

NO. A08-0636

State of Minnesota
In Court of Appeals

Mohammed Monirul Alam,

Appellant,

v.

Salina Chowdhury,

Respondent.

APPELLANT ALAM'S REPLY BRIEF

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ARGUMENT

I. ALAM DID NOT MAKE ANY MISREPRESENTATIONS TO THE COURT.

In her brief, Chowdhury argues that the trial court's vacation of the terms of the Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree entered October 16, 2001 (hereinafter "2001 Judgment and Decree"), on the basis of fraud on the court should be upheld. Chowdhury's arguments center on factual disagreements regarding the value of marital assets, which disagreements Chowdhury characterizes as Alam's misrepresentations. Upon examining the valuation of the specific assets challenged by Chowdhury, all of those assets were addressed by Alam at the time of the 2001 Judgment and Decree, and none of the disparities in asset valuation and property division rise to the level of fraud on the court.

A. Alam Made Good-Faith Estimates of the Values of the Parties' Assets and Any Imperfections in the Values Result Only From His Lack of Knowledge and Experience in Valuation.

Alam did not make any misrepresentations to the trial court or to Chowdhury. In obtaining the dissolution of marriage, Alam proceeded in good faith and was honest in his representations. Alam hired a paralegal service to help him prepare the requisite documents for the marriage dissolution, including the proposed judgment and decree. (App. 28; Tr. 13, March 13, 2006.) Alam provided information known to him regarding the parties' assets and income to that paralegal service to help him prepare the proposed judgment and decree. (Tr. 13, March 13, 2006.) Alam calculated values using his best

estimates and trusted that the paralegal service was appropriately incorporating the information he provided into the proposed judgment and decree.

It is possible that Alam's valuation was not perfectly accurate, as is the case in most marriage-dissolution proceedings. Alam calculated values and income using his best estimates and reasonable approaches. Any imperfections in Alam's valuation of assets or determination of income derive from improper valuation methods and lack of experience, though not intentional misrepresentations. Notably, the division of marital property set forth in the 2001 Judgment and Decree divides the parties' assets almost precisely equally. (See, Appellant's Br. 4.) Alam believed that the division of marital assets and liabilities was approximately equal, and had no intention of depriving Chowdhury of any marital property. In fact, at the default hearing Alam volunteered to assume all of the \$18,000 home equity credit line debt to achieve an approximately equal division of the parties' assets and liabilities. (Tr. 3:16 – 4:25, Oct. 16, 2001.)

In her brief, Chowdhury alleges that Alam made misrepresentations to the trial court regarding certain assets. Chowdhury provides no explanation for her belief that Alam intentionally misled the trial court. She merely concludes that because the parties disagree as to the value of assets, Alam must have been dishonest. This does not make sense. It is reasonable for people to have different beliefs as to the value of his or her property. The value of some assets, for example jewelry, is subjective.

Chowdhury makes much of her allegation that Alam included a pending inheritance from her father in her share of the marital assets in his request for division of property at the 2001 default hearing. The record does not support Chowdhury's claim.

Although the 2001 Judgment and Decree awards Chowdhury the pending inheritance from her father, it does not classify the asset as marital or non-marital. (App. 3, 6.)

Likewise, at the 2001 default hearing, Alam made no representations about the marital or non-marital nature of an inheritance. (Tr. 9:15-18, Oct. 16, 2001.)

Whether an asset is marital is a question of law. The trial court could have concluded that an inheritance is non-marital property under Minnesota Statutes § 518.003, subdivision 3b. That was not necessary here, however. Excluding Chowdhury's pending inheritance, the property division in the 2001 Judgment and Decree results in an almost precisely equal division of assets and liabilities between Alam and Chowdhury. (See, Appellant's Br. 4.) This division suggests that a pending inheritance was not included in the 2001 Judgment and Decree as a "marital" asset for Chowdhury. It was merely awarded to her in the event she receives it. There is certainly no reason to believe that Alam made any misrepresentations on this topic to the trial court.

Chowdhury makes much of her allegations that Alam included inaccurate values for jewelry and household goods and furnishings in connection with the 2001 default hearing. Valuation of jewelry and household goods and furnishings is subjective by nature. It is not surprising that the parties did not agree as to the value of these items. Reasonable people can differ in good-faith evaluations as to this type of asset. Alam made a reasonable, good-faith estimate of the value of the parties' jewelry and household goods and furnishings at the time of the default hearing. Alam did not make any misrepresentations about their value.

