

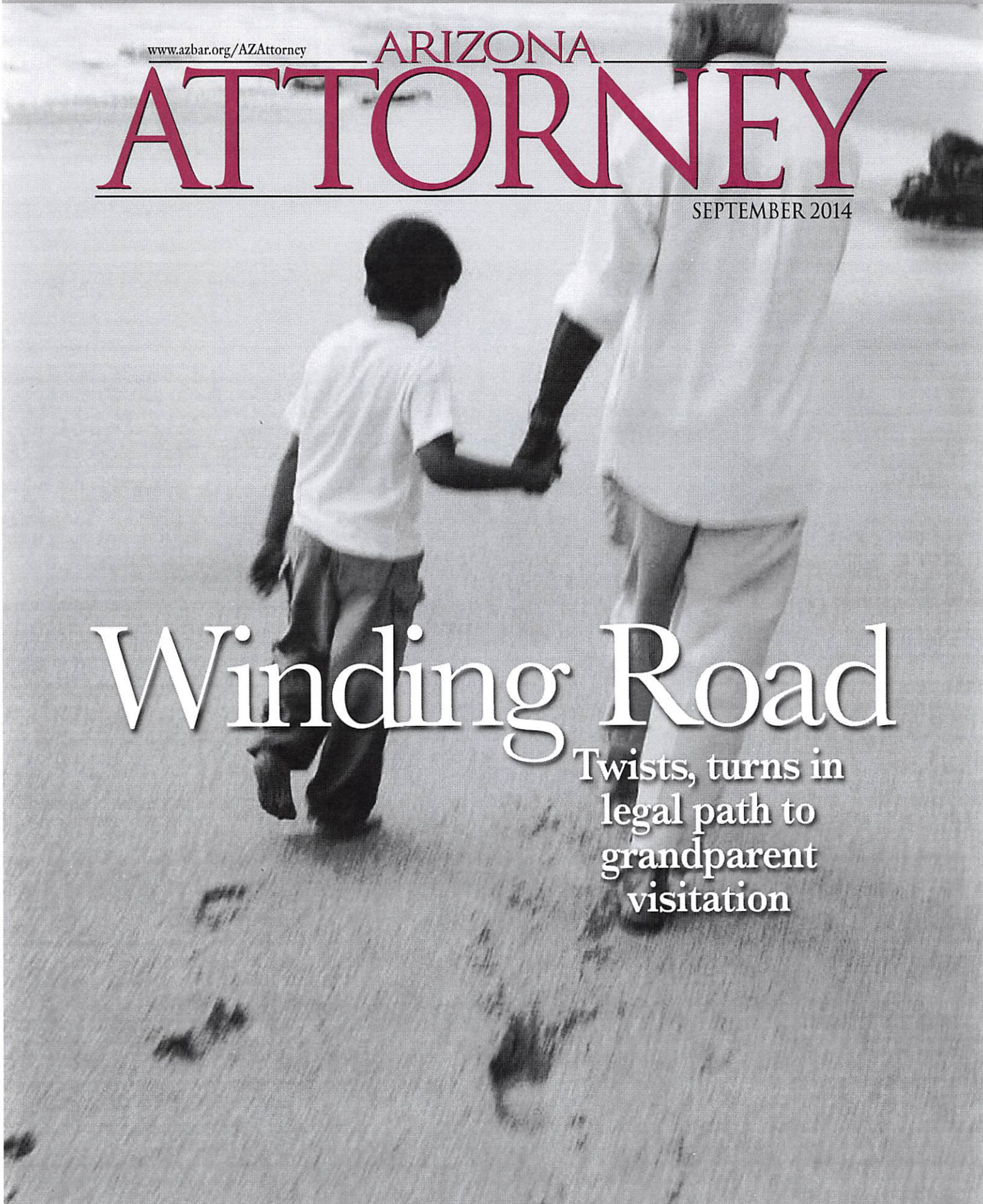
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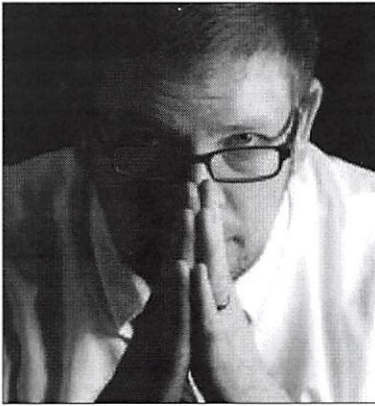
ARIZONA ATTORNEY

SEPTEMBER 2014

Winding Road

Twists, turns in
legal path to
grandparent
visitation





Determining Goodwill in a Divorce-Related Business Valuation: Professional/Personal vs. Enterprise

There is a gathering storm around the country on whether or not all types of goodwill should be included as a marital asset, and therefore divided in a divorce.

We all know that preparing a business valuation for a divorce can be tricky enough. In Arizona, there is yet to be a clearly defined Standard of Value to use.

In addition, we have to deal with the different valuation methodologies, earning periods, discount rates and so on to determine a value of the business, which usually involves some amount attributable to goodwill.

What About Personal Goodwill?

But now, the key issue is whether or not the goodwill attributable to a business is personal/professional goodwill or enterprise goodwill.

As you are aware, there are many components that go into quantifying goodwill: repeat business, quality of service/products, customer loyalty, name recognition, expectation of continued future patronage ... and on and on.

Professional Goodwill is a Divisible Asset

In Arizona, the 1987 *Mitchell* case clearly states that professional goodwill (in this case derived from husband's interest in an accounting firm), is in fact a divisible asset. *Mitchell*

addresses the husband's contractual rights as to withdrawing from the firm, the fact that his CPA license itself is non-transferable as well as ARS 525-211. But this case is also 27 years old.

Court Decisions Changing Definitions

Courts in California (*In Re Marriage of McTiernan*) and Indiana (*In Re Marriage of Yoon*) have started to delineate the different types of goodwill. In the *McTiernan* case, the Court found that McTiernan (a well-known movie director and producer) did in fact possess goodwill, but that because his reputation could not be transferred, it did not meet the definition of property and could not be divisible in a divorce.

The Court went on to clarify its position by saying that McTiernan's skills were unlike a law or medical practice. "That standing is his alone, and he cannot bestow it on someone else." So it seems that the Court is saying that McTiernan's unique abilities are what make his goodwill non-transferable. So what about a surgeon who is the only surgeon in the world who is able to perform a complex surgery? Would that make his goodwill

non-transferable?

In the *Yoon* case, the Court determined that enterprise goodwill is a marital asset, but personal goodwill is not ... but that personal goodwill might be considered as a divisible asset in the global property division.

The "Double Dip" Argument

One of the underlying arguments for the movement against professional/personal goodwill being a divisible asset is the "double dip" argument.

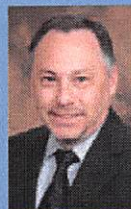
Many professionals and some Courts feel that if the goodwill is personal in nature, and there is also some type of spousal support award, then by giving the out-spouse one-half of the goodwill as well as spousal support would result in the in-spouse having to pay for the same dollars two times.

Defining Components of Goodwill

So while Arizona still relies on the *Mitchell* case regarding goodwill attribution and divisibility, many states that once held similar positions to Arizona are now changing their positions and taking a closer look at the actual components that define goodwill.



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