

July 10, 1984

*Sachs & Deas
5832 Hoffman
Hammond*

In Re: The Marriage of
Frank J. Bochnowski and
Carol P. Bochnowski

383-786

791570

FINDINGS OF FACTS AND CONCLUSIONS
OF LAW AND JUDGMENT AND DECREE

The court having heretofore heard the evidence in this matter and taking the same under advisement, now finds as follows:

General Findings

1. Petitioner has been a bona fide residence of the County of Lake for three (3) months and the State of Indiana for six months immediately preceding the filing of this cause on June 2, 1983, and this cause was pending for more than sixty days after the filing of said petition by the petitioner for dissolution of marriage.

2. There has been an irrevocable breakdown of the marriage of the parties.

3. That there were two children born of the parties namely, Peggy A., born April 22, 1962 and Susan C., born September 1, 1965.

4. The parties were married on December 26, 1960 and shortly thereafter petitioner commenced a twenty one (21) year career in the United States' Army, retiring in 1981 as a Lieutenant Colonel. That during said time, the respondent reared his children and was an effective Army wife, engaging in many activities at the various assignment posts of the petitioner.

5. That while on petitioner's last military assignment in New York he completed law school and is presently engaged in the private practice of law in this State.

6. That the respondent during one of petitioner's duty assignments in Oklahoma, completed her bachelor's degree in business administration in 1975.

7. That the petitioner is employed as an attorney in private practice and in 1982 had a net income of Thirty Nine Thousand Two Hundred Eighty Eight Dollars (\$39,288.00) from his practice and further, receives a retirement benefit from the United States Government for his military service in the gross amount of Eighteen Thousand Two Hundred Fifteen Dollars (\$18,215.00) per year.

8. That for calendar year 1983, the respondent was employed as a sales representative and during calendar year 1983 made approximately twenty four Thousand Dollars (\$24,000.00)

9. That the petitioner returned to Indiana in June, 1981, upon his retirement from the military and took up residence here. That the respondent stayed in New York presumably to wait the youngest child's completion of high school. Although the parties' minor child finished high school in May, 1982, respondent never joined the petitioner in Indiana. In essence, the petitioner and respondent have been living apart since June, 1981.

10. That from June, 1981 until the present the petitioner paid all of the parties' debts and obligations both in the State of Indiana, including his mortgage, utilities and debts here, and further paid, all of the parties' debts and obligations at the New York residence, including from June, 1981 to April, 1983 both rent (Five Hundred Seventy-Five Dollars \$575.00 per month) and utilities (Two Hundred Dollars - \$200.00 per month) and at the same period of time from June, 1981 to August 1983 utilities of approximately Two Hundred Dollars (\$200.00) per month, and all other bills including the respondent's Datsum payment (Seven Hundred Fifty Dollars \$750.00 per month) Plus insurance for said automobile, Bamberger's (Seven Hundred Dollars \$700.00), dime Savings and Loan Bank (Eighteen Thousand Dollars \$1,800.00) Visa (Thousand Dollars \$2,000.00) in addition since June 1981 the petitioner has assumed the cost of various education loans for his daughters college expenses, Nine Thousand Dollars (\$9,000.00) in 1981, Sixteen Thousand Dollars (\$16,000.00) in 1982 and Eight Thousand Dollars (\$8,000.00) in 1983 This was notwithstanding the fact that respondent was making in excess of Twenty Thousand Dollars (\$20,000.00) per year, with the exception of an eight (8) month period of unemployment.

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DULY ENTERED
FOR TAXATION

FEB 7 1985

John A. [Signature]
ANCHOR LAKE COUNTY

STATE OF INDIANA
FEB 8 12 11 PM '85
RUBOLPH CLAY
RECORDER

297-A

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CUSTODY, SUPPORT AND VISITATION

1. That the respondent should have custody of the parties' minor child, Susan who is eighteen (18) years of age and presently in college. That the petitioner has as indicated, been paying for all of her college expenses and stated in open court agrees to continue to do so to the extent that he can. The respondent should have custody subject to the right of reasonable visitation with said child on the part of the petitioner. The petitioner's continued payment of college expenses shall satisfy any support obligation. The respondent should keep the parties' daughter, Susan on her medical insurance plan and petitioner continue to provide medical coverage under Champus. That further, the petitioner should be allowed to claim the parties' daughter Susan as an exemption for tax purposes and for calendar year 1983, both Susan and Peggy.

