

DECEPTIVE DIVORCE?

SPLIT SPAWNS CLAIMS OF TRICKERY AND HIDDEN GOLD

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In terms of opening lines, says **Helen Vickery**, it was less than classic.

Vickery, wife of successful Baytown plaintiffs lawyer Glenn **Vickery**, knew that Houston attorney Dianne Richards had prepared a divorce petition in her name and she knew that Richards had filed it, but only because Glenn told her so.

After a tearful two-hour conversation in November 1991 in which she pleaded with Glenn to keep the marriage together, **Helen** reluctantly signed the divorce papers because he told her the move would protect their assets from potential creditors.

As she was driving back home alone, she says, the car phone rang. It was Richards, who had been so busy on her behalf.

Strangely enough, considering Richards' activity so far, the attorney and her client were about to have their first conversation about the case. And it certainly had an inauspicious beginning: This is unethical; I have never spoken to you, Richards said by way of a greeting, according to **Helen**.

Things went downhill swiftly after that, and the result has been a spectacularly messy five-year legal battle over claims that Glenn conned **Helen** into a divorce agreement that gave him the vast bulk of an estate worth \$14.6 million.

Richards and Glenn hotly dispute **Helen's** version of the story - Richards especially denies ever making the This is unethical statement - but a jury, a judge and an appellate court have found the pair breached their fiduciary duty to **Helen** and that Glenn defrauded her in the divorce. Glenn and Richards both are fighting disciplinary actions by the Bar.

While the procedural and legal aspects of the case are complex and dry, at its heart the suit centers on emotionally charged allegations of greed, deception and jealousy.

The case has included surreptitiously recorded conversations relaying threats of reprisal, featured a spirited courtroom match of wits between a noted plaintiffs attorney and a former state Supreme Court justice testifying as an expert witness, and brought forth tales of \$1 million in gold coins being buried near the **Vickery's** tennis court.

It's absolutely unbelievable, says Ronald Krist, **Helen's** lawyer. Sometimes truth really is stranger than fiction.

Cars and Coins

Both sides have asked for a rehearing on at least portions of the divorce ruling, and both expect the state Supreme Court eventually will have to weigh in.

Although the appellate panel found in favor of **Helen's** claims Dec. 5, they sent the case back to the district court to redivide the assets. The trial court had awarded **Helen** 58 percent of the \$14.6 million estate, but the appellate panel unanimously found that the community estate incorrectly included a \$700,000 home that was Glenn's personal property. The judgment also hits Glenn with \$1.3 million for mental anguish and \$1 million in exemplary damages. (By 6-2, with one judge not participating, the 1st Court voted not to consider the case en banc.)

Glenn originally sought the divorce as a way to protect his assets from a pending malpractice suit that threatened to ruin him, Richards and **Helen** testified. (Glenn testified that his only motivation was that his marriage was crumbling.) By agreeing to a divorce with only a vague description of the estate, and sealing the record, Glenn could thwart creditors trying to track his assets.

Glenn's lawyers, and Richards, say **Helen** was fully aware of what was going on in the divorce - she had worked 13 years as a paralegal and signed three different documents affirming the divorce proceedings in a seven-month period - but that she became enraged when she later found out Glenn had married her best friend.

It appears Glenn's dating and marriage may have precipitated this lawsuit, wrote Richards' expert witness, former state Supreme Court justice Eugene Cook.

The woman is crazy, says Richards, who won't comment at length on the litigation. I am so sick of this case.

Glenn's true intent, **Helen's** lawyers say, was to keep as much as possible of the estate - including a fleet of antique cars and that mysterious million-dollar cache of gold coins - while dumping his wife of 13 years in favor of his mistress. He convinced his old friend Richards to act as **Helen's** divorce attorney, and she acted without talking to **Helen** about the case. She also prepared and filed Glenn's original answer to the divorce action and his counterclaim, the 1st Court said.

Helen says she reluctantly went along with what she thought was a sham divorce because of intense psychological pressure put on her by Glenn. She says she caught on to his real plans when, after the action became final, he sought to evict her from a Liberty County ranch on which they had a home.

It was a premeditated ploy - Glenn thinks he's smarter than everybody, says Krist, name partner in Houston's KristWellerNeumann. It was orchestrated, planned and accomplished perfectly, until an independent jury and judge got a chance to see it.

I'm just thankful the judge and jury and appellate court believed me, **Helen** says.

The Scrivener

Glenn **Vickery**, a 58-year-old former state representative, had quietly built a lucrative plaintiffs practice in the Houston suburb of Baytown. Print advertisements included in the court record note, with enthusiasm, that he was Specializing in Serious Injury or Death Cases Only!

Tax returns dating to 1987 show a string of recent years in which his practice generated more than \$2.5 million in gross income; he rang up \$7.7 million in 1990 alone.

In 1991, a former client named June Wright filed a \$44 million malpractice suit against **Vickery**, claiming his negligence resulted in an appellate court overturning \$11 million in punitive damages a jury had awarded. His malpractice coverage had a \$5 million limit.

About that time, according to testimony and the 1st Court opinion, Glenn began discussing divorce with **Helen**. He contacted Richards to file a plain vanilla divorce petition on **Helen's** behalf, Richards says.

She says she had known **Helen** through Mrs. **Vickery's** work as a paralegal in Glenn's office.

Parties come to lawyers all the time with an agreed divorce, and this was never anything but an agreed divorce, Richards says.

Richards testified that she filed the divorce without first speaking to **Helen** or obtaining her consent because she knew **Helen** well enough to do so, says the 1st Court opinion, written by Judge Tim Taft. She said she and **Helen** spoke several times about the pending divorce, which **Helen** disputes.

