

APPELLATE COURT CASE NUMBER A-09-349
STATE OF MINNESOTA
IN COURT OF APPEALS

LORETTA MARIE ANGELL
Appellant,

vs.

GORDON WILLIAM ANGELL
Respondent.

* * * * *

RESPONDENT'S BRIEF AND APPENDIX

* * * * *

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

ISSUE 1: Appellant/Wife did not meet her burden of proof that the life insurance proceeds and death gratuity benefits of the couple's son was a non-marital asset.

The trial court ruled the funds were non-marital.

ISSUE 2: Life insurance proceeds are marital property, when the proceeds are from the death of a son of the parties, who named one parent but not the other parent as beneficiary, and the proceeds are disbursed during the marriage.

The trial court ruled the funds were non-marital.

ISSUE 3: The trial court has authority to apportion or award non-marital property to prevent an unfair hardship.

The trial court ruled Respondent/Husband was entitled to \$150,000.00 of wife's non-marital funds to prevent an undue hardship.

ISSUE 4: The Federal statute exemption is being raised, for the first time, on appeal, and, regardless, does not apply to this situation.

The trial court was not presented with this issue.

ARGUMENT

ISSUE 1: Appellant/Wife did not meet her burden of proof that the life insurance proceeds and death gratuity benefits of the couple's son was a non-marital asset.

Assets accumulated during a marriage are presumed marital unless shown to be non-marital. Minnesota Statutes §518.003 Subd. 3b. The burden, by a preponderance of the evidence, is on the spouse who is claiming the asset is non-marital. Pfleiderer v. Pfleiderer, 591 N.W. 2d 729 (App. 1999). Whether property is marital or non-marital is a question of law which the Court of Appeals exercises review de novo. Baker v. Baker, 733 N.W. 2d 815 (App. 2007), review granted, affirmed in part, reversed in part, 753 N.W. 2d 644. see also Prahl v. Prahl 627 N.W. 2d 698 (App. 2001). On this question of law, the Court of Appeals will exercise its independent judgment. Wopata v. Wopata, 498 N.W. 2d 478, (App. 1993). See also Berenberg v. Berenberg, 474 N.W. 2d 843 (App. 1991).

Appellant/Wife testified that she had received more than \$500,000.00 following the death of the parties' adult son, Levi (Transcript, pgs 19-20). However, nowhere in the record does she claim those funds are non-marital. She only claims that some of the funds were in her name (Transcript, pg 18, line 9; pg 19 lines 6-12 & 18-19; pg 20 lines 14-23) and were simply deposited into her bank account. But simply depositing the funds in a bank account in only

Appellant/Wife's name is not evidence the funds are non-marital ("Regardless of the form of ownership, property obtained by either spouse during the marriage is presumed to be marital property." Pfleiderer v Pfleiderer, 591 N.W. 2d 729 (App. 1999). "Form of ownership is not necessarily dispositive of the property's marital or non-marital status." Olsen v. Olsen, 552 N.W. 2d 290 (App. 1996), review granted, affirmed 562 N.W. 2d 797). She also testified that she handled all the finances for the family (Transcript, pg 49 lines 11-23; pg 50 lines 2-9) and that her deceased son, Levi, knew that (Transcript, pg 50 lines 10-13).

It is the Appellant/Wife's burden to show that any of the funds are non-marital. Minnesota Statutes §518.003 Subd. 3b; see *a/so* Pfleiderer, 591 N.W. 2d 729. During the trial, Appellant/Wife failed to introduce any evidence that the funds are non-marital. She only showed a "Servicemember's Group Life Insurance Election and Certificate" form (Trial Exhibit 2) that was completed by the parties' son, Levi, in March 2006 (during the parties' marriage). Then, Appellant/Wife showed the Court evidence that funds were deposited into a Prudential account in the amount of \$250,000.00 plus interest and a letter from the Office of Servicemember's Group Life Insurance dated January 14, 2008 that those funds were from the life insurance policy (Trail Exhibit 2). Then Appellant/Wife showed the Court a letter from the Department of the Navy explaining that an additional \$150,000.00 was being paid under the life insurance policy. Next, Appellant/Wife showed a "Claim Certification and Voucher for Death Gratuity Payment" which showed a payment of \$12,000 (Trial Exhibit 2). Finally,

Appellant/Wife admitted during her testimony that an additional \$88,000.00 was paid (Transcript, pg 20 line 15; pg 52 Line 17) but she testified that she did not have any evidence to show the Court where that money came from (Transcript, pg 20 line 17-18; pg 53 line 4-9; pg 54 line 1-2). However, Respondent/Husband testified that the additional \$88,000.00 was supposed to go to the deceased soldier's family (Transcript, pg 80, line 5).

