SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FN 2004-000898 04/19/2005

HON. ROLAND J. STEINLE

CLERK OF THE COURT
T. Fenton
Deputy

FILED: 04/21/2005

IN RE THE MARRIAGE OF
QUINN P WILLIAMS CHARLES C VANCOTT

AND

INGRID ELIZABETH HAAS SANDRA J FROMM

MINUTE ENTRY

INTRODUCTION

The parties have listed uncontested facts on pages 1 through 5, line 17, paragraphs A through U. The Court finds that each fact is proven and these shall be incorporated into the Decree of Dissolution.

In addition, the parties have entered into several stipulations contained on the record in trial and contained in section 2, paragraphs A through E. These Stipulations shall be incorporated in to the decree.

The parties withdraw various claims contained in paragraphs E, F, and G of the Joint Pretrial Statement, Section 3, paragraphs A through N.

Prior to answering the contested issues, the Court will make the following background findings.

The Petitioner is an experienced commercial lawyer. He was a partner at the law firm of Snell & Wilmer and later at the firm of Greenberg Taurig.

The Respondent was a self-employed ObGyn physician practicing in Scottsdale, Arizona.

The parties had an informal (oral) agreement to place $5,000.00 each into a community account at Compass Bank. Respondent maintained a business account at Arizona Business Bank where she deposited any compensation she received from her practice. Petitioner, prior to and after the marriage, maintained an account at Morgan Stanley. According to him, his net salary was deposited into this account in the amount of $846,000.00. (See Exhibit 47).

The proceeds of the sale of Petitioner's prior residence ($404,000.00) were deposited into this account. Further, the Morgan Stanley account contained commingling funds consisting of Petitioner's separate funds from before the marriage ($73,108.00 was in the account on the date of marriage) and community funds, such as his salary. There was no agreement to limit the community interest in his salary to the $5,000.00 contribution to the Compass account. Petitioner paid numerous community obligations from the proceeds, as well as separate expenses.

Neither party offered a forensic accounting, which attempts to trace separate funds from community funds. The only attempt at an accounting was exhibits prepared by and offered by the Petitioner. (See Exhibits 44 through 47).

Further, the Petitioner, without the benefit of a written agreement, transferred to the Respondent an undivided one-half interest, with a right of survivorship, in his residence, which he owned prior to the marriage. The property was sold and $404,000.00 was deposited in the Morgan Stanley account. The parties benefited because they took advantage of the $500,000.00 married person exemption versus the $250,000.00 for a single person on the tax return for that year.

Petitioner paid numerous community obligations from the proceeds, as well as separate expenses.

The Respondent conveyed to the Petitioner an undivided one-half interest with a right of survivorship. This conveyance was confirmed when the Petitioner signed an acknowledgement that the Respondent would be entitled to a $700,000.00 lien for her sole and separate interest if there was a divorce. The parties, at the time of the refinancing, treated the property as a community asset, and when they obtained a line of credit.

Considering the background of the parties, the commingling of the funds and the transfer of title to assets without a written agreement created a confusing situation. This is illustrated in the investments made from the Morgan Stanley account.

If the parties had maintained separate accounts and not commingled funds from the community, the Court would make a specific finding that the investment was made from sole and separate property for a sole and separate asset i.e. Legacy Investment of $50,000.00. Or, the sole and separate debt, i.e. Invencor Partnership calls was paid by funds from a sole and separate debt.

The Court finds in this matter that the Petitioner commingled $846,000.00 of community salary from his law firm with $404,060.00 from the proceeds from the sale of his former residence in which he conveyed a one-half interest to the Respondent Out of this account he paid sole and separate debt, i.e. Paradise Valley Country Club equity payment, and the Invencor Partnership calls. He paid community debts; he purchased community assets, i.e. Porche. There was no attempt to trace what was sole and separate and what was community by either party. Despite having the means, no forensic accounting was done.

