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### Draskovich v. Draskovich, 140 Nev. Adv. Op. (Mar. 21, 2024)

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*Draskovich v. Draskovich*, 140 Nev. Adv. Op. (Mar. 21, 2024)<sup>1</sup>  
A BUSINESS INCORPORATED DURING MARRIAGE BUT CONTINUING A PRE-  
MARRIAGE OPERATION DOES NOT AUTOMATICALLY BECOME COMMUNITY  
PROPERTY.

### **Summary**

In this divorce case, the Court addressed the characterization of the Draskovich Law Group (DLG) and the issue of alimony, establishing legal principles for determining the status of businesses incorporated during a marriage. The Court ruled that a business established by one spouse prior to the marriage and incorporated under a different name during the marriage retains its character as the separate property of that spouse, despite incorporation. The incorporation of DLG did not alter its essential nature as a continuation of Robert Draskovich's pre-marriage legal practice, thus not invoking the presumption of community property. However, the Court also recognized the potential for a community property interest in the business' value increase during the marriage, requiring clear and convincing evidence from the non-owning spouse to establish such interest. Further, the Court vacated the trial court's ruling on alimony, necessitating reconsideration due to the altered circumstances surrounding the characterization of DLG.

### **Background**

Robert Draskovich, practicing criminal law since 1997 and a partner at Turco & Draskovich (T&D) prior to his marriage to Laurinda Draskovich in 2012, incorporated DLG as his wholly owned corporation after T&D dissolved. The primary contention at trial was whether DLG, valued at approximately \$1,210,000, constituted community property or remained Robert's separate property, given its establishment and operation continuity from his pre-marriage legal practice. The trial court initially classified DLG as community property, reasoning based on the timing of its incorporation during the marriage. The district court also rejected Laurinda's request for alimony, because although some factors supported alimony, the district court determined that the share of community assets given to Laurinda would provide sufficient support.

During oral arguments, concessions were made by both parties acknowledging a potential mixture of separate and community interests in DLG, signaling a need for reevaluation under the law. Robert's counsel conceded that DLG almost certainly contained some community property interest subject to some apportionment.

### **Discussion**

#### ***DLG represents the continuation of T&D and is Robert's separate property***

The Nevada Supreme Court addressed whether DLG, incorporated during Robert Draskovich's marriage to Laurinda Draskovich, should be classified as separate or community property under family law. The key question centered on the interpretation of NRS 123.220, which presumes that property acquired during marriage is community property, and whether

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<sup>1</sup> By Evan Sommer.

DLG's formal incorporation during the marriage transformed it into community property, despite its operational continuity with the pre-marriage business, T&D.<sup>2</sup>

Robert maintained that DLG did not fundamentally change from T&D; it retained the same business operations, client base, and office location, arguing that these factors evidenced DLG's status as his separate property. Contrarily, Laurinda likely benefited from the trial court's ruling which labeled DLG as community property due to its incorporation during their marriage, potentially influenced by marital contributions.

The Court clarified that the incorporation of a business during marriage does not automatically reclassify it as community property if it essentially continues a pre-marriage enterprise. The Court drew upon Nevada case law, specifically referencing *Schulman v. Schulman*, and California cases such as *In re Marriage of Koester*, to support the view that changes in business form, without significant operational changes, do not necessarily alter the business's character as separate property.<sup>3</sup> Rather than the mere act of incorporation during the marriage automatically reclassifying a business as community property, the Court looks at the "totality of the circumstances" to determine the character of the business.

The Court found that DLG, being a direct continuation of T&D, retained its character as Robert's separate property. It was noted that Robert maintained the same office location, clients, staff, and business practices as T&D, substantiating that DLG was merely a new form of the original business, not a new entity warranting community property status.

***Laurinda bears the burden to show a community portion of DLG***

The Court pointed out that the erroneous classification of DLG had significant financial implications for Laurinda, potentially affecting her entitlement to alimony. Given that the business was determined to be Robert's separate property, Laurinda must now prove by clear and convincing evidence—citing *Kelly v. Kelly*—any community contribution to the increase in DLG's value during the marriage for a potential apportionment of the business' value between separate and community interests.<sup>4</sup> The Court stated that Laurinda can demonstrate this by showing that Robert's active work as an attorney increased the value of the firm. If, on remand, Laurinda meets her burden, the district court will need to recalibrate the division of DLG, specifically determining how much of the firm's enhanced value should be attributed to community efforts and hence subject to division between the parties.

***We necessarily vacate and remand as to alimony in light of the changed community property circumstances***

The Court determined that the district court must reevaluate its decision on alimony due to revised findings regarding the classification of DLG as Robert's separate property, rather than community property. The original denial of alimony was influenced by the expectation that Laurinda would receive a substantial passive income from her share of the community assets, specifically from DLG. However, given that DLG has been reclassified as Robert's separate property, this impacts the potential financial resources available to Laurinda. Consequently, the Court has vacated the district court's alimony ruling and remanded the case back for a reassessment of alimony, directing the court to consider the new valuation and division of DLG

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<sup>2</sup> NEV. REV. STAT § 123.220 (2022).

<sup>3</sup> *Schulman v. Schulman*, 92 Nev. 707, 709, 558 P.2d 525, 526 (1976); *In re Marriage of Koester*, 87 Cal. Rptr. 2d 76, 79 (Ct. App. 1999).

<sup>4</sup> *Kelly v. Kelly*, 86 Nev. 301, 310, 468 P.2d 359, 365 (1970).

and its effect on Laurinda's financial circumstances. This reassessment is in alignment with the legal standard that alimony should be awarded in a manner that is "just and equitable," taking into account the actual distribution of assets between the parties.

### **Conclusion**

The Nevada Supreme Court ruled that the Draskovich Law Group incorporated during Robert's marriage but established prior, remained his separate property. This decision was based on the continuity of its operations from his pre-marriage business, emphasizing that incorporation alone does not alter property status. Furthermore, the Court vacated the previous alimony ruling, requiring reassessment in light of the new classification of the Draskovich Law Group. This necessitated a reevaluation of Laurinda's financial support, aligning it with the current understanding of the couple's assets. The case was remanded for proceedings consistent with this clarification.