Chowdhury further accused Alam of misleading the trial court with respect to his non-marital claims stemming from a \$35,000 inheritance and \$20,000 in pre-marital savings. Chowdhury agreed, however, that Alam inherited \$35,000 and that she knew he had pre-marital savings. (Tr. 86:25, Mar. 13, 2006.) Although the trial court ultimately concluded that Alam was unable to meet his burden of proving his non-marital claims, that does not mean that he was dishonest in raising those claims at the default hearing. Chowdhury could have chosen to participate in the proceedings and challenge Alam's non-marital claims in 2001. She did not. Instead, years later she attempts to recast his claims as misrepresentations.

B. Chowdhury had Notice of the 2001 Marriage-Dissolution Proceedings and Every Opportunity to Participate in those Proceedings.

Chowdhury was personally served with the Summons and Petition commencing the marriage-dissolution proceedings on July 10, 2001. Chowdhury did not respond to the Summons and Petition, nor participate in the marriage-dissolution proceedings in 2001. About two months before the default hearing on October 16, 2001, Alam presented Chowdhury with a stipulation containing the same provisions included in the proposed judgment and decree. (Tr. 11-14, Mar. 13, 2006.) Alam fully disclosed to Chowdhury the proposed division and valuation of assets, as well as the denial of spousal maintenance, ultimately approved by the trial court following the hearing. Chowdhury still chose not to participate in the marriage-dissolution proceedings.

By at least December 2001, Chowdhury knew of the final terms of the marriage dissolution approved by the trial court in the 2001 Judgment and Decree. She did not

take any action to dispute the terms of the 2001 Judgment and Decree for more than four years. If Chowdhury honestly questioned the information Alam presented to the trial court as demonstrated in the 2001 Judgment and Decree, it is puzzling why she would wait more than four years before taking any action. This suggests that Chowdhury did not believe that Alam made any misrepresentations to the Court.

Given that Chowdhury knew all of the precise terms of the judgment and decree Alam proposed to the trial court approximately two months *before* the default hearing, there is no logical way to conclude that she was misled. She could have participated in the proceedings if she disagreed with the values of property, division of property, or denial of spousal maintenance. She chose not to do so. She knew of the terms of the 2001 Judgment and Decree for more than four years before moving the court to reopen said decree.

Further, she benefited financially by the terms of the 2001 Judgment and Decree. The parties agree that Alam paid virtually all of the household expenses from 2001 to 2004, while the parties continued to live together. During that time, he also paid Chowdhury \$750 per month in child support, all of which she saved. It was not until Alam requested that the parties sell the marital homestead held as tenants in common many years after the marriage dissolution that Chowdhury became upset and no longer agreed to live under the 2001 Judgment and Decree. At that point, she grasped to find limited areas of disagreement with the 2001 Judgment and Decree, conclusively alleging without any factual proof that Alam had been dishonest in his representations to the court.

Despite Chowdhury's accusations, Alam did not mislead the trial court in these proceedings. As required under Minnesota law, Alam caused Chowdhury to be personally served with the Summons and Petition of dissolution of marriage commencing these proceedings. Minn. Stat. § 518.09 (2000); Minn. R. Civ. P. 4.03 (2000). Chowdhury did not respond. Alam complied with all notice provisions under Minnesota law. In fact, he even presented her with the terms of the proposed Judgment and Decree that Alam provided to the Court at the default hearing. There is no question that Chowdhury knew of the marriage-dissolution proceedings well in advance of the default hearing on October 16, 2001. There is no requirement that Alam notify Chowdhury personally of the date and time of the default hearing. Moreover, it was reasonable for him to believe that, like himself, Chowdhury received notice by mail of the default hearing from the trial court.

Chowdhury relies on section 518.145, subdivision 2 for the argument that a trial court may reopen a judgment and decree if it finds that a party was not actually personally notified as provided in the Rules of Civil Procedure. Under the Rules of Civil Procedure, Chowdhury is only required to receive notice of the action by service of the Summons and Petition – not notice of the default hearing. The provision in section 518.145, subdivision 2 cited by Chowdhury is inapplicable to the present case. Alam complied with all of the notice requirements in the Rules of Civil Procedure.

