

Case No. A10-126

STATE OF MINNESOTA

In Court of Appeals

In re the Marriage of:

Catherine A. Risk, on behalf of
the Estate of Mary Elizabeth Miller,

Respondent,

vs.

Jarrin E. Stark,

Appellant.

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).

TABLE OF CONTENTS

Table of Authorities.....ii

Statement of Facts.....1

Legal Issues.....5

DOES THE DEATH OF A PARTY, SUBSEQUENT
TO THE ENTRY OF A JUDGMENT AND DECREE
OF MARRIAGE DISSOLUTION, TERMINATE THE
DISTRICT COURT’S JURISDICTION AND
AUTHORITY TO MAKE AN EQUITABLE DIVISION
AND DISTRIBUTION OF THE PARTIES’ MARITAL
AND NON-MARITAL ESTATES, WHERE THOSE
ISSUES WERE EXPRESSLY RESERVED BY
THE COURT?.....5

PROPERTY DIVISION EQUITABLE.....10

Conclusion.....11

Certificate of Brief Length.....12

Index to Respondent’s Appendix13

TABLE OF AUTHORITIES

Minnesota Statutes:

Minn. Stat. § 518.58, subd. 1 (2006) 10, 11

Case Law:

Aaron v. Aaron, 281 N.W.2d 150, 152 (Minn. 1979) 10

Anders v. Anders, 213 N.W. 35 (Minn. 1927) 9

Antone v. Antone, 645 N.W. 2d 96, 100 (Minn. 2002) 10

DeLa Rosa v. DeLa Rosa, 309 N.W.2d 755, 757-58 (Minn. 1981) 6

Donnelly v. Donnelly, C7-96-2150, (filed June 24, 1997) 8, 9

Gruenhagen v. Larson, 310 Minn. 454, 458, 246 N.W. 2D 565, 569 (Minn. 1976) 7

Putz v. Putz, 645 N.W.2d 343, 351 (Minn. 2002) 6

Rutten v. Rutten, 347 N.W.2d 47, 50 (Minn. 1984) 10

Ruzic v. Ruzic, 281 N.W.2d 502, 505 (Minn. 1979) 10

Schneider v. Grimes, 193 N.W. 942 (Minnesota 1923) 9

Sefkow v. Sefkow, 427 N.W.2d 203, 212 (Minn. 1988) 6

Sirek v. Sirek, 693 N.W. 2D 896, 898 (Minn. App. 2005) 10

Stieler v. Stieler, 244 Minn. 312, 70 N.W.2d 127 (Minn. 1955) 8

Tikalsky v. Tikalsky, 166 Minn. 468, 208 N.W. 180 (1926) 8

Wegge v. Wegge, 89 N.W. 2D 891 (1958) 9

STATEMENT OF FACTS

The parties were married on March 25, 2002, in Douglas County, Minnesota. At the time of their marriage the Respondent – Wife was 60 years of age (d.o.b. January 11, 1942), and the Appellant – Husband was 61 years of age (d.o.b. January 1, 1941). The parties had no children in common, and both parties had been married previously.

At the time of their marriage in 2002, the Respondent was the owner of substantial non-marital assets. The Respondent was previously married for nearly 40 years to Robert John Miller, which marriage was dissolved by way of an Anoka County, dissolution decree filed on April 6, 2000 (in Anoka County District Court file no. 02-FX-00-2449). In her former dissolution decree, the Respondent was awarded substantial assets, valued at approximately \$329,441.50 (see finding nos. VI and VII, in 2009 decree at A-69 & A-70). Said amount included an estimate of equity in her then homestead in Anoka County of \$150,000. However, the Respondent's non-marital homestead in Anoka County was actually sold on March 14, 2002, from which she received net proceeds of \$162,934.78. The proceeds of which were deposited into the Respondent's individual US Bank checking account and then transferred into the Respondent's Waddell & Reed investment accounts (see finding no. VII, in 2009 decree at A-69 & A-70). Additionally, the Respondent was awarded spousal maintenance from her former husband, Robert John Miller, in the amount of \$1,700 per month through January 4, 2007, which maintenance terminated upon the Respondent's marriage to the Appellant herein, in March of 2002 (see finding no. VIII in 2009 decree at A-70).

During the parties' marriage, the Respondent also inherited approximately \$26,949.30 upon the death of her late aunt, which assets were also found by the district court to be non-marital (see finding no. XXIII in 2009 decree at A-71).

