

FAMILY LAW ACCOUNTING NEWS

October 11, 2016

Lacoste: Not Just A Shirt Anymore

Many people used to wear Lacoste clothing like a badge of honor. Now, for those attorneys practicing in family law, Lacoste can be a badge of shame if you are not careful.....and I don't mean this as a fashion statement.

Everyone who practices law knows that so much of their profession is driven by case law. Not only does an attorney need to know about local case law, but also be aware of case law in other states that can have an impact in your state. Such is the case (pun intended) of Marriage of Lacoste (2016 Miss. App. Lexis 460 (July 19, 2016)). Mississippi, the hotbed of valuations in family law cases, had a case that can potentially impact all family law valuations and even other financial issues in family law cases. To summarize, a couple was getting divorced with the major asset in the marital estate being the community business, which had very few tangible assets, and was a service driven fitness training company. The income fluctuated year to year, which could have significant implications on the value. In this specific case, the parties did what many parties in a divorce do when it comes to valuing the business...nothing.

In This Issue:

"...expert testimony may be essential to establish valuation sufficient to equitably divide property..."

For whatever reason, they each chose not to present a valuation and instead relied on the testimony of the business CPA who was not experienced in business valuations. In other words, accounting information/data was provided, but no indication as to the value of the business was offered as evidence.



David Cantor, CPA/ABV has been working almost exclusively in Family Law Accounting since 1990 in both Arizona and California.

He has worked on over 1,000 Family Law cases and has experience in all aspects of Family Law Accounting including Business Valuations, Separate Property Tracings, Calculation of Income for Purposes of Determining Maintenance and Support as well as many other financial issues.

Mr. Cantor has testified in Court over 100 times as an expert witness.



The Court then took it upon herself to actually calculate a value for the business. In its decision, the Court of Appeals concluded “While the Chancellor is correct that the parties are responsible for presenting evidence of valuation, and the Chancellor did the best she could with the information available, we find that the business valuation here was such an important aspect of the Chancellor’s ruling that further testimony was essential to establish a proper valuation to divide the marital property fairly and correctly.” Then they reversed and remanded the case “...for an adequate valuation either through additional testimony of the parties or an expert, who may be appointed by the Chancellor if necessary.”

In the bigger scheme of things this case is not about a business valuation but instead reflects the importance of the attorney to identify the need for an expert and then utilizing the expert for that need, regardless of the issue.

What this case does (besides provide free advertising for those of us in the profession of being expert witnesses) is provide the simple rationale for the reason why expert testimony is so important when there are any issues that are in contention.

The Supreme Court pounded this point home when it stated “Property division should be based upon a determination of fair market value (*authors note...I am not advocating the method of value in Arizona as this case utilized laws in Mississippi*), of the assets, and these valuations should be the

When To Consider Retaining A Financial Expert

- ◆ ANY complex financial issue
- ◆ Your client has burden of proof
- ◆ Business valuation
- ◆ Separate property an issue
- ◆ How long might support/ maintenance last (\$400/month might not seem like a lot, but over 8 years that is \$38,400....)
- ◆ Opposing side has retained an expert
- ◆ Needs in excess of guidelines
- ◆ Community monies have “disappeared”



FREE CLE CLASSES IN YOUR OFFICE

Cantor Forensic Accounting offers free 2 hour CLE* classes at your office. Working with you, I can customize a class on any Family Law accounting issue to meet your office needs and fulfill a minimum of two hours of CLE.

Topics can include:

- ◇ Business valuation issues related to marital dissolutions
- ◇ Calculation of income
- ◇ Separate property tracing
- ◇ Document requests
- ◇ Marital Standard of Living
- ◇ Income tax issues related to marital dissolutions
- ◇ Reimbursement claims
- ◇ Stock option allocations

Please call David to receive more information on these classes.

*The State Bar of Arizona does not approve or accredit CLE activities for the Mandatory Continuing Education requirements of Specialists. This activity may qualify for up to two hours toward your annual CLE requirement for the State of Arizona, including two hours of advanced level training in the area of Family Law. A minimum of 5 attorneys are required to attend.

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initial step before determining division. Therefore, expert testimony may be essential to establish valuation sufficient to equitably divide property, particularly when the assets are as diverse as those at issue in the instant case.”

The Court continued by citing another Mississippi case, Ferguson, 639 So. 2d at 929, “The Supreme Court held that ‘[o]n remand the parties themselves may establish valuation of [the husband]’s practice, if reliable, or they may prove valuation utilizing expert testimony.’ *id.* The Supreme Court further held that the Chancellor “...may appoint an independent expert if absolutely necessary and if the parties are unable to show good cause, as to why such expert should not be appointed”.

Two final, albeit important parts of the decision were:

“Here, the Chancellor recognized the importance of an accurate business valuation, stating, ‘the foundational step to make an equitable distribution of marital assets is to determine the value of those assets based on competent proof.’” and “It is incumbent upon the parties, and not the Chancellor, to prepare evidence touching on matters pertinent to the issues to be tried.”

Conclusion

No matter what the issue is, financial or other, you need to consider bringing in an expert. If the issue on the table is so important that it is worth going to trial over, then your client needs to understand how important it is to retain the services of an expert. In my 20 plus years of experience, if there is a dispute on a financial issue and only one side retains an expert, it is usually that side who ends up with the better result.

*If you have a case and are not sure whether or not it merits the cost of hiring a forensic CPA, then call me. I will be happy to take the time to discuss with you how I can help both your client and you.**

**Until Cantor Forensic Accounting, PLLC is retained I can not discuss specific details of the case.*

Contact Us

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