

State of Minnesota
In Court of Appeals

Citizens State Bank Norwood Young America,
a Minnesota Banking Corporation,

Respondent,

vs.

Gordon Brown and Judy Brown a/k/a Judy Kay Brown,

Appellants.

**BRIEF, ADDENDUM AND APPENDIX OF APPELLANTS
GORDON BROWN AND JUDY BROWN**

BRIGGS AND MORGAN, P.A.

Eric J. Magnuson, Esq. (#66412)

Amie E. Penny Saylor, Esq. (#389874)

2200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

(612) 977-8400

and

McCLAY AND ALTON, PLLP

Robert M. McClay, Esq. (#69620)

951 Grand Avenue

St. Paul, MN 55105

(651) 290-0301

Attorneys for Appellants

Gordon Brown and Judy Brown

GAVIN, WINTERS, TWISS,

THIEMANN & LONG, LTD.

Alan M. Albrecht, Esq. (#887)

1017 Hennepin Avenue North

Glencoe, MN 55336

(320) 864-5142

and

JOHN A. HALPERN & ASSOCIATES

John A. Halpern, Esq. (#39913)

500 Plymouth Building

12 South Sixth Street

Minneapolis, MN 55402-1510

(612) 375-1980

Attorneys for Respondent

Citizens State Bank Norwood Young America

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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STATEMENT OF ISSUES

- 1. Where assets are transferred pursuant to a stipulated marital dissolution decree approved by the district court as fair and reasonable, can the sole fact of transfer support a finding of fraudulent conveyance under Minn. Stat. § 513.44?**

Despite the fact that the sole basis for its finding was a court ordered transfer pursuant to a dissolution decree, the district court concluded that Citizens State Bank was entitled to collect its judgment against Gordon Brown from Judy Brown because it concluded that all transfers Gordon Brown made to Judy Brown were fraudulent transfers under Minn. Stat. § 513.44. (Add.4-5)¹

Apposite Authorities:

Minn. Stat. § 513.44
Kiesow v. Kiesow, 270 Minn. 374, 386, 133 N.W.2d 652, 661 (1965)

- 2. Alternatively, did the district court err in granting summary judgment to Citizens State Bank due to genuine issues of material fact regarding the intent of Gordon Brown to fraudulently transfer assets?**

Notwithstanding the lack of evidence in the record regarding the alleged administrative nature of Gordon Brown and Judy Brown's dissolution, the fact that Gordon Brown and Judy Brown were not husband and wife at the time of the transfer, and conflicting evidence regarding the value of the transfers made to Judy Brown, the district court concluded that there were no genuine issues of material fact, and therefore that summary judgment was appropriate. (Add.4)

Apposite Authorities:

Fairview Hosp. & Health Care Servs. v. St. Paul Fire & Marine Ins. Co.,
535 N.W.2d 337, 341 (Minn. 1995)

¹ "Add." refers to Appellants' Addendum; "A." refers to Appellants' Appendix.

STATEMENT OF CASE

This appeal involves the interplay among three separate lawsuits. First, as a predecessor to the action on appeal, in 2010 Respondent Citizens State Bank initiated an action against Gordon Brown (“Gordon”) because he provided a personal guaranty for a corporate debt upon which the borrower defaulted. Citizens State Bank also named the borrowers and another personal guarantor in that action. Judy Brown (“Judy”) did not provide a personal guaranty for the debt, and was not a party to that action. On June 29, 2010, Citizens State Bank was awarded a judgment against all parties, except the other personal guarantor who had filed for bankruptcy.

Second, also a predecessor to the action on appeal, in 2010 Gordon filed an action for the dissolution of his marriage to Judy. Gordon and Judy resolved the litigation with a stipulated marital termination agreement, which was adopted by the court in its Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree (“Dissolution Decree”) entered on October 8, 2010. The Dissolution Decree awarded some assets to Gordon and some assets to Judy. There is no award of spousal maintenance and there is no discussion of what assets were marital property.

Third, in the action on appeal, in 2011 Citizens State Bank sued Gordon and Judy, alleging that Gordon fraudulently transferred assets to Judy pursuant to the Dissolution Decree. The only evidence that Citizens State Bank offered to prove its allegations was the Dissolution Decree.

