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***Tennessee Cases You Need to Know in
Divorce Business Valuation***

Robert Vance, CPA, ABV, CFF, CVA, CFP
Forensic & Valuation Services, PLC
Memphis, TN

Blasingame v. American Materials – 3 Approaches

- Shareholder Oppression case
- “There are a number of acceptable methods available to determine the value of a corporation. Blasingame recognized three of these methods [approaches] and “*requires*” them:
 - Market Value [approach],
 - Asset Value [approach], and
 - Earnings Value or Capitalization of Earnings [approach].
- Minimum of 3 years of earnings to be considered unless clear evidence to use less
- **Delaware Block Method**

Blasingame v. American Materials, Inc., 654 S.W.2d 659, 667
(Tenn.Supt.Ct. 1983)



***Athlon v. Duggan* – Affirming Delaware Block**

- Davidson County Chancery Business Court-Ch. Lyle
- Merger which converted the minority dissenting shareholders shares into cash consideration at \$0.10 per share
- Defendants contend that their shares are worth at least \$6.48 per share
- Found that the Trial Court properly utilized the Delaware Block Method and affirmed \$0.10 per share
- Trial Court considered the competing expert testimony, accredited Athlon's expert, Michael Collins, and discredited Duff & Phelps



Smith (Middle Section 1985) - No GW

- Law practice (professional practice) is marital property if the non-professional spouse made contributions related to the practice during the marriage (i.e. worked as bookkeeper, helped spouse through school)
- Business goodwill of a professional practices isn't a marital asset which should be accounted for in equitable distribution
- Assets and accounts receivable should be taken into account when valuing a professional practice

Smith v. Smith, 709 S.W.2d (Tn. Ct. App. 1985)



Hazard (Western Section 1991) - No GW

- Sole practitioner physician
- Practice was highly specialized and very dependent upon personal referrals from other physicians
- Goodwill in a professional practice is not a marital asset subject to equitable distribution
- Sole practitioner professional practice is to be valued using the “net tangible assets with ascertainable value.” Cites *Smith v. Smith*
- Net Asset Value a.k.a. Net Book Value

Hazard v. Hazard, 833 S.W.2d 911 (Tn. Ct. App. 1991)



Witt (Middle Section 1992) - GW Allowed

- Large outpatient radiological diagnostic clinic
- If the professional practice or closely-held business is large and diverse enough and not solely dependent on the individual, goodwill may be considered as part of the ownership interest
- Dr. Witt's clinic was found to have separate goodwill that was not directly related to his professional or personal goodwill
- Size Does Matter

Witt v. Witt, No. 01-A-019110CH00360, 1992 WL 52746 (Tenn. Ct. App. Mar. 20, 1992)



Harmon (Western Section 2000) - No to Buy-Sell

- Buy-sell agreement of a closely-held corporation, not signed by the non-shareholder spouse, is not binding on that spouse and is only a consideration
- Very large medical practice and goodwill was considered as part of the marital ownership interest;
- Court found that “[s]ince [the] Husband will continue to experience the benefits of being a ... shareholder and an employee,’ factors such as those deleted from the valuation [like goodwill] in the buy-sell agreement are pertinent to the valuation of Husband's interests for purposes of the division of marital property.”

Harmon v. Harmon, 25 TAM 15-22 (Tn. Ct. App. 2000)



Powell (Western Section 2003) – Rev. Rul. 59-60?

- Fair Market Value Standard as in IRS Rev. Rul. 59-60 does ~~not have to be strictly followed when valuing a business in a divorce~~
- Business owners can be held to values declared by them in personal financial statements submitted to banks
- Credentials and experience of business valuation analysts are **CRITICAL.**



Inzer (Middle Section 2009) - Yes to Buy-Sell

- Husband owned a 24% interest in a Sonic restaurant and signed a buy/sell agreement with a low valuation method
- Wife, not an owner, signed an agreement stating she agreed to be bound by the same terms
- Court found that the value of the business should be determined based upon the buy/sell agreement since the wife had signed the agreement
- The case was remanded for determination of the value in accordance with the agreement.

