

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Jeanette J. Mattern,)	Supreme Court Case No.: 20140296
)	
Plaintiff and Appellant,)	Burleigh County No.: 2011-CV-02627
)	
vs.)	
)	
Frank J. Mattern Estate, by and)	
through Anne M. Erickson, personal)	
representative,)	
)	
Defendant and Appellee.)	

Appeal from the JUDGMENT dated August 20, 2014

Burleigh County, North Dakota
South Central Judicial District
Honorable Donald L. Jorgensen

REPLY BRIEF OF APPELLANT

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TABLE OF AUTHORITIES

Cases

Calmer v. Calmer,
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ARGUMENT

I. Jeanette Mattern Raised the Issue that Only Creditors, Not Heirs, Have Standing to Divide the Homestead at the May 29, 2014 Status Conference.

[¶ 1] The Estate erroneously claims Jeanette did not raise the issue of standing under N.D.C.C. § 30-16-09. As discussed in the *Brief of Appellant*, after the trial court entered its *Order* dividing the homestead the parties requested a status conference to clarify the effect of the *Order*. (*Brief of Appellant* ¶ 10.) The status conference was held on May 29, 2014, at which time, Jeanette’s attorney referenced specific case law which permitted a surviving spouse to a homestead exceeding the statutory limit:

MR. BORMANN: The cases though, Your Honor, I think are saying that the \$100,000 limit, or at the time of these cases it was smaller, like 30 or \$35,000, said basically that even though the value of the homestead is greater than that, that the widow is still entitled to it. ***The only one that could force the sale are creditors of the estate, not heirs of the estate.***

(May 29, 2014 H’rg T. 9:8-14 (emphasis added).)

[¶ 2] The transcript shows that the issue of standing to divide a homestead was expressly raised by Jeanette. Furthermore, on brief, Jeanette cited to Calmer v. Calmer, 15 N.D. 120, 106 N.W.2d 684, 688 (1906), which was a case where the court declined to divide the living quarters from the rental units. (*Plaintiff Jeanette J. Mattern’s Trial Brief*, docket No. 17, ¶¶ 12-13; *Plaintiff’s Post-Trial Summation*, docket No. 28, ¶¶ 17-21.) Calmer and In re Teiten’s Estate, 63 N.D. 729, 249 N.W. 914 (involving indivisibility of attached buildings) were also brought to the trial court’s attention at the May 29, 2014 status conference. (May 29, 2014 H’rg T. 8:12-24.) The Estate has not addressed these cases.

[¶ 3] Because Jeanette previously raised the issue of standing, the Estate's erroneous claim made throughout the *Brief of Appellee* that Jeanette's arguments are outside of this Court's jurisdiction must be disregarded.

CONCLUSION

[¶ 4] Jeanette previously raised the issue that the homestead cannot be divided if no creditors exist and the Estate's argument that this Court lacks jurisdiction must be disregarded. The other arguments raised by the Estate have already been addressed in the *Brief of Appellant*.

[¶ 5] Based upon the *Brief of Appellant* and *Reply Brief of Appellant*, the trial court abused its discretion in dividing the building and ordering Jeanette, the surviving spouse, to pay rent in order to live on the homestead. The trial court further abused its discretion failing to award Jeanette the rents from the lower units. The *Judgment* dated August 20, 2014 (APP 69-70), which encompassed the *Order* dated April 14, 2014 (APP 26-30) and *Order for Judgment* dated July 3, 2014 (APP 62-63), must therefore be REVERSED.

Respectfully submitted this 8th day of December, 2014.

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CERTIFICATE OF SERVICE

[¶ 6] The undersigned certifies that the **REPLY BRIEF OF APPELLANT** was electronically served on the 8th day of December, 2014, on the following via their electronic mail addresses published on the supreme court's website:

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