Nevertheless, on a motion for summary judgment, the Honorable Kevin W. Eide concluded that Gordon had fraudulently transferred assets to Judy when he complied with

the Dissolution Decree, and accordingly voided the transfers. Appellants appeal from the judgment entered on June 6, 2012.

STATEMENT OF FACTS

A. Predecessor Action—*Citizens State Bank v. Gordon Brown, et al.*

The judgment being collected in the action *sub judice* has its genesis in a previous action in which Citizens State Bank sued Gordon Brown (“Gordon”), Dale Mack, Cool Air International, Inc., Medallion Fasteners Corporation, and TCB Tool Corporation based on a default on a loan.² Gordon was sued because he had provided a personal guaranty for the loan. (A.19) Judy Brown (“Judy”) did not provide a personal guaranty on the loan, and was not named in the suit. On June 29, 2010, Citizens State Bank was awarded a judgment against Medallion Fasteners Corporation, TCB Tool Corporation, and Gordon in the amount of \$294,825.52.³ (A.22–24)

B. Dissolution Action—*Gordon Brown v. Judy Brown*

Gordon and Judy were married in 1987. (Add.7) They initiated divorce proceedings on March 15, 2010, which was before Citizens State Bank was awarded a judgment against Gordon.⁴ (See Add.3; Add.6, ¶ 1) On October 8, 2010, the Honorable Shawn M. Moynihan issued his final Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree for Gordon and Judy’s dissolution (“Dissolution Decree”). (Add.6)

Gordon was awarded:

² *Citizens State Bank Norwood Young Am. v. Gordon Brown et al.*, No. 10-CV-10-106 (Carver Cnty. Dist. Ct.). (A.15–20)

³ Dale Mack filed for bankruptcy prior to the issuance of the judgment. (A.23)

⁴ *Brown v. Brown*, No. 19HA-FA-10-267 (Dakota Cnty. Dist. Ct.). (Add.6–21)

- their home, valued at \$421,900;
- his 1999 Cadillac;
- his checking account, valued at approximately \$3,000;
- shares of Clearwater Marine, Inc., valued at approximately \$80,000; and
- his Clearwater Marine 401k account, valued at approximately \$140,000.

(Add.13–14)

Judy was awarded:

- her 1985 Rolls Royce, 1993 Jaguar, and 2002 Chevrolet Pickup;
- her four checking accounts, collectively valued at approximately \$10,000;
- her four savings accounts, collectively valued at approximately \$84,420, about \$84,000 of which was subject to a pledge of security;
- her Charles Schwab account, valued at approximately \$51,000;
- her UBS Financial Services account, valued at approximately \$1,000;
- her RBC account, valued at approximately \$1,200,000, which was subject to a pledge of security for approximately \$1,100,000; and
- a partnership interest in Pontoon Partnership. (Add.14–15)

Notably, at the time the Dissolution Decree was issued, Gordon was responsible for \$8,807,040 in outstanding personal guaranties. (Add.11–12) Judy was not a party to any of the guaranties. Additionally, Gordon received about \$4,000 per month in income, whereas Judy received about \$500 per month in income. (Add.12) And, despite Gordon

and Judy's 23 year marriage, the Dissolution Decree did not award Judy support payments.

C. Fraudulent Transfer Action—*Citizens State Bank v. Gordon Brown and Judy Brown*

1. Complaint

On July 18, 2011, Citizens State Bank filed a complaint against Gordon and Judy, alleging that Gordon fraudulently transferred assets to Judy pursuant to the Dissolution Decree.⁵ Specifically, Citizens State Bank alleged that the transfer of the assets in the RBC account, Charles Schwab account, and Pontoon Partnership were fraudulent transfers. (A.2) Citizens State Bank requested that the district court allow it to levy execution on Judy's assets to satisfy the outstanding judgment it had against Gordon.

