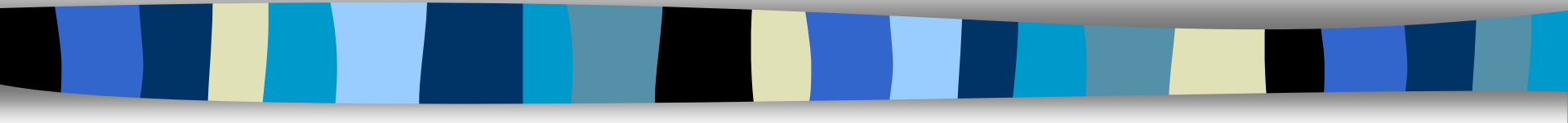


The Magnolias





Magnolia Knitting Classification

- Marital property
 - Total DOS value acquired during the marriage
 - Owned on the DOS
 - Not separate property



Magnolia Knitting Value

- Court must “reasonably approximate the net value” of business on DOS
- Value must be based upon “sound methodology”
- “Expert”: a witness qualified by knowledge, skill, experience, training, or education to assist the trier of fact



Magnolia Knitting Classification

- Divisible property: GS 50-20(b)(4)(a)
 - Postseparation depreciation of marital property that is not the result of the actions of a spouse
- Decrease is a distribution factor if caused by postseparation actions of one spouse. *Hay*, 148 NC App 649 (2002)



Stock

- General rule: property acquired after separation is not marital property
- But: property acquired as result of “exchange or conversion” of marital property is marital
 - *Mauser*, 75 NC App 115 (1985)
- Burden is on party seeking marital classification to trace and show value



Residence Classification

- Mixed asset: both marital and separate
- Each estate is entitled to an interest in the property in the ratio its contribution bears to the total investment in the property
 - *Wade*, 72 NC App 372
- Need to account for contributions from each estate
 - *Mclver*, 92 NC App 116



Mishler 90 NCAPP 72 “formula”

- Marital Property = (Total Marital Contribution Over Total Contribution) x DOS Net Value
- Separate Property = (Total Separate Contribution Over Total Contribution) x DOS Net Value



Residence Classification

- Mixed Asset:
 - Separate Contribution: \$20,000
 - Marital Contribution: \$60,000
- Apply Mishler formula to \$185,000 DOS Net Value:
 - Marital Property: \$138,750 (75%)
 - Separate Property: \$46,250 (25%)



Residence Classification

- Divisible property. GS 50-20(b)(4):
 - (a): Postseparation appreciation not caused by actions of a spouse
 - Payments generally are ‘actions’
- But general rule: do not consider payments made pursuant to alimony or child support order in ED case. GS 50-20(f)
 - *Morris*, 90 NC App 94



Residence

- Postseparation appreciation is divisible property
 - \$12,000 total (ignore payments)
- But, only to extent it is attributable to marital property
- Possible method: Apply *Mishler* “formula” to postseparation appreciation



Mustang

- Gift between spouses during marriage is marital property unless contrary intent stated in conveyance.
 - *Friend-Novorska*, 131 NC App 508 (1998)
- Fair Market Value?
 - Blue book: \$22,000 marital asset
 - Purchase price: \$28,000 marital asset



Mustang

- Divisible property. GS 50-20(b)(4)(a):
 - Postseparation decreases not caused by postseparation actions of a spouse
- \$3,500 decrease caused by Wilma's actions?



Car Loan

- Marital debt defined as debt:
 - Incurred during the marriage
 - Existing on the DOS
 - Incurred for the joint benefit of the parties
- Joint benefit: debt encumbers a marital asset? *See Glaspy*, 143 NC App 435 (2001)



Car Loan

- Divisible debt: GS 50-20(b)(4)(d)
 - Interest and finance charges on marital debt
 - Decreases in marital debt (cases filed after 10/11/02)
- Here:
 - \$2,000 decrease in loan balance
 - (\$1,200) interest and finance charges



Joint Account

- Deposit into joint account does not establish gift to the marriage
- But: account is presumed marital because acquired during the marriage
- Henry has burden of tracing separate part of DOS value
 - *Minter*, 111 NC App 321 (1993)



37-acre Tract

- Gift to “a” spouse is separate property
- Gift to both spouses is marital property
- Burden on Wilma to prove donor’s intent to make gift to her alone
 - *See Hunt*, 86 NC App 484 (1987)



IRS Debt

- Marital if incurred for joint benefit of the parties
 - See *Glaspay*, 143 NC App 435 (2001)
- Postseparation decrease in marital debt is divisible property (cases filed after 10/11/02)
 - GS 50-20(b)(4)(d)



Collectibles

- Marital because acquired during the marriage
- Wilma has burden to prove DOS value
 - *See Grasty*, 125 NC App 736 (1997)
- Methodology not needed for personal property



Collectibles

- Postseparation dissipation of marital assets
 - Distribute missing property to spouse that took it. *Sharp*, 84 NC App 128 (1987), or
 - Include property acquired with the missing property in marital estate. *Mauser*, 75 NC App 115 (1985)
- Both methods require a value?



Henry's 401(k)

- Deferred comp is marital property to the extent it is earned during marriage.
- The “coverture fraction” is used to determine marital portion of deferred comp
 - Years earning the pension while married over total years earning pension.
 - GS 50-20.1(d); *Bishop*, 113 NC App 725 (1994)



Henry's 401(k)

- 4/5ths marital (20 out of 25 years)
- Divisible property
 - Postseparation appreciation of marital portion not caused by one spouse
 - Here - \$160?



Henry's 401(k)

- Pre-separation dissipation (no marital asset to distribute)
- A distribution factor if marital funds spent for non-marital purpose “contemporaneous with marital breakdown or in anticipation of separation.”
 - *See Fountain*, 148 NC App 329 (2002)



Wilma's 401(k)

- All marital on DOS
- Divisible property: \$1,000
 - Postseparation decrease in marital property not caused by the actions of one spouse



Credit Cards

- DOS balance marital if incurred for joint benefit
 - See *Riggs*, 124 NC App 647 (1996)
- Postseparation increase in balance?
 - Divisible to extent represents interest and finance charges on marital debt
 - Otherwise, a distribution factor
- Postseparation payments?
 - Divisible if decrease marital debt (for cases filed after 10/11/03)