



# The Dangers of DIY Divorce: Omitted Assets and the Case of *Pooley v. Pooley*



**April L. Will**

612-877-5329 | [April.Will@lawmoss.com](mailto:April.Will@lawmoss.com)

[LawMoss.com/people-april-l-will](http://LawMoss.com/people-april-l-will)

April is a member of Moss & Barnett's Family Law team. She assists clients in all family law matters, including divorce and custody proceedings.

A recent family law case before the Minnesota Supreme Court highlights the importance of a full financial disclosure and detailed property division in divorce proceedings.

## The Facts

In *Pooley v. Pooley*, a couple jointly sought a dissolution of their marriage. They reached a settlement agreement, that they outlined in a divorce decree. Neither party was represented by an attorney. Instead, the couple memorialized their agreement using a template form made available to the public on the Minnesota Judicial Branch website.

One section of the form instructed the parties to list all of their assets on a separate asset sheet, which included columns for Husband and Wife. The form stated each party would be awarded the assets in his or her column as reflected on the asset sheet, but Wife made the following handwritten addition to this section: "Will be split equally — we will work together."

On the actual asset sheet, the parties listed "zero" as the value for a number of categories, including bank accounts, but they also listed the values for various personal property items and designated some of these items to Husband's column and other items to Wife's column. The couple wrote nothing in the lines provided for retirement accounts. They also did not check the boxes for "Profit Sharing Pension" or for "401(k), IRAs or other."

The judge signed the dissolution decree on the pre-printed form, and the court administrator entered judgment. The parties were divorced.

## Post-Divorce Litigation

More than five years after the divorce, Wife returned to court seeking to enforce, clarify, or reopen the divorce decree.

Specifically, she sought to be awarded an equitable portion of Husband's retirement accounts as of the date of divorce.

The parties' motion pleadings revealed that, at the time of the divorce, Husband had a 401(k) with a value of approximately \$235,000 and an interest in a defined-benefit pension. Wife had a 401(k) with a zero balance and an unvested interest in a pension plan.

The parties presented conflicting evidence about their intentions regarding the retirement accounts when they agreed to the terms of their settlement. Wife argued her handwritten statement that the couple would split all marital property "equally" applied to the retirement accounts. But Husband argued the couple had an unwritten side agreement. Specifically, Husband claimed the parties discussed the retirement assets and agreed that they would each keep their own accounts, in part, because he had agreed to assume extra expenses and debt.

## The Court's Decision

The Minnesota Supreme Court began its analysis by defining what courts may *not* do with respect to assets omitted from a divorce decree. Although Wife's motion was framed as one to enforce or clarify the divorce decree, the parties' settlement agreement completely omitted any reference to the retirement accounts. The issue was never presented to the district court, and therefore, there was nothing for the court to clarify, enforce, amend, or reopen.

However, Minnesota law has long recognized that the district court's role in divorce proceedings is to ensure a stipulation is fair and reasonable and to protect the interests of both parties. Refusing to address omitted assets would frustrate the district court's duty to ensure a just and equitable division of marital property. Thus, the Minnesota Supreme Court concluded the district court retained jurisdiction over the omitted assets and was required by statute to equitably divide them. Although not relevant to the facts of the *Pooley* case, the Minnesota

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Supreme Court was particularly concerned that enforcing unwritten side agreements may allow for abusive spouses to force their victims to agree to extremely inequitable divisions of property without legal recourse or judicial review.

The *Pooley* case has now been remanded to the district court for further proceedings on the division of the omitted retirement accounts.

## Conclusion

The *Pooley* case underscores the importance of having a family law attorney review the terms of a divorce decree. Even court-provided template forms cannot prevent parties from omitting relevant information and undermining the enforceability of their agreements.

At Moss & Barnett, our family law attorneys work diligently to resolve issues that arise during the divorce proceeding, but also anticipate and address issues that may arise once the divorce has been finalized. If you need assistance with your divorce or other family law matter, please contact your attorney at Moss & Barnett.