

# MA Appeals Court: Husband not Responsible for Divorce Payout After Ex-Wife's Attempted Murder

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*Court halts dentist's division of assets payments after former wife convicted of attempted murder.*

In what can only be described as a remarkable [opinion](#), the Massachusetts Appeals Court held that a Bristol County dentist was not responsible for ongoing payments to his former wife after the wife attempted to murder him with a hatchet. The Appeals Court's decision in [Rabinowitz v. Schenkman \(2023\)](#) pulls no punches from its opening paragraph with the following description of the case (emphasis added):

To effect the gradual division of property under a separation agreement, Mark Schenkman (husband) made monthly payments to his former spouse, Julie

Rabinowitz (wife). **After the wife tried to kill the husband, payments ceased.** The wife filed an action for breach of contract in the Superior Court, and the husband asserted that **the wife's attempt to murder him** excused his further performance. Following a jury waived trial, judgment entered for the husband on the contract claim. We affirm.

The opinion goes on to tell the astonishing story of a wife and mother who turned to murder after she entered a divorce agreement granting sole legal and physical custody of the parties' four children to the husband following a 16-year marriage. As part of the 2013 divorce agreement, the husband was also required to pay \$212,000 to the wife over five years as a buyout of the wife's equitable interest in the husband's dental practice. The husband also had to maintain a life insurance policy for the wife's benefit until these payments were made.

#### [Former Wife Attempts to Murder Dentist Husband with Hatchet After Divorce](#)

In 2015, about a year and a half after the divorce, the wife "attacked the husband and the parties' nine year old son with a hatchet outside the husband's dental practice." In the pandemonium of the attack, the wife "accused the husband of ruining her 'reunification plans' that were 'in the works' for the children. After the attack, the husband stopped making the buyout payments."

Later in 2015, the wife "pleaded guilty to armed assault with intent to murder, one count of assault and battery by means of a dangerous weapon, one count of assault and battery, and two counts of assault by means of a dangerous weapon." She received a relatively lenient sentence of "two and one half years in the house of correction, one year to serve, the balance suspended for ten years of probation".

In 2019, the wife sued the husband in Superior Court for non-payment under the divorce agreement. The Appeals Court describes the result of the wife's lawsuit as follows:

Following a jury-waived trial, the judge found that the wife's attempt to kill the husband was "part of a woefully misguided plan to regain custody of her

children” and was an attempt to interfere with the husband's “buyout” of the wife’s share in the dental practice. The judge concluded that the husband was excused from further performance of the separation agreement because the wife's attempt to murder him constituted a violation of the covenant of good faith and fair dealing implicit in the separation agreement and incorporated into the amended divorce judgment.

Despite the loss in the Superior Court, the wife appealed.

#### Wife’s Guilty Plea Admissible Evidence in Subsequent Civil Case

The wife made a variety of arguments on appeal, including that the Superior Court judge have excluded any evidence of her assault on the husband. In addition, the wife argued that the Superior Court judge erred by relying on the wife’s guilty pleas in the criminal case “because evidence of the guilty pleas is not sufficient to support the judge's finding” that “[the wife] tried to kill [the husband] and that she did so in an attempt to further her plans to regain custody of the children.” The Appeals Court rejected this argument, citing existing case law to the contrary:

We disagree. “[A] defendant’s guilty plea is not without consequence in subsequent civil litigation. The defendant’s guilty plea and any other admissions made during the plea-taking colloquy with the judge are admissible as evidence in the civil litigation.” Aetna Cas. & Sur. Co. v. Niziolek, 395 Mass. 737, 750 (1985). Thus, the trial judge properly considered the wife's guilty pleas to crimes against the husband and their child.

The Appeals Court also rejected the wife’s argument that “the judge deprived her of the opportunity ‘to explain what occurred during the August 11 incident’ that resulted in the indictments and subsequent guilty pleas.” The Court noted that the wife raised this argument for the first time on appeal, and “in two pretrial motions, the wife asked the judge to exclude testimony related to the August 11 hatchet attack”. Similarly, the Court noted that the wife’s attorney had argued against the inclusion of any evidence of the assault beyond wife’s guilty pleas at trial:

At trial, the wife's counsel did not attempt to offer any evidence relative to the hatchet attack and successfully objected when the husband's counsel tried to broach the subject.



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### Implied Covenant of Good Faith in Divorce Cases: Bad Intentions Matter

In terms of substantive law, the main focus of the case is the implied covenant of good faith and fair dealing. Historically, this common law doctrine has applied to commercial contracts. In Massachusetts, however, it also applies to Separation Agreements entered in divorce cases:

That covenant demands that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. (Citations omitted.)

