

IN THE SUPREME COURT OF THE STATE OF MONTANA

CASE NO. DA 23-0469

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 23-0469

IN THE MARRIAGE OF:

BRADLEY JOHN STRECKER,

Appellant/Respondent,

-and-

LISA MARIE STRECKER,

Appellee/Petitioner.

PETITION FOR REHEARING OF APPELLANT
BRADLEY JOHN STRECKERON APPEAL FROM THE THIRTEENTH JUDICIAL DISTRICT COURT
OF THE STATE OF MONTANAIN AND FOR THE COUNTY OF YELLOWSTONE
THE HONORABLE ASHLEY A. HARADA, PRESIDING
District Court Cause No. DR 21-0506APPEARANCES:

Kevin T. Sweeney
1601 Lewis Avenue, Suite 109
Billings, Montana 59102
Telephone (406)256-8060
kevintsweeney@hotmail.com
Attorney for Appellant/Respondent
Bradley John Strecker

Casey Heitz
Michael L. Dunphy
PARKER, HEITZ & COSGROVE
401 N. 31st Street, Suite 1600
P.O. Box 7212
Billings, Montana 59103
Telephone (406)245-9991
caseyheitz@parker-law.com
mdunphy@parker-law.com
Attorneys for Appellee/Petitioner
Lisa Marie Strecker

The Appellant, BRADLEY JOHN STRECKER, (hereafter "Brad") comes now before the Court, and pursuant to Rule 20 MRAppCivP, hereby petitions this Court for rehearing two issues presented on appeal that appear to be overlooked by this Court that, in the view of Brad, are decisive to his appeal.

The two issues are Issue 1(b) and 2 as set forth in the appellant's Statement of Issues Presented For Review in his Opening Brief.

These two issues include:

1. (b) There are thousands of dollars of difference presented by the parties in their trial testimony as to a number of their assets and debts. The parties and this Court are left to guess what the trial court determined to be their property, debt and its valuation.
2. The Court ignores agreed upon debt owing of \$180,000. This action constitutes an egregious error as well as a flawed interpretation of law and lends to reversible error.

ARGUMENT

ISSUE 1(B) - "EQUAL DIVISION".

The District Court, in its Finding of Fact No. 22 provides in full:

Lisa is entitled to one-half of all of the entire marital estate - this being, the Molt real property (i.e., W & S Partnership interests); the home located in Billings, Montana (Mary Street); the real property east of Billings located on the Yellowstone River; all remaining farm and ranch machinery/tools; and all income derived from the parties' real property and farm and ranch machinery from the date of separation forward with the Court has determined to be \$150,000.00 and one-half of the farm trust account with shall be no less than \$54, 000.00. See Exhibit A attached hereto. (Emphasis added)

The analysis of the District Court work here, giving the benefit of the argument all to Appellee, LISA MARIE STRECKER (hereafter "Lisa") is that, under the District Court division of property:

LISA RECEIVES

Hoskins Farm Property - worth between \$3 Million and \$4 Million Dollars;
Molt Real Estate - valued by Lisa at \$675,000;
Mary Street home equity- \$154,000;
Net Total: Between \$3,829,000 and \$4,829,000

BRAD RECEIVES

Powmer Farm Property - worth between \$3 Million and \$ 4 Million Dollars;
Farm and Ranch Equipment - valued by Lisa at \$285,560;
Less Debt to Mother (\$180,000);
Net Total: Between \$3,105,560 and \$4,105,560

The Finding 22 labels this division of property "equal" in the view of the District Court. It is manifestly not equal.

There are, simply put, hundreds of thousands of dollars missing or not accounted for in this division between Brad and Lisa in this "equal" view valuation District Court analysis. This constitutes substantial error. It is reversible error.

ISSUE 2 - THE \$180,000 DEBT.

The Streckers have but one unsecured obligation, a \$180,000 debt owing to Brad's mother. The District Court did not factor this debt into its property division. This Court, in its opinion, did not address the propriety of this failure by the District Court to account for this large obligation.

