

Survey of Family Law Cases 2004-2013

2007 Family Law Survey

DEFINING PROPERTY

Husband appeals the division of property under permanent orders in In re the Marriage of Green, 169 P.3d 202 (Colo. App. 2007). Five months prior to marriage, the parties signed an agreement to live together, share all expenses, and purchase a specific residence together. Ten years later, Wife petitioned for dissolution, but in an effort to reconcile, the parties signed a second agreement to reaffirm the first and agree that in the case of dissolution each party would leave the marriage with what they contributed.

In sum, the first “marital” agreement was unenforceable because the parties were not contemplating marriage upon signing, and the second agreement was unenforceable because it was signed after Wife petitioned for dissolution.

Premarital property that is commingled with marital property loses its separate character. Income produced by separate assets, but produced during the marriage, is presumed marital property. A special master determined the marital and separate nature of the parties’ assets. The court must accept the special master’s factual findings regarding the commingling of separate and marital funds unless they are clearly erroneous. C.R.C.P. 53(e)(2). Thus, income derived from Husband’s military and Social Security disability benefits lost their separate character and became marital property when they were co-mingled with marital assets.