The Appellant had purchased what was the parties' homestead located at 1204 Geneva Road NE, in Alexandria, Minnesota on March 13, 1996, at a purchase price of \$23,000 (see finding no. X in 2009 decree at A-70). However, the Appellant testified that he refinanced the property in 2001 (only about a year before the parties' marriage), and took out a mortgage that year in the amount of \$70,000. According to public Douglas County Tax Assessor records, the parties' homestead had an estimated market value in tax year 2002 of only \$67,200. The estimated market value in tax year 2009 was \$108,900 (see finding no. X in 2009 decree at A-70). The Appellant did not have a substantial equity in the homestead at the time of the parties' marriage.

The Appellant had only *nominal* income throughout the parties' marriage. As reflected on his state and federal income tax returns, the Appellant's gross annual income during the parties' marriage was as follows:

a.	Tax year 2002:	\$ 253.00	(see Exhibit 1-62)
b.	Tax year 2003	\$ 2,958.00	(see Exhibit 1-61)
c.	Tax year 2004	\$ 0.00	(see Exhibit 1-60)
d.	Tax year 2005	\$ 0.00	(see Exhibit 1-59)
e.	Tax year 2006	\$ 0.00	(see Exhibit 1-58)
f.	Tax year 2007	\$ unknown ¹	(see Exhibit 1-57)

See finding no. XI in 2009 decree at A-70.

At trial, the Respondent offered detailed evidence in the form of bank statements and financial records, which clearly demonstrated that throughout the parties' brief six-year marriage, the parties had heavily relied upon the Respondent Mary E. Miller's non-marital financial resources, and the interest and dividend income on her non-marital investments, in order to meet the parties' ongoing monthly living expenses and obligations (see finding no. XII in 2009 decree at A-71). From her individual non-marital funds, the Respondent Mary Miller

¹ The parties' reported total Social Security benefits of \$15,600 in tax year 2007, see line 20a on page 1 of 2007 Form 1040 (see Exhibit 1-57), but no testimony of who received it.

made the following contributions during the marriage, which directly benefited the Appellant:

- | | |
|--|------------------------------|
| a. Appellant's Life Insurance premiums: | \$ 9,472.31 (Exhibit 1-54) |
| b. Appellant's Medicare premiums: | \$ 3,400.74 (Exhibit 1-54) |
| c. Appellant's Dental implants: | \$ 7,965.00 (Exhibit 1-55) |
| d. Mortgage payments on Homestead: | \$29,884.00* (Exhibit 1-52) |
| *Respondent made every mortgage payment on homestead from 2-02 through 1-08. | |
| e. Real estate taxes on Homestead: | \$ 1,975.00 (Exhibit 1-52-2) |
| f. Utility expenses for Homestead: | \$ 2,854.44 (Exhibit 1-53). |

See finding no. XII in 2009 decree at A-71.

The Respondent depleted substantial portions of her non-marital assets during the parties' marriage, in helping support the Appellant. Also during their marriage, the parties purchased and sold real property consisting of a single family residence in Wadena, MN in Ottertail County, hereinafter referred to as the "Amish Farm". Said property was purchased by the parties on March 31, 2005 with a purchase price of \$62,000 to which the Respondent contributed \$500 in earnest money, and an additional \$12,170.99 which was due at the time of closing, from her non-marital monies. Further, Respondent made all of the monthly loan payments on said property from her non-marital funds (see finding no. XX in 2009 decree at A-74 & A-75). The parties also purchased From March of 2005, through December of 2007, the Respondent made **all** of the monthly mortgage payments on the hunting land mortgage totaling \$15,386 from her non-marital assets (see finding no. XX in 2009 decree at A-74 & A-75).

The parties separated and began living apart, in April of 2008, in part to allow the Respondent to begin living closer to her health care providers at the University of Minnesota in Minneapolis, where she was receiving treatment after being diagnosed with inoperable pancreatic cancer.

Shortly prior to the commencement of this dissolution proceeding, and without the

Respondent's knowledge or consent, the Appellant withdrew a total of \$63,096.45 in two separate withdrawals from the parties' joint 1st State Bank of Alexandria Money Market Account.

The Appellant withdrew the sum of \$21,000 in the form of a Cashier's check made payable to himself on April 8, 2008; and a second withdrawal, also in the form of a Cashier's Check made payable to himself on the following day, April 9, 2008 in the amount of \$42,096.45 (see finding no. XXIV in 2009 decree at A-76).