In his Opening Brief, Brad asserts that it was error for the District Court not to consider and account for the \$180,000 debt that is owing by the parties to Brad's mother. In the trial testimony of both parties, and the accounting work of Ms. Rebecca Schmitz, the District Court was informed that Brad and Lisa borrowed \$180,000 from Brad's mother and, for years, made "interest only" payments on the debt obligation. The District Court Judge, herself, commented on the "interest only" payment history, questioning why the parties did not, years ago, pay off the debt and made interest only payments on the obligation.

It is a distortion of the trial record and the job to equitably divide wealth to simply ignore or deny the debt.

In her Response Brief, Lisa provides that "it is true Lisa was not surprised to hear the potential existence of this liability during trial".

Indeed, to remind this Court, Lisa's testimony on the matter at trial provides:

BY MR. SWEENEY:

Q. In your testimony, Ms. Strecker, you testified that you had no knowledge or information of a \$180,000 debt for a loan of funds that you and Brad borrowed from Betty Strecker?

BY LISA STRECKER:

A. No, I acknowledged that there was a loan for that.

Q. So there is a loan for \$180,000?

A. Yes.

"..."

BY MR. SWEENEY:

Q. But you admit that there was an obligation?

BY LISA STRECKER:

A. I admit that, yes.

Tr. Vol II pg. 265 ln 3 - pg. 266 ln 4.

The District Court relied upon two decisions of this Court¹ wholly not on point dealing with contracts/obligations not admitted by the debtor.

This Court in its opinion did not address the wisdom of the District Court argument or Lisa's "allegation of debt." It did not provide any analysis on this debt issue.

In her Response Brief, Lisa asserts that the debt is "alleged" and provides that "there would be no way for the District Court to even know what obligation exists, let alone impose this obligation on Lisa in its property distribution..."

It is obvious that the entire \$180,000 loan obligation remains to be paid; Brad and Lisa testified they made for years interest only payments on this \$180,000 obligation.

This is substantial, clear error not to account for the debt.

CONCLUSION

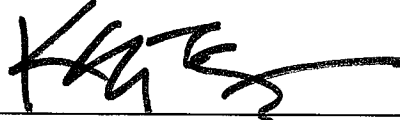
Brad respectfully requests that the Court explain how it is equal to divide wealth as done by the District Court and to explain

¹ *In re Marriage of Malquist* (1987) 227 Mont. 413, 739 P.2d 482. *In re Marriage of Schmitz* (1992) 255 Mont. 159, 841 P.2d 496.

why it is not error not to account for this \$180,000 obligation. These matters appear overlooked.

RESPECTFULLY SUBMITTED this 15th day of May, 2024.

KEVIN T. SWEENEY
1601 Lewis Ave., Ste. 109
Billings, Montana 59102

A handwritten signature in black ink, appearing to read 'KTS', written over a horizontal line.


ATTORNEY FOR APPELLANT/RESPONDENT

CERTIFICATE OF COMPLIANCE

This document has a word count of less than 2500 words and is less than ten pages, prepared in monospaced typefaced/typewritten.

DATED this 15 day of May, 2024.

KEVIN T. SWEENEY
1601 Lewis Ave., Ste. 109
Billings, Montana 59102



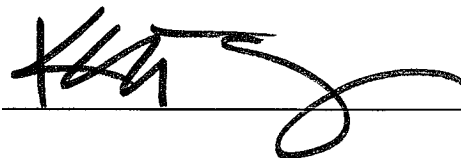
ATTORNEY FOR APPELLANT/RESPONDENT

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I served true and accurate copies of the foregoing Petition for Rehearing was duly served by electronic filing on this 15 day of May, 2024, to counsel for Appellee as follows:

Casey Heitz
PARKER, HEITZ, & COSGROVE
P.O. Box 7212
Billings, Montana 59103

By: _____

A handwritten signature in black ink, appearing to be 'CH', written over a horizontal line.

CERTIFICATE OF SERVICE

I, Kevin T. Sweeney, hereby certify that I have served true and accurate copies of the foregoing Petition - Rehearing to the following on 05-15-2024:

Casey J. Heitz (Attorney)
401 N. 31st Street
Suite 805
PO Box 7212
Billings MT 59103
Representing: Lisa Marie Strecker
Service Method: eService

Electronically signed by Michelle Black on behalf of Kevin T. Sweeney
Dated: 05-15-2024