

## Survey of Family Law Cases 2004-2013

### 2009 Family Law Survey

## Valuation of Property

In re the Marriage of Thornhill, 200 P.3d 1083 (Colo. App. 2008), cert. granted, 2009 Colo. LEXIS 184 (Feb. 17, 2009), addressed, among other things, the application of a marketability discount to the valuation of the husband's closely held business as well as an award of temporary maintenance for the wife.

With regard to temporary maintenance, magistrates' awards of temporary maintenance are appealable under C.R.M. 7(a). The threshold determination of whether maintenance is applicable is that the spouse seeking maintenance must (1) lack sufficient property, including marital property, to provide for his or her own needs; and (2) be unable to support himself or herself through appropriate employment. C.R.S. § 14-10-114(3). If the spouse meets this test, then the spouse is entitled to maintenance, and maintenance of the parties' lifestyle becomes relevant.

With regard to the husband's majority shareholder interest in a closely held business, the court appropriately applied a marketability discount to the value of the husband's interest. Marketability discounts are applied in valuing closely held businesses in dissolution of marriage cases because such stock is less marketable than publicly traded stock, and courts in dissolution cases act as courts of equity; thus, they should have discretion to apply a discount.

On February 17, 2009, the supreme court denied the petition for writ of certiorari, but granted the cross-petition for writ of certiorari on the following issues:

- 1) Whether the appellate court erred by refusing to extend the holding of Pueblo Bancorporation v. Lindoe, Inc., 63 P.3d 353 (Colo. 2003), to divorce proceedings, thereby allowing the application of a marketability discount in valuing a closely held corporation operated as a going concern at the time of the parties' divorce proceeding; and
- 2) Whether the court of appeals erred by reversing the district court's ruling, which upheld the magistrate's temporary maintenance award to the wife, when it failed to consider the particular facts and circumstances of the parties' marriage within § 14-10-113(3)'s threshold requirements of "reasonable needs" and "appropriate employment."