



# MICHIGAN COURT OF APPEALS RULES ON TRIAL COURT'S DECISION CONCERNING THE VALUE OF AN INTEREST IN AN INN IN THE UPPER PENINSULA:

*BAIRD-PETERSON V PETERSON*, MICH APP NO. 319938 (10/16/14)

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## Facts

- During the marriage, W invested \$30,000 of marital funds in an LLC which was constructing the Mather Inn (Inn) in Marquette, Michigan, an endeavor initiated by W's father.
- The LLC agreement provided that a member's interest would be lost—without compensation—incident to a member's divorce.
- Construction of the Inn “fell through” leaving debts reportedly exceeding the value of the property.
- H claimed the business was worth \$100,000.
- The trial court ruled that the evidence did not support a value of \$100,000 and, further, that W's interest in the Inn had “no present value.”
- The trial court also ruled, however, that if W ever realized a return on the parties' \$30,000 investment, she had to reimburse H his half of the investment
- H appealed.

## Court of Appeals Decision

In an unpublished opinion, the Court of Appeals (Court) upheld the trial court's decision on the Inn.

The Court noted that the uncertainty of both (1) whether W's interest had been lost and (2) whether outstanding debts exceeded value of the property supported the trial court's decision.

## Comment on the Case—Use of Value at Date of Divorce

As a rule, trial courts have a responsibility to determine

value as close to date of divorce (DOD) as possible. Such value is used in the division of the marital estate.

One reason for the court's responsibility to determine a value is the need for finality in divorce settlements. If a value were subject to change based on the occurrence or non-occurrence of future events, there could be a number of disadvantages:

- Risk that post-divorce efforts are included in value divided between the parties. This generally relates to business enterprises in which a party has meaningful active involvement.
- Need for the non-owner to “look over the shoulder” of the owner—not generally a welcome prospect after divorce.
- Constrain the owner from taking certain actions, such as expanding.

In *Peterson*, the trial court found that the Inn had no value as of DOD. However, the trial court also ruled that if the Inn subsequently—that is, post-divorce—acquired value and, accordingly, W received a return on investment, such would be shared equally with H.

As indicated, value arising after DOD is not divided because such value is typically attributable to events and/or efforts occurring after marriage.

Further, as ruled in *Skelly v Skelly*, 286 Mich App 578, 780 NW2d 368 (2009) and its progeny (*Hoskins* Mich App 309237 (5/28/13)—see October 2013 Tax Trends article), value attributable to events and/or efforts during marriage is not divisible if subject to a condition satisfied after marriage.

But, the objective of a divorce settlement is to achieve as equitable a result as possible. While some rules—including those established in case law—are necessary, so is the discretion to take into account the unique facts and circumstances

of each case. In *Peterson*, although we cannot tell from the COA opinion, it is possible the trial court considered factors such as the following:

- The Mather Inn LLC was owned by W and her father—a family LLC. The provision regarding losing one’s interest in the event of divorce is not found in most model commercial LLC agreements.
- The investment of the \$30,000 and signing the LLC agreement may have occurred a relatively short time before W filed for divorce.
- The investment was in real estate which, in general, was recovering value lost in the recession as of the July 2013 divorce trial.

These are the type of factors a family court should have the discretion to consider in fashioning a fair settlement. In *Peterson*, the trial court did not assign any value to the Inn for the division of the estate, but did, evidently, believe that fairness compels H to receive half a return on W’s investment of marital funds should she ultimately receive same.

While finality is a laudable goal in divorce settlements, now and then—particularly in long term marriages—equity will

not be achieved without a provision for sharing presently undeterminable value attributable in considerable part to years of marriage.

**Example:** A formula for dividing incentive compensation received for a set number of post-divorce years by an executive whose long, successful career overlapped the years of a long term marriage.

Though not allowed under *Skelly*, counsel are certainly free to include such a provision in a divorce settlement where compelled by fairness.

### About the Author

*Joe Cunningham has over 25 years of experience specializing in financial and tax aspects of divorce, including business valuation, valuing and dividing retirement benefits, and developing settlement proposals. He has lectured extensively for ICLE, the Family Law Section, and the MACPA. Joe is also the author of numerous journal articles and chapters in family law treatises. His office is in Troy though his practice is statewide.*