When the Court makes findings, it will attempt to differentiate, where possible, when the monies used to pay an obligation were sole and separate or community, however, the Court will be guided by the following rule of law:

When a party commingles sole and separate monies with community monies, there arises a rebuttalable presumption the entire asset is a community asset unless the sole and separate asset can be explicitly traced. In order to rebut the presumption, the party must show by clear and convincing evidence the monies are not community. It is not enough to show that a portion of the funds is not community but the party must show that a portion of the funds is affirmatively separate. See: *Cooper v. Cooper* 130 Ariz. 257, 260-261 (1981), and *Potthoff v. Potthoff* 128 Ariz. 557 (App.1981). Clearly in this matter the burden of proof is on the Petitioner. Again, Petitioner has offered no forensic accounting.

A. COMMUNITY INTEREST IN HORSESHOE RESIDENCE

The Court has weighed the credibility of the two real estate experts and the Court finds the Petitioner's expert more credible. Accordingly, the Court finds the fair market value is $1,825,000.00 for the Horseshoe property.

The Respondent conveyed to the Petitioner an undivided one-half interest with a right of survivorship. This conveyance was confirmed when the Petitioner signed an acknowledgement that the Respondent would be entitled to a $700,000.00 lien for her sole and separate interest if there was a divorce (Exhibit #2). The parties, at the time of the refinancing, treated the property as a community asset, and when they obtained a line of credit. Accordingly the Court finds that the Horseshoe property is a community asset. See: *Becchelli v. Becchelli*, 109 Ariz. 229, 233 (1973).

After the marriage, the Petitioner signed an Antenuptical Agreement (Exhibit 2) which acknowledged the Respondent had a sole and separate interest for the benefit of her children from a prior marriage. The amount of the interest was $700,000.00. There was some discussion about whether the original was done on the letterhead of the law firm of Snell & Wilmer where the Petitioner was a senior partner doing commercial work. However, the Respondent produced a letter signed by the Petitioner. It is interesting to note the Petitioner specifically notes the purpose of the letter was to acknowledge the interest if there was a divorce. See: *Canyon Contracting Co. v. Tohono O'Odham Housing Authority* 172 Ariz. 389 (App Div. 1 1992). See also *Hundka v. Hundka* 186 Ariz. 84, 90-91 (App. Div. 1 1995).

Accordingly, the Court finds the Respondent produced a document signed by the Petitioner [the person against whom the interest is being enforced]. The Petitioner was an experienced commercial attorney. The document acknowledged Respondent's sole and separate interest prior to the marriage. Therefore, the Respondent has a sole and separate interest in the amount of $700,000.00.

The Court finds there is a mortgage lien in the amount of $640,000.00.

The Petitioner has previously petitioned the Court to force the sale of the residence. At trial he requested the sale of the property. Accordingly, the Court will use an 8% cost of sale factor to determine the community interest. The Court finds the cost of sale is $146,000.00.

After deducting the mortgage lien and the cost of sale and then crediting Respondent her sole and separate interest, the net proceeds are $339,000.00. Petitioner is entitled to an equalization credit of $169,500.00.

B. PETITIONER'S PROCEEDS FROM SALE OF THE 8175 NORTH 75TH STREET RESIDENCE

The property was sold and the parties received a check for $404,060.14 which was made payable to both parties. The Respondent endorsed the check to the Petitioner who then deposited the check into the Morgan Stanley account. The parties claimed a martial exemption on their joint tax returns which empted the entire gain. Out of that account, the Petitioner paid $25,000.00 to the Respondent which was intended as an equity payment. Accordingly the Court finds that these proceeds are a community asset.

The Court further finds that $90,000.00 was paid from these funds to the Petitioner in February of 2004 as further equity payments. After several exchanges, the funds remain in the Arizona Business Bank.

While the Respondent denied these payments were for equity in the Horseshoe property, the Court finds that there were funds from the proceeds of the 75th Street property intended as further equity payments in the Horseshoe property as agreed to by the parties. The rejection by the Respondent was an attempt to bolster her initial claim the Horseshoe property was her sole and separate agreement.

The Court further finds the remainder of the money was spent on community obligations, the $40,000.00 equity payment for the Porche, separate debts, and to purchase gifts including the estate necklace. The balance of the Morgan Stanley account on the date of the marriage was $73,108.00, and $88,930.00 in the account on the date of service, or a $15,822.00 differential. Therefore, the Court finds there are no other funds remaining. The Court will deal with the $90,000.00 in the Arizona Business account and the Morgan Stanley account separately.

There is no equalization payment due to the Respondent from the proceeds of the sale of the 75th Street property.