A temporary hearing was held on May 28, 2008, before the Honorable David R. Battey, Judge of District Court. The hearing was requested by the Respondent in large measure due to the Appellant's unilateral liquidation of the Respondent's non-marital funds in the amount of \$63,010.43, from the money market account. The parties acknowledged that during the pendency of the dissolution proceedings, the Appellant did return to the Respondent's possession, the sum of \$8,000 of the \$63,096.45 in funds removed from the 1st State Bank of Alexandria Money Market Account,

At trial, the Appellant testified to an incredible tale of how he had excessively gambled-away the entire amount of any and all remaining funds withdrawn by him from the 1st State Bank of Alexandria Money Market Account, even though the Appellant did not have a history of high stakes gambling. The Court expressly found that the Respondent's testimony that he gambled-away the funds withdrawn by him, was less than credible (see finding no. XXVII in 2009 decree at A-76 & A-77).

The Respondent further offered an even more incredible tale of how he had been able to meet his current living expenses, because an unknown, stranger whom he did not know but met in Minneapolis, and whom he could not identify, had mysteriously lent him \$30,000 without requiring him to sign a promissory note or any writing documenting said loan (see finding no. XXVIII in 2009 decree at A-77).

The district court granted the Respondent's motion to bifurcate the dissolution proceedings to dissolve the parties' marriage relationship and to reserve for later determination, an equitable division and distribution of the parties' marital and non-marital estates, by way of the district court's judgment and decree filed on August 13, 2008. The district court's judgment and decree expressly provided that,

The issues of an equitable division and distribution of the parties' real and personal property on a permanent basis is reserved for future agreement between the parties, or the further order of the Court.

See conclusion 2 of the district court's decree filed August 13, 2008, A-4 & A-5.

The district court's judgment and decree also expressly provided that,

The terms, conditions and provisions contained herein shall inure to the benefit of and be binding upon and enforceable against each of the parties hereto and their respective heirs, personal representatives and estates.

See conclusion 10 of the district court's decree filed August 13, 2008, A-24

Sadly and though relevant to the issues now presented by Appellant, the Respondent lost her courageous battle with pancreatic cancer and died on August 19, 2008, only 5 days after the entry of the district court's dissolution decree on August 13, 2008.

Following the Respondent's death, Catherine A. Risk, the Petitioner's daughter and the Personal Representative of the Estate of Mary Elizabeth Miller (in Douglas County Probate Court File no. PRO-08-2841), was granted leave of court to intervene in the district court post dissolution decree proceeding, and to be substituted to act in the Petitioner's place (see district court findings and order filed January 9, 2009, A-49).

The matter was then tried before the Honorable David R. Battey, on August 19, 2009, which trial resulted in the district court's Findings of Fact, Conclusions of Law, Order for

Judgment and Judgment and Decree, filed on December 11, 2009.

The Respondent now asserts that as the result of the Petitioner's death, the district court was without jurisdiction to effect an equitable division and distribution of the parties' marital and non-marital assets, and presumably that the Appellant should be entitled to a majority of the Respondent's marital and non-marital assets.

LEGAL ISSUES

Does the death of a party, subsequent to the entry of a judgment and decree of marriage dissolution, terminate the district court's jurisdiction and authority to make an equitable division and distribution of the parties' marital and non-marital estates, where those issues were expressly reserved by the court?

District courts are encouraged to bifurcate dissolution proceedings in order to resolve that which can be resolved, and leave for a possible bitter court fight later, issues which cannot be resolved. See Sefkow v. Sefkow, 427 N.W.2d 203, 212 (Minn. 1988). The decision as to whether or not a proceeding should be bifurcated, rests in the sound discretion of the district court. Appellant has failed to demonstrate **any** abuse of discretion in Judge Battey's decision to bifurcate this proceeding.

In marriage dissolution proceedings, and in post-dissolution proceedings, a district court is acting as a court of equity. Even absent express statutory authority, the district court has inherent power to award equitable relief. See DeLa Rosa v. DeLa Rosa, 309 N.W.2d 755, 757-58 (Minn. 1981) (discussing inherent authority of courts in dissolution matters); see also Putz v. Putz, 645 N.W.2d 343, 351 (Minn. 2002) (discussing court's inherent authority in child-support matters).

It was no secret to either of the parties, or to the district court that the Respondent had a terminal illness and an extremely short life expectancy. In support of her motion for

temporary relief in May of 2008, the Respondent had submitted copies of her medical records and her doctors reports detailing her pancreatic cancer. See Respondent's Affidavit dated May 21, 2008 at Respondent's Appendix A-9 thru A-20.

The relevant facts before the district court included the following;

- a) This was not the first marriage for either of the parties;
- b) Both of the parties were in their early 60's when they wed in March of 2002;
- c) It was a relatively short term marriage with the parties having been married for only about six years at the time the dissolution proceeding was commenced;
- d) The Respondent had brought substantial non-marital assets with her into the marriage;
- e) The Respondent basically supported the Appellant by paying for the majority of his and the Respondent's own living expenses throughout the time the parties were together; and
- f) As was reflected in the district court's painstakingly detailed findings of fact, the Respondent had greatly contributed to acquisition and preservation of the parties' marital estate, through the use and depletion of much of her non-marital resources.

