

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

JERRY RENO, SR.,

Debtor,

DEFENDANT STEPHANIE
MICHELIZZI'S VERIFIED NOTICE OF
HEARING AND MOTION FOR
SUMMARY JUDGMENT

Randall Seaver,

Plaintiff,

BKY 02-50651
ADV 04-5008

vs.

Jerry Reno, Jr. and
Stephanie Michelizzi,

Defendants.

TO: Arthur Albertson, attorney for debtor Jerry Reno, Sr: The debtor, Jerry Reno, Sr.; Roger Seaver, attorney for Randall Seaver; Jerry Reno, Jr., Co-defendant; and The United States Trustee.

1. Defendant Stephanie Michelizzi moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion at **2:00 PM on Wednesday, October 6, 2004 in Courtroom No. 2 , on the 4th Floor of the United States Courthouse, 515 W. First St., Duluth, MN 55802**
3. Any response to this motion must be filed and delivered not later than September 27, 2004, which is 7 days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 22, 2004,

which is ten days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 USC sec. 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This is a core proceeding. The petition commencing this chapter 7 case was filed August 9, 2002. The case is now pending in this court.

5. The Defendant Stephanie Michelizzi, through counsel, asks this court to enter summary judgment pursuant to FRCP Rule 56, dismissing the complaint against her because there are no material facts in dispute, and Defendant Michelizzi is entitled to judgment as a matter of law.

6. At the time the Debtor, Jerry Reno Sr., transferred the real estate at 3919 Getchell Rd., Hermantown (hereinafter "the home") to Defendants, Michelizzi was married to Jerry Reno, Jr. Defendant Michelizzi occupied the premises from 1999 until approximately August of 2001 , and made payments to the debtor of \$540 per month on the \$48,000 purchase price.

7. Defendants separated in August of 2001, when Michelizzi left the home, and took her child with her. Defendants were divorced in January of 2002. Under the terms of the divorce decree, the home was transferred to Jerry Reno, Jr., and Michelizzi received no lien or any other award of equity in the home. Michelizzi received no property settlement from the divorce other property Michelizzi owned prior to the marriage.

8. Michelizzi has no ownership interest in the home, nor has she realized any benefit from the debtor's 2000 transfer of the home to Defendants.

9. At the time Debtor transferred the home to Defendants, Michelizzi had no

knowledge that Debtor was insolvent, nor has Michelizzi taken any steps to shield any property belonging to the Debtor from Debtor's creditors.

Wherefore, upon consideration of this verified motion, the accompanying divorce decree, and memorandum of law, Defendant Stephanie Michelizzi requests that this Court enter Summary Judgement in her favor, determining that she has no liability to the Plaintiff in this matter.

LEGAL AID SERVICE OF
NORTHEASTERN MINNESOTA

DATED::8-5-04

/s/ Gwen Updegraff _____
BY: Gwen Updegraff (AIN 197075)
Attorney for Defendant Stephanie Michelizzi
302 Ordean Bldg.
424 W. Superior St.
Duluth, MN 55802
(218)726-4800

9. At the time Debtor transferred the home to Defendants, Michelizzi had no knowledge that Debtor was insolvent, nor has Michelizzi taken any steps to shield any property belonging to the Debtor from Debtor's creditors.

Wherefore, upon consideration of this verified motion, the accompanying divorce decree, and memorandum of law, Defendant Stephanie Michelizzi requests that this Court enter Summary Judgement in her favor, determining that she has no liability to the Plaintiff in this matter

LEGAL AID SERVICE OF
NORTHEASTERN MINNESOTA

DATED: 8-5-04

Gwen Updegraff
BY: Gwen Updegraff (AIN 197075)
Attorney for Defendant Stephanie Michelizzi
302 Ordean Bldg.
424 W. Superior St.
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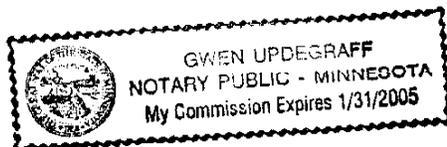
VERIFICATION

The allegations of fact set forth in the foregoing Motion are true and correct to the best of my knowledge.