However, there was no evidence or testimony that the funds were non-marital funds belonging to Appellant/Wife. While she may have showed that the parties' son listed her as a beneficiary in 1996, she never introduced any evidence that the funds she received were made to her alone, or even in her name alone. She had no receipts; no check stubs; no evidence at all that the funds were non-marital. Even the forms Appellant/Wife introduced showing the deposits did not necessarily show that she was the only person who received the funds (Trial Exhibit 2). Appellant/Wife provided no evidence that the funds were non-marital. Minnesota law presumes all property is marital unless the asset is acquired as a gift, bequest, devise, or inheritance to one but not the other spouse (Minnesota Statutes §518.003 Subd. 3b; 3b(a)). The burden, again, is on the party claiming the asset is non-marital. *Id.*, see also Pfleiderer, 591 N.W. 2d 729. Appellant/Wife never claimed that the funds were acquired as a gift, bequest, devise, or inheritance to one but not the other spouse. She provided no evidence that the \$412,000.00 in funds were a gift, bequest, devise, or inheritance. She

provided absolutely no evidence contradicting the presumption that the remaining \$88,000.00 are marital funds (Transcript, pg. 52 lines 14-17).

Appellant/Wife failed to show by a preponderance of the evidence that any of the funds are non-marital.

ISSUE 2: Life insurance proceeds are marital property, when the proceeds are from the death of a son of the parties, who named one parent but not the other parent as beneficiary, and the proceeds are disbursed during the marriage.

Minnesota Statutes 518.003 subd. 3b states, in part:

“Nonmarital property” means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which

- (a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse;”

Life insurance proceeds from the death of a parties’ son who designated one parent but not the other parent as a beneficiary under that life insurance policy does not fit into of the statutory definition of ‘non-marital property’, that is, such life insurance proceeds are not a gift, a bequest, a devise, or an inheritance.

There is no evidence that the life insurance money was a gift. There was no will, so there can be no bequest. Black’s Law Dictionary (West 1991) defines

'gift' as a "voluntary transfer of property" (Black's at 472) and 'bequest' as "A gift (transfer) by Will..." (Id at 110). Neither applies in this case.

The law distinguishes between 'beneficiary' and 'inheritance'. Black's Law dictionary defines 'inheritance' as "...to acquire property by descent..." (Black's at 539), and defines 'beneficiary' as "...person entitled to take proceeds on death of insured..." (Id at 108). To 'inherit', the funds must pass by Will, or intestate laws. State v. Probate Court of Henn. Cnty, 137 Minn. 238; 163 N.W. 285 (1917).

By definition, in order to inherit money, the money must exist before the passing of the person who will devise the money. Henn. Cnty, 163 N.W. 285 at 285. In this case, the money did not exist until the son passed away; which means the funds are not a devise, bequest, or inheritance.

Life insurance proceeds are a contractual right in Minnesota, not a property right. See generally Minnesota Statutes Chapter 61A. (Specifically, see §61A.05: "Every policy of insurance... shall contain the entire contract between the parties." *and see also* §61A.03 Subd. 1(c): "... the policy constitutes the entire contract...".) Since the deceased son never possessed the life insurance proceeds, he could not gift, devise, or bequeath the funds to anyone. He could only name a beneficiary.

There is no basis in Minnesota law for finding that proceeds from a deceased son's life insurance policy, even if naming only one parent as beneficiary, is non-marital property. Since the presumption under the law is that the funds are marital, and since the Appellant/Wife did not show evidence that

the funds are non-marital, the proceeds are marital and the trial court should have divided the funds equitably between the parties.

The same analysis applies to death gratuity benefits. The death gratuity benefits are marital funds as well, and should have been divided equitably between the parties.

ISSUE 3: The trial court has authority to apportion or award non-marital property to prevent an unfair hardship.

Appellant/Wife states in her brief that the Court is without jurisdiction to allocate her non-marital funds. Minnesota Statute §518.58 Subd. 2, states:

Subd. 2. Award of nonmarital property. If the court finds that either spouse's resources or property, including the spouse's portion of the marital property as defined in section 518.003, subdivision 3b , are so inadequate as to work an unfair hardship, considering all relevant circumstances, the court may, in addition to the marital property, apportion up to one-half of the property otherwise excluded under section 518.003, subdivision 3b, clauses (a) to (d), to prevent the unfair hardship. If the court apportions property other than marital property, it shall make findings in support of the apportionment. The findings shall be based on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, and opportunity for future acquisition of capital assets and income of each party.