Alam did not make any misrepresentations to the Court. The disagreements about the facts that Chowdhury alleges do not rise to the high level of fraud on the court required to vacate a default judgment. They are the kind of ordinary factual

disagreements that parties to a marital dissolution often have when they participate in the proceedings rather than defaulting. Here, though, Chowdhury did not participate. And in failing to participate, she lost the ability to disagree and dispute facts. As such, the trial court abused its discretion by reopening the 2001 Judgment and Decree because there is not sufficient evidence to support a finding of fraud on the court.

II. ALAM'S RETIREMENT ASSETS ACQUIRED AFTER THE DISSOLUTION OF THE PARTIES' MARRIAGE ARE NOT IN THE CATEGORY OF ASSETS THAT THE TRIAL COURT MAY DIVIDE.

In her brief, Chowdhury pays no attention to the definition of marital property. Rather, the thrust of Chowdhury's argument is that Alam made misrepresentations to the trial court in obtaining the 2001 Judgment and Decree by default and, as such, it is equitable for Chowdhury to share in assets Alam acquired *after* the dissolution of the parties' marriage. Chowdhury ignores the clear statutory definition of marital property. Instead, Chowdhury argues that it is equitable for the trial court to include Alam's retirement funds acquired after the marriage dissolution in the pool of divisible marital assets.

Chowdhury's argument fails. Property acquired after the dissolution of marriage is not marital. As such, it is not within the category of property that is divisible in a marriage-dissolution proceeding. Minnesota law defines marital assets and governs which assets fall into the category of assets divisible in a marriage-dissolution proceeding. Equity subsequently governs how those marital assets shall be divided. The trial court erred as a matter of law by including Alam's retirement assets acquired after

the marriage dissolution in the category of marital assets to be divided between the parties.

A. Property Acquired After the Dissolution of Marriage is Not Marital Property.

Chowdhury cannot dispute the applicable law. Property acquired after the dissolution of marriage is not marital property. Minn. Stat. § 518.003, subd. 3b. In order for property to be marital in nature, it must be acquired during the marriage. Stageberg v. Stageberg, 695 N.W.2d 609, 619 (Minn. Ct. App. 2005); Cummings v. Cummings, 376 N.W.2d 726, 730 (Minn. Ct. App. 1985). While a spouse generally has ownership rights in property acquired during a marriage, a party to a marriage dissolution proceeding does not have a right to property acquired by the other spouse after dissolution. Sweere v. Gilbert-Sweere, 534 N.W.2d 294, 297 (Minn. Ct. App. 1995). Whether property is marital in nature is a question of law that this Court reviews de novo, and over which this Court exercises its independent judgment. Baker v. Baker, 733 N.W.2d 815, 819 (Minn. Ct. App. 2007); Stageberg, 695 N.W.2d at 619; Wopata v. Wopata, 498 N.W.2d 478, 484 (Minn. Ct. App. 1993); Berenberg v. Berenberg, 474 N.W.2d 843, 846 (Minn. Ct. App. 1991).

In the present case, the parties' marriage was dissolved on October 16, 2001. On the motion of Chowdhury in 2006, the trial court vacated all of the terms of the original 2001 Judgment and Decree save for the marriage dissolution. Following a trial on vacated issues in the present case, the trial court awarded Alam his retirement accounts using a December 31, 2006 value – a value more than five years after the dissolution of

the parties' marriage. The trial court based the value of Alam's *marital* interest in his retirement assets on the December 31, 2006 valuation date as opposed to the October 16, 2001 date, or some earlier date.

Minnesota law is clear that a party to a marriage dissolution proceeding does not have a right to property acquired by the other spouse after dissolution; marital property is limited to property acquired during the marriage. Sweere, 534 N.W.2d at 297-98. The trial court erred in valuing Alam's retirement assets on a date more than five years after the parties' marriage dissolution. Whether property is marital in nature is a question of law over which the court of appeals exercises de novo review. This Court should, therefore, reverse the trial court's valuation of Alam's retirement assets and instruct the trial court to value said retirement assets at the time of the marriage dissolution, a value to which the parties have already stipulated.

B. Whether Alam's Retirement Assets Are Marital is a Question of Law Over Which the Court of Appeals Exercises De Novo Review.

