

## Survey of Family Law Cases 2004-2013

### 2010 Family Law Survey

## Valuation Of Property

On February 17, 2009, the Supreme Court denied the petition for writ of certiorari, but granted the cross-petition for writ of certiorari to decide the following issues in In re the Marriage of Thornhill, 232 P.3d 782 (Colo. June 1, 2010): (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 wife, when it failed to consider the particular facts and circumstances of the parties' marriage within section 14-10-113(3)'s threshold requirements of "reasonable needs" and "appropriate employment."

The trial court held that the separation agreement, which subjected Husband's business interest to a thirty-three percent marketability discount was enforceable, and ordered temporary maintenance for Wife based upon the increased standard of living of the parties late in their marriage. The Court of Appeals found the separation agreement to be unconscionable, but rejected Wife's argument that the holding of Pueblo should be extended to dissolution of marriage cases, thus prohibiting marketability discounts when valuing interests in closely held businesses for property division. The Court of Appeals reversed the award of temporary maintenance, finding that the magistrate erred by considering the parties' standard of living when determining whether Wife was entitled to temporary maintenance under C.R.S. §14-10-114(3), rather than examining the standard of living after the threshold for entitlement to temporary maintenance was met.

Under the holding of Pueblo, marketability discounts were prohibited in the context of a corporation buying out a dissenting minority shareholder. The Supreme Court found that extending this holding to dissolution cases is inappropriate because the limiting statutory language examined in Pueblo, "fair value," is not included in the property division statute applicable in dissolution cases. In fact, C.R.S. §14-10-113(1) provides the trial court with broad discretion to divide property as the court "deems just" after "considering all relevant factors." Thus, the Supreme Court held that there is no per se rule against applying marketability discounts to interests in closely held businesses in dissolution of marriage cases. Trial courts have discretion, on a case-by-case basis, to determine whether to apply a marketability discount.

Where the parties' combined annual gross income is greater than \$75,000, a party seeking maintenance must meet a two-pronged test. First, the court must find a spouse lacks sufficient property to provide for his/her reasonable needs and is unable to support oneself through appropriate employment. C.R.S. §14-10-114(3). The Supreme Court found that In re the Marriage of Olar, 747 P.2d 676 (Colo. 1987), established that "reasonable needs" and "appropriate employment" are to be assessed within the broader context of the specific facts and circumstances of the parties and their marriage. In effect, examining the standard of living during the marriage "is in fact an appropriate – and even a necessary – starting point" to determining reasonable needs and appropriate employment. Thus, the Supreme Court held that the threshold determination of whether a party is entitled to temporary maintenance under C.R.S. §14-10-114(3) contemplates that the court will consider the circumstances of the marriage, including the parties' standard of living.

