

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

JAN - 3 2011

PATRICIA PRESLEY, COURT CLERK

By \_\_\_\_\_  
DEPUTY

In Re the Marriage of: )  
)  
Rhonda Lynn Grose, )  
Petitioner, )  
)  
v. )  
)  
David Edward Grose, III, )  
Respondent. )

Case No. FD-2010-4378  
Judge Barry L. Hafar

**REPLY OF OKLAHOMA DEPARTMENT OF SECURITIES  
TO PETITIONER'S OBJECTION TO MOTION  
TO INTERVENE**

COMES NOW, Oklahoma Department of Securities, *ex rel.* Irving L. Faught, ("Department" or "Intervenor"), and for its reply to Petitioner's objection to the Department's motion to intervene states as follows:

**Background**

1. On December 3, 2010, and pursuant to Okla Stat. tit. 12, § 2024(A), the Department filed its *Motion to Intervene* in this matter. As required by Okla Stat. tit. 12, § 2024(C), the *Motion to Intervene* was accompanied by a *Petition in Intervention* setting forth the Department's claim for which intervention is sought and its requested relief.

2. Petitioner correctly states that counsel for Petitioner and counsel for the Department spoke with this Court regarding scheduling of the *Motion to Intervene* and that an order of the Court was entered prohibiting Petitioner and Respondent from "transferring, assigning, mortgaging, dissipating, encumbering, concealing, or in any way

disposing of, any marital property, except in the usual course of business, for the purpose of retaining an attorney or for payment of normal and routine household expenditures" (the "Order").

### **Arguments and Authorities**

Petitioner's first proposition, that the Court has already approved the Department's intervention, is not correct. Although counsel for Petitioner and the Department signed the Order as required by Rule 22 of the Rules of the Seventh and Twenty-Sixth Judicial Districts (the "Local Rules"), the Department's *Motion to Intervene* was docketed by the Court for hearing on January 5, 2011. Furthermore, no order of the Court has been issued specifically granting intervention by the Department.

Petitioner's second proposition, that orders regarding marital property are premature, is inapplicable to the issue before the Court. The only issue before the Court at the present time is whether the Department should be allowed to intervene. Petitioner's second proposition addresses the Department's prayer for relief in its *Petition in Intervention*, not whether intervention should be granted. The *Petition in Intervention* was attached to the *Motion to Intervene* in accordance with Okla Stat. tit. 12, § 2024(C). The ultimate merits of any arguments by Petitioner relating to her interests in the marital estate are not relevant to the issue of intervention of right as addressed in Okla Stat. tit. 12, § 2024(A).

If the Court were to consider Petitioner's interests in the marital estate at this early stage, the Court will find that the authority cited by Petitioner is neither controlling nor factually applicable. Petitioner, citing *Thompson v. Thompson*, 2005 OK CIV APP 2, 105 P.3d 346, states that Oklahoma law is clear that liabilities arising from the criminal

activities of a spouse are not marital debts. While accurately cited by Petitioner for this point of law, *Thompson* dealt with the issue of support alimony and payment of a non-marital debt. In *Thompson*, the court refused to require a former spouse to make monthly restitution payments owed by the other spouse because the ordered restitution was not a marital debt.

Further, very persuasive case law exists holding that a marital estate does not include the proceeds of fraud and that assets misappropriated from others during the course of a marriage never become marital assets subject to division by the Court.

Courts specifically addressing the issue have refused to distribute illegally obtained funds or other assets as part of a marital dissolution. In *LaPaglia v. LaPaglia*, 134 Misc.2d 1030, 514 N.Y.S.2d 317, 318 (Sup.Ct. Kings Cnty. 1987), the New York Supreme Court held that the proceeds of an illegal business are not marital property. The *LaPaglia* court reasoned that, as a matter of public policy, the "fruits of a criminal enterprise" are not subject to equitable distribution in a divorce proceeding. *Id.* at 318. The Supreme Court of Colorado has also held that a marital estate does not include the proceeds of fraud. *In re Marriage of Allen*, 724 P.2d 651 (Colo. 1986). In *Allen*, an ex-wife argued that she was entitled to keep an equitable distribution of assets acquired through her former husband's embezzlement scheme. The *Allen* court rejected her argument, stating that "the property was never truly a marital asset and should never have been subject to property division negotiations." *Id.* at 659. See also, *Sheridan v. Sheridan*, 247 N.J.Super.552, 589 A.2d 1067, 1071 (Ch. Div. 1990).

Petitioner, is in effect, asking the Court, in equity, to enhance her interest in misappropriated property. To permit illegally obtained funds or assets to be shielded

through the filing of divorce would render the remedies available under the Oklahoma Uniform Securities Act of 2004 (the "Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2009) meaningless in many instances.

Finally, Petitioner argues that the marital home is in no danger of being transferred due to a notice of *lis pendens* filed by the United States of America. The need for the Order in this matter is very clear. The District Court in *Oklahoma Department of Securities, ex rel. Irving L. Faught, Plaintiff, v. David E. Grose*, [Case No. CJ-2009-1763, Dist Ct. Okla. County], has already ordered that no transfers or assignments of the marital home were to occur. That order was violated when a General Warranty Deed was executed by both Petitioner and Respondent and filed on November 12, 2010. Any action the United States of America may take with respect to Respondent has no bearing on the standing of the Department to proceed with intervention to fulfill its obligations to enforce the Act.

### **Conclusion**

The *Motion to Intervene* should be granted to allow the Department to protect its interests in this matter.

Respectfully Submitted,



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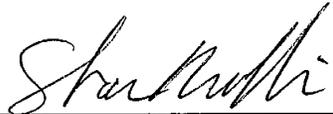
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 3<sup>rd</sup> day of January, 2011, a true and correct copy of the above and foregoing was mailed via U.S. Mail, postage prepaid thereon, addressed to:

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