackson County Attorney
Dallas Corbet, BrownCounty Commissioner
Kevin Davis, Kansas League of Municipalities
Jerry Palmer, Kansas Trial Lawyers Association
Ron Smith, Kansas Bar Association
Lois Johnson
Robert Guthrie
Winfred Wenger
Lowell Hoch
Keith Bossler
Robert Foster
Marvel Chambers
Gordon Preller
Rep. Elaine Hassler
Dr. Robert Harder, Department of Social and Rehabilitative Services
Bill Paprota

HB 2962 - An act concerning domestic relations; relating to child custody orders in certain actions.

Rep. Jim Patterson appeared before the committee in support of this bill stating that it came about at the request of a grandparent. This bill would require the judge to ask children of the age of reason their preferences before entering custody orders in domestic cases. He stated that this is being done some not but this would give the statutory authority for doing so.

Richard Maxfield of the Kansas Psychological Association appeared before the committee in opposition to this bill (Attachment 1). He said there are a number of reasons this should not be enacted including: 1) A child voicing a preference for one parent over another has a detrimental affect on the child maintaining a good relationship with both parents and a healthy relationship with both parents is necessary to help a child overcome the emotional trauma of divorce. 2) Sometimes children will choose a parent for reasons that are less than ideal such as choosing leniency over stricter discipline. Children will also choose a parent who appears to need them more because of being more troubled or unhappy than the other parent. 3) This bill would place the child squarely in the middle of the two parents and the child becomes a weapon between the two parents. 4) A child needs the security of school, friends and responsible adults to make important decisions for them. If parents are unable to make decisions which are in the best interests of the child the court should do so and not put so much pressure on the child to make the right decision.

HB 2686 - An act relating to the Kansas tort claims act; concerning the payment of attorney fees.

The Chairman announced that this is Rep. Eckert's bill and he is unable to attend but has presented the committee with a written statement (Attachment 2).

Mike Ireland, Jackson County Attorney appeared before the committee in support of this bill. He stated that the bill should be reworded to assess the payment of attorney fees at the judge's discretion, but otherwise he is in support of the bill. (Attachment 3). He

believes it will have an impact in keeping unmeritorious cases from being filed. Conversely he does not feel it will keep a suit against a governmental entity from being filed if the plaintiff felt he had a meritorious claim. He feels the judges in his district would not assess costs in meritorious cases even if the governmental entity won but would do so in an attempt to limit frivilous suits. He stated that frivilous suits or the threat of same are limiting the number of individuals running for elected offices and having a negative impact on liability insurance rates.

Dallas Corbet a Brown County Commissioner appeared in support of this bill citing rapidly increasing liability insurance rates as being of concern to Brown County (Attachment 4). He feels passage of this bill could have a beneficial affect on those rates.

Kevin Davis of the Kansas League of Municipalities appeared in support of the bill stating that if the plaintiff loses a suit to a governmental entity defendant the taxpayers should have their legal fees reimbursed. He stated that this does not have anything to do with frivilous lawsuits.

Jerry Palmer of the Kansas Trial Lawyers Association appeared in opposition to the bill. He stated that this is a fee shifting bill which is more socialistic than democratic. There is no statute on any book which places defendant's attorneys fees on the plaintiff without the reverse also applying.

Ron Smith of the Kansas Bar Association appeared in opposition to this bill stating that SB 480 makes amendments to the Uniform Federal Rules of Civil Procedure relating to frivilous suits. It does not limit itself to attorney fees but makes a provision that any person can have fees, costs, etc. assessed against him.

HB 3063 - An act concerning medical assistance; relating to determination of eligibility; concerning recovery of medical assistance paid.

The following individuals appeared before the committee in support of this bill and related personal experiences and situations: Lois Johnson, Robert Guthrie (Attachment 5), Winfred Wenger, Lowell Hoch, Keith Bossler (Attachment 8), Robert Foster (Attachment 6), and Marvel Chambers (Attachment 7). Written testimony was also offered from Joyce Barr Wanda Blaser, Kansans for Improvement of Nursing Homes and William Gannaway (Attachments 9 through 11). Rep. Elaine Hassler and Gordon Preller also appeared in support of the bill.

Dr. Robert Harder appeared in opposition to the bill on behalf of SRS stating that this bill would have a major consequence from the standpoint of operation of SRS and medical assistance programs in the state (Attachment 12). He said it would be putting more emphasis on the medical care of the elderly and stated that 50% of the people receiving SRS currently are children and the passage of this bill would not allocate 50% of the SRS medical payments budget to children. This would place a hardship on the children of Kansas.

HB 2851 - An act concerning domestic relations; relating to division of property in actions for divorce, annulment or separate maintenance.

Bill Paprota of Overland Park appeared in support of this bill stating that a date must be established for the valuation of property of the marriage in domestic cases. He related instances in his practice where many months or even years passed from the filing of the case to the decree being entered causing the parties thousands of dollars in accounting and legal fees in an effort to value the property for property settlement purposes (Attachments 13 and 14).

The Chairman adjourned the meeting at 6:05 P.M.

KANSAS PSΨCHOLOGICAL ASSOCIATION

March 6, 1986

Mr. Chairman, Members of the Committee,

Thank you for the opportunity to give testimony on House Bill 2962. I am Dr. Richard Maxfield. I am the Chief Psychologist of the Diagnostic and Consultation Service of the Menninger Foundation and am here today representing the Kansas Psychological Association.

We are opposed to this proposed change in the Divorce and Custody Statute. One of the clearest findings in the research on divorce is that the child's maintaining a relationship with both his or her parents is likely to mitigate some of the harmful effects divorce has on children. I fear that a child choosing one parent over the other may well interfere with the child's maintaining a relationship with both parents. In that sense I do not believe that giving the child as much power as is recommended in this Bill is in the child's best interests.

Both children and adults make decisions based on a variety of factors, only some of which are fully in our awareness. In that regard one could imagine a child opting for one parent over the other for less than ideal reasons. It is easy to imagine, for instance, a child choosing to live with the most lenient parent even if the child might benefit from more discipline than that parent can provide. Children might also choose to live with the parent who is most troubled or unhappy, sensing that parent's unhealthy need to be dependent on the child.

Another effect of this Bill is the possibility that the child will be placed squarely in the middle of two angry and fighting parents. In that regard the child's wishes may be used by his or her angry parents as a weapon to continue the marital battle. Certainly that potential outcome is not in the child's best interests. I also fear that subtle, or not so subtle

Attachment 1
House Judiciary
March 6, 1986

Central Office/P.O. Box 1262/Lawrence, Kansas 66044-8262/(913) 841-2425
Affiliate of the American Psychological Association

influence by the parents to choose them could well occur if this Bill is enacted.

