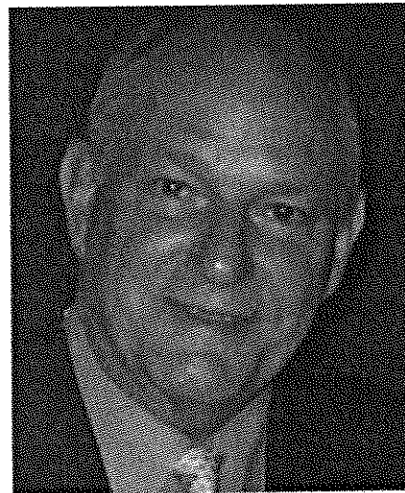


## Attorney wins state court decision

In a decision filed November 10, the Connecticut Supreme Court agreed with local attorney Richard C. Stewart and reversed an Appellate Court ruling adverse to his client, the plaintiff in *Kaczynski v. Kaczynski*. In doing so, the Supreme Court overruled two prior long-standing Appellate decisions.

Stewart, who has practiced law in New Canaan since 1982 and is an officer, director, and shareholder in his family-owned business Walter Stewart's Market, had replaced the plaintiff's initial attorney just before trial in a divorce case pending in the Bridgeport courthouse. He immediately filed an amended complaint alleging that he had discovered a series of fraudulent transactions by the defendant husband in the case.

After a six-day trial, the trial judge agreed with Stewart and included three sizable assets in its decision, which the defendant husband claimed he did not own. The defendant appealed, and in a split decision, the Connecticut Appellate Court reversed the trial court's decision on the narrow grounds that the trial court had not explicitly stated that by "clear and convincing evidence" it found the included assets to have



RICHARD C. STEWART

been fraudulently transferred.

Stewart then successfully petitioned for certiorari, a request that the Connecticut Supreme Court review the decision of the Appellate Court. The Supreme Court reversed the Appellate Court, and also overruled seven Connecticut Appellate Court decisions dating back to 1984.

Stewart argued that the old rule requiring a trial judge state explicitly that the higher standard of proof had been employed was too technical and inappropriate in divorce cases. The

Connecticut Supreme Court agreed, and articulated a new rule that presumes a trial judge used the correct standard of proof unless a litigant specifically asks the court which burden of proof it was applying, and the standard of proof it stated it was applying was erroneous.

Commenting that while he was of course "gratified that my client's divorce award had been reinstated," Stewart added he was "also pleased, on a professional level, that what had been an overly technical rule, especially in the context of divorce litigation, had finally been erased. I thought the Supreme Court's unanimous decision was well reasoned, correct, and very much needed. Historically they only accept about one in five petitions for the certiorari. It was important that they did so here to correct a flaw in existing family case law."

Stewart served on the New Canaan Town Council for 12 years, and was recognized with his twin brother two years ago as the New Canaan Gridiron "Fall Guy". He is a New Canaan High School graduate, tri-captain of the 1960 state championship football team and a former member of the Republican Town Committee.