



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**Dressler v. Morrison,  
CV-05-0119-PR**

**PARTIES AND COUNSEL:**

**Petitioner:** Walter A. Dressler, represented by Gilbert B. Weiner.

**Respondent:** Dona Morrison and Dona Dressler Real Estate Trust, represented by Dwane M. Cates and Max Nicholas Hanson of Cates & Hanson, PLC.

**FACTS:**

The parties were married in 1980 and divorced in 2000. This litigation concerns two rental properties located in Ohio. The couple purchased the properties in 1993 and 1995, respectively. As part of the couple's estate plan, the two properties were conveyed to two trusts – the Walter A. Dressler Living Trust and the Dona M. Dressler Living Trust. In April of 2000, at Morrison's request, Dressler signed new deeds transferring the property to a new revocable trust, with Morrison as the trustee and sole beneficiary. At the time Dressler signed the new deeds, he believed that there would be no change in his ownership rights, and that the reason he had been asked to sign the deeds related to insurance coverage issues. Two months after recording the deeds, Morrison filed a petition for dissolution of the marriage. Dressler accepted service of the dissolution papers but took no further action in the proceedings. After a default hearing, a decree of dissolution was entered on December 7, 2000. The decree did not expressly mention the property at issue here. The decree awarded each party their separate property; Morrison contends that the two rental properties at issue here were covered by that general statement, and thus were awarded to her as her separate property.

In June 2003, Dressler filed a civil action seeking a judicial decision on the ownership of the property. The complaint alleged fraud, constructive fraud, unjust enrichment, constructive trust, negligent misrepresentation, and fraudulent transfer. Dressler later amended the complaint to add counts for breach of fiduciary duty, quiet title, and sale in lieu of partition. Morrison moved to dismiss the complaint on multiple grounds, including that the action was intended to usurp the decree of dissolution without meeting the requirements of Rule 60(c), the rule that permits a party to seek amendment of an earlier judgment. The trial court granted the motion to dismiss, finding that, if Dressler wished to modify or overturn the decree, he should file a Rule 60(c) motion.

Dressler appealed the dismissal of his suit. The court of appeals affirmed in a divided decision. Two judges believed that the trial court had properly granted the motion to dismiss. One judge dissented, believing that Dressler should be permitted to bring an independent action for fraud.

**ISSUES:**

1. Is a party who claims to be a tenant in common with a former spouse in marital real estate not addressed in a decree of dissolution (A.R.S. § 25-318 B) entitled to litigate co-tenancy issues with the former spouse/co-tenant in an independent civil action or does Ariz. R. Civ. P. 60(c) provide the exclusive remedy?
  
2. Under what circumstances do the provisions of Ariz. R. Civ. P. 60(c) prohibit an independent, post-decree action between former spouses and mandate a reopening of the dissolution proceedings?

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