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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DOROTHY DOIG,

Petitioner and Appellant,

v.

ROBERT DOIG,

Respondent.

B255899

(Los Angeles County
Super. Ct. No. PD053905)

APPEAL from an order of the Superior Court of Los Angeles County. Lloyd Loomis, Judge. Affirmed.

Larry E. Wasserman for Petitioner and Appellant.

No appearance by Respondent.

Appellant Dorothy Doig (wife) appeals from an interlocutory order entered in favor of respondent Robert Doig (husband) in the proceedings for dissolution of their marriage. At issue is the date of valuation of husband's accounting and financial services practice. Wife sought an order fixing the date of valuation as the date of separation; husband argued that the date of trial was the appropriate valuation date. The trial court agreed with husband. Finding no abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Husband and wife were married in 1975. They separated on January 6, 2012. Husband is a CPA who, for many years, operated his own accounting and financial services practice.¹ From 2010 through 2012, the practice generated net annual profits ranging between \$115,000 and \$140,000.

In October 2012, husband indicated in an income and expense declaration that he would be closing his practice and retiring at the end of 2012. He did not, in fact, retire at that time. However, the two employees who had worked for him both left in 2012. In 2013, husband was the only person working in his practice. His net profits that year were just under \$115,000.

Thereafter, husband began the process of winding up his practice. On January 7, 2014, husband sent letters to his clients reminding them that he was retiring from active practice and informing them to make alternative arrangements for preparation of their 2013 tax returns.² At this time, husband was 66 years old. He suffered from hypertension, diabetes, and advanced arthritis. His physician had instructed him to reduce his workload, take more time for himself, and get more rest.

¹ Husband's 2010 tax return indicates two practices: a management and consulting services practice called Robert E. Doig Financial Services; and an accounting practice called Robert E. Doig, CPA. By 2011, it appears that the practices were consolidated into a single practice providing accounting and financial services.

² Copies of 31 such letters are in the record on appeal. Wife does not suggest that any clients of husband's practice were *not* sent these letters.

On February 3, 2014, wife filed a motion for the trial court to value husband's accounting practice as of the date of separation (in 2012) rather than the date of trial (which had yet to occur). Under Family Code section 2552, the court generally must value an asset as of the date of trial, but, may, for good cause shown, value any community asset as of a date after separation and before trial in order "to accomplish an equal division of the community estate of the parties in an equitable manner." Wife argued that good cause for valuation as of the date of separation was established by the fact that the husband's business was a professional practice in which husband was the sole professional. Wife did not question the legitimacy of husband's plans to retire, but suggested those plans were irrelevant to the selection of the valuation date.³

Husband opposed the motion, arguing that his planned retirement defeated any possible showing by wife of good cause to value the business as of the date of separation. Husband conceded that the court had discretion to select an alternative valuation date other than that of trial, but argued that such discretion should not be exercised in this case.

In reply, wife again argued that husband's retirement was irrelevant to the valuation date. Wife argued that, in order to obtain the valuation date of separation, she need not establish that husband had acted in bad faith to devalue the business. She further argued that if husband would suffer any hardship from the use of the date of separation as the valuation date, such hardship would be the result of husband's poor planning. Wife argued that husband should have planned for the possibility that the business would be valued as of the date of separation.

³ Wife argued that, if the trial date were used for valuation, husband could decrease the value of the business by retiring "and for reasons which could either be innocent or nefarious reopen the business after trial using his name and goodwill." She did not suggest, however, that any evidence existed supporting the speculative assertion that husband would reopen his practice after trial.

The trial court denied wife's motion, on the basis that husband was not attempting to devalue his accounting practice. Instead, the court found husband's retirement to be "understandable[,] reasonable and to be expected."⁴

Wife sought certification for immediate appellate review of the trial court's order. Certification was granted. Thereafter, wife moved this court for interlocutory appellate review. We granted the motion.