2. Summary Judgment

On April 26, 2012, Citizens State Bank moved for summary judgment. Presenting no evidence other than the Dissolution Decree, Citizens State Bank argued that Gordon fraudulently transferred assets to Judy by way of the Dissolution Decree. Essentially, Citizens State Bank asserted that the Dissolution Decree was "lopsided" and therefore fraudulent. Specifically, Citizens State Bank argued that Gordon kept \$83,000 in assets and \$9,077,340 in debt, while Judy kept \$2,026,420 in assets and \$200 in debt. These numbers, however, ignored the fact that, at a minimum, Gordon kept \$504,900 in assets

⁵ *Citizens State Bank Norwood Young Am. v. Gordon Brown and Judy Brown, a/k/a Judy Kay Brown*, No. 10-CV-11-1607 (Carver Cnty. Dist. Ct.). (A.1-5)

because he was awarded their home,⁶ and that \$8,807,040 of Gordon's debt was due to personal guaranties he made. Moreover, these numbers ignored the fact that, at best, Judy kept approximately \$200,000 in assets because she was not awarded their home, the assets that she was awarded were subject to a \$1,180,000 loan security agreement, and the interest in Pontoon Partnership consisted of a sole piece of commercial property that had been on the market for years and was subject to a promissory note due less than 60 days after the Dissolution Decree was issued. (Add.10) Moreover, despite their 23-year marriage, Judy was awarded no spousal maintenance.

Nevertheless, the district court, the Honorable Kevin W. Eide presiding, agreed with Citizens State Bank and granted it summary judgment on June 6, 2012. The district court concluded that actual intent was shown based on the existence of a number of "fraudulent factors" that the court listed, *i.e.*, (1) the transfers were from husband to wife; (2) the transfers were "concealed" in that Citizens State Bank was not made a part of the divorce action; (3) Gordon transferred substantially all of his assets leaving himself with a negative net worth in excess of \$8,500,000; (4) Gordon failed to received reasonably equivalent value for the transfers because Judy had "over 10 million dollars more than" Gordon after the transfers; (5) Gordon became insolvent after transferring his assets; and (6) the transfers occurred shortly after the debt became delinquent. (Add.4-5) Despite the fact that Judge Moynihan reviewed the stipulation for dissolution and was required by

⁶ Citizens State Bank argued that Gordon transferred their home to Judy in August 2009. That transfer, however, was trumped by the court's Dissolution Decree from October 2010, that awarded their home to Gordon.

statute to evaluate whether the proffered stipulation was fair and reasonable,⁷ Judge Eide concluded that the Dissolution Decree “was approved administratively,” and afforded it no weight in evaluating the claim of fraudulent transfers. (Add.4)

⁷ Minn. Stat. § 518.13, subd. 5 (requiring a court to schedule a hearing in any case where a stipulated agreement is contrary to the interests of justice).

ARGUMENT

Summary of Argument

Citizens State Bank brought this fraudulent transfer action against Gordon and Judy because it had been unable to satisfy its judgment regarding a default on a loan against Cool Air International, Inc., Medallion Fasteners Corporation, TCB Tool Corporation, or one of the loan's guarantors, Gordon. But Citizens State Bank's attempt to satisfy its judgment by obtaining funds awarded to Judy in her marital dissolution reaches too far.

Citizens State Bank did not satisfy its burden to prove that fraudulent transfers occurred pursuant to the Dissolution Decree. Put simply, Citizens State Bank failed to prove the badges of fraud existed. First, Judy was not an insider of Gordon because she was no longer his wife when the transfers occurred. Second, Gordon did not conceal the transfers; to the contrary, they were made pursuant to the public Dissolution Decree. Third, Gordon did not transfer substantially all of his assets. Fourth, Gordon did not fail to receive reasonably equivalent value for the transfers. Myriad factors are considered in the division of marital property; Judge Moynihan's approval of the stipulation was evidence that he considered the Dissolution Decree a just and equitable division of property; and there was no evidence offered or considered by either Judge Eide or Judge Moynihan to show that the division was otherwise. And there was no evidence in the record that Judge Moynihan "administratively" approved the Dissolution Decree. Finally, Gordon did not become insolvent after the transfers. Instead, he had a large

negative net worth before the transfers occurred. In short, there was no support for the district court's conclusion that the marital dissolution resulted in a fraudulent transfer.