Divorce is one of the most disruptive events in a child's life. The security of home, school, friends, activities, and, potentially, relationships with parents may all be threatened. I believe that children have a right, especially under those circumstances, to have responsible adults make decisions for them. If the parents are unable to make decisions which are best for the child then the court should, weighing all the factors, including the child's wishes as to the best custody and residency arrangements. Although I listen to my 8-year-old son's opinions as to the appropriateness of his bed time, I nevertheless make that decision for him based on my best judgment. If this Bill is enacted he may be making decisions far weightier than his bed time.

I would be happy to attempt to answer any questions you might have.

STATE OF KANSAS

RICHARD E. "DICK" ECKERT
REPRESENTATIVE, SIXTIETH DISTRICT
P.O. BOX 157
WETMORE, KANSAS 66550

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE AND SMALL BUSINESS
COMMERCIAL AND FINANCIAL INSTITUTIONS
FEDERAL AND STATE AFFAIRS
JOINT COMMITTEE ON SPECIAL CLAIMS
AGAINST THE STATE

TO: HOUSE JUDICIARY COMMITTEE

FROM: Representative Richard E. "Dick" Eckert

SUBJECT: H.B. #2686

Thank you Mr. Chairman and members of the Committee.

I am Representative Dick Eckert of the 60th Legislative District. I have parts of Brown, Jackson, Nemaha and Pottawatomie Counties in my district. Each year in December counties from Northeast Kansas meet with legislators from this area to discuss the upcoming legislative session. County Commissioners and other county officials attend this meeting. Counties that attend that are not in my district are Atchison, Doniphan and Marshall.

During the meeting in December 1985, I heard a great deal of concern regarding liability and liability insurance. Some counties were concerned about escalating insurance premiums, others voiced reluctance to out of court settlements just to save money that could not be recovered even if the defendent prevailed in court. Guilty or not guilty it was going to cost the county if a suit was filed.

I have no malicious intentions with the introduction of this bill. I believe that elected and appointed officials should be accountable for their actions. I also believe that those actions should not be curbed by the threat of frivolous lawsuits.

I appreciated the committees time and I apoligize for not being able to be present, but another matter in one of my assigned committees dictates that I be present in that committee.

Attachment 2
House Judiciary
March 6, 1986

To: The Chairman of the Judiciary Committee

From: Micheal A. Ireland, Jackson County Attorney

Re: Speaking in favor of House Bill 2686

Dear Madam Chairman:

It is my belief that the requested amendment to K.S.A. 75-6108 will be helpful and in the very near future probably necessary, if it is not already, due to the escalating cost of insurance, the use of threatened suits to affect the responsible decisions of elected officials and government officials, the fear of some individuals of the sue-conscious society will keep certain responsible individuals from running for and seeking public offices, and the knowledge of the general public that certain suits are settled for nuisance value because it would cost more than that to try the matter.

In looking at escalating insurance premiums, this legislative session in the State of Kansas and many other jurisdictions are grappling with the problem of putting a cap on medical malpractice, various forms of liability insurance for government and quasi-governmental bodies. It appears that as long as juries continue to give out extremely large awards, that certain individuals will consider that to be their pot of gold at the end of the rainbow and will continue to bring at times very groundless and unmeritorious suits. All this does is to increase the premiums charged by the various insurance companies. If, under the proposed amendment to this Act, the Judge had the power to award reasonable attorney fees, costs and expenses, then it is my opinion that both lawyers who counsel their clients and individual clients would step back and take a longer look before a lawsuit was brought.

I do not feel that this in any way, shape or form would deter someone from bringing suit against a governmental entity when they in all good consciousness felt that they had a meritorious claim. It is my opinion, based upon my knowledge of the Judges I have worked with, that most Judges would not assess costs against a party who felt they had a legitimate claim against a governmental entity, but in more cases would be inclined to assess costs against those frivilous lawsuits that are filed almost daily.

There are individuals who would attempt to affect the responsible decision making abilities of public officials and governmental employees by the threat of a lawsuit. No one enjoys being sued and these threats of suits are nothing more than an attempt at intimidation. Again, the proposed change to the above-referenced Kansas Law does not affect someone who has acted outside the scope of their governmental employment, or has committed some type of fraud or done their

Attachment 3
House Judiciary
March 6 1986

act with actual malice. But it does keep the governmental employee or elected official from being intimidated by those people, and they exist in almost every community, who would sue anyone for anything just to cause them a problem, or to attempt to gain some type of an advantage in a decision making dilemma.

Further, since the number of lawsuits which have no basis seem to be at times increasing in various jurisdictions, there are certain individuals who will not seek office or seek government service based upon the fact that they do not wish to be involved in lawsuits, and as such will shy away from the type of governmental offices or occupations that are at times controversial and could lead to lawsuits being filed against them. Many times a suit is filed not to settle a matter of principal, because of a wrong, or for any other legitimate reason, but merely to cause the governmental employee or governmental agency both hardship and embarrassment. Many times insurance companies settle these cases out of Court due to the fact that they could spend up to five times as much to defend a case as they can to settle it. Any time the general public can realize a gain by filing an unfounded lawsuit with the knowledge that the insurance companies will most times settle for nuisance value rather than actually try it, there will always be those people who will attempt to do this type of activity. This Bill and its amendments will give the Judges, those that are responsible, a tool to stop this type of litigation, and as I said earlier, to cause both attorneys and their clients to step back and make an intelligent decision as to whether or not this lawsuit actually has a basis in fact.

Some of the costs that are associated with a lawsuit would be the attorney's time for initial conferences, the possibility of the attorney having to travel from one jurisdiction to another to answer various motions or related matters to the lawsuit before trial, the use of interrogatories, depositions, requests for admissions, and other methods to glean all of the facts of this lawsuit, and quite frankly, the loss of the employee or governmental head during the time they have to defend this lawsuit. All of these are balanced by an insurance company when they look at a claim and decide whether or not to defend it or just attempt to settle it.

In summation, it is my feeling that House Bill 2686 gives the Judges the power and a tool to prevent the nuisance suits or suits that are brought as a matter of revenge or anger. It will allow the Judges to look at a case and decide to force the plaintiff who is unsuccessful, and again I believe it will only be in those matters where the case is unfounded, brought as a matter of revenge, or for some other reason to be extremely vexious in its nature, to hurt the plaintiff in his pocketbook. At times, this is the only method that the Court has in dealing with these kinds of people and to keep them from filing frivilous lawsuits.

MICHEAL A. IRELAND
JACKSON COUNTY ATTORNEY

County of Brown, State of Kansas

HIAWATHA, KANSAS 66434

March 6, 1986

Chairperson, Judiciary Committee
State Capitol Building
Room 313 South
Topeka, Ks 66601

From: Dallas L. Corbet
Brown County Commissioner
Hiawatha, Kansas

Re: House Bill No. 2686

Mr. Chairperson:

I would like to testify in favor of House Bill No. 2686. In particular, I am in total agreement with Section 1, Paragraph f, which concerns fees for the governmental entity's own attorney.

