YUDES FAMILY LAW CITATOR

FALL 2018 SUPPLEMENT

CHAPTER 1 - ALIMONY

XIX. PENDENTE LITE SUPPORT

Slutsky v. Slutsky, 451 N.J. Super. 332 (App. Div. 2017)

This case primarily deals with an appeal of a trial court's equitable distribution determinations in this divorce matter, including in regards to treatment of alleged loans taken from various family trusts, the valuation and distribution of the husband's law practice interest, including the extent of any good will component, and the conflicting disposition of certain alleged premarital accounts. Secondarily, the trial court's counsel fee award was reviewed, as well as the propriety of the wife's counsel's efforts seeking enforcement thereof. The trial court's disposition of the wife's request for a retroactive modification of pendente lite support was also reviewed in this appeal. In a lengthy and detailed opinion, the Appellate Division affirmed in part, reversed in part and remanded to the trial court for further proceedings.

First, in regards to the "loan" issue, the husband had alleged that during the course of the marriage, substantial monies were borrowed by way of loans from certain "family trusts", and which funds were used to address the wife's excessive spending. Among the trusts from which these loans were taken, included a testamentary trust created by the husband's grandmother for the benefit of his mother for her lifetime, with the remainder of the mother's interests passing to the husband upon her death; a credit-shelter trust established by the husband's late father in which his mother was the sole trustee and the husband holding a Power of Attorney; and an inter vivos insurance trust paying a death benefit to the husband upon the death of both of his parents, and on which the defendant was trustee and from which the cash value of the insurance policy had been borrowed against. Beyond the husband's testimony, his proofs of these alleged loans involved certain promissory notes signed by him, and a legal pad containing his and the wife's handwriting made in conjunction with certain estate planning discussions contended that these "loans" constituted valid marital debt, that the wife was aware of same and of the need for their repayment, and sought to have the court do so as an aspect of equitable distribution. The wife denied knowledge of these loans and/or of any need for repayment. While the plaintiff's testimony was found to be scattergun and evasive, she offered certain expert testimony questioning the validity of such claimed loans, as well as a bank representative who had noted that these alleged family trust debts had not been disclosed on loan applications previously completed by the parties. The trial court rejected the husband's request to have the wife contribute to the repayment of monies allegedly loaned from the various family trusts. The Appellate Division affirmed this aspect of the court's determination.

First, the Appellate Division recognized the general principle that in dividing marital assets, the court must also take into account liabilities as well, and that where marital debts are proven, same should be deducted from the total value of the estate or allocate those obligations between the parties. However, when a particular debt is claimed to be owed to a member of one

spouse's family, the burden of proof rests on the claiming spouse to establish a bona fide obligation to repay the certain monies asserted as loans. Notwithstanding the trial court's general finding of the husband being credible, and of the wife's testimony being scattered, tenuous and evasive, the Appellate Court noted that the decision had turned on the conclusion that the husband had not satisfactorily met his obligation to prove that he must repay the debts, which conclusion was supported by the record, including the fact that the alleged "promissory notes" had contained no specific terms for interest or repayment, that the trust had not intervened in the litigation to protect their interest, that the documents produced lacked specificity as to the total amounts distributed, as well as the absence or disclosure of the alleged debt on prior mortgage loan applications, along with the fact that the husband generally held a beneficial interest in the trusts involved.

The Appellate Division then addressed issues challenging the trial court's valuation and distribution of the husband's law practice interest. The husband joined his law firm in 1978 and he was named an equity partner in 1984. He specialized in complex tax matters and billed over 2,000 hours per year. Much of the husband's work load was originated by fellow partners; he was not a significant originator of new clients, but rather worked many hours in his highly specialized practice area. The husband received a gross bi-monthly draw, a quarterly distribution and a variable amount of excess distributions based on his allocation of the firm's year-end net income, or profit. There was also an interest component attached to a TCA, a termination credit account, being the firm's compensation system for equity partners, including the calculation of each partner's interest in the firm. The husband was also a party to a shareholder's agreement with the firm which includes the firm's obligation to purchase a shareholder's stock when he or she ceases to be employed by the firm, and defines the formula fixing the amount of payment for the interest. Further, while the firm did not impose a mandatory retirement age, once an equity partner reached the age of 65, the board of directors determined whether the individual could continue to participate in the allocation system, or whether he or she would be moved to senior status, which was a salaried position, and at which time the TCA account would not increase by future allocations, charges against the account would cause it to decrease, and that the balance of the TCA would be paid out over four (4) years when the equity partner left the firm. Each party engaged accounting experts for the purpose of valuing the husband's interest in the law firm. The wife's expert computed a calculation of value of the husband's interest in the firm, comprised of his TCA as well as the value of his interest in the enterprise value or goodwill of the firm. In regard to the goodwill component, the wife's expert first determined the reasonable compensation of an attorney with the husband's education and experience, opined that the differential between this reasonable compensation and the distributions made represented the husband's share of the firm profits as an owner, projected earnings to a retirement date at age 70 adjusted for taxes, then reduced to present value. During trial, the wife's expert reduced his original calculations during redirect in light of his agreement to some of the challenges made by the husband's expert. The husband's expert computed the husband's TCA interest using a methodology similar to that of the wife's expert, with certain adjustments; however, because he opined that the husband's billable hours' hourly rate of compensation and average billings were consistent with surveys of attorneys similarly situated, and that the husband's accrual basis income allocation was similar to the reported reasonable compensation data, the TCA account alone represented the true value of the husband's interests in the firm and that there was no additional goodwill component. In its decision, the trial court found "incredible" that the firm