Had the district court **not** bifurcated the proceedings the appellant would have realized an unfair and unwarranted wind-fall of the Respondent's substantial non-marital assets. Given the Respondent's illness and the facts before the district court, the bifurcation of the parties' dissolution proceeding was clearly a just, equitable and appropriate ruling by the district court.

The Appellant did not move the district court for amended findings or amended conclusions of law, or for a new trial. On appeal from a judgment where there has been no motion for new trial, the only questions for review are whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment. Gruenhagen v. Larson, 310 Minn. 454, 458, 246 N.W. 2D 565, 569 (Minn. 1976). The Court of Appeals scope of review is limited accordingly.

The Appellant's reliance on the case law cited in his brief is greatly misplaced. Appellant loses sight of the fact that the matter tried to the district court in August of 2009 was a **post-decree** proceeding, and that the parties' marriage had already been dissolved at the time of the Petitioner's death. As in Stieler v. Stieler, 244 Minn. 312, 70 N.W.2d 127 (Minn. 1955), the district court **did** have jurisdiction to address property issues after the death of a party occurred subsequent to the entry of a dissolution decree.

Appellant cites various cases standing for the proposition that a district court lacks authority to grant a decree of dissolution where one party had already died. The general rule is that if a party dies **during** a proceeding to dissolve a marriage, the proceeding abates and a judgment cannot be entered. This aspect of the law is not in dispute. See Tikalsky v. Tikalsky, 166 Minn. 468, 208 N.W. 180 (1926), in which the wife died **prior** to entry of a judgment, however this is not the situation presently before the court. In the instant case, Respondent knew of her dire circumstances, made both the district court and the Appellant aware of those circumstances, and given the very real possibility that she would not live long enough for the dissolution proceeding to run its course, properly moved the Court to bifurcate the proceedings. The District Court, after considering arguments by both sides, and having knowledge of the relevant law, and having full knowledge of the possible consequences, made an informed, just and equitable decision to grant the Respondent's motion and effectively grant the parties' dissolution in August of 2008. The district court's granting of bifurcation in this manner was not an abuse of discretion, but rather the product of great consideration on the part of the district court.

The Appellant also cites the unpublished Court of Appeals matter of Donnelly v. Donnelly, C7-96-2150, (filed June 24, 1997), as support for his position. However, Donnelly dealt mainly with whether or not the parties there had reached a "meeting of the minds" in

placing a stipulation on the record. The appellant in Donnelly essentially maintained that the parties' had never reached such a "meeting of the minds", and that since the other party later died, the terms of the parties' stipulation should not be followed. The Court of Appeals clearly disagreed, and determined that the parties had come to an agreement as a stipulation was placed upon the record, and that the terms of the parties' stipulation should be enforced, even after a party's death. Donnelly clearly does not support the Appellant's position.

Similarly, the other cases cited by the Appellant all dealt with request for entry of a judgment of divorce **after** a parties' death. The cases of Wegge v. Wegge, 89 N.W. 2d 891 (1958); Schneider v. Grimes, 193 N.W. 942 (Minnesota 1923); and Anders v. Anders, 213 N.W. 35 (Minn. 1927) **all** deal with requests for entry of a judgment **after** a party had died. It should also be noted that in Wegge, there were no property rights involved whatsoever. Further, following the entry of the Findings and Judgment in August 2008, the Appellant's then-attorney, Jan M. Nordmeyer, Esq., submitted a memorandum of law in support of Appellant's motion to dismiss the dissolution action based upon the death of Respondent. Even though the district court denied the motion and specifically stated that the Appellant's argument and case law were **not** on point as the case was now a **post** dissolution proceeding, the Appellant's brief to the Appellate Court now cites the same cases once again.

Accordingly, it would clearly be inequitable to dismiss this proceeding and to not affirm the district court's just and equitable division and distribution of the parties' marital and non-marital estates, where the parties' marriage had *already been dissolved*. The district court had specifically and expressly reserved these issues. To grant Appellant the relief he seeks on appeal, would result in a windfall to, and the unjust enrichment of the Appellant.