I am very concerned, however, about the skyrocketing rates of liability insurance charged to governmental entities for such coverage. I feel our state representatives might want to examine these outrageous rate increases to discover if they are just. In our county alone, liability insurance has increased 179% in a single year. This has further burdened our already tight budget.

Sincerely,

Dallas L. Corbet

Dallas L. Corbet

Attachment 4
House Judiciary
March 6, 1986

HOUSE BILL NO. 3063
HOUSE JUDICIARY COMMITTEE
MARCH 6, 1986

Representative Knopp and Committee Members:

My brief remarks are made as a member of the Kansas Alzheimer's Disease Task Force and of the Alzheimer's Disease and Related Disorders Association, Topeka Chapter; as a native Kansan with a deep concern for the tragic problems brought about by this malady; and finally and most sadly, as the husband of a bright, vivacious woman, active in many community, church and civic affairs, who in her sixties has been stricken with Alzheimer's Disease.

As a salaried person, with a 35 year career in banking and without family inheritance, I have been able, nevertheless, to save what should have provided reasonably well for us in our retirement. But now that this catastrophic illness has afflicted my wife, I have great concern over the sufficiency of our savings.

The fact is that Alzheimer's disease usually runs a long course - anywhere from 5 to 20 years. Tragically, the later stages of the disease very often require nursing home care. As you know, these costs can run from $20,000 per year and up and Medicare and health insurance pay little or nothing for custodial care.

House Bill 3063, which would provide for a division of income and resources between spouses, would make it possible for the well spouse to have something left to live on, thus avoiding the present situation in Kansas under K.S.A. 39-709, which requires that both spouses reach the poverty level before other aid is available. The Task Force did not consider the distress of divorce or separate maintenance as viable alternate solutions to the problem.

As a concerned citizen, who has served and now serves on Boards for the health and welfare of the unfortunate, I urge the Judiciary Committee to consider the merits of House Bill 3063 and to act favorably upon it.

Thank you sincerely,

Robert C. Guthrie

Robert C. Guthrie
3000 West 19th Street
Topeka, KS 66604

Attachment 5 a
House Judiciary
March 6 1986

LaRue v. LaRue, 216 Kan. 242, 250, 531 P.2d 84 (1975); *Zeller v. Zeller*, 195 Kan. 452, 459, 407 P.2d 478 (1965). To determine what property is subject to division, the court looks to all property which is jointly or individually held by the parties when the divorce is filed. *Cady v. Cady*, 224 Kan. 339, 344, 581 P.2d 358 (1978).

There is no definitive Kansas authority on whether military retirement pay is marital property and, if so, how it is to be valued. This court in *Gronquist v. Gronquist*, 7 Kan. App. 2d 583, 644 P.2d 1365 (1982), concluded that the division of military retirement pay was prohibited under the federal law then in effect, noting the ruling in *McCarty v. McCarty*, 453 U.S. 210, 69 L.Ed.2d 589, 101 S.Ct. 2728 (1981). However, the court in *Gronquist* approved consideration of military retirement pay as income in awarding alimony, or as property the value of which may be considered in dividing the remaining property. 7 Kan. App. 2d at 585.

Since *Gronquist*, however, Congress has responded to the *McCarty* decision and enacted 10 U.S.C. § 1408 (1982), which provides in part:

"(c)(1) Subject to the limitations of this section, a court may treat disposable retired or retainer pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court.

"(2) Notwithstanding any other provision of law, this section does not create any right, title, or interest which can be sold, assigned, transferred, or otherwise disposed of (including by inheritance) by a spouse or former spouse.

"(3) This section does not authorize any court to order a member to apply for retirement or retire at a particular time in order to effectuate any payment under this section.

"(4) A court may not treat the disposable retired or retainer pay of a member in the manner described in paragraph (1) unless the court has jurisdiction over the member by reason of (A) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (B) his domicile in the territorial jurisdiction of the court, or (C) his consent to the jurisdiction of the court."

With the passage of this statute the prior prohibition against the division of military retirement pay is removed. Therefore, if found to be marital property with determinable value under Kansas law, military retirement pay is subject to division in accordance with 10 U.S.C. § 1408.

Other jurisdictions have generally reached one of two results on the issue. Some have found a military pension not to be

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699, 267 N.W.2d
U.S. 887 (1978),
Cal.3d 592, 111
Kruger, 139 N.J.

marital property, although it may be considered in ordering division of the property. *Ellis v. Ellis*, 191 Colo. 317, 552 P.2d 506 (1976), is illustrative. In *Ellis*, the court summarized and held:

"The husband retired after 29 years of military service and not long after his commencement of a dissolution of marriage proceeding. The parties had been married for the last 20 years of his military duty. After his retirement, he was receiving both retirement pay and compensation from employment. The trial court took into consideration these two sources of income in ordering the husband to make payments to the wife for the support of herself and their minor children. The court declined to grant the wife's request that the retirement pay which would be payable to the husband in the future was 'property' subject to division in the dissolution of marriage proceeding. The court of appeals affirmed, as do we.

. . . .

"The statute provides that the court shall 'divide the marital property.' It further provides:

'All property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property.' Section 14-10-113, C.R.S. 1973.

"The court of appeals has mentioned that the statute goes no further in the definition of property. We hold, as did the court of appeals, that military retirement pay is not 'property' under the dissolution of marriage act. Our reason is that it does not have any of the following elements: cash surrender value; loan value; redemption value; lump sum value; and value realizable after death." 191 Colo. at 318-19.

Cases similarly finding a military pension not to be divisible marital property include: *Paulsen v. Paulsen*, 269 Ark. 523, 601 S.W.2d 873 (1980); *Sadler v. Sadler*, 428 N.E.2d 1305 (Ind. App. 1981); *Savage v. Savage*, 176 Ind. App. 89, 374 N.E.2d 536 (1978); *Light v. Light*, 599 S.W.2d 476 (Ky. App. 1980); *Howard v. Howard*, 196 Neb. 351, 242 N.W.2d 884 (1976); *Baker v. Baker*, 546 P.2d 1325 (Okla. 1976). Each of these cases found, however, that the pension may be considered in dividing the other marital assets.

Other jurisdictions have found military retirement pay to be divisible marital property. In *Chisnell v. Chisnell*, 82 Mich. App. 699, 267 N.W.2d 155, *cert. denied* 442 U.S. 940, *reh. denied* 444 U.S. 887 (1978), the court relies on *In re Marriage of Fithian*, 10 Cal.3d 592, 111 Cal. Rptr. 369, 517 P.2d 449 (1974); *Kruger v. Kruger*, 139 N.J. Super. 413, 354 A.2d 340 (1976); and *Hutchins*

v. Hutchins, 71 Mich. App. 361, 248 N.W.2d 272 (1976), to conclude that vesting is not a relevant consideration and that military retirement pay is in fact deferred compensation subject to division. After the *McCarty* decision, *Chisnell* was questioned by the Court of Appeals of Michigan in *Groteluesche v. Same*, 113 Mich. App. 395, 318 N.W.2d 227 (1982). See also *Daffin v. Daffin*, 567 S.W.2d 672, 679 (Mo. App. 1978) (pension earned by military service during marriage was marital property); *Ebert v. Ebert*, _____ Mont. _____, 616 P.2d 379 (1980) (vested military pension deemed divisible marital property).