Stephanie Michelizzi

Sworn to and signed before me this
5th day of August, 2004.

Gwen Updegraff
Notary Public



STATE OF MINNESOTA
COUNTY OF ST LOUIS

DISTRICT COURT
SIXTH JUDICIAL DISTRICT

FAMILY COURT DIVISION
File No. _____

In Re the Marriage of:

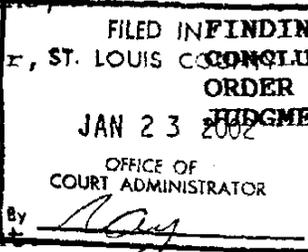
Stephanie A. Michelizzi-Reno,

Petitioner, ST. LOUIS COUNTY
FINDINGS OF FACT
CONCLUSIONS OF LAW
ORDER FOR JUDGMENT AND
JUDGMENT AND DECREE

and

Jerry Raymond Reno, Jr.,

Respondent



F5-01-600973

The above entitled proceedings having been regularly set upon the calendar of the above Court, came on for a review on the 23rd day of January, 2002, before the undersigned Judge of District Court. There was no appearance by the petitioner or the respondent, except by written Marital Termination Agreement.

The parties have entered into a Marital Termination Agreement, which is made a part hereof.

The court makes the following as:

FINDINGS OF FACT

I

The correct name of the petitioner is Stephanie A. Michelizzi-Reno. The petitioner has a past name of Stephanie Ann Fiavia Michelizzi. Petitioner was born on December 5, 1980, and is 20 years of age. Petitioner resides at 5118 Ostego Street, Duluth, Minnesota, 55804.

II

The correct name of the respondent is Jerry Raymond

Reno, Jr. Respondent was born on February 23, 1974, and is 26 years of age. Respondent resides at 3919 Getchell Road, Hermantown, Minnesota, 55811.

III

Petitioner has been a resident of the State of Minnesota for not less than 180 days immediately preceding commencement of this proceeding.

IV

The parties were married to each other on November 9, 2000, at Duluth, Minnesota, St Louis County, and ever since said time have been and are now wife and husband. The parties have been separated since August 2, 2001.

V

No minor children have been born as issue of the parties' marriage. The petitioner is not now pregnant.

VI

There has been an irretrievable breakdown of the marriage of the parties, within the meaning of Minnesota Statute Section 518.06.

VII

No separate proceeding for dissolution of marriage or legal separation has been commenced or is pending in this or any other jurisdiction.

VIII

Neither party is in the military service of the United States.

IX

The parties are owners of certain real property, located at 3919 Getchell Road, city of Hermantown, county of St Louis, state of Minnesota, and legally described as: SE 1/4 of SE 1/4 of SW 1/4, Section 23, Township 50 North, Range 15 West, EXCEPT the Southerly 459.72 feet thereof. The approximate market value of said property is \$50,000.00. The total amount of encumbrances on the real property is \$33,000.00.

Pursuant to Minnesota Statute 518.583, both parties have been notified that income tax laws regarding the capital gain tax may apply to the sale of the principal residence and that the parties may wish to consult with an attorney concerning the applicable laws.

X

The parties own the usual household goods, furnishings and other personal property situated in and about their separate residences. In addition, they own the following vehicles subject to encumbrances as indicated:

ITEM	TITLE	ENCUMBRANCE
1989 Ford Bronco 2	Petitioner	\$ 0.00
1991 Ford Bronco 4x4	Respondent	\$3,750.00

XI

The parties have incurred miscellaneous individual debts during their marriage. There are no joint debts.

XII

The parties are owners of various checking and savings accounts, and other intangible assets.

XIII

Neither of the parties has a pension.

XIV

The parties have fairly disclosed their income, assets and liabilities to each other.