In her brief, Chowdhury confuses the standard of review on appeal. The question before this Court pertaining to the valuation and division of Alam's retirement assets is whether said property is marital in nature, which is a question of law over which the court of appeals exercises de novo review. Baker, 733 N.W.2d at 819; Stageberg, 695 N.W.2d at 619; Wopata, 498 N.W.2d at 484; Berenberg, 474 N.W.2d at 846. Chowdhury argues that an abuse of discretion standard applies on review by the court of appeals, but this argument fails.

First, Chowdhury notes that a trial court has broad discretion in structuring the just and equitable division of *marital* property, which determination the court of appeals will overturn upon a showing of a trial court's abuse of discretion. Chowdhury's reasoning, however, is not applicable to the present case. Alam's retirement assets valued by the trial court in 2006 included five years of retirement assets acquired after the parties' marriage was dissolved in 2001. These are not *marital* assets. The trial court's broad discretion in dividing *marital* assets does not apply where the assets awarded are not marital.

Second, Chowdhury argues that a trial court's determination in setting a valuation date will not be overturned by the court of appeals absent an abuse of discretion. Again, however, Chowdhury's reasoning is inapplicable to the present case. Under Minnesota Statutes section 518.59, subdivision 1, the trial court has the authority to "value marital assets for purposes of division between the parties . . ." on a date that is "fair and equitable." The trial court's discretion in determining a valuation date for purposes of property division applies to *marital* property. In the present case, Alam's retirement assets acquired after the marriage dissolution are not marital. Without a determination that the retirement assets in question are marital, the trial court's discretion to value and divide marital assets is irrelevant. The issue before this court is whether Alam's retirement assets acquired after the dissolution of the parties' marriage are marital in nature, which is a question of law over which this Court exercises *de novo* review.

C. Chowdhury's Argument That the Parties' Lived Together Following the Dissolution of Their Marriage is Irrelevant to the Issue of Whether Alam's Retirement Assets Acquired After the Marriage Should Be Considered Marital.

In her brief, Chowdhury also makes much of the claim that because the parties continued to live together for less than three years following the marriage-dissolution, Alam was able to contribute more to his retirement accounts than he might otherwise have been able to do. This allegation is irrelevant to the issue before this Court. The parties' living status for a portion of the years following the marriage dissolution cannot convert the nature of Alam's retirement assets acquired after the marriage-dissolution into marital assets.

Additionally, from the time the parties stopped living with one another in August 2004 until the date the trial court valued Alam's retirement accounts – December 31, 2006 – Alam and his employer made substantial contributions to Alam's retirement assets. (Tr. 142-43, May 9, 2007; App. 104.)

D. Alam's Current Wife Has an Interest in a Substantial Share of the Retirement Assets Alam Acquired After the Dissolution of Marriage.

Alam's current wife has an interest in the retirement assets Alam has acquired during his marriage. In the five-year period after the 2001 marriage dissolution and the valuation of Alam's retirement accounts in 2006, Alam remarried in December 2004. (Tr. 215, May 9, 2007.) Spouses have a common ownership interest in property acquired during their marriage. Minn. Stat. § 518.003, subd. 3b; Searles v. Searles, 420 N.W.2d 581, 583 (Minn. 1988). Specifically with respect to retirement interests, the federal Employee Retirement Income Security Act protects spousal interests in retirement assets.

29 U.S.C. § 1055 (2006). Alam's current wife has an interest in the retirement assets Alam has accrued since his remarriage in 2004. Relying on the trial court's improper findings on this issue, Chowdhury claims that the trial court has "jurisdiction to dispose of property that is considered marital without concern of the subsequent wife's interest in what is left over." (Resp't. Br. 33; App. 114.) Again, the flaw in this reasoning is that the retirement assets Alam acquired after the marriage dissolution to Chowdhury, some of which were acquired during his marriage to his current wife, are not *marital* in the marriage-dissolution proceeding with Chowdhury.

CONCLUSION

This Court should reverse the trial court's decision to reopen the 2001 Judgment and Decree and reinstate the original Judgment and Decree. Alternatively, this Court must reverse the trial court's erroneous 2006 valuation of Alam's retirement assets to exclude all portions of those assets acquired after the date of the 2001 marriage dissolution.

Dated: August 13, 2008

Respectfully submitted,

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