Richards' expert witness Cook says she acted merely as a scrivener, or someone who prepared the documents without offering legal advice. He said there was no conflict of interest in her actions.

Krist, naturally, disagrees. If that was the case, why would [**Helen**] even need Dianne Richards? he says. Why would she even need a lawyer? There are typewriters in Glenn's office - why have an attorney? The purpose was to leave the illusion of **Helen** being represented by an attorney in order to fight off any attacks on the [divorce] judgment.

Krist and Cook tangled notably when he testified. Admitting he would receive about \$20,000 for his time spent studying the case at \$375 an hour, Cook, a Bracewell & Patterson partner and frequent lecturer on legal ethics, said the **Vickery** divorce was highly unusual.

This case is not an ordinary case. And Dianne Richards' conduct is not being judged entirely by ordinary standards, he testified. In the ordinary case she would have a duty to notify the client as to a lot of things that were not done here in the ordinary case. But in a case where we're trying to conceal or trying to make assets difficult to reach, she was doing what the parties wanted. She upheld the standard of care.

Cook stumbled a bit later, however, when Krist asked him, Just someone comes into your office and says, File a lawsuit against me on behalf of my wife. Now, is it appropriate to do nothing but go ahead and file that lawsuit, Mr. Cook?

A. Not in the abstract. But that wasn't the facts here. This is a case where she knew both parties and knew well and knew the problems that they were going through.

Q. I want it in black and white: Eugene Cook takes the position that one can file a lawsuit for an individual without ever talking to that individual and getting express permission to do that.

A. I do not agree with that. I think you should talk to the person, especially if they're strangers. But these weren't strangers.

Q. You say if you know a guy well enough, you can go ahead and sue for divorce without asking him?

A. No

Q. Well, I mean, your position, Mr. Cook, quite frankly, don't you agree, is rather silly.

A. I have never filed a divorce on someone's behalf without asking them and visiting with them in person.

Q. That's a good idea, isn't it?

A. It is a good idea in almost every case. [But] there is nothing that is reasonable about this lawsuit.

Crazy Son of a Bitch

For his part, Glenn and his attorney, Houston solo practitioner Burta Raborn, argued that **Helen** chose Richards as her attorney and was kept apprised of the case.

The State Bar has refused to credit Glenn's story. The Bar filed a disciplinary suit against him, and a visiting district judge fined him \$50,000 and suspended him for two years, with all but 90 days of the suspension probated. A final judgment has not yet been entered.

The Bar also has charged Richards with misconduct, but her trial was stayed pending the appeal of the divorce case.

In his appeal of the divorce action, Glenn argued unsuccessfully that the suit included judicial errors of stunning magnitude [that] shaped the trial of this case and said the family-court proceedings were an example of the so-called cronyism at the Harris County Family Courts that was frequently alleged before several longtime judges retired in 1994.

Glenn argued that the trial judge, now-retired 311th District Judge Bill Elliott, should have recused himself because of a close friendship with Pasadena solo practitioner Roy Mease, who was part of **Helen's** team but did not examine one witness nor make any legal argument at trial. (We're not divorce lawyers, says Krist, who worked with his former partner Richard Morrison, now a Kemah solo, on the trial. We've used [Mease] before to help us through the minefields of domestic relations law.)

Glenn also said he was harmed because he was hospitalized with Crohn's disease during the trial, but the 1st Court found no abuse of discretion in Elliott's allowing Glenn's videotaped testimony to be substituted for a live appearance.

Glenn's case wasn't helped at the divorce trial when Houston attorney W. Allyn Hoagland, a former associate of his, was taped by **Helen** calling Glenn a crazy son of a bitch who might invent burglary charges against **Helen** or sue Krist and Morrison for tortious interference with his law business in order to prevent them from representing her.

He urged **Helen**, a longtime friend, to settle the case and said Glenn had asked him to talk to her.

Hoagland also told **Helen** that Glenn would go to his death bed and not let anybody know where that million dollars in gold is. He may go to the Cayman Islands. He may go to Canada. The gold will never be found.

The gold in question was a set of coins kept in a safe-deposit box. Glenn testified he had given the gold to **Helen**, who says she never saw it. At one point, Morrison says, Glenn claimed to have buried the coins in his backyard. The inventory of the estate that **Helen** received 58 percent of includes a listing of \$992,000 in gold coins.

Glenn objected to Elliott's decision to allow the tape into evidence, claiming it contained settlement negotiations, but the 1st Court ruled that the tape was admissible as evidence of Glenn's infliction of emotional distress on **Helen**.

Those emotional-distress claims, if they stand up on appeal, could have some precedential affect, Krist and Morrison say, along with the 1st Court's ruling that **Helen** is able to recover separate monetary damages against Glenn for fraudulent actions in the division of the estate.

The dissent from the decision to deny an en banc hearing, written by Judge D. Camille Hutson-Dunn, says any depletion of the community estate through Glenn's fraud should have been taken into account when the judge divided the assets, and not allowed as a separate action.

With none of the three parties totally happy with the outcome, no resolution is in sight. Complicating matters is Glenn's filing of a Chapter 11 bankruptcy.

The two parties that are commenting on the case show no signs that the bitterness it has engendered will go away. This has all been a very long thing, says **Helen**. [Glenn] has said I'm a whore and a thief and an unfit mother. [The Vickerys have one child, living with **Helen**.] The only people who believed in me were Ron Krist and Richard Morrison.

Richards is blunt in her assessment.

This woman has dragged me everywhere in this and things she has said have been proven to be lies. She knew exactly what was going on, she says. I don't deserve this shit.