C. COMMUNITY INTEREST IN PORCHE

The Respondent traded in her sole and separate automobile to purchase a Porche automobile. The Petitioner transferred $40,000.00 from his Compass Bank account to provide the funds for the balance of the purchase price. The car was titled in the name of the Respondent. The purchase price was $54,087.98. The present value is $41,865.85 due to depreciation typical for automobiles. Under these circumstances, the Court finds the purchase of the Porche with $40,000.00 in community funds for the sole use by the Respondent did not extinguish the community interest in the vehicle. Respondent failed to meet the burden of proof that the Petitioner intended to release his community interest, and therefore it was not a gift. See: *Hundka v. Hundka*, supra, 186 Ariz. at 93.

However, automobiles depreciate. Therefore, the community interest depreciates also. The community interest is $30,967.00. Petitioner is entitled to an equalization credit of $15,480.00.

D. THE COMMUNITY INTEREST IN THE ARIZONA BUSINESS ACCOUNT

At the time the action was commenced, there was $142,142.88 in the money market account, including the $90,000.00 discussed previously in Section B, and $50,000.00 from the refinancing. The value of the account at the time of the marriage was $41,300.00 (at the time, it was a Wells Fargo account later transferred to the current account).

The Court finds the Respondent is entitled to a credit for $41,300.00 for her sole and separate interest. The balance of $100,042.42 is a community asset. The Petitioner shall be entitled to an equalization payment of $50,421.00.

There is a difference in the value of the checking account. Petitioner claims it had a balance of approximately $10,000.00, and the Respondent claims it has a value of $5,000.00. However, there is a differential in $15,000.00 in the Morgan Stanley account.

The Court finds that the Court will award Petitioner all interest in the Morgan Stanley Account, and the Respondent is awarded all interest in the Arizona Business Bank checking account without further offset. See *Toth v. Toth* 190 Ariz. 218 (1997). Equitable does not necessarily mean equal. Awarding these two accounts in kind is equitable.

L. ESTATE NECKLACE

During the marriage, the Petitioner purchased an estate necklace for $39,500.00. This necklace was purchased after the Respondent was dissatisfied with a necklace she received as a Christmas gift. The original necklace was valued at $15,000.00. The second necklace was purchased shortly before her June birthday and was given to her on her birthday.

There was some testimony the jeweler at the behest of the Respondent solicited the Petitioner to buy the necklace as an investment. However, Petitioner's own witness indicated that the most he would do was sell it on consignment for approximately the purchase price or slightly less than the purchase price. After weighing the credibility of the parties, the Court finds that Respondent has sustained her burden of proof that the estate necklace was a gift and is not a community asset. The Court has considered the nature of the gift, other gifts of jewelry made during the marriage, and the fact the necklace had not appreciated in value. See: *Hundka v. Hundka* supra, 186 Ariz. at 92-93.

While the Court finds the fair market value is $39,500.00, the Petitioner is not entitled to an equalization credit.

M. PARADISE VALLEY COUNTRY CLUB EQUITY PAYMENT

During the course of the marriage, Petitioner made a $9,000.00 equity payment at the Paradise Valley Country Club.

As previously discussed, the payment was made from Petitioner's bank account at Morgan Stanley account. The Court finds the Petitioner met the burden on this issue for the following reasons.

The Petitioner was a member of the Paradise Valley County Club before the marriage. In light of the fact the Morgan Stanley account contained separate funds, the Court finds any equity payments were made from his sole and separate property and not from community funds. Further, Respondent enjoyed the use of the club throughout the marriage.

Accordingly, the Respondent is not entitled to any equalization credit for equity payments made to the Paradise Valley Country Club.

H. LEGACY INVESTMENT LTD.

The Court finds the community interest, according to the Amended Partnership Agreement, is the 10% interest Respondent had taken over from Petitioner's parents. Therefore, the community has a 10% interest. The Court will award each a 5% interest for a division of this asset.

I. COMMUNITY INTEREST IN ICP 1000 LLC

The Court finds that both parties agreed that each party intended to make a $50,000.00 payment to ICP 1000 LLC. Petitioner used $50,000.00 from the Morgan Stanley account. The Respondent attempted to roll over her IRA but it proved ineligible for a roll over. So, the only investment was $50,000.00. The investment was made on behalf of Legacy Investments. Accordingly, the Court finds that Legacy Investments interest has a fair market value of $61,026.54 in ICP 1000 LLC.

