



TAX TRENDS AND DEVELOPMENTS

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Court of Appeals (1) Rules on Marital Property Status of Gift of a Vet Practice and (2) Rejects a Bright-Line Rule Re Excluding Personal Goodwill from Practice Value – Brusach No. 334550 (10/17/2017)

Facts

- W purchased a veterinarian practice from her father at a substantially discounted price. The discount was a gift from dad to daughter.
 - H assisted W in various capacities in maintaining the vet practice during the marriage.
 - The vet practice was valued by experts working on behalf of H and W, respectively.
 - The trial court selected a value within the two calculated by the two experts and found that the gift component of the value had lost its separate property character due to (1) H's active involvement and (2) the commingling of practice income with the marital estate.
 - W objected to this finding and to the inclusion of her personal goodwill in the practice value.
 - In her appeal on the personal goodwill issue, she claimed personal goodwill should be excluded from the marital estate because:
 1. It is the equivalent of future earning ability, which is not marital; and,
 2. It results in double-dipping since future earnings are factored in to setting spousal support.
- Regarding W's **personal goodwill** claim, the COA cited the 2012 *Loutts* decision, 298 Mich App 21, in ruling that double-dipping issues are determined on a case by case basis and, accordingly, "there is no room for *** rigid and arbitrary formulas when determining *** spousal support."
 - Further, the Court stated: "Accordingly, there is no bright-line rule for whether the value of a business can be used in determining property distribution and awarding spousal support."

Comments on the Case

- Whether separate property is transformed into marital property is a "facts and circumstances" determination.
- Commingling of income from the separate property with marital income, as occurred in this case, is one factor suggesting property has been converted to marital.
- The Court has previously indicated that personal goodwill is includable in value for divorce purposes, stating: "We are unpersuaded of the need to adopt a distinction between personal and business goodwill for purposes of valuing business assets in the context of a divorce action." *Conger*, Mich App No. 219373 (12/26/00).

Court Of Appeals (COA/Court) Decision

- In an unpublished opinion, the COA upheld the trial court decision.
- Regarding the **gift component of the practice** value, the Court, on reviewing the record, stated that it could not conclude that "the trial court made a mistake in finding that the gift lost any characteristic of being separate property."
- It agreed that the gift portion of the practice had essentially been transformed to marital property during the marriage.

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.

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