



Divorce Court Accepts Double-Dipping Argument From Valuation Analyst

In re Marriage of Porter, 2007 Wash. App. LEXIS 1161 (May 21, 2007)

The Porter husband owned a successful radiology practice and imaging services. His trial expert, a certified business appraiser, valued the businesses at \$1.5 million, including an assessment of goodwill at \$500,000. The expert used an excess earnings method to arrive at the goodwill value, which the trial court adopted in its determinations regarding property distributions and maintenance.

In particular, the expert testified that because goodwill was based on the income stream from the doctor's businesses, and because it was included in the property distribution, it should not be counted again in any maintenance determinations. Doing so would be "double-dipping," he explained. To use his analogy, this would be tantamount to the court requiring the physician to "buy" his practice (from the non-owning spouse) based on the income stream it generates, and then using that same income stream as the basis for determining maintenance to the non-owning spouse.

The husband's attorney cited the expert's analysis in his closing argument, urging the trial court to base maintenance on the "reasonable compensation" of \$368,000 per year (gross). Although projections forecasted the husband as earning \$430,000 in wages and \$510,000 in income from his businesses during the year of the divorce, there was also testimony that he was going to cut back his workload due to health concerns. After considering all the evidence, the trial court awarded the wife two years of maintenance at \$8,000 per month and four years at \$6,000 per month.

Wife wanted \$15,000 per month

In her appeal, the wife contested the award. She claimed \$15,000 in monthly expenses—and that the \$8,000 maintenance amounted to only 15% of the doctor's projected monthly income of \$54,000. But on review of the trial record, the appeals court confirmed that the husband's estimated net income would likely decline because of his health. Further, the projections included business income that the trial court already accounted for in its property distribution. "To consider that income stream twice would, according to [the doctor's] expert, amount to double dipping." The trial court was entitled

to rely on that testimony and to base maintenance on the doctor's reasonable replacement compensation of \$20,800 per month.

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