The Court has broad discretion to divide property in a marriage dissolution, including non-marital assets. Reed v. Albaaj, 723 N.W. 2d 50 (App. 2006). The

court's findings on asset division will be considered an abuse of discretion only if the division is against logic and the facts on record. Id.

The evidence showed that the Respondent/Husband was married to the Appellant/Wife since 1981; that the parties raised several children together, that he is over 65 years old and in poor health, is unemployed and unemployable, has no marketable skills, no source of income, no personal property of any substance, and is essentially homeless, and he is in need of funds for living expenses. (Transcript, pgs 62-68). An award of non-marital funds is appropriate.

Finally, the Court acts as a court of equity in a dissolution. See Minnesota Statutes §518.58. It is an established principle of equity that those who ask the Court for equitable consideration must come into the Court with clean hands. Johnson v. Freberg, 228 N.W. 159 (Minn. 1929).

In this case, Appellant/Wife asks the Court to enforce a statute when it works to her advantage, but is willing to ignore the rules if such rules are not to her advantage. Appellant/Wife herself testified during trial that she has been hiding the insurance proceeds in an account held in her daughter's name so she (the Appellant/Wife) can keep getting government health insurance and benefits. (Transcript, pg 51 lines 11-19) She is not entitled to ask the Court for relief, especially when she has over \$500,000.00 hidden in a bank account out of state (Id.)

She also testified, during trial, that she cashed a check made out to both parties without even telling her husband (Transcript, pg 29 lines 6-12), and kept

the money from him. (Transcript, pg 29 lines 13-20). Appellant/Wife has proven herself willing to hide marital funds from her husband when it suits her.

ISSUE 4: The Federal statute exemption is being raised, for the first time, on appeal, and, regardless, does not apply to this situation.

The Court does not reach this issue if it determines that Appellant/Wife did not meet her burden of proof; or if the Court determines that the disputed proceeds funds are marital.

But it's a fundamental tenet of appellate jurisdiction that assignments of error which have not been presented to the trial court ... will not be reviewed on appeal. Gruenhagen v. Larson, 244 N.W. 2d 565 (1976). The Court of Appeals does not generally entertain arguments neither presented to, nor considered by, the district court. Thiele v. Stich, 425 N.W. 2d 580, 582 (1988). The Appellant cannot initiate a Court action, then challenge the Court's jurisdiction when the result does not suit her.

But if this Court considers the Appellant/Wife's argument that the funds are exempt under Federal law, this Court should be aware that Appellant/Wife's argument is flawed. The trial court did not order an assignment, taxation, attachment, levy, or seizure of the funds, whether by a legal or equitable process. The district court did not assign, tax, attach, levy, or seize any of the funds. The district court used its authority under Minnesota Statutes §518.58 Subd. 2 to

award and apportioned what it considered non-marital funds (see Judgment & Decree).

The Federal statute is designed to make sure that the funds could not be absconded by third parties; it was not designed to keep a dead soldier's father from receiving any of the benefits. Appellant/Wife is trying to convince the Court that the Federal law should be extended to prevent apportionment between a dead soldier's parents. Under Appellant/Wife's theory, essentially, any funds received under the Federal program cannot be used for anything at all- she could buy a car, for example, then demand her money back. That is absurd.

First, this Court has no jurisdiction to extend Federal statutes. Second, the Federal statute, if it even applies, does not prevent a Court from awarding and apportioning these funds between the parents. Any other result would be absurd. The court will only look beyond the plain meaning of statutory language if the plain meaning produces an absurd result. Wegner v. Comm'r of Revenue, 505 N.W.2d 612, 617 (Minn. 1993). There is no such situation here. The language of the Federal statute cited by Appellant does not apply.

CONCLUSION

Appellant/Wife did not meet her burden of proof that over \$500,000.00 of the party's funds were non-marital. In fact, the law in Minnesota does not treat such funds as non-marital. Even if it did, the trial court has legal and discretionary authority to award and apportion those funds to Respondent/Husband to prevent

an undue hardship. Finally, any Federal exemption claimed by Appellant/Wife does not apply in this case.

Respectfully submitted,
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