



**In the Missouri Court of Appeals
Eastern District
DIVISION TWO
OPINION SUMMARY**

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|-------------------------------|---|----------------------------------|
| MARGARET LEONA FISHER, |) | No. ED91076 |
| DECEDENT, AND SHAWN H. GARST, |) | |
| AND DARLENE S. ZOLMAN, |) | Appeal from the Circuit Court of |
| CO-PERSONAL REPRESENTATIVES |) | St. Francois County |
| OF THE ESTATE OF MARGARET |) | |
| LEONA FISHER, |) | Cause No. 05SF-CC01203 |
| |) | |
| Respondents, |) | Honorable Thomas L. Ray Jr. |
| |) | |
| vs. |) | |
| |) | |
| JAMES LEE FISHER, |) | |
| |) | Filed: March 10, 2009 |
| Appellant. |) | |
| |) | |

James Fisher (hereinafter, “Husband”) appeals from the trial court’s judgment dissolving his marriage to Margaret Fisher (hereinafter, “Wife”). Husband raises three points on appeal. First, Husband challenges the division of marital property as inequitable. Second, Husband argues the trial court improperly used maintenance as a method of distributing marital property when it awarded Wife the marital home in lieu of permanent maintenance. Third, Husband argues that since the property award was substituted for maintenance, the trial court should have ordered the property transferred back to him upon Wife’s death.

REVERSED AND REMANDED.

Division II Holds: (1) The trial court misapplied the law when it awarded Wife the marital home in lieu of permanent maintenance. (2) Since we find the marital home is marital property, and not maintenance, the trial court could not order the property to revert to Husband upon Wife’s death, but rather, must be divided equitably between Husband and Wife’s estate upon remand.

Opinion by: George W. Draper III, J.

Roy L. Richter, P.J., and
Lawrence E. Mooney, J.,

concur

Attorneys for Appellant: Kimberly D. Tyler

Attorney for Respondents: Eric C. Harris

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
SHOULD NOT BE QUOTED OR CITED.**