Once found to be marital property, courts have based a division of military retirement pay upon a ratio determined by the number of months the parties were married while the husband was in the service, compared to the total number of months the husband served. *In re Marriage of Musser*, 70 Ill. App. 3d 706, 27 Ill. Dec. 240, 388 N.E.2d 1289 (1979). Defendant in the case at bar cites another Illinois case, *In re Marriage of Hunt*, 78 Ill. App. 3d 653, 34 Ill. Dec. 55, 397 N.E.2d 511 (1979), which employs the same method of division of a nonmilitary pension. Recognizing the difficulty of determining a present value for a pension, the trial court in *Hunt* retained jurisdiction to award the nonpensioned spouse a percentage of each payment. *E.g.*, *Cearley v. Cearley*, 544 S.W.2d 661 (Tex. 1976).

Here, plaintiff's military retirement pay had no lump sum present value determinable when the divorce was filed. Military retirement pay has none of the qualities commonly attributable to marital assets such as cash surrender value, loan value, redemption value, lump sum value, or a value realizable after the death of the retiree. *Ellis v. Ellis*, 191 Colo. at 318-19. In these respects, military retirement pay is similar to good will in a professional practice which our Supreme Court concluded in *Powell v. Powell*, 231 Kan. 456, 461-63, 648 P.2d 218 (1982), was not a marital asset subject to division. Military retirement pay is nothing more than a future stream of income which will cease at plaintiff's death. Defendant's comparison of military retirement pay to an annuity is not compelling as annuity value based upon estimated life expectancy provides only a speculative future value. We conclude military retirement pay has no present determinable value which would qualify it as a marital asset subject to division.

The trial court did not abuse its discretion in awarding the military retirement pay to the plaintiff. The trial court specifically considered the military retirement pay in its division of property. Acknowledging the change in federal law which would allow division of military retirement pay, the court followed the rationale reached by other jurisdictions in finding the retirement pay had no present property value. Plaintiff's military retirement pay was considered by the trial court as income which could serve as a source for payment of child support and alimony. This conclusion follows Kansas precedent. In addition, the fact that child support and alimony awards consume nearly half of the plaintiff's military retirement pay further establishes the equity of the property division.

Defendant's second issue is whether the trial court abused its discretion in failing to make more detailed findings of fact as requested by the defendant's motion to alter and amend judgment. Central to this issue is the trial court's refusal to place a value on the military pension.

The trial court in this case itemized in detail the property which was awarded to each party. Defendant relies on *Mies v. Mies*, 217 Kan. 269, 535 P.2d 432 (1975), to support her contention that the trial court must set a value on every piece of property awarded. *Mies*, however, addressed the issue of whether an adequate statement had been made by the trial court regarding *what* property was awarded, not its worth. 217 Kan. 269, Syl. ¶ 4.

In the case at bar, the findings of the trial court are adequate for review and are adequate to advise the parties. A comparison of the property valuations contained in the briefs shows disagreement only in the valuation of four items: the home, the two vehicles, and the pension. The parties are not in disagreement over the other eleven assets listed. The variance in the combined worth of the vehicles is $300. The home value variance is $7,500. None of these items, individually or separately, has enough disparity in value to shift the property division inequitably to the favor of one party or the other. Appraisals of these items were not offered by either party.

The focus of the motion is thus left upon the military retirement pay. The trial court in its hearing on the defendant's motion gave its rationale and legal basis for not placing a present value

on the pension's future earnings. Absent a finding by this court of an abuse of discretion in the manner in which the trial court divided the property and took into consideration the pension as a source of child support and maintenance, the defendant's argument is without merit.

Affirmed.

TESTIMONY ON H.B. 3063
BY LOIS JOHNSON, MCDONALD, KANSAS
MARCH 6, 1986

Representative Knopp and Committee Members:

I support bill 3063.

Often people are misled into thinking Alzheimer's is only a disease of the aged. I am here to tell you it is not. My husband was only 49 when he was diagnosed as having organic brain syndrome probably Alzheimer's.

I started checking into SRS to see what financial aid might be available to us. I could not believe what I was hearing; until all our assets were depleted down to $1,700 we would not be eligible for assistance. I was told I would need to sell the business, a small grocery store, any tools or equipment Tom had and his old pick-up. I was furious. The store has always been mine. My husband never had any part of it. I am only 50 years old and I have 15 more years to make a living. If I have to sell my store, I would need to move in order to find a job. According to SRS if I did not live in my home, it would also be sold. Our town is in the Northwest corner only 40 miles from Colorado and has a population of 200 people so property is not selling. The most I could hope to sell for would be $14,000. I could never buy another home for that amount so the $14,000 would become a liquid asset and would also go for the care of Tom.

Alzheimer's is a disease that can only be diagnosed after lengthy testing. We had depleted all our savings and had borrowed against the business. We still had two children in college. This was turning into a real nightmare.

Some Alzheimer's patients can be kept at home for a period of time, but in our case it was impossible. Tom has behavior problems that force us to keep him in a locked ward that only Alzheimer's rest homes can offer. The cost of these homes are $1,800 a month with all doctors fees and drugs paid separately. Alzheimer's patients can live for 3 to 15 years.

The only alternative I have available to me is divorce. I am not sure I can morally handle this; but the SRS laws leave me no choice.

I feel this is a fair bill. We are not trying to get out of our responsibilities, only retain a portion that we both worked so hard to earn together.

I feel I am being punished for being a responsible hard working member of society.

Thank you.

Attachment 5 b
House Judiciary
March 6 1986

HOUSE BILL NO. 3063

Mr. Chairman, members of the committee

I am Bob Foster, Wichita, Kansas.
I want to thank you for the opportunity to speak today.

My experience for this testimony comes from three sources: as a family member whose wife has had Alzheimer's Disease for over 16 years, as a member of the Kansas Alzheimer's and Related Diseases Task Force, and as past president and active member of Alzheimer's and Similar Diseases-Kansas State Association, a voluntary group dedicated to helping Alzheimer's families meet the challenges of the disease through self help support groups.

Alzheimer's disease progresses to the stage where the well spouse can no longer provide the care needed. They will require outside help to meet this "36 hour day." This is expensive. Long term care in a nursing home becomes a necessity and is also expensive. This family may well find themselves <u>without</u> resources and both spouses will need welfare help.

I have heard from many families; how they have spent all or nearly all they have and still have unknown number of years of care needed. Example: one family had to sell the family business. Then the wife sold their home to pay nursing home costs. She then moved in with their daughter's family to have a place to stay.