XV

The petitioner has her own health insurance through the State of Minnesota. The respondent currently has no health insurance but is responsible for providing his own.

XVI

The petitioner is employed by Z's Deli as a Hostess. She receives a gross annual salary of \$4,095.00 and a net monthly income of \$260.00 and reasonable monthly expenses of \$40.00. Petitioner has been so employed for one (1) month. The petitioner is also receiving child support in the amount of \$210.44 per month for a child born of a previous relationship; namely: Destanie Ann Michelizzi, born December 9, 1998, age 2.

XVII

The respondent is employed by JR Construction, Inc as a Foreman. He receives a gross annual salary of \$36,000.00 and a net monthly income of \$2,400.00 and reasonable monthly expenses of \$1,000.00. Respondent has been so employed for one (1) week.

XVIII

The parties are both capable of self-support and there is a mutual waiver of spousal maintenance.

XIX

The petitioner requests her former name of Stephanie Ann Piavia Michelizzi. The petitioner is seeking a name change solely because of the marriage dissolution and not to defraud or mislead anyone. The petitioner has not been convicted of any felonies.

From the foregoing, the court makes its:

CONCLUSIONS OF LAW

1. The bonds of matrimony existing between the parties are hereby dissolved.
2. That neither party is awarded spousal maintenance or alimony; and each party is forever barred from seeking any recovery of maintenance or alimony from the other, now or in the future.
3. That the respondent is awarded, subject to existing

terms of this Agreement shall be of no effect, but if this Agreement is approved by the Court and the Court grants a dissolution of the marriage, the terms of the Agreement shall be made a part of any decree issued.

2. That neither party shall be awarded spousal maintenance or alimony; and each party shall be forever barred from seeking any recovery of maintenance or alimony from the other, now or in the future.

3. That the respondent shall be awarded, subject to existing encumbrances, the exclusive right, title, and interest in and to the homestead of the parties located at 3919 Getchell Road, city of Hermantown, county of St Louis, state of Minnesota and legally described as: SE 1/4 of SE 1/4 of SW 1/4, Section 23, Township 50 North, Range 15 West, EXCEPT the Southerly 459.72 feet thereof. The party awarded this property shall assume and pay all encumbrances on the property and shall hold the other party harmless thereon.

4. That the petitioner shall execute a quit claim deed and such other documents as may be necessary to transfer to the respondent her entire right, title, interest and equity in and to said homestead, within ten (10) days of the entry of the judgment and decree herein. In the event she should fail or refuse to execute said quit claim deed, a certified copy of the judgment and decree shall operate as conveyance of

encumbrances, the exclusive right, title, and interest in and to the homestead of the parties located at 3919 Getchell Road, city of Hermantown, county of St Louis, state of Minnesota and legally described as: SE 1/4 of SE 1/4 of SW 1/4, Section 23, Township 50 North, Range 15 West, EXCEPT the Southerly 459.72 feet thereof. The party awarded this property will assume and pay all encumbrances on the property and will hold the other party harmless thereon.

4. That the petitioner shall execute a quit claim deed and such other documents as may be necessary to transfer to the respondent her entire right, title, interest and equity in and to said homestead, within ten (10) days of the entry of the judgment and decree herein. In the event she should fail or refuse to execute said quit claim deed, a certified copy of the judgment and decree shall operate as conveyance of title.

5. That pursuant to Minnesota Statute 518.583, it is made an express finding and order of this court that the parties are notified that income tax laws regarding the capital gains tax may apply to the sale of a principal residence. This includes, but is not limited to, the exclusion available on the sale of a principal residence for those over a certain age under Section 121 of the Internal Revenue Code of 1986, or other applicable law. Unless otherwise specifically

stated, the party who receives the principal residence is entitled to have the first choice in exercising this offset. The parties may wish to consult with an attorney concerning the applicable laws.

