SUPREME COURT OF COLORADO

In re the Marriage of Bonnie Balanson and Richard Balanson

25 P.3d 28 (Colo. 2001) · No. No. 99SC811 · Decided June 25, 2001

SUMMARY

The Colorado Supreme Court reviewed issues arising from the dissolution of Bonnie and Richard Balanson's marriage, including the classification of employee stock options, a remainder interest in a discretionary family trust, and interspousal gifts. The court held that interspousal transfers may qualify as gifts under certain circumstances, employee stock options granted for future services are not marital property until the employee has an enforceable right to them, and a discretionary trust remainder may constitute property for dissolution purposes. The court also addressed the effect of property-division errors on maintenance and attorney-fee awards and remanded in part while affirming in part.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Rice
JURISDICTION	Colorado
DECIDED	June 25, 2001
DOCKET	No. 99SC811
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Colorado Supreme Court granted certiorari to review a court of appeals judgment affirming in part and reversing in part final dissolution-of-marriage orders concerning employee stock options, a family trust, interspousal gifts, maintenance, attorney fees, and child support.
STANDARD OF REVIEW	Property division, maintenance, and attorney-fee determinations are reviewed for clear abuse of discretion. Child-support determinations involving financial resources, standard of living, and the child's physical and emotional condition are also reviewed under an abuse-of-discretion standard because they are factual in nature.
PRECEDENTIAL VALUE	Published en banc opinion; precedential
PARTIES	Bonnie Balanson, Richard Balanson

TOPICS

equitable distribution · dissolution of marriage · spousal support · child support · family law procedure

PRACTICE AREAS

family law · dissolution of marriage · equitable distribution · spousal support · child support

QUESTIONS PRESENTED

1. Whether the treatment of Richard's employee stock options was moot after the options expired and, if not, whether options granted for future services constituted marital property before the required services were completed.
2. Whether Bonnie's remainder interest in the family trusts constituted property rather than a mere expectancy and whether it was marital or separate property.
3. Whether transfers from one spouse to another during marriage necessarily constitute marital property or may qualify as gifts excluded from marital-property classification.
4. Whether the trial court's errors in classifying and valuing property were harmless when considered in relation to the overall marital estate.
5. Whether the trial court was required to reconsider maintenance and attorney fees in light of errors in property division and a substantial decrease in the value of marital property.
6. Whether the child-support award properly accounted for the child's share of general family living expenses.

HOLDINGS

1. An interspousal transfer is not presumed either to be a gift excluded from marital property or to be marital property in every circumstance. Property placed in joint tenancy by one spouse during marriage may be presumed marital absent clear and convincing evidence to the contrary, while a transfer to the other spouse may qualify as a gift if it involved contemporaneous intent to make a gift, delivery, and acceptance.
2. An error in property division is reversible when, viewed in relation to the overall distribution, it affects the substantial rights of the parties. Errors affecting only a small percentage of the marital estate may be harmless, but aggregate errors affecting a substantial portion of the estate require remand.
3. An employee stock option constitutes property for dissolution purposes when the employee has a presently enforceable contractual right to the option, regardless of whether the option is presently exercisable. Options granted in exchange for future services do not constitute property until the required services have been performed.
4. A beneficiary's future vested remainder interest in a trust is property rather than a mere expectancy even when the value is uncertain and the trustee or income beneficiary may invade the corpus for specified purposes. Bonnie's interest was separate property because it was acquired by gift during the marriage, but appreciation in that separate property during the marriage was marital property.

5. Substantial errors in property division or significant changes in the value of marital property may require reconsideration of maintenance. Attorney-fee awards must also be reconsidered when property-division errors materially alter the parties' financial resources.
6. The child-support award was properly affirmed because the trial court's calculation of the wife's maintenance needs, based on reducing prior family expenses for a family of four to expenses for a family of two, included the child's pro rata share of general family living expenses.