Another lady said, "We were worth over a $100,000. We are now reduced to nothing."

I urge passage of House Bill 3063 for the following reasons:

1. Division of assets will allow the well spouse to remain living independently with dignity--able to pay taxes and not on welfare or a tax burden.

2. Division of assets will allow the sick spouse to pay for care needed until it is spent down to the resource level required for welfare. This person will also retain dignity for awhile at least.

3. All Kansas residents will benefit through lower costs to taxpayers. I believe that the overall cost to the taxpayers will be less with a division of assets law allowing one spouse to remain off the welfare system than with both spouses winding up on welfare.

Robert E. Foster
5317 E. Kinkaid
Wichita, KS 67218
1-316-684-2662

Attachment 6
House Judiciary
March 6, 1986

I am Marvel Chambers of Wichita,

Thank you for this opportunity to speak on behalf of HB 3063.

Alzheimer's disease first effected our lives in 1971 with my husband's diagnosis. The effects did not end in 1980 at his death, but continues today. Realizing what emotional and financial impact Alzheimer's can have I, as a member of Alzheimer's and Similiar Diseases, Kansas State Association (KASDA) continue to work to help those who are presently dealing with the disease. Therefore I speak for those who are unable to be here today and there are hundreds of them throughout Kansas.

Nursing home charges that may have been affordable in 1974-1980 but not so in 1986. Monthly nursing home charges are approximately $1200 to $1500 ($14,400 to $18,000 a year). One needs no imagination to look down the road a few years and see savings gone. we want so desperately to remain independent, yet give the loved ones what they require.

Let NOT Alzheimer's victimize two people, one the afflicted, the other the spouse. Therefore I urge the legislators--yes, even plead--that you support H.B 3063. This is a great step forward!

Thank you.

Marvel Chambers

Marvel Chambers
3023 Aloma
Wichita, KS 67211

Attachment 7
House Judiciary
March 6, 1986

BOSSLER / BROWN & ASSOCIATES, INC.
1035 SOUTH TOPEKA BLVD. / TOPEKA, KANSAS 66612 / 913-234-5626

March 6, 1986

House Judiciary Committee
Kansas Legislature
State Capitol
Topeka, KS 66612

Dear Members:

As a member of an Alzheimer's victim's family, and as Vice President of the Alzheimer's Disease and Related Disorders Association, Topeka Chapter, I am interested in providing testimony in favor of House Bill 3063, Alzheimer's-Division of Assets.

My mother was diagnosed as having Alzheimer's Disease in 1979. Up until that time, age 77, she had been active in a real estate sales career.

Since then the disease has slowly progressed until she is now somewhere in the 2nd stage.

She was able to live in her own home until February of last year, when she fell and broke her hip and wrist. At the present time she lives at the Topeka Presbyterian Manor, a resident of the intermediate personal care section. It is the opinion of various professionals that she will not be able to return to her home and live out her years with any acceptable degree of safety and security.

In addition to the great anquish and deep frustration this brings to our mother and family, there is the financial cost of care that is not covered by private insurance carriers and Medicare.

Fortunately for our family, my brother and I are able to supplement her modest income without financial hardship. This support will enable her to continue, throughout her lifetime, to have the benefit of the care and security that can be provided for her at the Presbyterian Manor.

In my association with members of the ADRDA of Topeka support group it has become evident to me that many of these people, who are trying to take care of a loved one in their home, are carrying a heavy financial burden on top of all the physical and emotional stress.

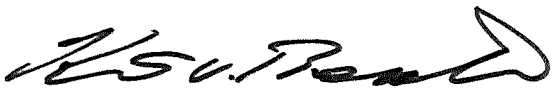
Attachment 8
House Judiciary
March 6 1986

Cost of care in nursing facilities for many families is more than they can afford, unless they reduce their asset holding to a level that qualifies the victim for Medicaid. This being the case, they continue trying to take care of the Alzheimer's patient in the home long after nursing home care would be in the best interest of both patient and care-giver. I believe that society has a moral obligation to provide financial assistance to these families, who through no fault of their own, are faced with the tragedy of this silent epidemic.

Of course, there are other issues. Education, Research, and Programming are other functions of the battle that need to be fought. Both the private and public sectors have their roles and responsibilities.

I would appreciate it if you would make this testimony a part of the record of this committee hearing on HB 3063 and I hope that the committee will act favorably in its resolution.

Sincerely,



Keith V. Bossler

KVB/fw

Dear Kansas Legislators, March - 1986

My name is Joyce Barr. My family hopes you will pass the Division of Assets (House Bill 3063)

My Mother is a victim of Alzheimers Disease. Her name is Georgia Griffith. She is 80 years old and has been in the Methodist Home in Topeka, Kansas for 2 years.

The cost for her care is $48.00 per day plus her medicine and supplies. My Mother now has to be diapered like a baby as her brain no longer tells her when she needs to go to the bathroom. Each Attend costs 64¢ and she uses at least 8 per day.

February-1986	
Supplies	169.84
Room	1488.00
Medicine	36.45
Beauty Shop	33.00
	$1727.29 Total

My Father is Les Griffith (83 years old) and still living in the Family Home he built in 1951 getting along with very little as it takes all of both their Pensions Plus more just for Mother.

I believe the Division of Assets (House Bill 3063) would help my parents and many others just like them.

Thank you
Respectfully,
Joyce Barr
1046 S.W. Valencia Rd.
Topeka, Kansas 66615
Phone 913 478-4488

Attachment 9
House Judiciary 3-6-86

UNITED METHODIST HOMES

1135 COLLEGE
TOPEKA KS. 66604

MONTHLY STATEMENT

3/01/86

NAME: GRIFFITH, GEORGIA

RES. NO.: 01169

DESCRIPTION	AMOUNT
PRIOR BALANCE.....	1,608.81
PAYMENTS.....	1,608.81-
02 HEALTH UNIT FEES	1,333.00
07 PRIVATE ROOM CHARGE	155.00
12 MEDICATION	36.45
23 BEAUTY SHOP	33.00
25 MEDICAL SUPPLIES	169.84
X BALANCE DUE..	1,727.29

RESIDENT COPY

Testimony in support of HB 3063

My name is Wanda Blaser. I am a registered nurse and have my master's degree in nursing. I teach for the University of Kansas and currently serve as president of the Alzheimer's Disease and Related Disorder's Association (ADRDA), Topeka Chapter.

From my work as a support group leader and at the task force hearings I have heard the priority family concerns as need for some type of finanacial assistance and acceptable insurance coverage. A quote from Meiners (1985) summarizes the problem well. Long term care expenses are frequently catastrophic for elderly persons needing such care. Medicare is not designed to cover long term care, and private insurance is not generally available to fill this gap. Without the benefit of private insurance for long term care, payments for those services have come to represent the largest out-of-pocket health care liability for the aged. Thus, as a result of funding their own extended care needs, many people become candidates for Medicaid.

