

Tuesday, August 25, 2009
9:00 A.M.

NO. 1

#25115, #25127

BARBARA R. HALBERSMA,
Plaintiff and Appellant,

vs.

LAWRENCE M. HALBERSMA,
Defendant and Appellee.

Ms. Debra M. Voigt
Piersol & Voigt, LLP
101 N Main Avenue Ste 201
Sioux Falls SD 57104-6411
Ph 339-0909

(FOR APPELLANT)

Mr. Aaron J. Emerson
Myers & Billon LLP
PO Box 1085
Sioux Falls SD 57501
Ph: 336-3700

(FOR APPELLEE)

The Honorable Stuart L. Tiede
Second Judicial Circuit
Minnehaha County

(DIV 05-639)

NOTICE OF REVIEW FILED JANUARY 26, 2009

STATEMENT OF LEGAL ISSUES

- I. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED IN THE APPLICATION OF LAW IN ITS DIVISION OF THE PARTIES' MARITAL ESTATE ON REMAND

The Trial Court awarded the Defendant/Appellee an additional \$247,420 for one-half the total value of the Plaintiff's Brandon residence and the extrapolated value of moneys that Defendant claimed to have inherited early in the marriage, plus post-judgment interest.

Halbersma v. Halbersma, 738 N.W.2d 545, 2007 SD 91
Voelker v. Voelker, 520 N.W.2d 903 (S.D. 1994)
Billion v. Billion, 553 N.W.2d 226, 232, 1996 SD 101
Godfrey v. Godfrey, 705 N.W.2d 77, 2005 SD 101

SDCL § 25-4-44

- II. WHETHER, IN THE ALTERNATIVE, THE DEFENDANT'S INDIRECT CONTRIBUTION SHOULD HAVE BEEN DETERMINED BY AWARDING THE DEFENDANT AN APPROPRIATE SHARE IN THE APPRECIATION OF THE VALUE OF THE PLAINTIFF'S INHERITED PROPERTIES.

The Trial Court purported to award the Defendant a share of the entire value of the Plaintiff's inherited assets.

Bennett v. Bennett, 516 N.W.2d 672, 675 (S.D. 1994)

Pellegrin v. Pellegrin, 574 N.W.2d 644, 1998 SD 19
Temple v. Temple, 365 N.W.2d 561 (S.D. 1985)

SDCL § 25-4-44

- III. WHETHER IT WAS ERROR FOR THE TRIAL COURT TO ASSESS THE PLAINTIFF INTEREST DURING A PERIOD OF DELAY CAUSED BY THE DEFENDANT AND THE COURT.

The Trial Court assessed post-judgment interest against the Plaintiff at the rate of 5% per annum from October 6, 2006.

SDCL § 54-3-5.1
SDCL § 21-1-11

N.O.R. STATEMENT OF LEGAL ISSUES

- I. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY AWARDING DEFENDANT/APPELLEE, ON REMAND, APPROXIMATELY 15% OF THE VALUE OF PLAINTIFF/APPELLANT'S PREVIOUSLY EXCLUDED INHERITED ASSETS AND THEREBY AWARDING PLAINTIFF/APPELLANT APPROXIMATELY 72% (\$1,984,606) OF THE TOTAL ASSETS AND DEFENDANT/APPELLEE APPROXIMATELY 28% (\$852,493) OF THE TOTAL ASSETS. *Although Barbara's inherited property was received thirty years into the marriage and continued to exist and appreciate thereafter for another twenty years with the valuable and indirect contributions of Defendant/Appellee, on remand, the trial court awarded nearly three quarters of the parties' assets to Plaintiff/Appellant.*

Halbersma v. Halbersma, 2007 SD 91, 738 N.W.2d 545

Novak v. Novak, 2006 SD 34, 713 N.W.2d 551

Hill v. Hill, 2009 SD 18

Goeden v. Daum, 2003 SD 91, 668 N.W.2d 108

- II. WHETHER THE TRIAL COURT ERRED BY UTILIZING A VALUATION METHODOLOGY FOR DETERMINING THE VALUE OF DEFENDANT/APPELLEE'S EQUITABLE INTEREST IN THE PREVIOUSLY EXCLUDED INHERITED ASSETS, WHERE SUCH METHODOLOGY WAS NOT ADVOCATED BY EITHER PARTY, NO EVIDENCE WAS OFFERED TO SUPPORT THE METHODOLOGY, AND WHICH WAS DIFFERENT THAN THE PROPERTY STIPULATION OF THE PARTIES (WHICH WAS ACCEPTED BY THE TRIAL COURT AT TRIAL FOR ALL OF THE ASSETS AT ISSUE. *At trial, the trial court had previously disregarded the acknowledgement by the parties that Defendant/Appellee had co-mingled and utilized his separate inheritance for the benefit of the marriage and marital estate. Although asserted as a factor for consideration in determining the division of assets that included Plaintiff/Appellant's inherited property, neither party requested that Defendant/Appellee be reimbursed his inheritance and neither party advanced a theory or offered evidence as a basis for determining the present value of Defendant/Appellee's inheritance.*

Halbersma v. Halbersma, 2007 SD 91, 738 N.W.2d 545

Moser v. Moser, 422 N.W.2d 594 (SD 1988)

- III. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW BY LIMITING THE JUDGMENT INTEREST AWARDED TO DEFENDANT/APPELLEE TO 5%, RATHER THAN THE CATEGORY B RATE OF INTEREST SPECIFIED IN SDCL § 54-3-5.1. *Notwithstanding statutory language that provides that interest is payable on all judgments at the Category B rate of interest (10%), the trial court assessed interest at 5% without explanation or basis in law.*

SDCL § 54-3-5.1

SDCL § 54-3-16(2)

SDCL § 54-3-16