

SUPREME COURT OF ALASKA

Tammi L. Edelman v. Duane F. Edelman

61 P.3d 1 (Alaska 2002) · No. S-10408 · Decided December 27, 2002

SUMMARY

The Alaska Supreme Court affirmed a superior court decision concerning the division of Exxon Valdez oil-spill claims in a divorce proceeding and the denial of attorney's fees and costs. The court held that retaining jurisdiction over the claims was appropriate because their value and timing of payment were uncertain, and that the former wife retained a 50% share of the marital lost-income claims. It also held that the parties' economic circumstances did not require an attorney's-fee award and that the former wife's generalized allegations did not establish vexatious conduct.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Chief Justice Fabe; Justice Matthews; Justice Eastaugh; Justice Bryner; Justice Carpeneti
JURISDICTION	Alaska
DECIDED	December 27, 2002
DOCKET	S-10408
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tammi Edelman appealed the superior court's supplementary order on remand denying her motion to compel Duane Edelman to assign her one-half of certain Exxon Valdez claims and denying her request for attorney's fees and costs.
STANDARD OF REVIEW	Procedural decisions of the superior court and decisions regarding whether to award attorney's fees are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; precedential.
PARTIES	Tammi L. Edelman v. Duane F. Edelman

TOPICS

- divorce
- equitable distribution
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the superior court abused its discretion by retaining jurisdiction over the uncertain Exxon Valdez claims instead of compelling Duane to assign Tammi one-half of the lost-income claims.
2. Whether the superior court abused its discretion by denying Tammi attorney's fees and costs based on the parties' relative economic circumstances.
3. Whether the superior court erred by declining to award enhanced attorney's fees for alleged bad-faith or vexatious conduct.

HOLDINGS

1. When a marital asset cannot be valued at trial because its value depends on future contingencies, the trial court may retain jurisdiction over its division until valuation is possible. The superior court therefore did not abuse its discretion by retaining jurisdiction over the Exxon claims and declining to compel assignments.
2. In a divorce case, attorney's fees and costs are determined primarily by the parties' relative economic situations and earning powers rather than by prevailing-party status. When the parties' economic situations are sufficiently comparable and the requesting spouse has resources adequate to pay personal fees, the trial court may require each party to bear his or her own fees.
3. A court considering enhanced attorney's fees must first determine the appropriate fee under the general rule and then decide whether to increase it for misconduct. The court must make explicit findings of bad faith or vexatious conduct, explain the reasons for deviation, and identify the nature and amount of any increased costs.

KEY QUOTATIONS

"We have held that when an asset is incapable of valuation at the time of trial because of future contingencies, the trial court should retain jurisdiction over its division until valuation is possible." (61 P.3d at 4)

"The purpose of awarding attorney's fees in divorce proceedings is to 'assure that both spouses have the proper means to litigate the divorce action on a fairly equal plane.'" (61 P.3d at 5)

"Failure to follow this two-step process is an abuse of discretion." (61 P.3d at 6)

FACTUAL BACKGROUND

Duane and Tammi Edelman married in 1976, separated in 1992, and divorced in 1994. Duane held Exxon Valdez litigation claims for lost fishing income and for devaluation of his salmon set-net permit; the lost-income claims had been classified as marital property and the permit-devaluation claim as Duane's separate property. The amount and timing of any Exxon recovery remained uncertain, and Duane was in bankruptcy while Tammi was not. Tammi also had received substantial marital assets and interim support and sought attorney's fees based on alleged economic disparity and vexatious conduct.

PROCEDURAL HISTORY

The parties divorced in 1994, and the superior court divided their marital property. In an earlier appeal, the Alaska Supreme Court classified the Exxon lost-income claims as marital property, classified permit-devaluation damages as Duane's separate property, remanded for additional property valuation issues, and remanded attorney's fees. On remand, the superior court retained jurisdiction over the Exxon claims rather than compelling assignments and denied Tammi attorney's fees and costs. The Supreme Court of Alaska affirmed.

DISPOSITION

affirmed

CASES CITED

- Edelman v. Edelman, 3 P.3d 348 (Alaska 2000)
- Nelson-Lizardi v. Lizardi, 49 P.3d 236, 238 (Alaska 2002)
- Davila v. Davila, 908 P.2d 1027, 1031 (Alaska 1995)
- Root v. Root, 851 P.2d 67, 68 (Alaska 1993)
- Nicholson v. Wolfe, 974 P.2d 417, 427 (Alaska 1999)
- Kowalski v. Kowalski, 806 P.2d 1368, 1372-73 (Alaska 1991)
- L.L.M. v. P.M., 754 P.2d 262, 263-64 (Alaska 1988)
- Burrell v. Burrell, 537 P.2d 1, 6 (Alaska 1975)
- Gallant v. Gallant, 945 P.2d 795, 803 (Alaska 1997)
- Wright v. Wright, 904 P.2d 403, 411 (Alaska 1995)