22165 - Estate of Hoffman

JURISDICTIONAL STATEMENT

The South Dakota Supreme Court has jurisdiction over this appeal pursuant to SDCL § 15-26A-3, which grants the authority to review the final order and judgment in question in this case.

STATEMENT OF THE ISSUES

I. Whether straw transactions that resulted merely in the severance of survivorship rights violate a temporary restraining order appearing in a divorce summons pursuant to SDCL § 25-4-33.1.

The Fifth Judicial Circuit ruled they did.

II. Whether the trial court, after determining that the straw transactions in question violated the temporary restraining order, abused its discretion in setting aside and invalidating the transactions.

The Fifth Judicial Circuit set aside and invalidated the transactions.

STATEMENT OF THE CASE

Cheryl Hoffman, the deceased, initiated a divorce proceeding on grounds of extreme emotional and physical cruelty against her husband, Bruce Hoffman. Pursuant to SDCL § 25-4-33.1, a temporary restraining order appeared in the summons restraining both parties from "transferring, encumbering, concealing, or in any way dissipating or disposing of any marital assets, without the written consent of the other party or an order of the Court." Cheryl Hoffman learned that she was terminally ill after instituting the divorce proceeding. She desired to leave property to her children, instead of entirely with her husband, and accordingly she changed her will to leave her share of property to her children. Several months later, when Cheryl Hoffman realized that Bruce Hoffman would not allow resolution of the divorce, Cheryl Hoffman and her father executed straw transactions by which all of her property was conveyed to her father and then