REAL ESTATE

1. That subsequent to the petitioner's taking up residence in Indiana the parties purchased a residence at 5497 West 86th Terrace Crown Point, Indiana SAid property was pruchased on December 21, 1982, and is in the joint names of the parties. That the respondent has never resided in said residence and the petitioner, from the date of purchase has defrayed all expenses, to include mortgage, taxes and insurance. The purchase price of said real esate of \$117,000.00. The outstanding indebtedness on said real estate is presently \$103,200.00 to Peoples Federal Savings and Loan. The petitioner testified that he borrowed approximately \$12,000.00 from his parents. At least \$10,000.00 of which went towards the downpayment of said residence and that this is a debt that is owed to his parents and not a gift. That the property is valued at approximately the purchase price of said property, as it was appraised by Vernon Lee & Associates. that between One Hundred Fifteen and One Hundred Twenty Thousand Dollars (\$115,000.00- \$120,000.00).

2. That since there is little or no equity in the residence, the petitioner should have sole ownership of said residence.

PERSONAL PROPERTY

1. That the parties have stipulated and agreed in open court with respect to personal property and the petitioner is hereby given all of the property presently in his possession except for the following items which the respondent has requested and which the petitioner has agreed she can have; table, cut glass, sewing maching, silver chaffing dishes and art books. The respondent shall have all of the personal property in his possession, except for those items which the petitionr has requested and the respondent has agreed he can have, whichare: West Point Eagle, Ray Horn painting, West Point parade Hat, and his grandmother's china cabinet.

2. That further, the parties after the submission of this case, verbally agreed with the knowledge of their attorneys to sell the Franklin Mint Coin Collection, valued at approximately Four Thousand Dollars (\$4,000.00) and utilize the net proceeds, to defray expenses of their oldest daughter, Peggy's wedding and split equally any remaining proceeds from said coin sale.

3. That the respondent should be awarded the parties' Datsun automobile which is valued at, prusuant to blue book prices an average retain of Forty Eight Hundred Dollars (\$4,800.00) should be awarded to the respondent and the parties' 1976 Oldsmobile, which has a value of less than One Thousand Dollars (\$1,000.00) should be awarded to the petitioner, as it is being used by the parties' child in college and the petitioner has indicated a willingness to keep theautomobile insured for his daughter.

4. That each of the parties have separate bak accounts of negligible value and each should be entitled to their own bank accounts.

5. That the petitioner has a IRA account under the Oppenheimer Fund with one hundred twenty (120) shares, valued at approximately Twenty-One Thousand Dollars (\$21,000.00) per share based on the distribution of property in division of personal property of the parties and the fact that the petitione has been and will continue to assume the debts of the parties and the tax consequences to the petitioner of said funds would be distributed he should be awarded all interest in said IRA account.

6. That the parties have insurance policies with Metro Life Insurance, Army Mutual Aid Society, Armed Forces Cooperative, and VA only one of which has any cash surrender value and on which there is a present loan existing exceeding the cash value. The petitioner should be awarded all of his insurance policies.

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7. That the property awarded to the respondent was valued at Thirty-Eight Thousand Dollars (\$38,000.00) on insurance scheduled items and Twenty-Five Thousand Dollars (\$25,000.00) unscheduled items. That said schedules were presented into evidence. Although the respondent testified that she disagreed with several of the values, even discounting and subtracting her difference in values, the property to be received by the respondent is valued in excess of Twenty-Five Thousand Dollars (\$25,000.00) in the scheduled items listed. The respondent, in addition, is getting the vast majority of the Twenty-Five Thousand Dollars (\$25,000.00) valued unschedule items.

MILITARY RETIREMENT PENSION

1. That the petitioner receives, due to his twenty-one (21) year military service a retirement benefit a gross amount of Eighteen Thousand Two Hundred Fifteen Dollars (\$18,215.00) per year. That the petitioner receives said retirement benefit pursuant to Federal Law for his military service. He did not contribute to said retirement fund and further, he cannot draw any lump sum. That is his continued receipt of said pension depends on his continuing to live. The respondent is requesting a percentage of aid pension by way of property distributin and argues that it should be an asset of the marriage. Respondent relays on her many years as a dutiful, supportive Army wife and the recent amendment to US Code Title 10 Section 1408. The amendment to United States code as it applies to military pensions was a reaction to United States Supreme Court decision McCarty vs. McCarty 1015 Ct 2728 (1981) This amendment was passed by congress to allow each state to deal with military pensions in dissolution proceedings in a manner in which the state saw fit. In Re the Marriage of Sarles (1983) 191 Cal. Rptr. 514.

2. That leaves the court with an application of Indiana law to apply to this military pension to determine whether or not respondent is entitled to an portion of said pension, that is, whether or not it is an asset of the marriage. Hiscox vs. Hiscox 385 NE 2n 1166 (1979) Sadler vs. Sadler 428 NE 2d 1305 (1981) and In Re The Marriage of Delgado 429 NE 2d 1124 (1982) and cases cited therein make it clear that pursuant Indiana law facts of tiis case would hold that military pension of the nature of the petitioner is receiving in not an asset and is not subject to property distribution. It is merely to be considered as the this court is considering it indivision of other property.

