

of \$2,500.00, the amount then offered by the High Commissioner as being a fair value of the subject property. In accordance with the provisions of Title 10, Section 57(b), of the Trust Territory Code, said sum shall draw interest at the rate of three percent per annum from the date of the summons until claimed by defendants or ordered paid to the defendants by the court. Thereafter, on November 17, 1971, said deposit was increased by the additional sum of \$8,137.25, the same to draw interest from the date of deposit. As to the latter deposit, interest at the rate of six percent per annum is to be paid from August 31, 1966, to November 17, 1971. (*In Re Ngiralois*, 3 T.T.R. 303, 315.)

Accordingly, it is:—

Ordered, adjudged, and decreed that:—

1. Title to the subject property, being said Taketik Island, Ponape District, Trust Territory of the Pacific Islands, be, and it is, vested in plaintiff; that
2. Defendants be compensated by plaintiff in the total amount of \$13,603.49, each defendant to share equally therein, and that
3. Defendants be, and they are, awarded costs incurred herein.

WILLIAM W. DEAN, Plaintiff

v.

MARY CATHERINE DEAN, Defendant

Civil Action No. 965

Trial Division of the High Court

Mariana Islands District

January 7, 1972

Action for divorce based on grounds that parties had lived apart for more than two consecutive years without cohabitation. The Trial Division of the High Court, H. W. Burnett, Chief Justice, held that two year period did not

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begin to run until there was a manifestation of intent on the part of plaintiff not to continue the marriage relationship.

Domestic Relations—Divorce—Grounds

To establish grounds for divorce based on the parties having lived apart for more than two consecutive years without cohabitation, the two year period does not begin to run until there is a manifestation of intent on the part of the plaintiff not to continue the marriage relationship. (39 T.T.C. § 201)

<i>Assessor:</i>	None
<i>Interpreter:</i>	None
<i>Reporter:</i>	ELSIE T. CERISIER
<i>Counsel for Plaintiff:</i>	R. K. SHOECRAFT
<i>Counsel for Defendant:</i>	THOMAS J. NOLAN

BURNETT, Chief Justice

Plaintiff filed complaint for divorce, alleging as grounds therefor that the parties have lived apart for more than two consecutive years without cohabitation. At the time set for trial, December 7, 1971, plaintiff appeared, together with counsel. Defendant did not appear but was represented by her counsel.

At the close of testimony on behalf of the plaintiff, defendant moved to dismiss, contending that there had never been an interruption of cohabitation of the parties within contemplation of the statute.

Relevant facts can be briefly summarized. Plaintiff is an employee of Kentron Hawaii, Limited, employed in Kwajalein, Marshall Islands. According to his testimony and records, he first arrived on Kwajalein on May 4, 1968, and his employment there has continued to this date. His wife, the defendant in this action, continued to reside in the State of Maryland, together with the parties' two minor children. On at least two occasions plaintiff has visited defendant and their children, and engaged in acts of intercourse on both occasions, the most recent being in

January 1971. Throughout this entire period, plaintiff concedes that he gave no intimation to defendant that it was his intention to terminate the marriage relationship. Copies of letters which he wrote to his family, and signed, "Your loving husband and father," were introduced in evidence, the most recent of these being dated February 23, 1971. Three days later, by letter dated February 26, plaintiff wrote a very brief request to defendant, asking if she would give him a divorce. This appears to be the first indication conveyed to defendant that plaintiff desired an end to the marriage.

It is plaintiff's contention that a simple physical separation for the two year period is sufficient under the statute, and that occasional acts of intercourse do not constitute a resumption of cohabitation. The question squarely presented, therefore, is whether the living apart, under the statute, must be with the express intention to separate.

Statutes similar to that of the Trust Territory have been enacted in a number of jurisdictions, their purpose, of course, being to provide a termination in law of those marriages which have terminated in fact. It is clear, however, that before there can be a divorce, there must be a showing that all of the requirements of the statute have been met. While this appears to be a question raised for the first time in the Trust Territory, it is one which has been met by courts in other jurisdictions. Thus, in the State of North Carolina, one of those jurisdictions having a provision similar to ours, the court has held that the requirements of the statute are met where the parties live separate and apart physically for an uninterrupted period of two years and that physical separation is accompanied by at least an intention on the part of one of them to cease matrimonial cohabitation. *Mallard v. Mallard*, 68 S.E.2d 247, 234 N.C. 654.

The State of Nevada also authorizes divorce where husband and wife have lived separate and apart for three consecutive years without cohabitation. In *Caye v. Caye*, 211 P.2d 252, the Supreme Court of Nevada considered the requirements of the statute with respect to the initial separation of the parties and concluded that:—

“The parties must live apart for the prescribed period as the consequence of a separation. The fact that one of the parties has been obliged by his business, or compelled by his government because of military duty, or, for some other reason, to live apart from his spouse for the required period of time does not entitle him to any relief under our statute. This circumstance does not result in the separation of the parties as we define it, unless such business or obligation to the government is undertaken with the avowed purpose of separating from the spouse.”

It would follow that a living apart, which is occasioned only by the necessity of one of the parties obtaining employment away from the matrimonial domicile, would not be such a living apart as is contemplated by our statute.

A remarkably similar situation was dealt with, again by the Nevada Supreme Court, in *Sutherland v. Sutherland*, 340 P.2d 581. The court there said:—

“The evidence establishes, and the trial court found, that the parties separated physically on or about the 24th day of April, 1954, when the wife went to England, but the intent not to resume cohabitation was first asserted by the husband on the 10th day of November, 1954, when he wrote the wife a letter to that effect.”

The court held that the statutory period did not begin until November 10, 1954.

I conclude, therefore, that the logic of the situation supports the position advanced by the defendant in this matter, and that the two year period under the statute could not begin to run until there was a manifestation of intent on the part of the plaintiff not to continue the marriage relationship, that is, by his letter of February 26, 1971.

Considerations of equity and justice, I believe, compel this conclusion. It would be manifestly unjust to permit one party to be misled by protestations of love and affection into believing that the relationship was a continuing thing, and then to be required to defend her rights under that relationship, and the rights of her children, in a foreign jurisdiction.

Defendant's motion to dismiss is granted.

JOHN E. BALLINGER, Plaintiff

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Defendant

Civil Action No. 487

Trial Division of the High Court

Palau District

January 31, 1972

Action seeking declaratory judgment and damages arising out of an alleged breach of contract of employment between plaintiff and Trust Territory Government. The Trial Division of the High Court, Arvin H. Brown, Jr., Associate Justice, held that under contract in question, the construction of which was a matter for the courts, plaintiff was entitled to annual salary adjustments if his work was satisfactory.

1. Administrative Law—Review

Whenever a statute prescribes an administrative remedy to be followed before resort is had to the courts, that remedy must be followed to its ultimate conclusion, however, where an administrative remedy is provided, but not required to be used before suit, the plaintiff is not required in all cases to pursue the administrative remedy as a prerequisite to suit.

2. Administrative Law—Review

The Trust Territory Personnel Manual does not require mandatory exhaustion of review or appeal rights contained therein.

3. Administrative Law—Review

Where the right to pursue an administrative remedy is given, but not required, it is within the discretion of the court to entertain suit before the administrative procedure has been exhausted.