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Dissolution of Marriage--Personal Injury Damages as Marital Property in Missouri

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Deterrence likewise is insufficient justification for the continued application of the felony-murder rule to non-dangerous felonies. As argued in the dissent in *Chambers,* if the felon has no reason to suspect that a homicide will result from his act, he is not going to be deterred from committing the felony by the threat of being convicted of murder for any deaths that result.

The result of limiting the felony-murder rule to inherently or foreseeably dangerous felonies would not be that the felon will go unpunished. He can still be convicted of the underlying felony and a more severe punishment can be assessed because a death resulted. Furthermore, if the felon's conduct is reckless and wanton, he can be convicted of manslaughter under conventional homicide statutes without the aid of the felony-murder rule.

The felony-murder rule is a highly artificial concept of strict criminal liability and should be given the narrowest possible application.[39] This is the trend in other jurisdictions and the approach taken by both the *Model Penal Code* and the *Missouri Proposed Criminal Code.* By refusing to limit the application of this doctrine to inherently or foreseeably dangerous felonies, *Chambers* reaches a result which neither logic nor fairness supports.

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DISSOLUTION OF MARRIAGE – PERSONAL INJURY DAMAGES AS MARITAL PROPERTY IN MISSOURI

Nixon v. Nixon[1]

Jeremiah Nixon, an attorney, recovered $60,000 from a drug company as an out-of-court settlement of a lawsuit for damages to his eyes and the resulting loss of professional income caused by the taking of medicine manufactured by that company.[2] A portion of the settlement, $25,000, was invested by Mr. Nixon in a partnership that later increased greatly in value. A decree of dissolution of marriage was later entered pursuant to an action instituted by Mrs. Nixon. Neither party contested the dissolution, but both excepted to the orders relating to the division of property. The Missouri Court of Appeals, St. Louis District, held that the property acquired by Mr. Nixon from the settlement of his personal injury action, and all increases in value thereof, was "marital property" under Missouri's new marriage dissolution law, and was therefore subject to division by the court.[3]

39. People v. Satchell, 6 Cal. 3d 28, 98 Cal. Rptr. 33, 489 P.2d 1361 (1971).

1. 525 S.W.2d 835 (Mo. App., D. St. L. 1975).

2. Mr. Nixon netted $55,000 after payment of his attorney's fee. This sum was placed in a separate account in his name. *Id.* at 839.

3. *Id.* The proportion of marital property which each spouse receives upon

Section 452.330 (2), RSMo 1973 Supp., provides that marital property is "all property acquired by either spouse subsequent to the marriage," unless it falls within one of five limited exceptions.[4] Section 452.330 (3) expressly creates a presumption that property acquired after marriage is marital property unless it falls within one of the exceptions in section 452.330 (2).[5] The *Nixon* court held that the settlement of Mr. Nixon's personal injury claim was not acquired in a manner expressly excepted,[6] and was therefore marital property as defined by statute.

The court apparently did not consider the legislative history of the new dissolution act in rendering its interpretation. Section 452.330 is based upon section 307 of the Uniform Marriage and Divorce Act as originally approved in 1970.[7] That section as originally approved adopted a community property rule for the division of marital property at divorce.[8] Because the property division section of the Missouri statute is derived from that of the Uniform Act, it is fair to assume that they share the same underlying rationale.[9] Furthermore, section 307 of the Uniform Act was amended in 1973 to provide alternate sections because of the unwillingness of many common law states to accept community property concepts.[10] It seems clear, then, that Missouri, by adopting section 307 as originally approved, shows no such aversion to the underlying principles of community property law, and has adopted community property principles for purposes of dividing property under the new dissolution act. However, it should be noted that Missouri has adopted these principles only for this limited purpose.[11]

A basic tenet of community property law is that "property acquired

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dissolution is to be determined by what the court deems just. § 452.330 (1), RSMo 1973 Supp.; *In re* Marriage of Powers, 527 S.W.2d 949 (Mo. App., D. St. L. 1975). "There is *no* intent to incorporate theories that each spouse is entitled to an equal share in the marital property; . . . the court is to divide the marital property as it deems just after considering the evidence." Fowler & Krauskopf, *Dissolution of Marriage Under Missouri's New Divorce Law: Property Provisions*, 29 J. Mo B. 508, 511 (1973).

4. The five exceptions of section 452.330 (2), RSMo 1973 Supp., are: (1) Property acquired by gift, bequest, devise or descent; (2) Property acquired in exchange for property acquired prior to marriage or in exchange for property acquired by gift, bequest, devise or descent; (3) Property acquired by a spouse after a decree of legal separation; (4) Property excluded by valid agreement of th parties; and (5) The increase in value of property acquired prior to the marriage.

