TAX TRENDS AND DEVELOPMENTS

Property Settlement

Court of Appeals Upholds Trial Court's Property Settlement Decision. *Gappy v Gappy*, Mich App No. 342861 (9/19/19) (Unpublished)

By Joseph W. Cunningham, JD, CPA

Facts

- H and W, who married in 2007, were both attorneys and maintained separate legal practices.
- They also maintained separate bank accounts during their marriage.
- In 2016, they purchased the marital home for $375,000. W paid the purchase price with funds from her account.
- However, H arranged for $100,000 to be transferred to W's account in connection with the purchase.
- Both parties' names were on the deed.
- In addition to his law practice, H spent 15 hours or so a week working at his father's business without getting paid. However, his father provided H with rent-free space.
- W claimed that, citing *Hanaway*,[1] some value of the father's business should be imputed to H in the division of the marital estate.
- The trial court treated the marital home as a marital asset and rejected W's claim about the father's business.
- W appealed.

Court of Appeals Decision

- The Court affirmed the trial court's division of property.
- In so ruling, the Court noted that the money in W's account used to purchase the home consisted of her earnings during the marriage.

- In this regard, the Court stated "that funds earned during a marriage are to be considered marital property."
- And, further, that "regardless of the parties' intentions with their separate bank accounts, they agreed to jointly purchase the home by combining their separate funds and to hold the home in both of their names."
- On the other issue, the Court ruled that, unlike in *Hanaway,* H did not own a legal interest in his father's business.
- The Court also noted that H had testified that when his father died, his estate would pass to H's mother and, further, that one of his brothers had special needs and that another had loaned money to the father over the years.
- The Court said the trial court did not err in refusing to impute value to H of an asset in which he had no legal interest.

Comments on the Case

- As the Court stated, money earned during marriage is marital regardless how disproportionately between the parties or whether it is deposited in a separate bank account.
- However, a written separation agreement may provide that, as of a specified date, future earnings are no longer marital.
- Regarding the other issue, there are cases involving family businesses owned by a parent but are essentially run by one of the parties who will clearly inherit the business.
- If this has occurred during much of a long-term marriage, equity often screams that the business should be taken into account in a divorce settlement.
- Should the mere fact that a party does not currently own a legal interest in a business of which he/she is CEO and certainly in line for future ownership be the overriding factor in fashioning an equitable divorce settlement in a long-term marriage?
- That is the current state of the law which clearly frowns on any degree of speculation on what might happen going forward, despite how probable and significant it may be.
- Of course, in "amicable" divorce settlements, provisions can be made to assure equitable results in such cases.

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.*

Endnote

1 *Hanaway v Hanaway*, 208 Mich App 278; 527 NW2d 792 (1995).

Email: JoeCunninghamPC@gmail.com

Website: https://JoeCunninghamPC.com