LAW PRACTICE

That the respondent requested a portion or perecentage of petitioner's private law practice by law of property distribution. The petitioner started his law practice in 1981 and is a sole practioner. The respondent provided no evidence as to the value of the petitioner's law business nor was there any showing of any goodwill attached to said business on the value thereof. The court simply consideres the petitioner's income from his law practice as a factor in dividing the parties marital property, Thus, the respondent is not entitled to any portion of petitioner's law practice.

DEBTS AND OBLIGATIONS

1. That the parties owe the following debts and obligations: Datsun payment - \$750.00 plus car insurance through July, 1984; education loan from Tutituion plan incorporated in the sum of approximately \$19,00.00; Eurpoean American Bank inthe sum of \$8,000.00; Visa in the sum of \$2,000.00; \$12,000.00 debt owned to Joseph and Estelle Bochnowski; \$700.00 to Bamberger's; Dime Saving and Loan in the amount of \$18,000.00; respondent's parents; Frank & Helen Deeker - \$757; all insurance loans for aptries' children's college expenses. That petitioner should be ordered to pay said debts and obligations and hold respondent harmless thereon, to include the parties' mortgage.

2. That the respondent's attorney has asked for attorney fees from the petitioner, that based on the petitioner's assuming the debts and obligations of the parties and his assuming the debts and obligations of the parties since the parties physical separation, and further based upon the income of the respondent, the respondent should pay her own attorney fees.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS;

1. That there has been an irretreicable breakdown of the marriage and the bounds of matrimony should be and hereby are dissolved and the parties restored to that of unmarried persons.

2. That the respondent is awarded the care and custody of the parties child, Susan born September 1, 1965 and the petitioner have reasonable visitation upon notice.

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3. That the petitioner shall continue, to the extent his he is able, to defray the cost of Susan attending college and provided he does so should be and hereby is ordered allowed to claim said child as a tax purposes.

4. That petitioner is further allowed to claim both of the parties children for calendar year 1983.

5. that the petitioner is awarded all personal property presently in his possession and in addition: West Point Eagle, Ray Horn painting, West Point Parade Hat and his grandmothers china cabinet and 1976 Oldsmobile automobile.

6. That the respondent should be awarded all personal property in her possession and in addition: table, cut glass pitcher, sewing machine, silver cahffing dishes and art books and 1980 Datsum automobile.

7. That each party is awarded their own bank accounts of negligible balances. Further, petitioner is awarded all his insurance policies and his retirement account.

8. That all right, title and interest is awarded the respondent in and to the following described real estate, to-wit: Lot 85, ^{0.417, 36} Pine Island Ridge be and the same is hereby divested of and from him and wholly vested in the petitioner. The Clerk of this court, the Auditor of Lake County and Recorder of Lake County, respectively, shall, with respect of said real estate, timely perform the duties imposed upon them pursuant to I.C. (Burns 1971) 6-1.1-5-6.

9. That the respondent is not entitled to any portion of the petitioner's retirment income. Respondent is further not entitled to an portion of the petitioner's law practice. #13-306-16

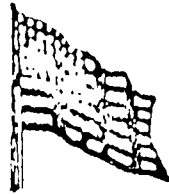
10. That the petitioner shall assume and pay all of the parties debts and obligations which are Datsum payment - \$750.00; education loan from Tutition Plan Incorporated in the sum of approximatley \$1,900.00; Eurpoean American Bank in the sum of \$8,000.00; Visa in the sum of \$2,000.00; \$12,000.00 debt owed to Joseph and Estelle Bochnowski; \$700/00 to Bamberger's ; Dime Saving and Loan in the amount of \$1,800.00, Frank and Helen Deaker \$757.00 and all insurance loans.

11. That each party should pay their own attorney fees.

All so Ordered this 10th day of July, 1984.

/s/ James Danikolas
Judge, Lake Superior Court
Room No. 3, Gary, Indiana
Civil Division

The United States of America



STATE OF INDIANA, COUNTY OF LAKE, ss:

I, the undersigned, Clerk of the Lake Superior Court of Lake County, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify that the above and foregoing is a full, true, correct and complete copy of the DISSOLUTION OF MARRIAGE entered of record in Cause Number 383-786 entitled, IN RE: THE MARRIAGE OF FRANK J. BOCHNOWSKI AND CAROL P. BOCHNOWSKI, on the 10th day of July, 1984, as the same appears of record in my office as such Clerk.

Recorded in Order Book 196 Page 292, 293, 294 and 295.

IN WITNESS WHEREOF, I have herunto set my hand and affixed the seal of said Court, at my office in Gary, Indiana In the said County, this 22nd day of January, A. D., 1985.

Edward G. Lekowski

Clerk Lake Superior Court

Margaret Linger Deputy