

Equitable Division

By Stephen L. Berry

Denise Hardigan stared at her husband and came to the same conclusion she'd arrived at months before.

He would make a handsome corpse.

Frank was six foot one, with a pair of warm green eyes she'd admired from the first day they met, eight years ago. They reminded her of her father's, that indifferent soul who'd cared far more about the weather for weekend fishing than he did for his three daughters. Her husband's tawny

mane was also a lot like her long-dead daddy's, the tips flecked with gray, the strands now curling in the moist sea air.

His face was striking, the features seemingly chiseled into a canvas of deeply tanned skin. His expression always conveyed a solemn sense of authoritativeness, one she'd immediately liked. Edgar Reubens, owner and operator of Reubens & Sons Funeral Home, Cobb County Georgia's largest mortuary, was going to have an easy time preparing the body. There'd be no wounds to mask with make-up. No teeth to replace. No bones to reset. She was intent on him looking quite proper framed out by an expensive bronze casket. She'd spend three thousand dollars. No. Four would be better.

She'd wear the black Donna Karan dress bought at Saks Fifth Avenue last summer when they'd spent four days in New York. A lace veil would shield her face and she'd force herself to cry uncontrollably. For effect she'd toss herself on the coffin as old Edgar hinged the lid closed and she'd cry out in desperation on the trials and tribulations that the blessed Lord had unwittingly forced upon her.

In short, she'd do everything a bereaved widow was expected to do.

Everything the people of Georgia would want to see from Mrs. Frank Hardigan, the wife of a justice to the Supreme Court of Georgia. The press loved a lively funeral and she'd make sure her dear departed husband's was one to remember. It was the least she

ANNUAL FICTION WRITING COMPETITION

The Editorial Board of the *Georgia Bar Journal* is proud to present "Equitable Division," by Stephen L. Berry of St. Marys, Ga., as the winner of the *Journal's* 11th Annual Fiction Writing Competition. In addition, the *Journal* would like to recognize the contest's runner-up, "Mrs. Palsgraf's Dream Team – A Play in One Act," by Henry W. Kimmel of Decatur, Ga.

The purposes of the competition are to enhance interest in the *Journal*, to encourage excellence in writing by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. As in years past, this year's entries reflected a wide range of topics and literary styles. In accordance with the competition's rules, the Editorial Board selected the winning story through a process of reading each story without knowledge of the author's identity and then ranking each entry. The story with the highest cumulative ranking was selected as the winner. The Editorial Board congratulates Berry, Kimmel and all of the other entrants for their participation and excellent writing.

could do for him. But she was getting ahead of herself.

First things first.

She turned toward Frank and said, "Darling, could you help me with my air tank?"

Before Frank could respond to her plea, one of the chocolate-brown deck crew shot over, lifted the steel cylinder, and slid the coarse black straps over her shoulders.

"Thank you, son. Careful now, my shoulders are a little red."

The boy gently settled the backpack down on the dive cozumel T-shirt that sheathed her thin frame. She adjusted the waist belt and turned to her husband. "You need to move faster."

Frank smiled back and she caught a glimpse of his pearly white teeth in the bright moonlight. They glowed with an almost fluorescent shine, like the wax ones kids wore at Halloween. "Those boys just know what it takes to garner a good tip. If I received a dollar every time someone shouted my name, I'd hustle too."

She turned to her young helper. "Son, could you put those bags somewhere for me so they won't get wet?"

"Yes, ma'am. They'll be in the forward cabin when we get back to shore."

The boy grabbed the green plastic shopping bags and scampered toward the front of the boat. Before they'd left the dock, while waiting for darkness, she'd done a little shopping in San Miguel, particularly enjoying the Ralph Lauren store where she filled three sacks with Polo clothes for herself and Frank.

Frank drew close, adjusting the straps to his own tank. "He'll want more than a couple of dollars when we get back to the dock."

"And you'll give them to him. After all, what are loving husbands for?" She planted a soft peck on his two-day stubble. One of the luxuries of a vacation, Frank liked to say, was not having to shave. Supreme Court Justices were expected always to look their best, but being nearly two

thousand miles from home came with certain intangible privileges.

She grabbed her mask and fins from the bench and again surveyed the boat. Her best estimate was that the vessel stretched forty feet. Its open decks and benches were specially outfitted to accommodate divers and their bulky equipment. Three crew members and a dive master rounded out the boat's complement, and she watched as everyone busily prepared themselves for night diving.

"While you suit up, let me go over the routine," the dive master said from the stern.

