

MISSISSIPPI SUPREME COURT AXES GOODWILL IN DIVORCE VALUATIONS

BY DON STALLINGS, CPA, CVA

In a recent Mississippi Supreme Court ruling the Court made it harder for the spouse who stays home and raises a family to share in the wealth built up by his or her working spouse. On October 17, 2002, the Mississippi Supreme Court in *Singley v. Singley*, No. 1999-CT-00754-SCT, said, "We join the jurisdictions that adhere to the principle that goodwill should not be used in determining the fair market value of a business, subject to equitable division in divorce cases".

The *Singley* opinion will have the most adverse effect where, for example, one spouse holds a professional degree and the other spouse worked or provided funds used to obtain that professional degree, the professional is operating as a sole proprietor, the non-working spouse has stayed at home and taken care of domestic duties at the suggestion of the working spouse, there is little or no marital or separate property other than the professional practice, the non-working spouse does not have access to funds to sustain adequate divorce litigation, the working spouse is in a position to temporarily reduce his income, and the working spouse is willing to become a deadbeat long enough to force the non-working spouse to settle for substantially less than they would otherwise be entitled.

In Mississippi, the Chancery Court is a court of equity with the Chancellor granted a great deal of discretion in providing for an equitable distribution between divorcing spouses. Chancellors have widely recognized the rights of a non-working spouse. For example, in *Hemsley v. Hemsley*, 639 So. 2d 909 (Miss. 1994), the Chancellor stated, "The wife contributed her share by rocking the cradle, keeping the house, and caring for the children. Although the husband was bringing in the income, still marriage is pretty much a 50/50 partnership as to property acquired during the marriage regardless of the role played by the parties. Certainly we recognize that Mississippi is not a community property state, but many of our cases indicate that the Court still should make an equitable division of the property acquired during the marital relationship. *Equity means equal fairness*". Generally, if it is not practical to make an equal distribution of the marital property (defined as any property acquired during the marriage), the Chancellor will attempt to equal things up by awarding either lump-sum or periodic alimony. The problem with using periodic alimony in providing an equitable distribution is that periodic alimony can be reduced in situations where the party paying alimony can demonstrate to the Chancellor that his or her economic circumstances have changed. Periodic alimony also ceases upon three events: (1) remarriage of the receiving spouse (2) death of the receiving spouse or (3) death of the paying spouse. Although the Chancellor can require sureties, liens on property, disability insurance policies, life insurance policies, and other tools to provide for the uncertainty of periodic alimony, certain uncontrollable events can occur that can circumvent even the most careful plan. The old saying of "a bird in hand is worth two in the bush" could not be more applicable than the choice between a property settlement and periodic alimony.

Although it is my understanding that the Court has agreed to rehear the *Singley* case, valuers like myself are limited to what we can consider in regard to goodwill in a divorce valuation. It is also my understanding that Jim Koerber, the valuation expert in the *Singley* case, will submit a "friend of the court" brief to the Court to consider in the rehearing of the case. He will appeal to the Court to distinguish entity goodwill from personal goodwill with entity goodwill recognized as marital property.

If you find yourself in a divorce situation as a non-working spouse, your first step should be to consult with a good divorce attorney and CPAs who have experience in litigation support in divorce cases.

(Don Stallings is a shareholder in the CPA firm of Baird & Stallings, CPAs, P.A. in Indianola, Ms. and

heads the firm's valuation and litigation support practice.)

ACCOUNTING/PLANNING SECTION

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her economic circumstances have changed. Periodic alimony also ceases upon three events: (1) remarriage of the receiving spouse (2) death of the receiving spouse or (3) death of the paying spouse. Although the Chancellor can require sureties, liens on property, disability insurance policies, life insurance policies, and other tools to provide for the uncertainty of periodic alimony, certain uncontrollable events can occur that can circumvent even the most careful plan. The old saying of "a bird in hand is worth two in the bush" could not be more applicable than the choice between a property settlement and periodic alimony.

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