Our Alzheimers families are in this category. They have worked hard to support themselves and through no ones fault are now forced to deal with a debilitating disease lasting an average of 8-10 years. I have seen spouses fear living in poverty, but realizing that is what they will have to do in order to receive the needed care for the ill spouse. We do not want to support a system that forces a married couple to choose between poverty, divorce, or separate maintenance to receive the care needed for a loved one.

I urge you to support HB 3063 and provid the spouse of the Alzheimer's patient opportunity to receive needed care for his loved one while continuing to care for himself.

Meiners, M. (1985) Long Term Care Insurance, Generations: 9(4)

Attachment 10
House Judiciary
March 6 1986

TESTIMONY OF THE REV. WILLIAM C. GANNAWAY
FOR BILL #3063 BEFORE THE HOUSE JUDICIAL COMMITTEE

As a pastor who has ministered to families of Alzheimer's disease and other related dementing illnesses, I speak in favor of House Bill #3063 which allows married couples to divide their financial assets. I have witnessed the terrible financial drain on families of Alzheimer's patients through costs of home care, day care at institutions, and finally, commitment to full time nursing care in an institution. The "slow death" characteristic of Alzheimer's patients cause some families to spend their entire life savings on an afflicted family member which leaves the surviving spouse with little or nothing for their survival. It would be a great financial relief to families if couples were allowed to divide their assets if such an illness would strike so that the afflicted spouse could spend down his or her assets and thereby qualify for welfare assistance if this way were chosen.

There is now a legal way for couples to receive assistance and that is if they would choose to enter into a divorce. I do not think a compassionate society would want to see this alternative selected by couples who have been married for 40 or 50 years. This pattern would further erode the nature and quality of the family in today's society.

Please consider voting in the affirmative on House Bill #3063 as a humanitarian gesture to those couples caught in the financial pressure which Alzheimer's disease inflicts. Thank you.

Atch. 10a
House Judiciary
March 4, 1986

KINH Kansans for Improvement of Nursing Homes, Inc.
913 Tennessee, suite 2 Lawrence, Kansas 66044 (913) 842 3088

TESTIMONY SUBMITTED TO THE HOUSE JUDICIARY COMMITTEE
CONCERNING HB 3063

March 6, 1986

Kansans for Improvement of Nursing Homes is a consumer organization having as its primary goal to improve the quality of care in nursing homes. Of our 850 members, most of whom are relatives of nursing home patients, many know all too well the tragedy of Alzheimer's Disease. One of the most devasting effects of this disease and other long-term debilitating illnesses is the impoverishment of the victim's spouse to pay for years of costly care for the sick husband or wife.

Current property laws in Kansas treat all assets of a married couple as joint property and require that spouses be responsible for the cost of one another's care until all resources are exhausted. When that "spend-down" occurs, the state finds that it then has to assume not only the support of the ailing spouse but for the now impoverished healthy spouse as well. Decades of saving for the couple's retirement years have been wiped out by the expense of nursing home care.

HB 3063 would permit the assets of a married couple to be divided so that the property of the healthy spouse could not be counted for the purpose of determining the sick spouse's eligibility for medicaid, and the victim's spouse could not be required to pay an amount which would reduce his or her income below the national median family income.

Under the proposed legislation the state would have to assume responsibility for the care of the Alzheimer's victim sooner than under the current system. However, it would, by the same token, delay or perhaps eliminate the time when it would have to provide state assistance for the spouse. That is not to suggest that the proposal is entirely without cost, but it appears that there would be some off-setting cost savings and that it would be little to pay for the self-respect and dignity of elderly citizens who, through no fault of their own, are facing a poverty-clouded retirement.

KINH urges your support for HB 3063.

Marilyn Bradt
Legislative Coordinator

Attachment 11
House Judiciary
March 6 1986

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Testimony in Opposition of H.B. 3063

I am appearing today in opposition to the proposed legislation contained in H.B. 3063.

The proposed changes would allow for the separation of income and resources of a husband and wife into equal shares for the purpose of determining medical assistance eligibility of either or both. It further restricts the recovery of medical expenditures from a spouse who has a legal obligation to pay for such medical expenses.

The bill appears to violate federal regulations. 42 CFR 435.723 states in part that SRS: "must consider income and resources of spouses living in the same household as available to each other, whether or not they are actually contributed."

Such regulation further provides that: "If both spouses apply or are eligible for Medicaid and cease to live together because of the institutionalization of one spouse - (i) The agency must consider their income as available to each other through the month in which they cease to live together. Mutual consideration of income ceases with the month after the month in which separation occurs. (ii) The agency must consider their resources as available to each other for the month during which they cease to live together and the six months following that month."

Attachment 12
House Judiciary
March 6 1986

Beyond the federal issues, the department has several concerns regarding the bill.

1. It restricts the Department's ability to consider the resources of a spouse even if such resources are vastly in excess of poverty guidelines. Restricting the Department's medical subrogation rights to only the income of a spouse who would otherwise have a legal duty to support his or her spouse could well create a situation in which a person with thousands of dollars in resources beyond the homestead exemption would be relieved from meeting such person's legal and equitable duty of supporting their spouse.

2. It permits a spouse to divest themselves of resources, whether owned separately or jointly, that could otherwise be used to meet medical needs. This is incongruent with the long-standing State policy of not permitting persons to transfer property for the purpose of becoming eligible for assistance.

3. There is uncertainty as to the fiscal impact that the bill would have on future medical expenditures. However, the change has the potential of being very significant.

4. The bill, as written, is not restricted to those situations where one or both spouses are institutionalized. As such, the bill not only violates

federal regulations, but the fiscal impact would be even more significant than if it were restricted to institutional living arrangements.

It is the department's recommendation that this bill not be passed until such time as the legal and fiscal impacts can be ascertained. With limited budget allocations, the bill could force the department into choosing to fund programs for the disabled and elderly at the expense of programs for children. More time is needed to study the proposed changes.

It should be noted that under both state and federal Medicaid regulations, the homestead is exempt as a resource for the spouse who enters an institution when his or her spouse continues to live there. In addition, one automobile per family is exempt. If the spouse in the community does not have sufficient income to meet basic maintenance needs, the spouse in the institution has the ability to allocate a portion of his or her income to help meet those needs. In doing so, the obligation for meeting the cost of institutional care is reduced.

Finally, with reference to jointly owned property, the department currently prorates the value of jointly owned real property. Although the value of jointly owned personal property, such as checking and savings accounts, is considered in full, the department could view a proportionate share here as well. For example, if a husband and wife have a $3,000 joint savings account, we consider the full amount as being available currently but could change policy to consider only $1,500 of the account available for each. Such a policy change would require an amendment to the Kansas Administrative Regulations and a change

in state law would not be necessary. However, careful consideration would have to be given to such a change in terms of the potentially high fiscal impact.