At a minimum, material questions of fact exist thereby rendering summary judgment inappropriate. The four corners of the Dissolution Decree is simply insufficient for establishing the badges of fraud. More is needed. Even if a claim of fraudulent transfer might be presented in the context of a marital dissolution, that case was not made here.

I. STANDARD OF REVIEW

This Court reviews a district court's summary judgment decision de novo. In doing so, the Court "determine[s] whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). This Court "must view the evidence in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 760, 761 (Minn. 1993).

II. THE DISTRICT COURT ERRED IN GRANTING CITIZENS STATE BANK SUMMARY JUDGMENT AND ALLOWING CITIZENS STATE BANK TO COLLECT FROM JUDY A JUDGMENT ISSUED AGAINST GORDON BASED ON THE CONCLUSION THAT THE TRANSFERS GORDON MADE TO JUDY PURSUANT TO THEIR DISSOLUTION DECREE WERE FRAUDULENT TRANSFERS UNDER MINN. STAT. § 513.44.

A. Statutory Scheme

Minnesota's Uniform Fraudulent Transfer Act ("UFTA") "prohibits a debtor from transferring property with the intent to hinder, delay, or defraud any creditors." *New*

Horizon Enters., Inc. v. Contemporary Closet Design, Inc., 570 N.W.2d 12, 14 (Minn. Ct. App. 1997) (citing *In re Butler*, 552 N.W.2d 226, 231 (Minn. 1996)). Citizens State Bank's Complaint alleged a violation of section 513.44 of the UFTA, which provides that a transfer is fraudulent where a debtor makes a transfer:

- 1) with actual intent to hinder, delay, or defraud any creditor of the debtor, or
- 2) without receiving a reasonably equivalent value in exchange for the transfer . . . and the debtor:
- 3) (ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

The creditor bears the burden of proving the intent to defraud. *New Horizon*, 570 N.W.2d at 15 (citing *Snyder Elec. Co. v. Fleming*, 305 N.W.2d 863, 867 (Minn. 1981)).

The existence of an actual intent to defraud is a question of fact. *Id.*; see also *Hibbs v. Marpe*, 84 Minn. 10, 11-12, 86 N.W. 612, 613 (1901). In determining actual intent, courts rely on "badges of fraud," as delineated in Section 513.44 of the UFTA, specifically whether:

- 1) the transfer . . . was to an insider;
- 2) the debtor retained possession or control of the property transferred after the transfer;
- 3) the transfer or obligation was disclosed or concealed;
- 4) before the transfer was made . . . the debtor had been sued or threatened with suit;
- 5) the transfer was of substantially all the debtor's assets;
- 6) the debtor absconded;
- 7) the debtor removed or concealed assets;
- 8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred . . . ;

- 9) the debtor was insolvent or became insolvent shortly after the transfer was made . . . ;
- 10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and
- 11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

See also In re Butler, 552 N.W.2d 226, 231 (Minn. 1996).

B. The Badges of Fraud Were Not Shown Here

Simply put, the evidence introduced by Citizens State Bank—the Dissolution Decree and nothing else—was inadequate to establish an actual intent to defraud. The district court relied on one fact, and one fact alone to find fraud—the court issued Dissolution Decree. That error requires reversal.

1. Gordon and Judy Were Not Husband and Wife at the Time the Transfers Were Made

The district court concluded that the transfers were to an insider because they “were to a relative, from husband to wife.” But that conclusion was flatly wrong. The transfers were made pursuant to the Dissolution Decree and were therefore made after Gordon and Judy were no longer husband and wife. *See* Minn. Stat. § 518.06, subd. 1 (“A dissolution of marriage is the termination of the marital relationship between a husband and wife. A decree of dissolution completely terminates the marital status of both parties.”); *In re Carbaat*, 357 B.R. 553, 558 (Bankr. N.D. Cal. 2006) (noting that a spouse is not an insider of the divorcing spouse). The decree ordered the transfers to be made, and they took place after the termination of the marriage.

