



COURT OF APPEALS RULES ON EFFECT OF CORPORATE BUSINESS DEBT ON SPOUSAL SUPPORT. *BOCKART V BOCKART*, MICH APP NO 335833 (3/20/18) (UNPUBLISHED)

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Facts

- During the parties' 11 year marriage, H operated a successful business of which he was the sole corporate shareholder.
- W was a stay-at-home mom tending to the parties' two young children.
- At the time of the divorce, W was earning \$11,000 annually for part-time work at a charter school. She testified she was seeking a full-time job.
- H drew \$43,216 from the business in the most recent year.
- During the pendency of proceedings, H paid W \$500/month spousal support and paid all household/family bills pursuant to a status quo order.
- H incurred substantial debt (1) to make the required support and status quo payments, (2) to pay his and W's attorney fees, and (3) to pay business expenses. At the time of divorce, the business owed \$108,000 including rent in arrears and tax deficiencies.
- The trial court imputed \$20,000 earnings to W and \$40,000 to H.
- The trial court awarded no spousal support to W because:
 - She had a Bachelor's Degree in Fine Arts while H had just a high school education.
 - H had paid all family expenses during the pendency by incurring substantial business debt.
 - Since W benefitted from this, she was "partially responsible" for such debt.
 - Because H was assuming full responsibility to repay the debt, the trial court viewed this as a "favorable outcome" for W.

Court of Appeals (Court) Decision

- The Court stated that the trial court failed to make a determination (1) "as to the origin of the debts" of H's business and (2) "who was responsible for their creation."
- Further, the Court noted that W had little, if anything, to do with H's business and, hence, likely had little, if anything, to do with incurring the debts.
- The Court remanded the case for reconsideration of (1) W's responsibility, if any, for the debts after thoroughly reviewing the origin of the debts and (2) the lack of a spousal support award to W.

Comments on the Case and on Treatment of Debts in Determining Money Available for Support

- The Michigan Child Support Formula Manual (Manual) provides in Section 2.01(B):

"The objective of determining income is to establish, as accurately as possible, how much **money** a parent should have available for support. **All relevant aspects of a parent's financial status** are open to consideration when determining support."

(Emphasis added.)
- Thus, if H in *Bockart* had to incur debts to pay family expenses, **money** used to make payments on the debts is simply not "available for support."
- If a business is required to pay on business loans incurred in the ordinary course of business, such as working capital loans or equipment purchase installment payment loans, then the money used to make payments is not available for support.
- Such payments are not deductible in determining business net income and so must be separately identified when determining money available for support.

- This is the flip side of adding back deductible depreciation (1) above straight line on personal property or (2) on real property – that is, converting net income to money available.
- The Court’s focus on the “origin” of the debt seems misplaced. Whether W had any “responsibility” for creation of the debts should not be a deciding factor. Neither should whether the debts were incurred by H or by his company.
- Rather, of significance is whether the funds from the debts were used for marital purposes. If so, they are debts of the marriage, however incurred.
- This may not apply to debts to provide for payment of divorce attorney fees. Responsibility for such fees is generally separately considered in divorce settlements.
- This is particularly so if one party owns a business or professional practice – both (1) to ensure all items of “indirect” income (excessive perks, etc.) are identified and (2) that legitimate debt payments are excluded from money available for support.
- Often balance sheets need to be reviewed in addition to income statements.

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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Concluding Comments

- Like so many matters in divorce, determining money available for support is a case specific exercise.