Robert C. Harder
Office of the Secretary
Social and Rehabilitation Services
296-3271

Thad E. Nugent, Chartered
ATTORNEYS AT LAW

THAD E. NUGENT
WILLIAM J. PAPROTA

SUITE 145 · TWENTY-SEVEN CORPORATE WOODS
10975 GRANDVIEW
Overland Park, Kansas 66210
(913) 451-1906

DOCTRINE OF EQUITABLE DIVORCE

Rule: Where there is clear and unequivocal evidence that at a particular point prior to divorce, the parties' marriage is no longer viable, identification of marital assets for the purpose of property division will be made as of that time rather than as of the date of divorce.

Painter v. Painter, 65 N.J. 196, 320 A2d 484 (1974) at p. 495

> Finally we think it necessary to consider and determine exactly what span of time is intended by the words, "during the marriage". While apparently clear on its face, the phrase may, in its appliction, present difficulties. Obviously the period commences as soon as the marriage has taken place. But when, for the purpose of this statute, does it end? Reading the act literally, the terminal point would seem to be the day the judgment of divorce is granted. Such an interpretation, however, presents practical obstacles. (emphasis supplied)
>
> * * *
>
> We think the better rule to be that for purposes of determining what property will be eligible for distribution the period of acquisition should be deemed to terminate the day the complaint is filed. In adopting this interpretation of the statute, we also have in mind the probable necessity in many cases of providing a period for discovery both as to the available marital assets of the other spouse as well as to their value. (emphasis supplied)
>
> We are under no illusion that what we have said alone will provide certain and ready answers to all questions which may arise as to whether particular property is eligible for distribution. We have sought only to implement the legislative interest, as we discern it, by setting forth what we believe to be the general governing rules. Individual problems may be solved, as they arise, within the context of particular cases.

Attachment X 13
House Judiciary
March 6 1986

Portner v. Portner, 93 N.J. 215, 460 A2d 115 (1983)
p.117 - referring to Painter:

> We thought the better and more practical rule to be the date of the filing of the complaint that would fix the marital terminiation date for equitable distribution purposes. (Citation omitted) We acknowledged that the rule would not provide certain and ready answers in all cases concerning equitable divorce. (Citation omitted) We further recognized that the rule was somewhat arbitrary and was chosen primarily because it presented the most workable and objective rule among all the alternatives we considered. (Citation omitted)
>
> Our present examination of Painter and its progeny pesuades us that the Painter rule still is the most feasible and practical rule to ascertain when a marriage has ended. Thus we reaffirm that the Painter rule is the standard to be applied in determining the terminal date of a marriage for equitable divorce purposes.

The Court goes on to state that marriage is like a Partnership, i.e., - a "joint undertaking":

> Therefore, marital assets acquired in the course of that joint undertaking fairly should be included in the estate subject to eqitable divorce. Conversely, assets acquired after that enterprise or partnership no longer exists should not be so included.

Some exceptions to the above rule, as determined by case law:

a. DiGiacom v DiGiacom, 402 A2d 922 (N.J. 1979)
[oral agreement and actual distribution of assets fixed the date]

b. Carlson v Carlson, 371 A2d 8 (N.J. 1977) and Smith v Smith, 371 A2d, (N.J., 1977) [written Property Settlement Agreement including support and division of assets.]

Painter rule applies, therefore, when there is:

a. a meritorious divorce petition filed that terminates in a divorce being granted.

b. an actual physical separation of the parties, thus terminating the "marital partnership".

c. No oral or written separation agreement or stipulation establishing a different value date.

d. no actual distribution of marital assets.

(685 P.2d 327)

No. 55,835

JACKIE LEE GRANT, a/k/a J. L. GRANT, *Appellee*, v. SHIRLEY M. GRANT, *Appellant*.

Petition for review denied October 2, 1984.

SYLLABUS BY THE COURT

1. DIVORCE—*Division of Property—Military Retirement Pay—Effect of Federal Law on Kansas Courts.* Federal law no longer precludes a Kansas court from dividing military retirement pay pursuant to K.S.A. 60-1610(*b*). Following 10 U.S.C. § 1408 (1982).
2. SAME—*Division of Property—Equal Split of Marital Property Not Required—Trial Court Discretion.* Kansas law does not require an equal split of all property acquired during the marriage, but rather gives the trial court discretion to consider all property to arrive at a just and reasonable division.
3. SAME—*Division of Property—Trial Court Discretion—Appellate Review.* In divorce actions, the trial court is vested with broad discretion in adjusting property rights, and its exercise of that discretion will not be disturbed on appeal absent a clear showing of abuse.
4. SAME—*Division of Property—Trial Court Determination of Property Subject to Division.* To determine what property is subject to division, the trial court looks to all property which is jointly or individually held by the parties when the divorce is filed.
5. SAME—*Division of Property—Military Retirement Pay—Value.* Military retirement pay does not have a present value which becomes part of the marital property divisible at divorce.
6. SAME—*Division of Property—Trial Court Did Not Err in Refusing to Value and Divide Military Retirement Pay.* In a divorce action, it is held: The trial court did not err in dividing the marital property, and in refusing to value and divide plaintiff's military retirement pay.

Appeal from Shawnee District Court; JAMES M. MACNISH, judge. Opinion filed August 9, 1984. Affirmed.

John E. Bohannon, of Topeka, for the appellant.

Hal E. Desjardins and *Paul D. Post*, of Topeka, for the appellee.

Before FOTH, C.J., PARKS and BRISCOE, JJ.

BRISCOE, J.: This is a divorce action wherein the defendant, Shirley M. Grant, appeals the trial court's division of property.

The plaintiff, Jackie Lee Grant, had been in the Air Force for three and one-half years when he married the defendant in 1955. He retired from military service in 1972 and at the time of trial he was receiving net monthly military retirement pay in the amount of $750.59. The couple had four children, two of whom were then minors, ages 15 and 17.

Plaintiff operated his own security service which showed a loss of $9,000 in 1982, part of which was attributable to depre-

Attachment #4
House Judiciary
March 6 1986

ciation and mileage. The business paid the plaintiff $6,895.39 in expense reimbursement during the same period. Plaintiff's living expenses totaled $926.33 per month.

The defendant is employed as an office clerk and earns a net monthly income of $538.50. During most of the marriage she did not work outside of the home, except for babysitting, ironing and selling Avon products. Her living expenses totaled $1,077.90 per month for herself and the two children.

The trial court, in granting the divorce, awarded the defendant custody of the two minor children and $200 monthly child support. She received in the division of property the family residence, a 1977 Chevrolet Nova, most of the household items, an insurance policy and the savings accounts. She also was awarded $150 monthly maintenance for 36 months.

The plaintiff received a 1975 Ford pickup and camper, a motorboat, the security firm and its checking account, some household items, an insurance policy and his military retirement pay.

