Trial Brief

August 21, 2012

Re: The value of a community asset should generally be determined as of the date of divorce or as close to that date as possible, but the court has discretion to consider values that are months old.

The value of a community asset should generally be determined as of the date of divorce or as close to that date as possible. *Van Heerden v. Van Heerden*, 321 S.W.3d 869, 880 (Tex. App.—Houston [14th Dist. 2010, no pet.)[1]; *Quijano v. Quijano*, 347 S.W.3d 345, 350 (Tex. App.—Houston [14th Dist.] 2011, no pet.). However, values from a few months prior to the divorce trial have been held acceptable, especially if no other competing evidence of a more recent value was introduced by the other side.

In *Quijano*, supra, the wife's evidence of how much was in a particular bank account that was dated six months before the trial was held to not have prevented the trial court from making a fair and just division of community property. *Quijano* involved a default judgment with no competing evidence of value. On the other hand, the trial court erred when it based its property division on bank account balances from a date three months before a contested trial in *Mata v. Mata*, 710 S.W.2d 756, 759 (Tex. App.—Corpus Christi 1986, no writ).

Several cases say that whether an appraisal is near enough in time to the date of the divorce to be considered in determining the value of the land in question for purpose of the property division is generally left to the discretion of the trial court. See e.g., *Finch v. Finch*, 825 S.W.2d 218 (Tex. App.—Houston [1st Dist.] 1992, no writ). For example, reliance on an appraisal of a house done three months before a contested trial was held not to be an abuse of discretion in *Handley v. Handley*, 122 S.W.3d 904, 908 (Tex. App.—Corpus Christi 2003, no pet.). Use of an appraisal dated a year before trial was not error in *Finch v. Finch*, 825 S.W.2d 218, 223 (Tex. App.—Houston [1st Dist.] 1992, no writ). The court of appeals in *Phillips v. Phillips*, 75 S.W.3d 564, 574 (Tex. App.—Beaumont 2002, no pet.) did not find an abuse of discretion where the trial court accepted the wife's value of a house based on an appraisal done eight months before trial.

However, testimony of the value of a certificate of deposit as of a date four years before trial in a default case was held insufficient in *Suarez v. Suarez*, No. 13-04-00108-CV (Tex. App.- Corpus Christi 2006)(mem. op.). Likewise, evidence of a community debt dated three and four years before a contested bench trial was held to be no evidence of the amount of debt owed at the time of trial. *Hernandez v. Hernandez*, No. 13-08-00722-CV (Tex. App.- Corpus Christi 2010)(mem. op.).

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[1] *Van Heerden v. Van Heerden*, 321 S.W.3d 869 (Tex. App.—Houston [14th Dist. 2010, no pet.) is an interesting case for family attorneys and judges for two other holdings: (1) the trial court should not have excluded the Wife's fact witnesses only because the Wife in her Request for Disclosure responses explained their connection to the case as "Petitioner's father" and "Petitioner's sister," – those short labels were deemed adequate by the 14th Court of Appeals under Rule 194.2(e), 321 S.W.3d at 876, and (2) a trial court does not abuse its discretion if it determines an asset is worth an amount in between the ranges of values suggested by the parties in their evidence, 321 S.W.3d at 888 – in other words, the trial court cannot err by selecting a value somewhere in the range of values given by the parties. This holding was repeated recently in *Walsh v. Walsh*, 14-10-00639-CV (Tex. App.—Houston [14th Dist. 7/24/2012)(mem. op.).