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Taking care of good people during difficult times

Fraud and Divorce

Fraudulent Transfer During Divorce.

With respect to fraud and divorce, the recent case of *Wright v. Wright* 280 S.W.3d 901 (Tex. Ct. App. - Eastland 2009, no writ) confirms that transferring assets without spousal consent, even in a contentious divorce, is fraudulent.

Within days of Wife's filing for divorce, Husband withdrew all money in community accounts, transferred title of the motorcycles to the parties' sons, amended the bylaws to remove Wife as co-director of the corporation and transferred 49% of corporation to an employee.

Not surprisingly, Wife filed a claim for fraudulent transfer and fraud on the community because of Husband's actions.

What did the Court do?

The Trial Court held that by transferring the stock Husband had committed actual fraud, constructive fraud, and fraud on the community. They awarded her $318,500 for her share of the 49 shares. Husband appealed.

The Court of Appeals stated, "A fiduciary duty exists between spouses regarding the community property each controls. . . . The breach of this duty is termed 'fraud on the community'. . . It is constructively fraudulent for one spouse to dispose of the other spouse's interest in community property without that spouse's knowledge or consent." The Court of Appeals affirmed the award of money and sent the case back to the trial court to determine amount of attorney fees awarded to Wife.

Obtaining value for transferred assets can be tricky.

In another case Wife claimed that Husband and the Association he worked for conspired to defraud her of her portion of community property by undervaluing his medical practice. In *Mandell v. Mandell*, 310 S.W.3d 531 (Tex. App. - Fort Worth 2010, no writ),

The Fort Worth Court of Appeals held that the buy-sell agreement *did* control the value of Husband's ownership interest in the medical practice where he worked.

ALL entering and exiting physicians paid or received $11,000 for 22,000 shares of stock in the Association, as specifically defined in the Stock Purchase Agreement. Neither Husband nor Wife initially signed the Shareholders Agreement as required, so the Association refunded the $11,000 during the divorce, confirmed that the medical practice had not issued the stock certificate to Husband and stated that Husband held *no* shares in the medical practice.

Husband then issued another check for $11,000 and received the shares of stock. At trial, Wife successfully claimed that the medical practice shares were community property but was denied in her attempt to value the shares at anything greater than what the buy-sell agreement provided. The court refused to let the jury hear the testimony of Wife's experts since other doctors had paid or been paid the same exact amount as specified in the Stock Purchase Agreement and Shareholders Agreement. Wife appealed. The Fort Worth Appellate Court upheld the trial court's decision.

Both of these cases involved an accusation of fraud. When the Court determines community assets were improperly handled during divorce, it will restore them to the proper party. If fraudulent "transfers" occur after the divorce is filed, the Courts will **not** allow the transferred property to "escape" the division of community property in the divorce, once fraud has been proven. However as noted above, buy-sell agreements may under value community interest in business assets.

Fiduciary Duty Presentation Available

If you, your employer or your professional organization would like to know more about fiduciary duties and their impact on family law issues, including divorce and property issues, contact my office to schedule a free one-hour lunch-and-learn continuing education presentation.

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