Both of the issues raised on appeal challenge the trial court's treatment of the husband's military retirement pay. The first issue is whether the trial court abused its discretion in dividing the marital property by not valuing and dividing the husband's military retirement pay. The second issue is whether the trial court was required to make more detailed findings of fact as requested in the defendant's motion to alter and amend judgment. Specifically, the defendant is here again concerned with the military retirement pay and the court's failure to assign a value to it.

As regards the first issue, the defendant contends the trial court in its division of the marital property failed to comply with the requirements of K.S.A. 60-1610(*b*). The factors to be considered by the trial court and its discretionary powers in the division of property, as well as the scope of appellate review of property divisions, are summarized in *Bohl v. Bohl*, 232 Kan. 557, 561, 657 P.2d 1106, *appeal after remand* 233 Kan. 725, 665 P.2d 775 (1983):

"There is no disagreement on the rules governing division of property pursuant to divorce. The trial court is under a duty to divide the marital property in a 'just and reasonable manner.' K.S.A. 1981 Supp. 60-1610(*d*). In determining a just and reasonable division of the property the trial court should consider: (1) the ages of the parties; (2) the duration of the marriage; (3) the property owned by the

parties; (4) the present
source and manner of a
the question of fault wh
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K.S.A. 60-1610(*b*

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parties; (4) the present and future earning capacities of the parties; (5) the time, source and manner of acquisition of property; (6) family ties and obligations; (7) the question of fault when determined; and (8) the allowance of alimony or the lack thereof. [Citations omitted.]

" 'In a divorce action the district court is vested with broad discretion in adjusting property rights, and its exercise of that discretion will not be disturbed on appeal absent a clear showing of abuse.' [Citations omitted.] '[D]iscretion is abused only where no reasonable [person] would take the view adopted by the trial court. If reasonable [persons] could differ as to the propriety of the action taken by the trial court then it cannot be said that the trial court abused its discretion.' [Citations omitted.]"

Defendant contends that the plaintiff's military retirement pay should have been valued at $97,600. Defendant bases this valuation upon the testimony of a life insurance actuary who testified as an expert witness at trial. The actuary compared the plaintiff's monthly retirement payment to an annuity paying the same monthly amount. He concluded that retirement pay of $881 per month, if purchased as an annuity to pay the same monthly amount, would cost $97,600. Defendant includes this valuation of the retirement pay in her computation of the percentage of net worth distributed to her. By her analysis, she received 28.5 percent of the net worth and the plaintiff received 71.5 percent. By plaintiff's computation, which assigns no value to retirement pay, the defendant received 93 percent of the net worth; the plaintiff, 7 percent.

The defendant urges this court to find an abuse of discretion in the trial court's failure to consider the military retirement pay as marital property with a determinable value. In addition, the defendant contends the pension should have been divided between the parties to allow the defendant 41 percent of each pension check. Defendant reaches this percentage by determining the percentage of plaintiff's military service which was completed during the marriage and then dividing that percentage in half.

K.S.A. 60-1610(*b*) states in pertinent part:

"The decree shall divide the real and personal property of the parties, whether owned by either spouse prior to marriage, acquired by either spouse in the spouse's own right after marriage or acquired by the spouses' joint efforts . . . ."

Kansas law does not require an equal split of all property acquired during the marriage, but rather gives the court discretion to consider all property to arrive at a just and reasonable division.

2825 SOUTH 24TH, KANSAS CITY, KANSAS 66106 U.S.A. • PHONE: (913) 262-4465

Division of Assets (House Bill 3063)
House Judiciary Commitee

Re: Testimony of Donna Land

My husband suffers from a degenerative disease known as "huntington's Chorea." He has been diagnosed for seven years. There is no cure for this disease and few medicines that are available to them. He has had many complications with this disease. His is mostly emotional. The medication he takes is very expensive because he is on a high dosage. The cost of this medication is $360 per month.

We have no insurance to cover these costs. We have to pay this out of our own pocket. We have been refused insurance because of his condition. We have been turned down on Medicaide four times now. We cannot meet the spendown of $3600 for six months. That is over one-half of our income. Can any of you possibly afford to spend this on medical needs? Of Course not; no-one can but they expect us to do so.

My husband needed a wheelchair in order to be able to go to the doctor and I had to go to the Goodwill and buy a used one and We worked on it for two weeks making necessary repairs. He also needed abed and we purchased a used single bed and bolted rails from a baby bed on the side in order for it to be safe for him.

He was not lucky enough to get one of the more popular diseases that have funds to help families with these extra devices. There are no funds available to help us. United Way told me we just happen to be one of the Unfortunate ones caught in the Middle.

The importance of this Bill is very great to us. There are so many people like ourselves that have been forced into institutions and care facilities simply because they do not have the money to give proper care at home. It is more expensive to have the state care for them in these institutions than in the home.

I have been advised by social workers to get a divorce and place the burden on the state but I think that is totally unfair to me and my family. Please while you are studying this bill think of myself and others like me that would greatly benefit from it. Also think of the consequences of all of us if it does not pass. A much greater strain will be placed on the State in the total care of patients with this disorder and related ones.

March 6 1986

TESTIMONY BY:

Barbara L. Dopyera Daley

Barbara L. Dopyera Daley
6912 Towerview Lane
Topeka, Kansas 66619
(913) 862-2092

March 6, 1986

House Bill 3063- Division of Assetts

Chairman Knopp and Members of the House Judiciary Committee:

Thank you for the opportunity to tell you why I support the passage of House Bill 3063, the Division of Assetts bill.

I believe that it is unjust that a community dwelling, well spouse must be forced into poverty in his attempts to provide for the care of an ill spouse.

Yet, this is happening to many Kansans facing Alzheimer's or a related disease. In my experience as Research Director for the Kansas Alzheimer's and Related Diseases Task Force, I had the opportunity to hear testimony from hundreds of Kansans. These people pleaded for financial assistance for long term care.

An Overland Park man told the Task Force: "Our nest egg will be wiped clean two years after my wife goes in a nursing home."

A Larned woman exclaimed: "When you have to put them in a care home it's either for the very wealthy or very poor. We have sold everything- he is getting good care but there is no help."

A Garden City woman stated: "Because Alzheimer's disease disables rather than kills, families are in for years of mounting expenses to cover care. Most must use all their life savings."

Often spouses exclaimed, "what about me? All of the savings we worked hard together to accumulate, go to the other person. How will I care for myself?"

It is unjust to force both spouses into poverty when only one is applying for the medical assistance.

I do not believe that this bill will allow the very rich to take advantage of financial assistance because there is an income limit written into the bill.

This bill will not secure assetts for adult children because it deals with dividing assetts and not transfering assetts.

This bill will most likely have a fiscal impact on the state of Kansas. However, at present the state is saving money at the expense of its citizens who are suffering in their attempts to provide humane care for an ill loved one. If any new revenue is raised, there must be some earmarked for House Bill 3063.

I urge passage of House Bill 3063 in view of the tremendous need for this law.

House Judiciary
March 6 1986