6. That each party is awarded all household items and personal effects in and about their separate residences.

7. That the petitioner is awarded all right, title and interest in the 1989 Ford Bronco 2 vehicle, subject to any encumbrance thereon, but free and clear of any claim by the respondent; and the respondent is awarded all right, title and interest in the 1991 Ford Bronco 4x4 vehicle, subject to any encumbrances thereon, but free and clear of any claim by the petitioner. That both parties shall cooperate in executing whatever documents are necessary to perfect the aforesaid awards. In lieu thereof, a certified copy of the Judgment and Decree shall serve to transfer title accordingly.

8. That each party is awarded any cash, bank accounts, investments, and all other intangible property in his or her present name and/or possession.

9. That each party shall be responsible for any debt or liability incurred by him or her after the date of separation, which was August 2, 2001, and shall save and hold the other harmless from liability for its payment.

Any debt or liability not disclosed by either party shall be the responsibility of the person who incurred it and that party shall save and hold the other harmless from liability for its payment thereof.

10. That if either party fails to pay any debt or liability, as set forth above, the other party will have the right, but is not obligated, to make any payments due. If done, the defaulting party shall be responsible for indemnification and reimbursement to the party who made the payments, with interest computed at the judgment rate per annum on the amount of any payment made by said party. Interest shall accrue until the debt is reimbursed in full.

11. That neither party shall contract any debt, charge or liability, whatsoever, for which the other party or his or her property or estate will be liable.

12. That each of the parties shall be responsible for his or her own attorney's fees and costs and no contributions are required of either party. Each party shall save and hold harmless the other party for any contribution towards fees and costs.

⑬ That the petitioner is awarded her maiden name of Stephanie Ann Flavia Michelizzi.

14. That in the event it becomes necessary for one party to proceed to Court against the other as the result of his or

her unwillingness to comply with the terms of the Judgment and Decree herein, the refusing party shall pay to the other party all reasonable attorney's fees and disbursements as awarded in the discretion of the Court.

15. That upon demand, now or in the future, both parties shall execute, acknowledge, and deliver any and all documents which may be necessary to carry out the terms and conditions herein. However, if a party is unable, unavailable, or refuses to do so, a certified copy of the Judgment and Decree may be recorded and/or utilized with the same force and effect as if a deed, conveyance, transfer, assignment or other such document has been personally executed, acknowledged and delivered by said party. Said Judgment shall constitute a full, present and effective relinquishment and waiver of all rights to be relinquished and waived.

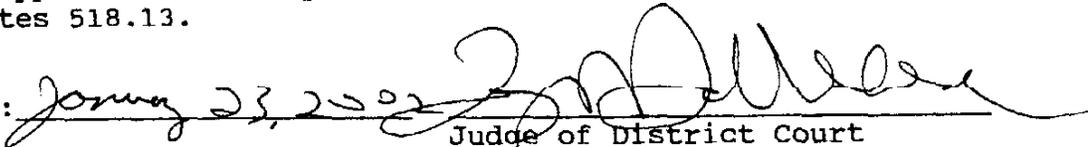
16. That service of the decree by United States Mail upon the Respondent by the Petitioner shall constitute due and proper service and proof thereof for all purposes.

17. Except as is expressly provided herein to the contrary, each party is released from any and all further liability of any kind, nature, or description whatsoever to the other.

ORDER FOR JUDGMENT

Let Judgment Be Entered Accordingly.

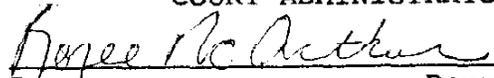
Approved for entry without hearing under Minnesota Statutes 518.13.

Dated: January 23, 2002 
Judge of District Court
Family Court Division

I certify that the above Conclusions of Law constitute the Judgment and Decree of the Court.

DECREE ENTERED AND JUDGMENT ROLL FILED THIS 23rd DAY OF January, 192002

BY THE COURT:
COURT ADMINISTRATOR

By: 
Deputy

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

JERRY RENO, SR.,

Debtor,

MEMORANDUM OF LAW

Randall Seaver,

Plaintiff,

vs.

