

EXAMINERS' ANALYSIS OF QUESTION NO. 12

Legal principles of property distribution in divorce cases shed light on the parties' positions and ultimately call for both acceptance and rejection of those positions, but only one in part.

When called on to divide property in a divorce case, the court's first task is to determine what property is marital property and what is separate property. *Reeves v Reeves*, 226 Mich App 490, 493-494 (1997), citing *Byington v Byington*, 224 Mich App 103, 114, n. 4 (1997). Marital property is property that came "to either party by reason of the marriage..." (MCL 552.19) and is subject to division equitably but not necessarily evenly. *Byington*, at 114-115. Separate property typically is maintained by the owner and not subject to distribution, unless "invasion" of the separate assets is countenanced by statutory exceptions in MCL 552.23 and MCL 552.401, on a showing of need or contribution to the value of the separate asset. The marital estate is to be divided equitably under a list of factors delineated in *Sparks v Sparks*, 440 Mich 141, 159-160 (1992).

The parties' positions have validity only to the extent that they can be squared with the principles enunciated above. As stated, Michigan law requires initially a determination of what is marital and what is separate property, an equitable distribution of marital property, and a determination as to whether separate property should be invaded due to need or contribution. There are four items of property in question: the business and its marital appreciation, the home and its appreciation.

The business had both separate and marital property components. Because the business came to Thomas prior to the marriage, it came to neither spouse by reason of the marriage. *Byington*, at 114-115. *Reeves*, at 495-496. Therefore, the first \$2.5 million of the business's value is separate, not marital property. The \$1.5 million appreciation during the marriage is a different story because the appreciation occurred during the marriage. The appreciation would be characterized as marital. Even if not so characterized, appreciation in a separate asset

may be equitably distributed to the non-owning spouse on a showing of need or contribution.

Applying these principles to the parties' positions yields the conclusion the positions are untenable. Connie's position that she is entitled to half of the pre-marital portion of the business cannot be sustained. She has not established that she is in need of an award of Thomas's pre-marital property, MCL 552.23 (need), or that she contributed to the business, MCL 552.401 (contribution). Her proffered reason ("because he cheated on me and that is all that matters") fits into neither category.

Thomas's claim that he gets "every dollar" of the business, i.e. that Connie gets none of the increased value because "he built that business," misses the mark as well. Pursuant to *Reeves*, the appreciation of a separate asset during the course of the marriage makes that appreciation marital, *Reeves*, at 495, unless that appreciation is passive, e.g. shares in a publicly traded stock. Even if the appreciation could be classified as separate property, Connie creating a home, raising and taking care of the children, and otherwise being supportive so as to allow Thomas to increase the business's value, establishes her contribution to the increased value. MCL 552.401, *Reeves*, at 495, citing *Hanaway v Hanaway*, 208 Mich App 278, 294 (1995).

The claims regarding the marital home are easier to decide. Every bit of the parties' residence -- shared and lived in together -- is a marital asset. It was purchased during the marriage, therefore coming to the parties by reason of the marriage and within its duration. See *Reeves*, at 495-496; *Bone v Bone*, 148 Mich App 834 (1986). Thomas's claim that "he paid for it" and should retain its value entirely lacks merit because the earnings or wages of the parties during the marriage are marital assets not separate property. See *Skelly v Skelly*, 286 Mich App 578 (2009); *Darwish v Darwish*, 100 Mich App 758 (1980). Thomas's argument cannot be squared with Michigan law.

Finally, as to the affairs, *Sparks* makes fault in the breakdown a factor applicable to property distribution. It is, however, only one of the factors. Connie seems to argue that she should get the entire value of the house due to fault. However, under Michigan law, fault is not to be inequitably weighted. Fault is an element in search of an equitable

distribution, not punishment for an inequitable distribution. See *Sparks, supra*; *McDougal v McDougal*, 451 Mich 80 (1996); *Vance v Vance*, 159 Mich App 381 (1987); and *Berger v Berger*, 277 Mich App 700 (2008), all speaking uniformly on limiting fault to its proper measure in property distribution. Connie overstates, improperly, the role of fault in this matter.