## DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

# Odak v. Vitrano

45 So. 3d 487 (Fla. 4th DCA 2010) · Decided September 1, 2010

### SUMMARY

The Florida appellate court reviewed challenges to a final judgment dissolving the parties' marriage and distributing marital assets. It affirmed the trial court's post-petition valuation date for Wild Oats stock but held that the husband's severance payment was not a marital asset because the right to receive it arose after the dissolution petition was filed. The court reversed in part, affirmed in part, and remanded for entry of a consistent final judgment.

### CASE DETAILS

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| COURT | District Court of Appeal of Florida, Fourth District |
| WRITING FOR THE COURT | Per curiam; Hazouri; Gerber; Kelley, Glenn D., Associate Judge |
| JURISDICTION | Florida |
| DECIDED | September 1, 2010 |
| DISPOSITION | reversed_and_remanded |
| PROCEDURAL POSTURE | Husband appealed and wife cross-appealed portions of a final order dissolving their marriage and distributing marital assets. |
| STANDARD OF REVIEW | Abuse of discretion for the trial court's selection of the valuation date and equitable-distribution determinations. |
| PRECEDENTIAL VALUE | Published opinion; precedential |
| PARTIES | Perry David Odak v. Rosalie Vitrano |

### TOPICS

equitable distribution · dissolution of marriage · family law procedure · appellate procedure · standard of review

### PRACTICE AREAS

family law · equitable distribution · appellate procedure

### QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by using a post-petition, trial-date valuation of the husband's Wild Oats stock rather than the petition-filing date.
2. Whether severance pay to which the husband had no right until after the dissolution petition was filed was a marital asset subject to equitable distribution.
3. Whether the wife's challenges to the classification, treatment, and valuation of other marital assets warranted relief.

## HOLDINGS

1. The trial court did not abuse its discretion in selecting a post-petition valuation date because conflicting trial evidence existed concerning the cause of the stock's increase in value.
2. The severance payment was not a marital asset because the husband's right to receive it did not exist until after the petition for dissolution was filed.
3. The change in equitable distribution did not require the trial court to reconsider alimony because the wife retained substantial other assets that precluded a need for alimony.

## KEY QUOTATIONS

> *"Absent a valid separation agreement, the cutoff date for classifying marital assets is the date of filing of the petition for dissolution of marriage."* (489)

> *"Therefore, the severance payment received by the husband upon termination of employment with Wild Oats was not a marital asset subject to equitable distribution."* (489)

## FACTUAL BACKGROUND

The husband served as president and chief financial officer of Wild Oats Markets, Inc. from March 2001 through November 2006 and obtained options to purchase Wild Oats stock through his employment. After the dissolution petition was filed in February 2005, the husband and Wild Oats amended his employment agreement to provide severance pay, and he later entered a resignation agreement providing for $1,943,346 in severance pay. The trial court selected the trial date to value the stock and treated $1,367,726 of the severance payment as marital property, awarding the wife $683,863.45.

## PROCEDURAL HISTORY

The trial court entered a final dissolution judgment that classified and distributed marital assets, including stock acquired by the husband through employment and severance pay received after termination of employment. The husband challenged the post-petition valuation date for the stock and the classification of severance pay as marital property; the wife challenged other asset classifications, treatment, and valuations in a cross-appeal. The appellate court affirmed on the stock-valuation issue and the wife's cross-appeal, but reversed the classification of the severance pay and remanded for entry of a consistent final judgment.

## DISPOSITION

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reversed_and_remanded
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### REMAND INSTRUCTIONS

Remanded for entry of a final judgment consistent with the opinion, including exclusion of the husband's severance pay from the marital assets subject to equitable distribution.

### CASES CITED

- Catalfumo v. Catalfumo, 704 So. 2d 1095 (Fla. 4th DCA 1997)
- Schmitz v. Schmitz, 950 So. 2d 462, 463 (Fla. 4th DCA 2007)

### OPINION

PER CURIAM.