He was a burly, oversized American with thick, sun-burned blond hair. He looked about forty and doled out his words in a heavy Dixie drawl. She wondered if the accent was real or part of an act to make the tourists feel at home.

"Ya'll are in for a treat. Usually May here in Mexico is full of storms, but its gorgeous tonight. We're about two hundred yards off the southwestern tip of Cozumel. The bottom is sixty feet down. I'll go first. After everybody gets in the water, I'll count heads, then we'll move out. At tonight's depth you've got about forty minutes of bottom time without having to



worry about a decompression stop on the way up. Be conscious of your time. Start for the surface after thirty-five minutes. I'll remind you by flashing my blue light at the half hour mark. Any questions?"

"What about the terrain?" asked a middle-age man in pink bathing trunks.

"We're anchored over one of the most beautiful spots in the world. The locals call this section of the reef Santa Rosa. Big mounds of coral everywhere. Lots of caverns and tunnels full of stuff. Don't be bashful. If you find a big opening, swim in and have a look."

The dive master continued his orientation. While he spoke, she again studied the assortment of people on board. She'd listened intently to the chitchat on the cruise out. Several of tonight's participants had accompanied them the past two days, apparently also booking the four-days-and-three-nights-dive-Cozumel-tour through their own travel agents. Four hundred and fifty dollars, including air fare and two meals a day. Not bad. A real bargain if recreation and relaxation was what a person sought.

There was an Illinois doctor, perhaps a surgeon from what little she'd overheard, who was at least

She stopped and shined her light inside. It was a tunnel. Thirty to forty feet long, her light fading into blackness on the far side.

sixty, along with his trophy wife. A car salesman traveling alone from Pennsylvania or New Jersey, she could never learn for sure. A group of young, bearded Canadians who chatted incessantly, mostly in French. A couple from Alabama, on their first trip out of the country and not enjoying Mexican hospitality. And six college kids from Minnesota who definitely were savoring the tropical heat. One in particular caught her eye. His washboard tummy was flat and hard and his genitals bulged through a skimpy piece of black nylon, the kind she'd seen in the mall that came in clear plastic cylinders and could easily be mistaken for a head band.

"See you on the bottom," the dive master said as he finished his spiel.

Frank stepped close, mask and fins in hand. "Should be fun."

She smiled at him. "You keep an eye on me, okay?"

He wrapped an arm around her waist and hugged her. She nestled her head into his shoulder and savored the feel of his warm body. She watched as the dive master stepped onto the platform and jumped from the stern. A light suddenly appeared, then faded in the dark transparent water. One by one others followed.

At their turn, she and Frank eagerly stepped off.

She started her descent and remembered what she learned three days ago about the strong underwater currents. As streams blew in from the open Caribbean a steady flow of warm water followed, so her changing depth had no effect on temperature. Fifty feet felt the same as ten. And the clarity was unsurpassed. A trans-



parent, tepid aquarium, available for viewing to anyone with four hundred and fifty dollars, air fare and two-meals-a-day included.

On the bottom the dive master counted heads and signaled if each person was okay. She and Frank carried a main light and backup, all provided by the tour. The moon added an additional degree of comfort, along with an easy point of reference. She took a moment and glanced up. A pockmarked lunar disk rippled over the surface.

Movement out of the corner of her eye caught her attention. The dive master was leading the way into black ink. Frank kicked his fins and followed and she fell in behind. Their combined lights slowly brought the spectacle into focus and she saw they were in a valley between two gigantic coral mounds, each rising at least thirty feet, a miniature Grand Canyon at the bottom of the Cozumel Straight. She checked her depth gauge. Sixty feet and dropping. Her compass indicated they were moving west, away from shore, toward the open channel.

After a short swim the dive master stopped and indicated this was the designated area. He signaled for the group to fan out and explore.

Frank needed no further prodding and immediately led the way. She liked that about him. He was a take-charge-kind-of-guy. A local cracker, born and bred in Bainbridge, Georgia. Well respected. A major player in the State Bar of Georgia. A close friend of the Governor. An Associate Justice for the past twelve years and leading candidate to become chief justice next year.

They negotiated a narrow passage between two coral walls. She traced the escarpment upward and calculated the precipice reached half way to the surface. Its face was a rutted mass of coral polyps. Purplish sea fans dotted the sides and swayed in the current like leaves bending in a breeze. A few of the other divers approached from behind, their lights setting the scene ablaze. Tropical fish smeared in scarlet, sapphire, and gold drifted in every direction, some feeding, others suspended trance-like, apparent-

ly out for the night. Crabs hustled like roaches and Frank's light caught a glimpse of an octopus sweeping across the sandy bottom, its color constantly changing in camouflage.

