

Survey of Family Law Cases 2004-2013

2007 Family Law Survey

VALUATION OF PROPERTY

In In re the Marriage of Nevarez, Jr., 170 P.3d 808 (Colo. App. 2007), Wife appeals from property, maintenance, and attorney fees determinations in a legal separation based upon valuation of a Partnership interest. Husband held an interest in Colorado Springs Health Partners, LLC and Medical Center, LLP (together, the Partnership). The Partnership Agreement states that if Husband withdraws from the Partnership, his capital contribution of \$10,000 is refunded, and the Partnership could buy out his share, for then \$95,000. The chief financial officer of the Partnership testified for Husband that his interest had been decreasing and would decrease to \$58,093 when two doctors left the Partnership at the end of the year. The trial court concurred with Husband's expert, adopted a value based upon Husband's future retirement and partners leaving, and held that Wife did not have standing to dispute the value of Husband's Partnership interest.

Wife has standing to challenge the value of Husband's Partnership interest even though she is not a partner. To have standing, a party must be injured in fact and the injury must be a legally cognizable interest. Thus, the Partnership interest was marital, therefore the court has jurisdiction to divide it equitably and Wife has a legally cognizable interest in its value.

The trial court has discretion to determine the valuation method. The court must consider the value of tangible and nontangible assets, including accounts receivable, value of work in progress, and goodwill. The price fixed in a Partnership agreement is not binding on the other spouse for equitable distribution purposes because the other spouse did not consent to it, but the court will consider it.

Though Husband argued that he would not retire for 10 years, and his Partnership interest should be valued like a pension at some date in the future, the court must determine the value of his Partnership interest at the time of the decree of legal separation or hearing on property disposition, whichever is earlier. C.R.S. §14-10-113(5). The court should have valued his interest at the time of hearing at \$95,000.

Despite Husband having greater earning potential, the court did not abuse its discretion by dividing the property equally. But, since the judgment was reversed as to the value of the Partnership interest, and property, maintenance and attorney fees are "inextricably intertwined," the court remanded to reassess property, maintenance, and attorney fees.

In re the Marriage of Markman v. Collawn went up on appeal and certiorari was denied, en banc. 04CA1626 & 04CA1913, 2007 WL 229640 (Colo. 2007). But Chief Justice Mullarkey would have granted certiorari as to the following issues: (1) Whether the trial court abused its discretion by crediting husband the original value of investments he made in violation of a temporary injunction without a finding of dissipation or economic fault, and (2) Whether the trial court made sufficient findings about the value of an investment and divided the asset appropriately.