

# Chicago Daily Law Bulletin®

Volume 163, No. 21

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## \$20M wrongful conviction money is marital property

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SPRINGFIELD — The state's high court denied the appeal of ex-convict Juan Rivera, meaning his \$20 million settlement for a wrongful conviction will be divided in his upcoming divorce.

Rivera's wife Melissa Sanders-Rivera has argued the settlement is marital property because it was reached during their marriage. Rivera contended the settlement should not be considered marital property because the wrongful conviction it resulted from happened before he and his wife met.

Rivera was wrongfully convicted of raping and murdering an 11-year-old in 1993. He and Sanders-Rivera married in 2000 while Rivera was still in prison. He was released in 2012 and filed for divorce in May 2014.

A 1st District Appellate Court opinion from 2015 determined his settlement is marital property and subject to the Illinois Marriage and Dissolution of Marriage Act.

Under state law, the \$20 million settlement would be divided between the two parties during the divorce trial.

The Illinois Supreme Court denied Rivera's appeal in the case last week.

The top court's rejection of the appeal is the latest event in Rivera's legal saga that began

when he was convicted more than 20 years ago for the rape and murder of 11-year-old Holly Staker from Waukegan.

After his initial conviction, Rivera appealed in 1998 and 2002 but his guilty verdict was upheld in both appeals.

His conviction was reversed in December 2011 by the 2nd District Appellate Court because of exculpatory DNA evidence that had not been tested in the previous trials.

In January 2012, Lake County State's Attorney Michael G. Nerheim dismissed Rivera's charges and he was freed from prison.

In 2012, Rivera sued Lake County, several officers from agencies including the Illinois State Police and municipalities including Waukegan, saying interrogators abused and coerced him to confess to the crime.

The complaint also alleged investigators knew it was a false confession because it conflicted with data from an electronic monitor tracking Rivera.

He settled the lawsuit in March 2015 for \$20 million, which at the time was the largest wrongful imprisonment settlement for a single plaintiff in U.S. history.

After taxes and legal fees, Rivera received roughly \$11.4 million.

Following the settlement, Rivera filed a motion for partial summary judgment that the settlement proceeds are not considered marital property.

Cook County Circuit Judge Carole Kamin Bellows granted his motion based on the finding that the events that resulted in Rivera's lawsuit and settlement took place before his marriage.

Sanders-Rivera filed a motion to certify a question of law under Rule 308 that was granted by the 1st District Appellate Court in the case, *In re Marriage of Juan A. Rivera and Melissa Sanders-Rivera*, No. 160552.

The question before the appellate court asked whether the settlement proceeds from a wrongful conviction case are marital property when "the coerced confession and initial conviction occurred before the marriage, and ... the conviction was reversed during the marriage."

The 1st District panel answered the question affirmatively, and in doing so, reversed the circuit court finding.

"Petitioner did not have a property interest in his lawsuit (or stated differently, no lawsuit existed) until the appellate court vacated his conviction in 2011. If there was no lawsuit, or property, in 1992 and 1993, there are no grounds for finding the lawsuit is nonmarital property," Judge Nathaniel R. Howse Jr. wrote in the appellate court's opinion. "Because the lawsuit accrued in 2011, during the marriage, it is marital property subject to distribution pursuant to the factors set forth in ... the Dissolution Act."

Donald C. Schiller, a senior partner at Schiller DuCanto & Fleck LLP which represents Sanders-Rivera, said he and his client are pleased with the Supreme Court's decision to reject the petition for leave to appeal.

"We also thought that the decision of the appellate court followed long-established precedent so there was no reason to change this precedent that has existed for a number of years," Schiller said in an interview.

While the Illinois Marriage and Dissolution of Marriage Act does not require that a divorce court divide marital property equally, Schiller said he believes that should occur in this case.

"It is very common when you have a long marriage that the estate is divided equally," Schiller said.

Michael J. Berger, of Berger Schatz, which represents Rivera, said the Supreme Court's denial is disappointing.

"We are considering what to do next," Berger said in an interview.

He said his client is considering whether to "pursue further judicial relief from this denial."

If he does not seek judicial relief, he said, the divorce trial will be heard in Cook County Circuit Court in July.

"And I anticipate Mr. Rivera will receive the vast majority of the settlement," Berger said.