Frank kicked in pursuit.

She followed and deliberately slowed her progress, giving the others time to swim ahead. She then thrust her fins forward against the canyon wall and stared a moment longer at the rainbow of coral feasting on a steady stream of microorganisms brought by the warm current, the colorful hues starkly illuminated against a caliginous sea. The whole thing had the look and feel of an Impressionist painting, surely calming and comforting, and hopefully distracting.

She continued to drift along the wall and, as the dive master predicted, periodically there were openings. Some were small — no more than a foot or two across — mere crevices and indentations. But some were larger. Suddenly, she came upon a huge one.

She stopped and shined her light inside. It was a tunnel. Thirty to forty feet long, her light fading into blackness on the far side. She judged the diameter at eight to ten feet, the inside teeming with crabs and fish. Swaying sea anemones made the walls look alive. She tested the bottom. The silt should not cloud visibility. She turned toward Frank and motioned with her light. His gaze locked on hers and she pointed, asking if they should swim through.

He nodded.

She knew him well.

She fell back and let him take his familiar place in the lead. She took the opportunity to glance behind. The lights of the other divers drifted in the distance, the distinctive blue tint of the dive master's nowhere nearby.

They were alone.

Finally.

She kicked her fins and followed her husband inside.

Frank floated weightless in the crystal clear water. He purged air from his buoyancy vest and slowly descended, landing on bare knees, a cloud of silt rising then drifting away. He traced the path of another octopus with his light and she used the distraction to move close, careful to blend her light with his so nothing betrayed her movements. She settled on the soft sand, fixing her eyes on his head, then gently grabbed the black knob that opened and closed his air tank. She twisted the narrow threads clockwise, closing the valve. She'd practiced with a similar knob for weeks and knew eight turns would be required to fully close.

Conscious of that fact, she halted her effort at six.

Frank's body swayed in the gentle current, and he seemed totally unaware of any contact. She timed her movements well since, just as she withdrew her grip, Frank swam forward into the heart of the tunnel. She took the opportunity to glance back one last time, blackness outside confirming they were still alone.

A hiss vibrated the water as Frank added air to his buoyancy vest. She refocused on him and watched as he flattened his body and floated up, his light fixed ahead on a group of feeding crabs. She maneuvered back into position and, as Frank concentrated on the spectacle, reached again for the valve.

But just as she made contact, he lurched forward with a suddenness that startled her.

Frank's body swayed in the gentle current, and he seemed totally unaware of any contact.

She jerked her arm away, wondering what he was doing. His air valve was open. His breathing was, as yet, unobstructed. A second later she realized that her unsuspecting husband had merely swum farther into the tunnel, a little closer to the fleeing crabs who continued to hold his undivided attention.

She propelled herself back into position behind and slightly above him. This time, without delay, her hand moved to the knob.

Three seconds and the final two turns were made.

She immediately pushed on the water and propelled herself back, listening as he sucked his last breath. Bubbles rumbled out the side ports of his regulator and percolated to the tunnel's roof.

He then tried to take another breath and instantly rolled over when nothing was there. He frantically slashed his right index finger across his neck, the universal signal that his air was gone. All of the training taught four years earlier when she became a certified diver

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required her to spring to his aid and share a regulator. They would each take repeated breaths and slowly make their way to the surface, one arm intertwined around the other forming a single unit of cooperation. The buddy system at its most prodigious self. The kind of hero story dive magazines liked to proclaim while at the same time hocking ads for overpriced equipment and four-hundred-and-fifty-dollar dive packages, meals and air fare included.

But she did nothing.

Instead, she simply sought comfort within the warm blanket of water that enveloped her. Yet a chill suddenly swept past, one that made her spine shiver. Was that Frank's fear rushing by as he finally realized his fate?

He kicked toward her and she pushed herself back. She pointed her light toward him. He shielded his eyes from the bright glare and tried again to signal that his air was gone. The confines of the tunnel provided little room to maneuver. Frank was a trained diver and a good swimmer — he'd been in the Navy — and if this was open water he might have made it to the surface. But the element of surprise and the choice of location gave her all the advantage.

A few seconds later his movements stopped.

She waited. He had to be dead. No chance for revival. No CPR by that damn Illinois doctor. No heroics from the dive master. Just a corpse Edgar Reubens could dress and decorate for fools to gawk at.