ISSUE ON APPEAL

The sole issue raised by this appeal is whether the trial court was *required* to value husband's accounting practice as of the date of separation or, to the contrary, husband's evidence of retirement supports the trial court's selection of the trial date as an appropriate valuation marker.

DISCUSSION

Under Family Code section 2552, subdivision (a), the court shall value community assets as of the time of trial. However, under subdivision (b) of that section, "the court for good cause shown may value all or any portion of the assets and liabilities at a date after separation and before trial to accomplish an equal division of the community estate of the parties in an equitable manner." This statute gives the court "considerable discretion to divide community property in order to assure an equitable settlement is reached." (*In re Marriage of Duncan* (2001) 90 Cal.App.4th 617, 625.) As long as the trial court exercised its discretion along legal lines, we will affirm the court's decision if there is substantial evidence to support it. (*Ibid.*)

⁴ The court denied the motion after the parties had argued and the matter was taken under submission. On appeal, wife has chosen to proceed on a record which does not contain any transcript or settled statement of the argument on the motion. This decision was made after this court ordered wife to fully augment the record to allow complete consideration of the issues. To the extent the record is inadequate, we make all reasonable inferences in favor of the judgment. (*Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712.)

Case authority has established that, as a general rule, good cause may be established to value a spouse's business as of the date of separation when it is shown that the business was a small business operated exclusively by that spouse, which was largely dependent for its success on that spouse's skill, reputation, industry and guidance. (*In re Marriage of Stevenson* (1993) 20 Cal.App.4th 250, 253.) This rule, allowing the court to value a small professional business as of the date of separation, was established to remedy the inequities that would result with a trial-date valuation when the work of one spouse alone, after separation, greatly increased the value of the business before trial. (*In re Marriage of Geraci* (2006) 144 Cal.App.4th 1278, 1290-1291.) As the post-separation earnings of a spouse are that spouse's separate property, any increase in value to the asset (the spouse's business) caused post-separation should also be considered separate property. (*In re Marriage of Duncan, supra*, 90 Cal.App.4th at p. 626.) Valuing the community asset of the business as of the date of trial, in such a case, would therefore be inequitable.⁵

Wife argues that she has established good cause for the use of the date of separation as a valuation date merely because she has established that husband's accounting practice was a small professional business largely dependent on husband's skill, reputation, industry and guidance. There is no dispute that husband's accounting business was, in fact, such a business. Therefore, there is no dispute that wife's showing, standing alone, *could* establish good cause for a valuation date of separation. However, that such a showing might establish good cause for the earlier valuation date does not mean that the trial court was required to accept the earlier date in this case.

The trial court's selection of an alternative valuation date is not a matter of the blind application of set rules. Instead, the trial court must make a decision to use a

⁵ Moreover, valuing the business as of the date of separation also relieves the concern that the spouse operating the business might deliberately act to devalue the business prior to the date of trial. (*In re Marriage of Stevenson, supra*, 20 Cal.App.4th at pp. 254-255.) However, a spouse need not *establish* that the operating spouse has deliberately devalued the business between separation and trial in order to obtain the earlier valuation date. (*Id.* at p. 253.)

valuation date other than the trial date in order “to accomplish an equal division of the community estate of the parties in an equitable manner.” (Fam. Code, § 2552, subd. (b).) In this case, the court concluded that husband’s reasonable, understandable decision to retire rendered it equitable to value his accounting practice as of the time of trial, when the practice would no longer be a going concern, rather than at the time of separation. We find no abuse of discretion. The court’s determination that husband’s decision to retire was reasonable, understandable and to be expected was supported by substantial evidence – including husband’s declaration, his medical conditions, and his letters to his clients terminating his services. As such, the court concluded that it was equitable to value the business at the time of trial, when the business had reached the end of its anticipated life cycle, rather than at separation, when it was still ongoing. Wife’s evidence established that the vast majority of the value of the business was due to husband’s efforts; when those efforts reasonably came to an end, it would be inequitable to value the business as though husband would continue working there indefinitely.

DISPOSITION

The order is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.