5. *See* Fowler & Krauskopf, *Dissolution of Marriage Under Missouri's New Divorce Law: Property Provisions*, 29 J. Mo. B. 508, 512 (1973).

6. 525 S.W.2d at 839.

7. The wording of these two sections is virtually identical.

8. FAMILY LAW REPORTER, DESK GUIDE TO THE UNIFORM MARRIAGE AND DIVORCE ACT 57 (1974).

9. *See* Krauskopf, *A Theory For "Just" Division of Marital Property in Missouri*, 41 Mo. L. REV. 165 1976).

10. UNIFORM MARRIAGE AND DIVORCE ACT § 307 (1973); HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM LAWS 312 (1973).

11. Krauskopf, *A Theory For "Just" Division of Marital Property in Missouri*, 41 Mo. L. Rev. 165, 173 (1976).

during marriage" is meant to be property acquired by onerous, rather than lucrative, title.[12] Property acquired by onerous title is that which is acquired through the labor of either or both of the spouses, while property acquired by lucrative title is that acquired through gift, inheritance, or any method which has its basis in pure donation.[13] The Missouri statute seems to accept this concept, since it specifically excepts from marital property anything that has been acquired by gift, bequest, devise or descent.[14] These exceptions involve means of acquiring property which are clearly lucrative in nature.

The part of the settlement which compensated Mr. Nixon for his pain and suffering (as opposed to damages the community may have suffered) was not property acquired by either onerous or lucrative title, but was more in the nature of an exchange of property during the marriage,[15] a specific exception to the statutory presumption of marital property.[16] This portion of the settlement took the place of Mr. Nixon's previous good health and well-being, which had been injured. Because this part of the compensation took the place of something which Mr. Nixon had prior to marriage, the recovery for it should have been considered to be his separate property. Thus, it appears that the statute itself provides a basis for judicial recognition that the settlement for a personal injury is composed of two parts; one part compensates the marital community for damages to it, while the other part is awarded to compensate the injured spouse for his lost health.

A further basis for a division of personal injury awards into two parts stems from the recognition of Missouri's adoption of community property principles for purposes of distribution of marital property under the new act. The definition of marital property under section 452.330 corresponds to that of community property in the eight community states.[17] Therefore, in construing the statute, the courts of Missouri should look to the manner in which damages recovered for personal injuries are treated in community property states. Such damages, as well as the cause of action for their recovery, are considered to be "property" in community property states.[18] The problem is that in those states there is disagreement as to whether the rights arising because of a personal injury

12. W. DEFUNIAK & M. VAUGHN, PRINCIPLES OF COMMUNITY PROPERTY § 62 (2d ed. 1971).
13. *Id.*
14. § 452.330 (2), RSMo 1973 Supp. *See* note 4 and accompanying text *supra.*
15. W. DEFUNIAK & M. VAUGHN, *supra* note 12, at § 82.
16. § 452.330 (2), RSMo 1973 Supp.
17. *See* W. DEFUNIAK & M. VAUGHN, *supra* note 12, at §§ 58-60.1.
18. *Id.* at § 82. Note that Missouri distinguishes between a cause of action and a judgment. A cause of action is not assignable, while a judgment (or settlement) is. Forsthove v. Hardware Dealers Mut. Fire Ins. Co., 416 S.W.2d 208 (St. L. Mo. App. 1967). Thus, there may be some question as to whether a cause of action for personal injuries (as distinguished from a judgment or settlement) can be "marital property" in Missouri.

should be treated as community property or as the injured spouse's separate property.

The traditional view in community property states had been that a personal injury award was community in nature, and therefore belonged to both spouses.[19] However, there has been a clear abandonment of the traditional view of treating personal injury awards as wholly community property in Louisiana,[20] Texas,[21] New Mexico,[22] and Nevada.[23] These states split the damages into two separate parts. One part is considered compensation for the injured spouse's personal injury, including pain and suffering. The judgment or settlement for this part is the injured spouse's separate property. The other part is said to compensate for damages to the community, which includes medical expenses, loss of services to the community, and loss of the earnings of the injured spouse. This portion of the recovery, then, belongs to the community.

