



A DEEPER LOOK

The Importance of Using an Expert

When complex financial issues are at stake, failure to hire an expert witness – whether due to limited funds or time – can prove disastrous in court. In a recent divorce case, the wife did not present expert evidence of the value of goodwill in her husband’s business, and she was disappointed by the court’s finding.

No Goodwill Value

In *Reedy-Huffman v. Huffman*, the husband was a licensed naturopathic physician with two practices in Alaska. The wife filed for divorce in February 2013. In June of that year, she filed a motion for interim attorneys’ fees of \$10,000 “to complete litigation” and “to value the [husband’s] business through discovery” with the help of a paid expert.

At trial, the husband contended that the business had no market value. He asserted that the only similar business in the geographic area had been for sale for more than a year but was taken off the market after it received no offers. (Under Alaska law, only business — as opposed to personal — goodwill is considered when dividing marital assets.)

Despite having received a continuance and the interim funds to pay an expert, the wife presented no evidence to rebut the husband’s assertion or suggest an alternate market value. Rather, she argued that because of an “evidentiary void,” the business should receive a valuation of \$500,000 to account for its business goodwill.

The trial court rejected her proposed goodwill valuation and held that the business had no goodwill value. The wife appealed.

Error of Her Ways

The wife acknowledged to the Alaska Supreme Court that she did not present any evidence of the business’s value. However, she claimed that where neither party presents business valuation evidence, the court should direct the party with the best access to proof of the value “to fill the evidentiary void,” and the husband here presented such evidence. The court found that the presentation of uncontroverted evidence does not create an evidentiary void.

The court noted that the parties — not the court — have the duty to ensure that all necessary evidence is presented in divorce proceedings. A party who fails to present sufficient evidence cannot later challenge the adequacy of the evidence on appeal. The court faulted the wife for neglecting to hire an expert to conduct a valuation of the business even though she had “ample opportunity” to do so.

Hard Lessons

It’s not clear why the wife in this case failed to hire an expert to testify to the value of her husband’s medical practice. What *is* clear is that she ended up receiving compensation for only the business’s tangible assets, even though it is possible that the practice had some business goodwill. Do not let this happen to your clients.

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