



## COURT OF APPEALS REVERSES TRIAL COURT RULING ON THE “MARITAL/SEPARATE” PROPERTY CHARACTER OF A BUSINESS INTEREST RECEIVED BY GIFT BEFORE MARRIAGE

*Wolcott v Wolcott*, Mich App No. 351918 (March 11, 2021) Unpublished

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### Facts

- In July 1999, W’s father gave her a 10% interest in a closely-held business (Company) at which she was not employed.
- The parties married a month later in August 1999.
- During the entire marriage, the parties maintained separate bank accounts.
- W deposited any distributions she received from the Company into her separate bank account.
- The trial court ruled that W’s interest in the Company was her separate property.
- H appealed.

### Court of Appeals Decision

- In an unpublished decision, the Court reversed the trial court’s ruling.
- In doing so, the Court noted that the distributions W received from the Company – though deposited into her separate bank account - were commingled with her marital income deposited into the same account.
- Further, the Court stated that W had testified that she used some of the distributions from the Company to pay marital expenses and household bills.
- The Court ruled that W’s conduct with regard to distributions from the Company indicates that her interest in the Company was marital property.

### Comments on the Case

- The Court’s decision seems unfair to W.
- The parties evidently, from the outset of their marriage,

intended to keep their respective property interests separate, including the distributions W received from the Company.

- That the distributions were incidentally “commingled” with marital funds does not necessarily indicate an intent to convert them – and certainly not the Company – to marital property, nor does use of some of the funds to pay marital expenses – particularly if other funds were temporarily insufficient.
- The Court used these two factors to convert a pre-marital gift into marital property.
- Treating the commingled distributions as marital seems reasonable. But, to treat the entire value of W’s interest in the Company as marital seems excessive.
- The obvious upshot of the case is, if a party wants to keep separate property separate, then such party:
  1. Should deposit any income from such property in a separate account into which no marital funds are deposited; and,
  2. Should not use such funds to pay marital expenses. If such is necessary because marital funds are insufficient, make a documented loan of the separate funds to pay the expenses, and be sure that the loan is repaid.

### 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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