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What Happens When One Party Dies During a Divorce in New Mexico?

A variety of complicated emotional and legal issues arise when a person dies. And those issues get even more complicated when the deceased is involved in a pending divorce action. Does one party's death end the divorce proceeding? Does the surviving spouse serve as personal representative of the deceased spouse's estate? How does the Probate Code (the body of laws governing the estate of a deceased person) interact with the statutes governing Domestic Affairs? The New Mexico Court of Appeals addressed these questions in two 2009 cases.

These questions are very important in a divorce action which is after all a dissolution of marriage. A dissolution of marriage means a division of property and debt. All community property and debt must be divided according to the law. It also means that the separate property and debt must be identified and divided as such. The division of property and debt has significant consequences for the parties. The division may also raise claims by creditors against the community property by creditors including mortgage companies, credit card companies, and even the IRS. As such, the fact that divorce legally survives the death of one of the parties is no trivial matter.

In *Karpien v. Karpien*, a case that arose in Sandoval County, the wife died during the parties' divorce proceeding which is commenced upon filing the Petition for Dissolution of Marriage. The district court appointed the wife's parents as the personal representatives of her estate (the personal representative is the party in charge of distributing the assets and addressing the outstanding obligations of a deceased person). The husband objected to the appointment of the wife's parents and argued that the wife's death essentially ended the divorce proceeding and that he was entitled to his inheritance as the surviving spouse under the Probate Code. The Court of Appeals disagreed with the husband and ruled that, upon the death of a spouse during a divorce proceeding, the divorce proceeding continues and the personal representative is charged with representing the interests of the deceased spouse.

But what if the will of the deceased spouse appoints the surviving spouse as personal representative? Just this situation arose in a case out of Albuquerque known as *Oldham v. Oldham*, in which the husband died during a divorce proceeding. The husband's will appointed his wife as the personal representative of his estate, which would have meant that the wife was charged with representing the husband's interest against herself in the divorce proceeding. The Court of Appeals overturned that appointment and ruled that such a situation created an inherent conflict of interest on the part of the personal representative, who in this case was the opposing party in the divorce

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action. The Court of Appeals sent the case back to the district court with instructions that the district court appoint another appropriate person to serve as the personal representative so that the divorce proceeding could be concluded.

When a family member dies, it is always important to consult an attorney about the probate process. And when that death occurs during a divorce, it becomes even more important to consult an attorney to make sure that all parties involved are compliant with both the Probate Code and the Domestic Relations statutes.

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