In Louisiana, the pertinent statute provides that damages recovered by a husband for personal injuries are the property of the community.[24] The Louisiana courts, however, have allowed a divorced wife to recover from her husband an interest in only that amount of his recovery which is attributable to the community, allowing the husband a separate amount for the disability he suffered.[25] Texas, which had long followed the traditional view,[26] recently adopted the new approach by statute.[27] This statute merely codified prior case law, however, because the Texas Supreme Court had previously accepted the theory of separation of damages "independent of statute."[28] New Mexico goes so far as to recognize two completely separate causes of action when there has been a personal injury to a spouse.[29] One action belongs solely to the injured spouse for that part of the injury which is personal to him, while the other action belongs to the community for the damages it suffered as a result of the injury.[30]

A leading treatise on community property law states that of the eight community property states, "only Arizona, California, Idaho and Washington [remain] in *full* support of the [traditional] view."[31] It appears,

19. W. DEFUNIAK & M. VAUGHN, *supra* note 12, at § 82.

20. LA. CIV. CODE ANN. art. 2402 (West 1973); Alfred v. Alfred, 237 So. 2d 94 (La. Ct. App. 1970).

21. TEX. FAM. CODE § 5.01 (1973); Graham v. Franco, 488 S.W.2d 390 (Tex. 1972).

22. Soto v. Vandeventer, 56 N.M. 483, 245 P.2d 826 (1952).

23. Frederickson & Watson Constr. Co. v. Boyd, 60 Nev. 117, 102 P.2d 627 (1940).

24. LA. CIV. CODE ANN. art. 2402 (West 1973), *as interpreted in* Tally v. Employer's Mut. Liab. Ins. Co., 181 So. 2d 784, 787 (La. Ct. App. 1965).

25. Alfred v. Alfred, 237 So. 2d 94 (La. Ct. App. 1970); Talley v. Employer's Mut. Liab. Ins. Co., 181 So. 2d 784 (La. Ct. App. 1965).

26. Bohan v. Bohan, 56 S.W. 959 (Tex. Civ. App. 1900).

27. TEX. FAM. CODE § 5.01 (1973).

28. Graham v. Franco, 488 S.W.2d 390, 396 (Tex. 1972).

29. Soto v. Vandeventer, 56 N.M. 483, 245 P.2d 826 (1952). *See* Annot., 35 A.L.R.2d 1199 (1954).

30. 56 N.M. at 494, 245 P.2d at 832-33.

31. W. DEFUNIAK & M. VAUGHN, *supra* note 12, at § 82 (emphasis added).

however, that even some of these states are now in less than "full support" of this view. In *Doggett v. Boiler Eng'r & Supply Co.*[32] the Idaho Supreme Court held that while the wife could be substituted as plaintiff in her deceased husband's personal injury action, her recovery was limited to damages to the community. The court, even though purportedly applying the traditional view, recognized the need to separate damages to the community from those that are personal to the injured spouse. In *Freehe v. Freehe,*[33] where a husband's injuries were negligently inflicted by the wife,[34] the result of the ensuing divorce action was that the Washington Supreme Court awarded part of the damages to the community and part to the husband separately. Although the court distinguished the situation from one in which a spouse is injured by a third person, *Freehe* nevertheless indicates a departure from the traditional view, since a strict application of the traditional view would require all the damages to be community property.

It seems clear, therefore, that recognition of the adoption of community property principles in the new act and proper reference to the law of the community property jurisdictions could lead to a contrary result in *Nixon.* The court should determine what portion of the settlement most likely was awarded as compensation for personal injury and what portion most likely was awarded as compensation to the marital community. Only the latter portion would be considered marital property to be distributed in accordance with the act.

One writer has said of section 307 (b) of the Uniform Marriage and Divorce Act, upon which section 452.330 (2) is based, that marital property is only that property which can be said to be a "product" of the marriage.[35] This interpretation of the Uniform Act is consistent with the onerous title theory, discussed earlier. However, the result reached by the *Nixon* court is not consistent with this reasoning, because it is clear that not all of Mr. Nixon's settlement was a "product" of the marriage. That portion of the settlement which was compensation for the loss of earnings and medical expenses could be considered a product of the marriage which belongs to the marital community. It merely took the place of money that would have been acquired by onerous title had the injury not been incurred. However, the part which compensated him for the damage to his eyes is personal to him. It is difficult to see how this latter part could be considered a "product" of the marriage.

The *Nixon* court failed to apply community property principles, upon which section 452.330 is based, to the problem of whether personal injury awards should be treated as marital property or as the separate property

32. 93 Idaho 888, 477 P.2d 511 (1970). The court in this case was working under a statute that defined community property in essentially the same terms as section 452.330 (2), RSMo 1973 Supp. *See* IDAHO CODE § 32-903 (1947).

33. 81 Wash. 2d 183, 500 P.2d 771 (1972).

34. Washington abandoned the rule of interspousal immunity in *Freehe.*

35. Staff, *Property, Maintenance, and Child Support Decrees Under the Uniform Marriage and Divorce Act,* 18 S.D.L. Rev. 559, 566-67 (1973).