



Divorce Court Rules Wife Lacks Standing to Contest Buy-Sell Value

Nevarez v. Nevarez, 2007 Colo. App. LEXIS 1756 September 6, 2007)

The husband in this case was a partner in a medical center who didn't plan to retire for another ten years. To value his interest during divorce proceedings, he presented testimony from the CFO, who said that on withdrawal in ten years the husband would receive a return of capital (\$10,000), plus the amount determined by the buy-sell agreement, which would then be worth \$95,000. The wife offered a real estate appraiser, who testified that the partnership had undervalued the rent and sales price from at least two of its properties.

Wife lacks standing to contest buy-sell?

Given the dearth of expert evidence offered by the wife, the trial court found that the CFO's testimony was the "starting point and...ending point" for its valuation of the husband's partnership interest. It accepted the \$95,000 value and adjusted it to a present value of \$58,093. Notably, the trial court also found that the only parties who had standing to challenge the partnership's valuation were the partners. The trial court had to be "cautious," it said, before it "completely upset the apple cart" by valuing the partnership in a way that could affect the remaining partners.

The Colorado appeals court swiftly upset this aspect of the opinion. Clearly, the wife (or any non-partner spouse) has standing to assert and/or contest the valuation of marital property, it ruled, especially when claiming that the values asserted by the partner spouse injure her legal interest in the property. Despite her standing, however, the wife failed to offer an alternate expert valuation of the partnership. While Colorado follows the majority rule—that a buy-sell agreement is not binding in divorce—in this case, the wife left the trial court but a "single choice": to value the partnership according to the buy-sell provisions, or to value it according to a real estate appraiser who reviewed only a portion of the partnership assets.

Like the trial court, the appeals court was bound to accept the only evidence of valuation on the record. It rejected the projection of the value ten years into the future, however, which effectively treated the partnership interest like a pension. The husband's interest was vested and mature and not subject to any future contingencies. Because he could withdraw at any time, the correct valuation date for purposes of the divorce was the trial

date, and the correct valuation of the partnership interest was the \$10,000 return of capital, plus \$95,000 per the buy-sell agreement.

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