KEY QUOTATIONS

> *"We now reverse in part and affirm in part the court of appeals' judgment and hold that: (1) transfers of property from one spouse to another may, under certain circumstances, constitute "gifts" that do not constitute marital property; (2) employee stock options granted in consideration for future services, where such services have not yet been completed, do not constitute marital property; (3) a beneficiary's remainder interest in a trust from which a trustee may, in his discretion, distribute income and principal, constitutes "property" for purposes of property division in a dissolution case; and (4) substantial errors in a trial court's property division determination or significant changes in the value of marital property may require reconsideration of a trial court's maintenance award."* (32-33)

> *"Rather, we conclude that an employee stock option constitutes property for purposes of dissolution proceedings only when the employee has an enforceable right to the options."* (39)

> *"Thus, we conclude that in the present case, Wife's interest in the family trust constitutes "property," as opposed to a mere expectancy."* (42)

> *"Thus, substantial errors in a trial court's property division determination or significant changes in the value of marital property could require a reconsideration of a maintenance award."* (43)

FACTUAL BACKGROUND

The parties dissolved a twenty-six-year marriage. During the marriage, Richard received employee stock options from 3D Systems in exchange for future services; at the time of the decree, he had completed the services required for only 62,500 of 300,000 shares. Bonnie also held a remainder interest in family trusts created during the marriage, and Richard had transferred jewelry and furs to Bonnie. The trial court treated the stock options and trust interest as marital property in whole or in part, treated the interspousal gifts as marital property, and awarded maintenance, child support, and attorney fees.

PROCEDURAL HISTORY

Bonnie Balanson filed for dissolution in April 1997, and the trial court entered a dissolution decree effective October 1997. The court of appeals reversed the trial court's treatment of the stock options and maintenance award but affirmed its rulings concerning the family trust, interspousal gifts, and child support. The Supreme Court reversed in part, affirmed the child-support ruling, and remanded for reconsideration of property division, maintenance, and attorney fees.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The case was returned to the Colorado Court of Appeals with directions to remand to the trial court. The trial court must reconsider the division of marital property, calculate the marital appreciation in Bonnie's family trust by determining the difference between its value at the decree and its value when created, reconsider maintenance in light of the corrected property division and the decreased value of the Everen Account, and reconsider attorney fees. The trial court must apply the opinion's rules concerning interspousal gifts and employee stock options.

CASES CITED

- In re Balanson, 996 P.2d 213 (Colo. App. 1999)
- In re Marriage of Hunt, 909 P.2d 525 (Colo. 1995)
- Graham v. Graham, 194 Colo. 429, 574 P.2d 75 (1978)
- In re Marriage of Weibel, 965 P.2d 126 (Colo. App. 1998)
- E-470 Public Highway Authority v. The 455 Co., 3 P.3d 18 (Colo. 2000)
- In re Marriage of Jones, 812 P.2d 1152 (Colo. 1991)
- In re Marriage of Wells, 850 P.2d 694 (Colo. 1993)
- In re Marriage of Price, 727 P.2d 1073 (Colo. 1986)
- In re Marriage of Gallo, 752 P.2d 47 (Colo. 1988)
- In re Marriage of Moncrief, 36 Colo. App. 140, 535 P.2d 1137 (1975)
- In re Marriage of Stumpf, 932 P.2d 845 (Colo. App. 1996)
- In re Marriage of Bartolo, 971 P.2d 699 (Colo. App. 1998)
- Moseley v. Moseley, 795 S.W.2d 464 (Mo. App. 1990)
- Grimsley v. Grimsley, 632 S.W.2d 174 (Tex. Civ. App. 1982)
- In re Marriage of Miller, 915 P.2d 1314 (Colo. 1996)
- In re Marriage of Grubb, 745 P.2d 661 (Colo. 1987)
- In re Marriage of Huston, 967 P.2d 181 (Colo. App. 1998)
- In re Question Submitted by the United States Court of Appeals for the Tenth Circuit, 191 Colo. 406, 553 P.2d 382 (1976)
- Davidson v. Davidson, 474 N.E.2d 1137 (Mass. App. Ct. 1985)
- Trowbridge v. Trowbridge, 114 N.W.2d 129 (Wis. 1962)
- Reserve Life Insurance Co. v. Frankfather, 123 Colo. 77, 225 P.2d 1035 (1950)
- Trinidad School District No. 1 v. Lopez, 963 P.2d 1095 (Colo. 1998)
- Humphrey v. Southwestern Development Co., 734 P.2d 637 (Colo. 1987)
- Board of County Commissioners v. Crystal Creek Homeowner's Association, 14 P.3d 325 (Colo. 2000)
- Feigin v. Colorado National Bank, N.A., 897 P.2d 814 (Colo. 1995)

- In re Marriage of Short, 125 Wash. 2d 865, 890 P.2d 12 (1995)
- In re Marriage of Jones, 627 P.2d 248 (Colo. 1981)
- In re Marriage of Schwaab, 794 P.2d 1112 (Colo. App. 1990)