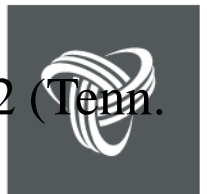
Inzer v. Inzer, No. M2008-00222-COA-R3-CV (Tenn.Ct.App. 2009)



Eberting (Eastern Section 2012) - GW Allowed

- Sole practitioner orthodontia practice value at FMV by Vance at \$700k; ~~included Enterprise (not Personal) Goodwill~~
- Opposing expert valued practice At \$224k (net book value with no Goodwill)
- Trial judge found value to be \$500k, which was a value indicated by the owner in a PFS;
- Chancellor knew that any value north of \$224k was **including** goodwill (he confirmed this to me afterwards)

Eberting v. Eberting, No. E2010-02471-COA-R3CV, 2012 WL 605512 (Tenn. Ct. App. Feb. 27, 2012)

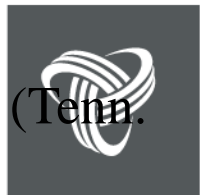




Hartline (Eastern Section 2013) – No GW

- Sole practitioner dentist; did not brand his name separately
- Trial value was \$468k included goodwill; based on the Market Approach-Guideline Transaction Method
- Appellate court remanded for a value with no goodwill
- “..sole practitioner of an unincorporated dental practice, whether his business could continue without him is speculative, leading to the conclusion that the goodwill of Husband’s practice should not be considered in valuing said practice.”

Hartline v. Hartline, No. E2012-02593-COA-R3CV, 2014 WL 103801 (Tenn. Ct. App. Jan. 13, 2014)



Barnes (Middle Section 2014) – GW Allowed

- Sole practitioner dentist; enterprise goodwill allowed
- Practice branded with the name of Shelbyville Family Dentistry with large staff and great location
- H's expert used income approach-\$735k which, remember, provides for goodwill (enterprise & personal)
- Trial court's crafted its own goodwill allocation method
- Trial court used H's expert figure of \$735k less personal goodwill of \$349k leaving enterprise value of \$386k

Barnes v. Barnes, No. M2012-02085-COA-R3-CV, 2014 WL 1413931 (Tenn. Ct. App. Apr. 10, 2014)



- Applied a Discount for Lack of Marketability (“DLOM”) of 15% to arrive at \$328k
- Value upheld by appellate court, but, held that DLOM was error based on *Bertuca*
- Valuation should not have been impacted by the lack of marketability of H’s interest, unless of course there was some indication that a sale of his interest was necessary or desirable



Lunn (Eastern Section 2015)-No GW

- Sole practitioner dentist
- Vance valued at \$639k using income approach and deducted personal goodwill of \$209k using the MUM to arrive at “divorce value” of \$430k; included enterprise GW of \$277k
- Opp. expert at \$52k; H at \$450k on a PFS
- Appellate Decision: “As the trial court properly recognized, this Court has repeatedly held that professional goodwill in a sole proprietorship is an intangible asset that is not divisible as marital property upon divorce because it is personal to the proprietor. [See, e.g., Hartline and Eberting.]”



- “Although the courts of our state have recognized the existence of “enterprise” or “business” goodwill as a distinct concept from professional or personal goodwill, [see, e.g., McKee, York], this Court has been reluctant to allow enterprise goodwill to be divided as a marital asset upon divorce when the business involved is a sole proprietorship, as here.”
- “Based on this precedent, we determine that the adoption of a valuation that expressly included enterprise goodwill was erroneous *because the business involved was a sole proprietorship* [emphasis added].”



Fuller (Eastern Section 2016)-GW by Another Name

- Sole practitioner CFP; business value based on “trail income”
— ruled to be a marital asset separate and apart from any
goodwill
- Industry expert: trail income value was “two times a year’s
trail, plus . . . one times the [direct] commission.”
- The salability aspect was determined by the Court to be the
controlling factor in distinguishing its nature from the
concept of goodwill
- Remanded for double dip due to using trail income in
business value and income available for support



Mabie (Western Section 2017)-GW Allowed

- Physician; 1/12 owner in pulmonary practice in Memphis
- Capitalization of Earnings value of \$586,000 upheld
- H argued for the stock control agreement-citing *Harmon*
- “*his expert was right, Wife’s expert was wrong, and that should constitute reversible error*”
- ‘*..to suggest that someone who can make 700, 800, 900,000 dollars per year progressively, that his ownership interest is only worth 8,000 dollars defies logic.*’ [The court continued:]
And, as we have stated before, a trial judge, as fact finder, is not required to check his or her common sense at the door when considering evidence. Eberting..”



Non BV Cases

- **Long-term Alimony: *Gonsewski v. Gonsewski*, No. M2009-00894-SC-R11-CV (Tenn.Supr.Ct. 2011)**

The Supreme Court ruled that alimony in futuro should not have been awarded since it is intended to provide support on a long-term basis if the court finds that there is relative economic disadvantage and that rehabilitation is not feasible. It noted that the wife has stable earning capacity and the appeals court did not rule as to how she could better improve her earning capacity.

