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Summary of DeVries v. Gallio, 128 Nev. Adv. Op. 63

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DeVries v. Gallio, 128 Nev. Adv. Op. 63 (Dec. 16, 2012)¹
FAMILY LAW – DIVISION OF PROPERTY AND SPOUSAL SUPPORT

Summary

The Court considered whether the district court abused its discretion in failing to award ex-husband (DeVries) an interest in ex-wife's (Gallio's) cattle company after having labored there without compensation, ostensibly increasing the value of the business. The Court also considered whether the district court abused its discretion in failing to award the ex-husband requested spousal support.

Disposition/Outcome

It is not an abuse of discretion for a district court to deny a party an interest in the separate property of the other without making an explicit finding as to the Van Camp or Pereia tests. It is an abuse of discretion for a district court to deny a party spousal support where the district court does not make specific findings as to the Sprenger factors.

Factual and Procedural History

DeVries and Gallio were married in 1997 and filed for divorce in 2009. While still married to DeVries, Gallio founded two of her own cattle company, Gallio Ranches, Inc. and Gallio Cattle, LLC. After the divorce, DeVries claimed that he had worked for Gallio Ranches from the time of its inception without collecting any wages and that he was entitled to an interest in that company, even though it was the separate property of Gallio. DeVries also claimed that he was entitled to spousal support.

The district court held three evidentiary hearings to determine whether disputed property was community or separate for purposes of dividing the assets. It held that Gallio Ranches, Inc. and Gallio Cattle, LLC were separate property and declined to award DeVries any interest in them. The district court did not address the issue of spousal support, although DeVries had raised it in his complaint.

Discussion

Separate Property

Justice Hardesty wrote the opinion for the three justice panel. The Court applied an abuse of discretion standard to the district court's decision to deny DeVries an interest in any of the separate property of Gallio, including Gallio Ranches, Inc. and Gallio Cattle, LLC. The law in Nevada allows courts to award a spouse an interest in the increase in value in the other's separate property when he "devotes his time, labor, and skill to the production of income from [that] separate property."⁴ Courts in Nevada typically apply one of two tests from California common law in determining when the apportionment of

¹ By Wade Beavers.

⁴ *Cord v. Neuhoff*, 94 Nev. 21, 26, 573 P.2d 1170,1173 (1978).

assets in this manner is appropriate. Under the Pereia method, a court may allocate the value of a business to the community property estate, minus a fair rate of return for the initial investment, given it can be shown that the increase in value was the result of a community effort. Under the Van Camp method, an amount equal to the average salary the spouse might have owned for his work may be attributed to the common property. The district court declined to explicitly apply either of these methods.

The Supreme Court held that the district court did not abuse its discretion because the reasons for the ruling were apparent elsewhere in the record and were sufficiently clear to allow for appellate review. The Court cited the fact that the increase in the value of Gallio Ranches had primarily been driven by increase in the value of real property held by the business rather than the labor of either spouse in any community effort as sufficient justification for denying the application of any value of the entity to the community property in the divorce.

Spousal Support

The Court also applied an abuse of discretion to standard to the district court's decision to deny DeVries spousal support. Courts generally have wide discretion in deciding whether to award spousal support.⁵ However, a court must indicate that it gave adequate consideration to the relevant factors in making the determination that spousal support should be denied.⁶ In this case, the district court held evidentiary hearings to make a determination of the status of the property, but failed to state any findings relating to the factors for determining the necessity for child support.⁷ Because the district court failed to state the consideration it had given to the various factors, concluding only that support was unwarranted under the "statutory factors," it had abused its discretion and must reconsider the case with specific findings as to the factors.

Conclusion

The Court concluded that the district court did not abuse its discretion in declining to award DeVries an interest in the separate property under either the Van Camp⁸ or Pereia⁹ methods of apportionment, as there was substantial evidence in the record to support a conclusion that he had been adequately compensated for his work through room and board, and because there was no evidence to support the assertion that his labor had actually contributed to increasing the value of the business.

The Court also concluded, however, that the district court did abuse its discretion in failing to adequately consider whether DeVries was entitled to spousal support, and

⁵ *Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996).

⁶ *Forrest v. Forrest*, 99 Nev. 602, 606, 668 P.2d 275, 278 (1983).

⁷ The factors are, among other things: The parties' previous careers before marriage, the parties' educations during marriage, the parties' marketability, the length of the marriage, and what the parties were awarded in the divorce proceedings other than spousal support. *Sprenger v. Sprenger*, 110 Nev. 855, 859, 879 P.2d 284, 287 (1994).

⁸ *Van Camp v. Van Camp*, 199 P. 885 (Cal. Ct. App. 1921).

⁹ *Pereia v. Pereia*, 103 P. 488 (Cal. 1909).

reversed and remanded that part of the decree for reconsideration.