BKY 02-50651
ADV 04-5008

Jerry Reno, Jr. and
Stephanie Michelizzi,

Defendants.

FACTS

For purposes of this motion for Summary Judgment, Defendant Michelizzi accepts the allegations of fact as set forth in the Complaint, supplemented by the her affidavit (contained in the Verified Motion).

ISSUE

Does Minn. Stat. 513.48 permit Plaintiff to obtain a personal judgment against Ms. Michelizzi for the value of the gift Debtor made to her and her husband, where as the result of divorce Michelizzi no longer owns the property and obtained no benefit from the gift?

DISCUSSION

1. The law should be construed to permit entry of judgment against a transferee only when consistent with principles of equity.

Minnesota Statute 413.48 (b) provides:

Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under section 513.47(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

- (1) the first transferee of the asset or the person for whose benefit the transfer was made; or
- (2) any subsequent transferee other than a good-faith transferee who took for value or from any subsequent transferee.

On the face of it, the statute appears to permit the trustee to obtain a judgment against Ms. Michelizzi for the value of the gift she received from the debtor. However, such an interpretation would create an absurd and inequitable result. It not only fails to accomplish the purposes of the statute, but imposes liability on a person who is innocent of any intent to defraud creditors, and gained nothing from the transaction.

In construing statutes, the legislative intent controls. Courts are directed to presume that the legislature did not intend a result that is absurd, impossible of execution, or unreasonable. Minn. Stat. 645.17.

The purpose of the Fraudulent Transfer Act is to prevent debtors from putting property which is available for the payment of their debts beyond the reach of their creditors. In Re Butler 552 NW 2d 226 (Minn. 1996). Saddling Ms. Michelizzi with a \$30,000 judgment would be both absurd and unreasonable. It would also fail to accomplish the purpose of the Act.

In order to avoid this result, the Court should read 513.48 in conjunction with 513.50, which makes the principles of equity, directly applicable to actions under the Fraudulent Transfers Act. The Bankruptcy Court sits as a Court of Equity. In Re Trainler Transit, Inc. 96 F. Supp. 571 (D.Minn. 1951). Although it may be argued that Ms. Michelizzi is within the class of people against whom judgment may be entered under that statute, once the rules of equity are invoked, she is no longer within that class.

When Courts have entered judgments against transferees in fraudulent transfer cases, they have always noted that the transferee knowingly participated in a scheme to frustrate creditors, and/or retained the fraudulently transferred property. New Horizon Enterprises Inc. V. Contemporary Closet 570 NW 2d 12 (Minn. App. 1997) (Transferee not only participated, but originated the scheme to frustrate the judgment creditor's collection efforts, and he retained an interest in the transferred assets because he transferred them to a corporation he controlled).

The Supreme Court of Nebraska clearly articulated the circumstances under which judgment may be entered against a transferee in Sheldon v. Parker 95 NW 1015 (Neb. 1903): "Where a husband and wife confederate to defraud creditors by transferring property of the husband to the wife,...so that it cannot be reached by the creditors of the husband, a personal judgement may be entered against the wife...provided it appears or is fairly to be presumed that she still retains such proceeds, or her separate estate has had the benefit thereof." See also Brule v. Harper, 4 NW 2d 609 (Neb.1942).

In addition to directing the Court to consider the principles of equity in applying the provisions of the FTA, the legislature also used the permissive "may": "the judgment *may* be entered against the first transferee". (Emphasis added).

In applying the principles of equity, this Court should also consider that the Trustee is not without remedy if he is denied judgement against Ms. Michelizzi. The other Defendant,

Jerry Reno, Jr. still owns the home, and the trustee may pursue him and should the Court determine that the transfer was fraudulent, the appropriate relief would be to reverse the transfer, and return the house to the bankruptcy estate.

CONCLUSION

Minn. Stat. 513.48 does not permit this court to enter judgment against Ms. Michelizzi, because such a judgment would be inequitable, and the Trustee may obtain complete relief from the co-defendant Jerry Reno, Jr., who still owns the transferred property. Summary judgment should be entered in Ms. Michelizzi's favor, and she should be dismissed from this action.