- **No Taxes Deducted: *Fulbright v. Fulbright*, No. E2000-02040-COA-R3-CV (Tenn.Ct.App. 2001)**
- **No Accrued Sales Comm. On House: *Yates v. Yates*, No. M2015-00667-COA-R3-CV (Tenn.Ct.App. 2016)**



Non BV Cases

- Separate Property: *Langschmidt v. Langschmidt*, 81 S.W. 3d 741, 747 (Tenn.Supt.Ct. 2002)
- Pension Interest Valuation: *Cohen v. Cohen*, 937 S.W.2d 823, 830-832 (Tenn.Supr.Ct. 1996)
- Dissipation: *Ward v. Ward*, 2002 WL 31845229 (Tenn.Ct.App. 2002)
- Dissipation TCA:§ 36-4-121. Distribution of marital property
For purposes of this subdivision (c)(5), dissipation of assets means wasteful expenditures which reduce the marital property available for equitable distributions and which are made for a purpose contrary to the marriage either before or after a complaint for divorce or legal separation has been filed.



New TN Law on DLOM

- 110th Tennessee General Assembly passed House Bill 348
— during the 2017 session; effective 7/1/2017 —



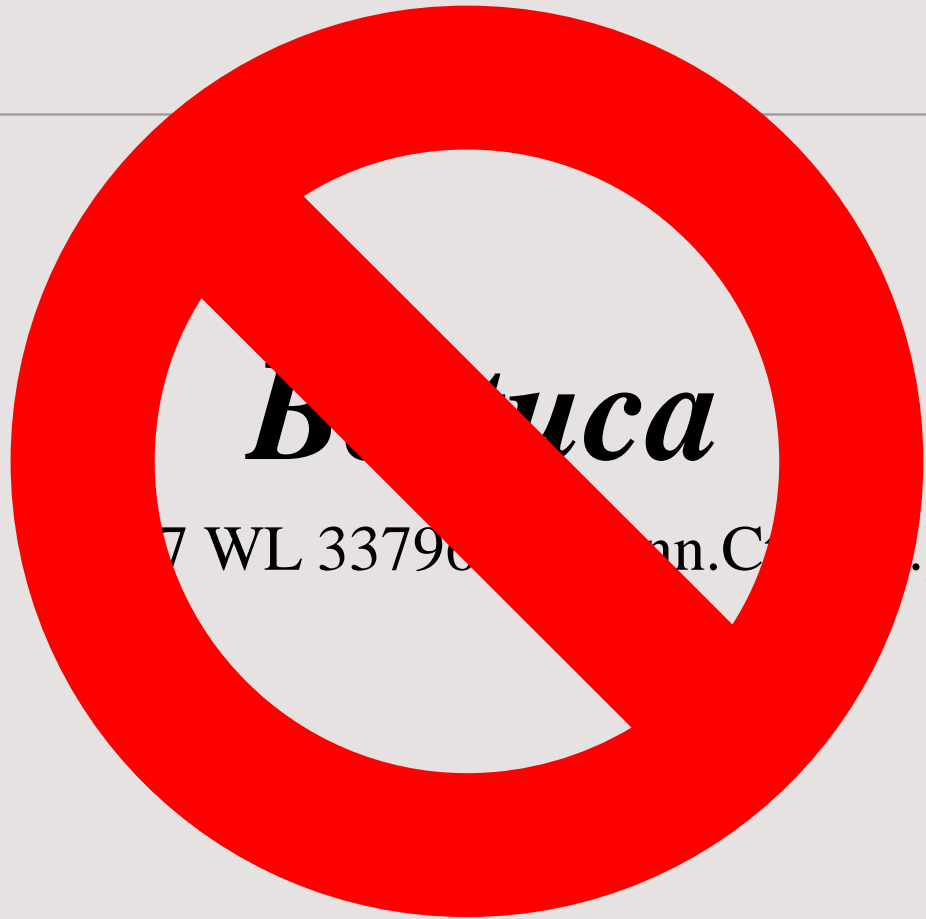
New TN Law on DLDM

Bertuca

[2007 WL 3379668 (Tenn.Ct.App.)]



New TN Law on DLDM



New TN Law on DLOM

- *“In determining the value of an interest in a closely held business or similar asset, all relevant evidence, including valuation methods typically used with regard to such assets without regard to whether the sale of the asset is reasonably foreseeable. Depending on the characteristics of the asset, such considerations could include, but would not be limited to, a lack of marketability discount, a discount for lack of control, and a control premium, if any should be relevant and supported by the evidence;”*



MS Cases

- No Goodwill **at all of any kind** in a divorce case in MS
(kind of crazy)
- *Singley* - MS Supreme Court, Decided: October 17, 2002,
NO. 1999-CT-00754-SCT
- *Yelverton* - MS Supreme Court, 961 So. 2d 19; 2007 Miss.
LEXIS 414