PER CURIAM. Perry David Odak (“husband”) and Rosalie Vitrano (“wife”), each challenge, in part, a final order dissolving their marriage and distributing marital assets. We affirm on all issues raised in the appeal and cross-appeal except for the trial court’s treatment of the husband’s severance pay.

The primary financial dispute in this case involves the treatment and distribution of various forms of compensation paid to the husband by Wild Oats Markets, Inc. (“Wild Oats”). From March of 2001 through November of 2006, the husband was the president and chief financial officer of Wild Oats. He was apparently hired by Wild Oats based on his experience in restructuring and “turning around” troubled companies.

The primary issues here are the trial court’s selection of a post-petition valuation date for stock in Wild Oats obtained by the husband during his employment, and the trial court’s treatment of the husband’s severance pay as a marital asset subject to equitable distribution.

We first address the trial court’s selection of a post-petition valuation date. Through his employment, the husband obtained options to purchase Wild Oats stock. He exercised these options by ob-*489taming a loan from Wild Oats.

In valuing the stock for equitable distribution, the trial court selected the trial date, and not the date of filing of the petition for dissolution of marriage, as the appropriate date of valuation. The husband asserts that the rise in value of the Wild Oats stock was the result of his post-petition efforts to make the company more efficient and profitable.

Under such circumstances, the husband contends that the proper valuation date is the date of filing of the petition for dissolution and that the wife should not benefit from the rise in the value of the stock which was occasioned by the husband’s efforts made after the filing of the petition. See, e.g., Catalfumo v. Catalfumo, 704 So.2d 1095 (Fla. 4th DCA 1997).

The trial court did not abuse its discretion in selecting a post-petition date of valuation. There was conflicting evidence at trial relating to what caused the Wild Oats stock to rise in value. Based on the evidence adduced at trial, the trial court acted within its discretion in selecting the valuation date.

The husband next contests the trial court’s treatment of severance pay as a marital asset subject to equitable distribution. Husband argues that the trial court’s treatment of his severance pay as a marital asset was error as the right to receive severance pay did not exist at the time of the filing of the petition for dissolution of marriage.

We agree. The petition for dissolution of marriage in this case was filed in February of 2005. In May of 2005, the husband and Wild Oats amended the husband’s employment agreement. The amendment provided, for the first time, for the payment $1,639,346.00 in severance pay to the husband.

In October of 2006, the husband and Wild Oats entered into a resignation agreement providing for the payment of $1,943,346.00 in severance pay. The trial court determined that the severance payment was, in part, a marital asset. Using a coverture fraction, the trial court determined that $1,367,726.00 of the severance payment was a marital asset.

Accordingly, the wife was awarded $683,863.45 as part of the equitable division of the marital assets. Section 61.075(6), Florida Statutes (2004), provides a bright line rule for classifying marital assets and liabilities. Absent a valid separation agreement, the cutoff date for classifying marital assets is the date of filing of the petition for dissolution of marriage.

Schmitz v. Schmitz, 950 So.2d 462, 463 (Fla. 4th DCA 2007). Here it is clear that the right to receive a severance payment did not exist until after the petition for dissolution was filed. Therefore, the severance payment received by the husband upon termination of employment with Wild Oats was not a marital asset subject to equitable distribution.

We are cognizant of the fact that the trial court did not award alimony based on a distribution of assets which included a share of the husband’s severance payment. However, the change in equitable distribution resulting from the exclusion of the husband’s severance pay as a marital asset does not require reconsideration of the issue of alimony by the trial court.

The wife leaves the marriage with other substantial assets which precludes any need for alimony. The wife asserts several issues in her cross-appeal relating to the trial court’s classification, treatment and valuation of certain marital assets.

We are not persuaded by the wife’s argument and affirm on all issues raised in the cross-appeal. *490Reversed in part, affirmed in part and remanded for entry of a final judgment consistent with this opinion. HAZOURI, GERBER, JJ., and KELLEY, GLENN D., Associate Judge, concur.