Summary of SC97984, *Christine Ann Lollar v. Richard Dwain Lollar*
Appeal from the St. Louis County circuit court, Judge Thea Ann Sherry
Argued and submitted May 6, 2020; opinion issued September 1, 2020

Attorneys: The wife was represented by Cheryl A. Raftert of Legal Services of Eastern Missouri Inc. in St. Louis, (314) 534-4200. The husband, who is incarcerated, but did not participate in the proceedings before this Court.

This summary is not part of the opinion of the Court. It has been prepared by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A wife appeals the circuit court's distribution of a retirement account in a dissolution judgment. In a decision written by Judge W. Brent Powell and joined by two judges, the Supreme Court of Missouri affirms the judgment. Even if the circuit court erroneously applied the law in finding the wife dissipated marital assets, its overall distribution disproportionately favors the wife and is not an abuse of discretion nor reversible error.

Judge Zel M. Fischer concurs in the principal opinion but would dismiss the appeal for failure to comply with mandatory briefing rules and does not believe this is the rare case in which the Court should exercise its discretion to review the merits.

In an opinion joined by two judges, Judge Patricia Breckenridge dissents. She would hold the circuit court misapplied the law and abused its discretion in holding the wife dissipated marital funds in paying marital debts, would reverse the judgment, and would remand (send back) the case for a new division of property.

Facts: After her husband's arrest for sexually assaulting their daughter, a wife filed a petition to dissolve her marriage, seeking sole custody of the daughter and division of property. She sought a disproportionate value of the marital estate, including 100 percent of a 401(k) account in the husband's name. Neither party provided an exact value of the account; the husband testified its value was perhaps "a couple thousand dollars" and the wife testified its value was perhaps a "couple thousand" but "less than five" thousand dollars. The wife also testified, after the husband's arrest, she moved to a smaller residence, surrendered to creditors a vehicle he had driven, disposed of some of her husband's personal property, and used his final paychecks and a tax refund to pay outstanding debts and bills. Ultimately, despite finding the wife had dissipated marital assets, the circuit court awarded the wife a marital vehicle with $17,000 in net equity and $11,000 in marital debt, leaving her with a net allocation of $6,000 in assets, while it awarded the husband his 401(k) account – which it valued at "less than $5,000" – and $12,800 in marital debt, leaving him with a net allocation of approximately $7,800 in debt. The wife appeals.

AFFIRMED.

Court en banc holds: Although the wife's multifarious point relied on violates Rule 84.04 and preserves nothing for appellate review, the Court exercises its discretion to review the appeal on its merits. Considering the evidence in the light most favorable to the judgment, the circuit court

acted within its discretion in awarding the 401(k) account to the husband. The wife has not shown the property division was unduly favorable to the husband. Even if the circuit court's finding that the wife dissipated marital assets erroneously applied the law, given its credibility findings and overall distribution of property and debts – which disproportionately favors the wife – the wife cannot show the property division is unfair under the circumstances, prejudiced her or constituted reversible error.

Concurring opinion by Judge Fischer: The author would dismiss the appeal for failure to comply with Rule 84.04's mandatory briefing requirements, which help prevent a court from becoming an advocate for any party. He acknowledges this Court's discretion to address noncompliant points, but believes such discretion should be exercised in only rare cases, such as to avoid manifest injustice. This is not such a case. Nevertheless, the author concurs in the principal opinion.

Dissenting opinion by Judge Breckenridge: The author would hold the wife was prejudiced by the circuit court's misapplication of the law and consequential abuse of discretion in holding the wife dissipated marital funds when she paid marital debts. Dissipation occurs when a spouse squanders or conceals marital property in anticipation of divorce, not when a spouse merely expends marital funds after separation and before dissolution. The circuit court repeatedly referenced dissipation in its judgment, materially affecting the property division and giving the wife less than all relief she requested. The author would reverse the judgment and would remand the case for a new division of property free from the incorrect application of law.