2. The Transfers Were Not Concealed

The district court concluded that the transfers “were not disclosed and therefore were concealed in that [Citizens State Bank] was not made a part of the divorce action.” That conclusion was also simply unfounded. First, not disclosing the dissolution action is simply not the same as concealing it. Under no construction can the dissolution action be deemed concealed; it was public record. Second, the dissolution action was filed months before Citizens State Bank obtained a judgment against Gordon. Therefore, there was no reason for Gordon to disclose the dissolution action. Finally, a dissolution action involves two parties, a husband and a wife; Citizens State Bank could not have been made a party to the dissolution action.

3. Gordon Did Not Transfer Substantially All of His Assets

The district court concluded that Gordon “transferred all of his assets leaving himself with a negative net worth in excess of \$8,500,000.00.” (Add.4) That conclusion was unfounded and misleading. First, as discussed, Gordon retained assets worth over \$500,000. Second, Gordon had a negative net worth prior to the dissolution proceeding. Gordon had made \$8,807,040 in personal guaranties. All of the personal guaranties were in Gordon’s name only; Judy was not a guarantor. Thus, the conclusion that the transfers rendered Gordon insolvent misses the mark completely; Gordon’s net worth was largely unaffected by the Dissolution Decree. Gordon had a large negative net worth before the dissolution and a similarly large negative net worth after the dissolution. The assets that

were transferred to Judy pursuant to the Dissolution Decree had little impact on Gordon's overall net worth.

Alternatively, it was error to include Gordon's guarantees in the calculation of the marital assets. Gordon's guarantees were speculative and contingent liabilities. The guarantees were only liabilities in the event that the borrowers defaulted. Speculative or contingent liabilities should not be considered in determining the net marital estate. *Nolan v. Nolan*, 354 N.W.2d 509, 513 (Minn. Ct. App. 1984). Whether the guarantees are counted against Gordon's net worth or are properly deemed speculative or contingent liabilities that should not have been considered, Gordon's net worth remained largely unchanged.

4. Gordon Did Not Fail to Receive Reasonably Equivalent Value for the Transfers

The district court concluded that Gordon failed to receive reasonably equivalent value for the transfer, stating that after the transfers Judy "had over 10 million dollars more than" Gordon when the dust settled. That number is reached, however, only by comparing Gordon's large negative net worth (which pre-dated the dissolution) with Judy's modest post-dissolution positive net worth, while also ignoring the absence of any spousal maintenance payments. That conclusion was erroneous and misleading for three reasons.

First, it is erroneous because the transfers were made pursuant to a court order. Thus, regardless of "reasonably equivalent value," Gordon was obligated to make the transfers. *Kiesow v. Kiesow*, 270 Minn. 374, 386, 133 N.W.2d 652, 661 (1965).

Second, at best, “reasonably equivalent value” in a dissolution action is a material question of fact. Gordon and Judy were married for 23 years. The facts and circumstances surrounding both their marriage and dissolution need to be examined to determine whether Gordon received “reasonably equivalent value” from his wife of 23 years for the transfers. *See* Minn. Stat. § 518.58, subd. 1 (directing trial courts to consider “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, opportunity for future acquisition of capital assets, and income of each party” in determining a division of marital property). In approving the stipulation, Judge Moynihan was obligated to consider those facts, and there is no evidence that he did not.⁸ And more importantly here, Citizens State Bank bore the burden of producing evidence that answered that question; it was improper to rely on conclusory allegations alone.⁹

⁸ For example, here Judge Moynihan could have considered the fact that Gordon was 94 years old and Judy was 55 years old at the time of dissolution. (Add.6–7) A disproportionate property award to Judy would make up for the fact that Gordon would not be likely to pay any sizeable maintenance award for the rest of Judy’s life.

⁹ Moreover, the standard of review for division of marital property is for an abuse of discretion. *Nolan*, 354 N.W.2d at 512. In determining whether the trial court abused its discretion, the reviewing court considers “all relevant factors,” including but not limited to those listed in Minn. Stat. § 518.58, subd. 1. *Nolan*, 354 N.W.2d at 512; *see also Dahlberg v. Dahlberg*, 358 N.W.2d 76, 80 (Minn. Ct. App. 1984) (noting that “[w]here evidence supports the trial court’s division, [a reviewing court] must affirm even if it would have reached a different conclusion in the first instance”). There is no indication in the record that Judge Eide considered the statutory factors or reviewed the Dissolution Decree approved by Judge Moynihan for an abuse of discretion.

