

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

- 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”

$$\text{Marital Property} = \frac{\text{Total Marital Contribution}}{\text{Total Contribution}} \times \text{DOS Net Value}$$

$$\text{Separate Property} = \frac{\text{Total Separate Contribution}}{\text{Total Contribution}} \times \text{DOS Net Value}$$

Residence

- 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

- 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
 - Presumed divisible
 - *Wirth v. Wirth*
- \$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
 - Payments made between 10/11/02 and 10/1/13)
 - Only *passive* changes in debt after 10/1/13
- 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 *Glaspy*, 143 NC App 435 (2001)
- Is postseparation decrease in marital debt divisible property?
 - Payments between 10/11/02 and 10/1/13 result in divisible debt if reduce debt
 - After 10/1/13, only passive changes are divisible
 - 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)

But is it deferred comp?

- *Watkins v. Watkins*, 753 SE2d 670 (2014)
 - 401K or IRA is not “deferred comp” for equitable distribution if spouse has access to funds in the account
 - If not deferred comp, court can classify account by tracing marital and separate contributions

Henry’s 401(k) [if ‘deferred’]

- 4/5ths marital (20 out of 25 years)
 - \$40,000 marital
- Divisible property
 - Postseparation appreciation of marital portion not caused by one spouse
 - Here - \$160?

Henry’s 401k [if not ‘deferred’]

- Classify using Source of Funds
 - \$10,000 separate
 - Rest presumed marital
 - Henry to prove passive appreciation of the \$10,000 investment
- Divisible property
 - Postseparation appreciation of marital portion not caused by one spouse
 - Here ?

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 (payments 10/1/02 through 10/1/13)
 - 'Consider' payments after 10/1/13