Respectfully submitted,

LEGAL AID SERVICE OF
NORTHEASTERN MINNESOTA

Dated: _____

BY: Gwen Updegraff (AIN 197075)
Attorney for Defendant Stephanie Michelizzi
302 Ordean Bldg.
424 W. Superior St.
Duluth, MN 55802
(218) 726-4800

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

JERRY RENO, SR.,

Debtor.

BKY 02-50651

ADV 04-5008

Randall Deaver,

Plaintiff,

vs.

Jerry Reno, Jr. and
Stephanie Michelizzi,

Defendants.

UNSWORN CERTIFICATE OF SERVICE

I, Cindy Behning, declare under penalty of perjury that on August 5, 2004, I mailed copies of the attached Defendant Stephanie Michelizzi's Verified Notice of Hearing and Motion for Summary Judgment, Memorandum of Law, and Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree, by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Arthur Anderson
101 W. 2nd Street, Suite 107
Duluth, MN 55802

Jerry Reno, Jr.
8909 Getchell Road
Hermantown, MN 55811

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

JERRY RENO, SR.,

Debtor,

MOTION FOR EX PARTE ORDER

Randall Seaver,

Plaintiff,

BKY 02-50651
ADV 04-5008

vs.

Jerry Reno, Jr. and
Stephanie Michelizzi,

Defendants.

* * * * *

Upon the attached Affidavit of Defendant Stephanie Michelizzi in the above-entitled matter, and upon all the files and records herein, Defendant Stephanie Michelizzi now moves the Court for an Ex Parte Order allowing Defendant Michelizzi to proceed in forma pauperis under 28 U.S.C.A. §1915 and waiving any and all filing and service fees or security for such costs. Further, Defendant Michelizzi moves the Court for an Ex Parte Order requiring the court clerk to waive any and all costs for filing and service fees or security for such costs relative to the above-entitled action as they become due and payable or as they are incurred by or on behalf of Defendant Michelizzi.

Dated this __5th day of August, 2004

LEGAL AID SERVICE OF
NORTHEASTERN MINNESOTA

/s/ Gwen Updegraff
BY: Gwen Updegraff (AIN 197075)
Attorney for Plaintiff
302 Ordean Building
Duluth, MN 55802
(218) 726-4800

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

JERRY RENO, SR.,

Debtor,

EX PARTE ORDER

Randall Seaver,

Plaintiff,

BKY 02-50651

ADV 04-5008

vs.

Jerry Reno, Jr. and
Stephanie Michelizzi,

Defendants.

* * * * *

At Duluth, in said District, this ____ day of _____,
2004.

The above-entitled matter having come on before the undersigned United States Judge of Bankruptcy Court in Chambers, in the United States Courthouse, City of Duluth, Minnesota, and upon the attached Affidavit of Stephanie Michelizzi, and upon all the files and records herein,

IT IS ORDERED:

1. That the Defendant Stephanie Michelizzi, is allowed to proceed in forma pauperis and to waive the filing fees relative to the above entitled action as they become due and payable or as they are incurred by or on behalf of the Defendant Michelizzi.

2. That the Clerk of the United States Bankruptcy Court for the District of Minnesota is hereby ordered to waive any and all costs for filing fees and the Marshall or his deputies are ordered to waive their service fees relative to the above-entitled action.

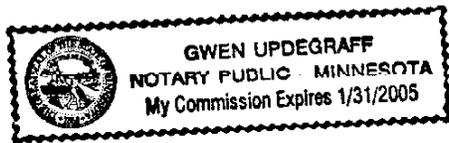
BY THE COURT:

Judge of Bankruptcy Court

Subscribed and sworn to before me

this 20 day of Sept, 2004.

[Signature]



Subscribed and sworn to before me

this 20 day of Sept, 2004.

[Signature]

