



## **Husband's earlier sale valuation damages his later divorce valuation**

**Gardner v. Gardner, 2005 Va. App. LEXIS 10 (January, 2005) Judge Frank.**

At issue in this marital dissolution appeal was the value of husband's medical practice.

### **Valuation evidence**

Husband presented the testimony of **Robert Pulliam, CPA, ABV** who concluded after using the net asset value method, that the value of the practice was \$27,000. The court summarized Pulliam's testimony: Pulliam rejected an excess earnings analysis, which is 'based on how much income is generated over and above a fair return on assets.' The 'excess' return is used in determining the goodwill portion of a practice's value. Pulliam concluded there were 'no excess earnings to capitalize and therefore implies that there was no goodwill within the practice.' Pulliam concluded that under this method of valuation the practice had no value. Pulliam considered the direct market data method and arrived at a \$13,000 value. Pulliam then concluded that the value of the practice should be 25% any debts. Prior to the trial, the husband had employed **Thomas H. Hicok, CPA** to value the practice in anticipation of a possible sale. Hicok did not testify during the trial but his report was admitted into evidence. Hicok valued the practice using the capitalization of excess earnings method and the IRS formula method. This resulted in a fair market value of \$195,016. Hicok determined there were excess earnings and valued them at \$159,152 under the capitalization of excess earnings method and \$230,879 under the IRS formula method. Pulliam attempted to discredit Hicok's report, stating that it was full of accounting errors and that it was simply a negotiating tool.

### **Holding and rationale**

The trial court valued the practice at \$125,000. Because the trial court did not explain the basis of its conclusion, the appeals court had to examine the evidence to determine if it supported the trial court's ruling. The appeals court set the standard of value as "intrinsic" value. The appeals court concluded that the trial court's selection of a value between the experts' figures was acceptable.

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