The Court further finds that the $50,000.00 investment was made from community assets with the consent of the Respondent in the name of and for the benefit of Legacy Investments.

The Court has previously found the community has a 10% interest in Legacy Investments. The Respondent was the managing partner. There is no evidence whether she still is or whether she was removed.

In light of the fact that Respondent has a 5% interest in Legacy Investments, she can attempt to dissolve the partnership pursuant to A.R.S. § 29-229 to 240. This may require the partnership to liquidate the investment in ICP 1000 LLC, and then the parties would each receive their one-half of the community interest.

Absent some separate petition on behalf of the partnership, the Court will not order the partnership to pay Respondent the one-half of the community interest, nor will the Court order the Petitioner to give her an equalization credit on an asset over which he has no control.

If the ICP 1000 LLC makes payment to the investors such as the $1,587.61, the monies will be paid into the Legacy Investments accounts and distributed pursuant to the partnership agreement.

The Court finds the Respondent is responsible to the partnership for the $1,587.61 she received and deposited into her account. The partnership may attempt to recoup the money. The Court will not order her to pay the money.

J. THE COMMUNITY INTEREST IN INVENCOR, "MOTOR WEB", AND WHITE TANK

The Court finds the Petitioner made the following payments from the Morgan Stanley Account:

A.	Invencor	$12,000.00
B.	Motor Web	$10,000.00
C.	White Tank	$ 6,000.00

The Court finds that the payments were made for obligations prior to the marriage and he used community funds to pay his sole and separate obligations. The Petitioner is obligated to reimburse the community the $28,000.00. Accordingly, the Respondent is entitled to an equalization credit of $14,000.00. The Court finds he failed to meet the burden that these payments were made from sole and separate assets.

N. ATTORNEY FEES

The Court finds that considering the substantial assets of the parties and their considerable earning capacity, the parties have the ability to pay their own attorney fees.

Further, the Court finds while there are considerable issues, neither party was unreasonable in the positions asserted. Considering the backgrounds, the difficulty in this case arose from the lack of clarity in their accounts. In hindsight, had the parties attempted to develop a clear financial plan, most issues would have been avoided.

EQUALIZATION CREDITS

Petitioner	**Respondent**
Horseshoe Property **White Tank and Motor Web** $169,500.00	Investments in Invencor, $14,000.00
Arizona Business Bank Money Market Account $ 50,421.00	
Porche $ 15,480.00 $235,401.00 - $ 14,000.00 (Respondent's Credit) $221,401.00	_____ $14,000.00

If Respondent wishes to retain the Horseshoe residence, the Petitioner is entitled to an equalization payment of $221,401.00.

IT IS ORDERED granting Respondent 90 days from the date of the Decree of Dissolution of Marriage to refinance and pay the Petitioner his equalization payment.

If the Respondent fails to refinance or if she is unable to refinance, the Court will appoint a Special Real Estate Commissioner to sell the property in order to pay Petitioner the $221,401.00 equalization payment only.

IT IS FURTHER ORDERED awarding the Horseshoe residence to the Respondent.

IT IS FURTHER ORDERED granting Petitioner a lien of $221,401.00 as and for his equalization payment in the Horseshoe property.

IT IS FURTHER ORDERED awarding the Porche automobile to the Respondent.

IT IS FURTHER ORDERED awarding Respondent the money market account at Arizona Business Bank Money Market Account and Checking Account.

IT IS FURTHER ORDERED awarding each party a 5% in interest in Legacy Investments.

IT IS FURTHER ORDERED awarding the Petitioner any and all interest in Invencor, Motor Web, and White Tank Investments.

IT IS FURTHER ORDERED awarding the Respondent the Estate Necklace.

IT IS FURTHER ORDERED awarding the Petitioner the Morgan Stanley Bank Account.

Petitioner shall prepare a form of Decree of Dissolution not later than **May 20, 2005.** If the Respondent has objections, Respondent shall submit a form of Decree with any objections not later than **June 3, 2005.**

FILED: Exhibit Worksheet.