Third, it is misleading because only by not considering the pledge of security against the assets awarded to Judy could the court conclude that Judy's net worth was about \$2,000,000. Thus, Judy could not possibly have "10 million dollars more" than Gordon. The bank never sought or received a personal guaranty from Judy. And there's nothing in the record to show that Gordon did not receive fair and equivalent value for being relieved of the obligation to pay Judy spousal maintenance.

5. Gordon Did Not Become Insolvent After Transferring the Assets

The district court also concluded that Gordon "became insolvent after transferring the assets." (Add.5) Nothing could be further from the undisputed facts. If the personal guarantees he gave were considered as liabilities, then they must be considered as liabilities both before and after the dissolution; and therefore, Gordon was massively insolvent long before making the transfers. "A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable liabilities on his existing debts as they become absolute and mature." *Neubauer v. Cloutier*, 265 Minn. 539, 544, 122 N.W.2d 623, 628 (1963); Minn. Stat. § 513.42(a) ("A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation."). Prior to the transfers, Gordon was personally obliged to pay approximately \$8,807,040 in outstanding personal guaranties. Thus, his net worth was, as noted, largely unaffected by the dissolution property division.

6. The Transfers Occurred Shortly After the Debt Became Delinquent Because Gordon Could Not Control the Timing of the Issuance of the Dissolution Decree

The district court concluded that the transfers occurred shortly after the Citizens State Bank judgment was entered. But this is not a badge of fraud. Gordon filed for divorce before Citizens State Bank was awarded its judgment. Gordon could not control when the court issued the Dissolution Decree. And once it was issued, he was obligated to comply with the transfers required thereunder. *See, e.g., Kiesow*, 270 Minn. at 386, 133 N.W.2d at 661 (“(T)he judgment in the divorce action, so far as it affects the property rights of the parties as between each other, is mutually binding upon them.”) (internal quotation marks omitted) (citation omitted).

III. ALTERNATIVELY, THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT TO CITIZENS STATE BANK BECAUSE GENUINE ISSUES OF MATERIAL FACT EXIST REGARDING THE INTENT OF GORDON TO FRAUDULENTLY TRANSFER ASSETS.

Axiomatically, “on a summary judgment motion a court may not weigh the evidence or make factual determinations, but must take the evidence in a light most favorable to the nonmoving party.” *Fairview Hosp. & Health Care Servs. v. St. Paul Fire & Marine Ins. Co.*, 535 N.W.2d 337, 341 (Minn. 1995). But here, the district court made several factual determinations. Not only were they unfounded on this record, but it was error to reach so far.

First, and most importantly, the district court made unfounded assumptions about the nature of the dissolution proceeding. Based on absolutely no evidence, the district court concluded that Gordon and Judy’s dissolution proceeding was “administrative,” and

therefore, apparently, that the Dissolution Decree was meaningless. By law, however, Judge Moynihan was required to ensure that the Dissolution Decree was fair and reasonable, and there is no evidence that he did not scrupulously discharge that obligation.

Second, the district court made factual determinations regarding the “reasonably equivalent value” of the assets transferred in a dissolution proceeding based on nothing more than the Dissolution Decree, but marital property division is based on a variety of factors; and, it can be disproportionate, especially in a dissolution without maintenance payments. *See, e.g., Johns v. Johns*, 354 N.W.2d 564, 566 (Minn. Ct. App. 1984). As a matter of law, the fact of property division, standing alone, cannot support a finding of fraudulent transfer. The bank was obligated to provide evidence to support its claim that the transfers were not for reasonably equivalent value, and failed to do so. The district court ignored the legal burden of proof. Citizens State Bank was seeking to set aside transfers as fraudulent. It had the burden of producing adequate, competent, and persuasive evidence sufficient to support its claim. It failed totally to meet that burden.