Applying the doctrine to the instant case, the Appeals Court did not mince words:

[T]he judge concluded that, by trying to kill the husband with a hatchet, the wife committed a breach of the covenant of good faith and fair dealing implied in the separation agreement. The judge reasoned that this breach by the wife “excused” the husband's obligation to continue making the monthly payments for the division of the value of the dental practice.

In affirming the Superior Court ruling, the Appeals Court rejected a number of arguments made by the wife, including her argument that the [final division of assets](#) – i.e. the buyout of the husband's dental practice – cannot be modified once a Judgment of Divorce has entered. The Court rejected this argument, citing a line of cases in which a party's post-divorce bad acts and/or bad faith

have resulted in courts modifying otherwise final asset divisions. Noting the rarity of such cases, the Court held:

On the unique facts of this case, and considering the egregious nature of the wife's conduct, the judge could conclude that this case constitutes one of those rare situations that warrants revisiting the issue of property division.

The Court likewise rejected the notion that the implied covenant of good faith and fair dealing only applies to marital conduct that occurs prior to a final divorce:

[S]uch a limitation would lead to absurd results where a judge could consider a wife's predivorce solicitation to murder her husband as a factor under § 34, but could not consider the same postdivorce conduct as a defense to performance of the terms set forth in a separation agreement. [Internal citations omitted.]

The Court noted that “parties to a separation agreement stand as fiduciaries to each other, and will be held to the highest standards of good faith and fair dealing in the performance of their contractual obligations.” Specifically, the Court noted that “the separation agreement was intended to provide an ‘orderly process’ for the distribution of marital property and to end the financial ‘stress’ on the parties”. The Court held:

[A] fact finder could conclude from this evidence that the wife tried to thwart the consequences of the separation agreement by killing the husband, accelerating the property division through the life insurance policy, and obtaining custody of the children. A fact finder could also conclude that the wife tried to seriously injure the husband and impair his ability to fund the carefully structured monthly payments with income derived from the ongoing dental practice. In the judgment of the fact finder, such precipitous and violent conduct could be viewed as a breach of the implied covenant of good faith and fair dealing because the wife took some action that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. [Citations omitted.]

In short, the Court found that the parties' Separation Agreement was a two-way street. The wife was entitled to the buyout payments for the dental practice, but the husband was also entitled to structured settlement that enabled him to continue working – in order to fund the payments – as well as custody of the children. The Court reasoned that the wife's conduct deprived the husband of his rights under the agreement, which, in turn, warranted the termination of the husband's further payment obligations to the wife.

Finally, the Court rejected the wife's argument that "that the husband also had to prove that she 'actually destroyed or injured' a right or caused 'demonstrable harm' such as economic loss" through her actions. The Court rejected this argument succinctly:

Since he survived the attack, so the argument goes, the husband suffered no real harm and should pay up. We disagree.

The Court went on to say:

Within months of striking the bargains in the separation agreement, the wife tried to kill the husband with a hatchet. The wife's violent armed attack, with an admitted intent to murder the husband, could be viewed as a desperate attempt to undo the separation agreement that was designed by the parties to be the final step at resolving outstanding issues in their divorce. The wife's extreme conduct, manifestly aimed at destroying or injuring the husband's rights that had been fixed by the separation agreement, may be viewed as precisely the type of behavior prohibited by the covenant of good faith and fair dealing because the wife tried to recapture opportunities forgone. [Citations omitted.]

### **Impact of Rabinowitz Opinion on Other Divorce Cases**

As the Appeals Court noted repeatedly in its decision, the facts in [Rabinowitz](#) are unique and unusual. Indeed, the Court cited the "unique and admitted homicidal conduct in the present case" while discounting the wife's argument that its decision would lead to a "flood of litigation concerning allegations of post-divorce misconduct aimed at invalidating property settlements." The Court

pointed out that Massachusetts courts “began applying the covenant of good faith and fair dealing to separation agreements almost a quarter century ago”, which has led to a flood of cases alleging post-divorce misconduct in the courts.

The facts of [Rabinowitz](#) are indeed unique. Most cases involving a post-divorce breach of the covenant of good faith and fair dealing are more pedestrian. For example, in [Nile v. Nile \(2000\)](#), the SJC cited the covenant when a deceased husband failed to follow the terms of his separation agreement in providing for his children under his estate plan. In [Krapf v. Krapf \(2003\)](#), the SJC upheld an order requiring a husband to pay a wife an amount equivalent to what she would have received from the husband's military pension under separation agreement but for husband's breach of the covenant by unilaterally electing to receive disability pay in lieu of his pension.

These cases reflect that principle that Probate and Family Courts will not allow a party to deliberately avoid their obligations under a separation agreement through deception or other forms of wrongdoing. Although the unique facts of [Rabinowitz](#) are unlikely to repeat themselves anytime soon, the principles articulated in the opinion surrounding the covenant of good faith and fair dealing are broadly applicable to most parties who enter a written agreement in the Probate & Family Court.

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