PROPERTY DIVISION EQUITABLE

The distribution of property in a dissolution proceeding will not be overturned absent a clear abuse of the trial court's discretion. Aaron v. Aaron, 281 N.W.2d 150, 152 (Minn. 1979). Additionally, "There must be a clearly erroneous conclusion that is against logic and the facts on record before this court will find that the district court abused its discretion." See Rutten v. Rutten, 347 N.W.2d 47, 50 (Minn. 1984). Also, a district court's division of marital property need not be mathematically equal, but need only be just and equitable. Ruzic v. Ruzic, 281 N.W.2d 502, 505 (Minn. 1979); see also Minn. Stat. § 518.58, subd. 1 (2000) (which directs that a district court to make a just and equitable division of the parties' property).

There has been no showing of any abuse of discretion by the district court in the division of distribution of the parties' marital and non-marital estates. To the contrary, the district court made detailed and comprehensive findings of fact which clearly support the division and distribution of assets it made.

"Upon a dissolution of marriage . . . the [district] court shall make a just and equitable division of the marital property of the parties." Minn. Stat. § 518.58, subd. 1 (2006). "District courts have broad discretion over the division of marital property and appellate courts will not alter a district court's property division absent a clear abuse of discretion or an erroneous application of the law." Sirek v. Sirek, 693 N.W. 2D 896, 898 (Minn. App. 2005). Appellate courts "will affirm the [district] court's division of property if it had an acceptable basis in fact and principle even though [the appellate court] might have taken a different approach." Antone v. Antone, 645 N.W. 2d 96, 100 (Minn. 2002).

Additionally, Minn. Stat. § 518.58, subd. 1a (2006) provides that if the district court finds that a party to a dissolution proceeding has transferred, encumbered, concealed or

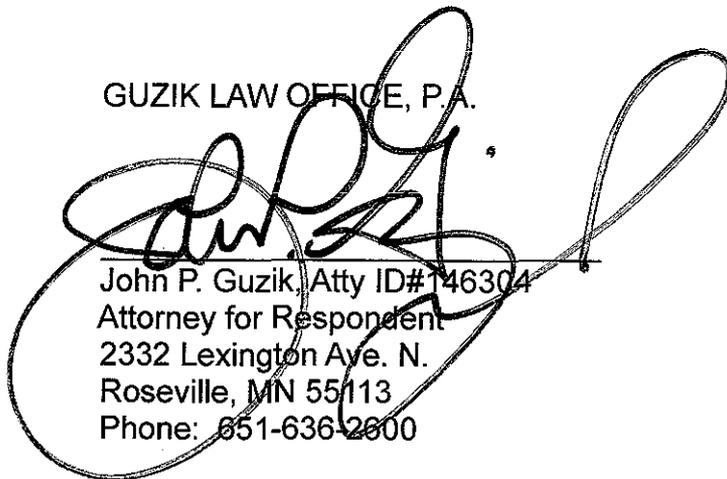
disposed of marital assets without consent of the other party, except in the usual course of business or for the necessities of life, the district court "shall compensate the other party by placing both parties in the same position that they would have been in had the transfer, encumbrance, concealment, or disposal not occurred." "In compensating a party under this section, the court, in dividing the marital property, may impute the entire value of an asset . . . to the party who transferred, encumbered, concealed, or disposed of it" *Id.*

CONCLUSION

There was no abuse of discretion by the district court in granting the Respondent's request to bifurcate the parties' marriage dissolution proceeding. The district court acted within its discretion in granting the Respondent's motion allowing Catherine A. Risk, the personal representative of the Petitioner's estate, to intervene and act in Petitioner's place. The district court appropriately reserved for later determination a just and equitable division and distribution of the parties marital and non-marital interests. There has been no showing of any abuse of discretion in the district court's division and distribution of the parties' marital and non-marital interests. Accordingly, the Respondent requests that this reviewing court affirm the district court's orders in all respects.

Respectfully submitted,

Dated: 3-18-10

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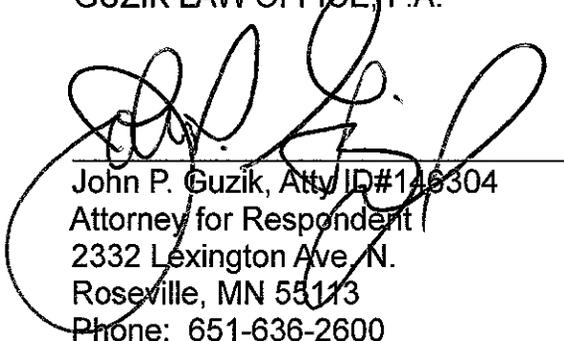
CERTIFICATE OF BRIEF LENGTH

I, John P. Guzik, hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds.1 and 3, with regard to both the typeface requirements and word count limitations set forth therein. This brief was prepared using OpenOffice.org 3.0.1 by Sun Microsystems, Inc. and contains 3,458 words.

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