After nearly a minute, and before the current moved the body toward the tunnel's exit, she swam close and shined her light into his mask. A wild look of terror stared back from his open eyes. For an instant she thought him alive, but there was no blinking, no pupil contraction, nothing. Strangely, the horrified gaze did not frighten her, and all she could recall was how those eyes once viewed her with love.

She rolled his body over and reopened the air valve. She then reached up to remove the regulator from his mouth, but stopped. Instead, she purged the mouthpiece by simply pressing the button in front. A burst of bubbles exploded from the exhale ports and out the sides of Frank's mouth, the air having nowhere to go in his lifeless throat and lungs.

She savored one last look inside the mask. No remorse. No guilt. Just a sense of relief.

Marriage number two was over.

The private investigator she'd hired three months back had proven invaluable. His discreet reports made clear that this would have been her last trip as Mrs. Frank Hardigan. Her husband had already retained a lawyer and was preparing to file for divorce. Though their marriage produced no children, the seven-year union had generated some valuable real estate purchases, a substantial stock portfolio, a respectable amount of jewelry, and most sacred, two tickets to the Masters. Nearly six million dollars in assets, all held jointly with rights of survivorship.

She'd made sure of that.

Being a lawyer herself helped. A divorce lawyer actually. A partner in a respectable downtown Atlanta firm.

Unfortunately, Frank had been uncharacteristically diligent. He'd hired his own private investigator and learned about her several affairs.

That would have been a problem at trial.

Unfortunately, too, Frank had also remained monogamous. The irritating bastard had not strayed once.

That too would have been a problem.

Georgia has never subscribed to a community property theory regarding assets acquired during a marriage. Our principles are governed by equitable division. The trier of fact is free to divide assets and liabilities as appropriate to the conduct and contribution of the parties.

Frank himself laid out that legal principle in *Ruffin v. Yates*, a case which involved another second marriage and another cheating wife.

She knew the decision well. That wife received little in the way of equitable division.

One other principle of Georgia law, though, was clear. If two parties own something jointly with a right of survivorship, at the death of one the other would own the property entirely. No questions asked. No legal challenges. Just sole ownership.

She stared again at Frank.

A joint owner no longer.

He'd agreed to the Cozumel trip without much debate. Surely a way for him to physically enjoy her one last time. After all, sex had never been a problem for them. She'd encouraged the excursion as some quality time between the high

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court's sessions where they both could unwind. Just a long weekend in Mexico — scuba diving and sex — who could resist?

When they returned to Atlanta there would have been the inevitable meeting. Probably his lawyer coming to her office and discreetly informing her of the information they possessed and suggesting an amicable divorce. Because of Frank's position on the Supreme Court, and her partnership in a firm always sensitive to image, the best course was the quiet course. A small cash payment would be offered to satisfy her immediate needs, but she'd be expected to support herself on her six-figure salary. Forget about the millions in assets, most of which she accumulated since Frank was financially challenged simply by the balancing of his checkbook. Don't concern yourself with alimony or any type of substantive property settlement, the publicity wasn't worth it. Watch the Masters on television, CBS does a great job with their telecast.

In short — no equitable division.

Just a simple, uncontested divorce accompanied by a press release that the parties 'are saddened by the dissolution of their marriage but are intent on remaining friends.' The type of words expected when a public official — especially a justice of the state's highest court — was involved. Enough information to dispel unseemly rumors.

But none of that carefully choreographed staging was to be. Her marriage was over, the equitable division one hundred percent.

To her.

She nearly smiled, but caught herself. There'd be time enough later for accolades.

So she waived goodbye to Frank.

A casual flip of her hand to a man that had proven a great disappointment. A tiny part of her would miss him. Weak men were easy to control. Weak men who thought themselves smart were even simpler to dominate. And weak men who believed themselves clever were the frailest of all.

None of them ever realized their vulnerability.

Like tonight.

She swam through the tunnel into open water. The dive master's blue light was off in the distance. Frantically, she waved her light in the darkness and attracted the attention of other divers.

Lights started heading toward her.

Good.

Frank needed help. 🍷



Stephen L. Berry is a 1980 graduate of Mercer University School of Law. Prior to attending law school, Berry attended Valdosta State College, where he earned a bachelor's degree in political science. Since 1980, Berry has been in private practice in St. Marys, Ga. He also served on the Camden County Board of Education and is presently chairman of the Camden County Board of Commissioners. Berry has been writing since 1990 and has recently sold two novels to be published by Ballantine. Berry was also the winner of the *Journal's* 10th Annual Fiction Writing Competition for his story, "The House."

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