The only evidence presented to support Citizens State Bank’s motion for summary judgment was the Dissolution Decree. Yet the district court concluded that “[t]he record clearly indicates that the [Dissolution Decree] was based on the parties [sic] Marital Termination Agreement, and that the [Dissolution Decree] was approved administratively,” and that it was “not the Court’s practice to second-guess those agreements.” These conclusions reach far beyond the face of the Dissolution Decree. They are apparently based on the district court’s assumption or perhaps own practice

regarding “administrative approval” of dissolution proceedings. But there is nothing in the record indicating that Judge Moynihan “administratively” issued a Dissolution Decree that he either did not review, or that he did not consider fair, or that he considered fraudulent. Moreover, had Judge Moynihan done so, he would have done so contrary to law. *See* Minn. Stat. § 518.13, subd. 5. It presumes too much to discard out of hand the fact that the court expressly approved the terms of the Marital Termination Agreement.

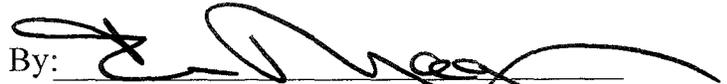
Finally, any issue as to the timing of the dissolution of the marriage and transfers must be resolved to determine whether Gordon and Judy were “relatives” at the time of the transfers. Second, the value of the transfers made simply cannot be determined solely from the Dissolution Decree. For example, the Dissolution Decree estimates the value of the Pontoon Partnership interest transferred to Judy at \$1,700,000. (Add.15) But Judge Eide concluded that the value of the Pontoon Partnership interest was \$80,000. (Add.3) Thus, a genuine issue of material fact exists as to the value of the transfers that Gordon made to Judy pursuant to the Dissolution Decree. *See, e.g., Thommes v. Thommes*, No. A11-1591, 2012 WL 2368877, at *4 (Minn. Ct. App. June 25, 2012) (reversing summary judgment where a genuine issue of material fact existed as to the “reasonably equivalent value” of a transfer of interest in a closely held business) (citing *Nardini v. Nardini*, 414 N.W.2d 184, 189-90 (Minn. 1987) (“recognizing the ‘difficulty’ and ‘imprecision’ of valuing a closely held corporation”)).

CONCLUSION

Citizens State Bank did not meet its burden of showing that summary judgment on a fraudulent transfer claim was appropriate. Citizens State Bank did not provide sufficient evidence, or in some areas any evidence, to show the badges of fraud existed. Moreover, the district court's judgment is premised upon facts that are not in the record, such as the "administrative" nature of Gordon and Judy's dissolution proceeding. Therefore, the summary judgment order must be reversed and vacated.

Dated: October 16, 2012

BRIGGS AND MORGAN, P.A.

By: 

Eric J. Magnuson (#0066412)

Amie E. Penny Saylor (#0389874)

2200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402-2157

(612) 977-8400

and

Robert M. McClay (#69620)

McClay and Alton, PLLP

951 Grand Avenue

St. Paul, MN 55105

(651) 290-0301

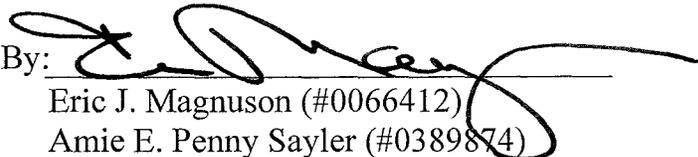
**Attorneys for Appellants Gordon Brown
and Judy Brown a/k/a Judy Kay Brown**

CERTIFICATE OF COMPLIANCE

The undersigned counsel for Appellants, certifies that this brief complies with the requirements of Minn. R. App, P. 132.01 in that it is printed in Times New Roman 13-point font, proportionately spaced typeface utilizing Microsoft Word Word 2007 and contains 4,552 words, including headings, footnotes and quotations.

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BRIGGS AND MORGAN, P.A.

By: 

Eric J. Magnuson (#0066412)

Amie E. Penny Sayler (#0389874)

2200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402-2157

(612) 977-8400

and

Robert M. McClay (#69620)

McClay and Alton, PLLP

951 Grand Avenue

St. Paul, MN 55105

(651) 290-0301

**Attorneys for Appellants Gordon Brown
and Judy Brown a/k/a Judy Kay Brown**