SUPREME COURT OF ALASKA

Krize v. Krize

145 P.3d 481 (Alaska 2006) · No. Nos. S-11842, S-11862 · Decided August 25, 2006

SUMMARY

The Alaska Supreme Court reviewed the division of property in the Krizes' divorce. It held that depositing income from Robert Krize's separate-property lease into a joint account was insufficient evidence to transmute future lease income into marital property, and it reversed the valuation of the parties' charter boat business as clearly erroneous. The court also addressed the permissible consideration of virtually certain inheritances in property division and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Eastaugh, Justice; Bryner, Chief Justice; Matthews, Justice; Fabe, Justice; Carpeneti, Justice
JURISDICTION	Alaska
DECIDED	August 25, 2006
DOCKET	Nos. S-11842, S-11862
DISPOSITION	vacated
PROCEDURAL POSTURE	Robert Krize appealed, and Judy Krize cross-appealed, from a superior court judgment dividing marital property after their divorce.
STANDARD OF REVIEW	Property-division rulings are reviewed for abuse of discretion; characterization of property and findings of transmutation are reviewed for clear error; valuation is reviewed for clear error; and equitable allocation is not disturbed unless clearly unjust.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Robert L. Krize v. Judy N. Krize

TOPICS

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

PRACTICE AREAS

family law | dissolution of marriage | equitable distribution | real estate | appellate procedure

QUESTIONS PRESENTED

1. Whether depositing income from Robert's separate-property ground lease into the parties' joint account was sufficient evidence of intent to transmute future lease income into marital property.
2. Whether the superior court clearly erred in valuing Alaska Viking Cruises at $50,000 without a principled valuation method or reliable evidence.
3. Whether a trial court may consider a prospective inheritance when equitably dividing marital property.
4. Whether the superior court erred in dividing the Mexican real estate and in considering the parties' health-insurance circumstances.

HOLDINGS

1. Depositing lease payments from separate property into a joint account, without evidence of an intent to assign future lease proceeds to the marital estate, is insufficient to transmute future lease income into marital property.
2. The superior court clearly erred by valuing the charter-boat business at $50,000 without reliable evidence or a principled valuation method.
3. A trial court may consider a prospective inheritance in dividing marital property only when the inheritance concerns an immediate family member, is virtually certain rather than merely possible, and is treated as one factor without inordinate weight.
4. The superior court did not abuse its discretion by awarding Judy one of the Mexican properties rather than enforcing the parties' uncertain pretrial understanding concerning their division.
5. The superior court considered the statutory health-insurance factor, but on remand Robert may present evidence of his insurance costs, which the superior court must consider in the final property division.

KEY QUOTATIONS

> *"Transmutation requires intent, as demonstrated through conduct, to change the character of property from separate to marital."* (485)

> *"Simply placing funds earned from separate property in a joint account, whether on a regular basis as here, or periodically as in Sampson, is insufficient to evince intent to transmute separate property into marital property."* (486)

> *"We held that valuation must be based on "one or more principled methods of valuation," not mere speculation"* (487)

> *"An absolute prohibition on considering prospective inheritance is unwarranted, but we think any such consideration (1) must be limited to immediate family members, (2) must be limited to inheritances that are not just possible but virtually certain, and (3) must treat the prospect as simply one factor and not give it inordinate weight."* (490)

FACTUAL BACKGROUND

Robert and Judy Krize were married for thirty-one years before divorcing in 2005. Robert received Fairbanks real property from his parents in 1999, and a Wells Fargo ground lease on that property generated income deposited into the parties' joint account during the marriage. The superior court treated future lease income as marital property and valued the parties' jointly owned charter-boat business at $50,000, although the business had made a profit in only one year. The parties also disputed the treatment and division of other property and Robert's prospective inheritance and health-insurance costs.

PROCEDURAL HISTORY

The superior court recognized Robert's Fairbanks real property as separate property but classified future lease income as marital property based principally on Robert's direction that lease payments be deposited into the parties' joint account. It valued the parties' charter boat business, Alaska Viking Cruises, at $50,000 and divided other property, including Mexican real estate. The Alaska Supreme Court vacated the judgment and remanded for further proceedings concerning classification, valuation, equitable allocation, possible invasion of separate property, and health-insurance costs.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion. The superior court may reconsider valuation and equitable allocation, including whether equity requires invasion of Robert's separate property; must use a principled method to value Viking and explain that method; may conduct discovery concerning Robert's prospective inheritance and determine what interests have vested; and must consider evidence of Robert's health-insurance costs.

CASES CITED

- Malone v. Malone, 587 P.2d 1167, 1167 (Alaska 1978)
- Sampson v. Sampson, 14 P.3d 272, 275-76 (Alaska 2000)
- Hansen v. Hansen, 119 P.3d 1005, 1009, 1013 (Alaska 2005)
- Lewis v. Lewis, 785 P.2d 550, 558 (Alaska 1990)
- Moffitt v. Moffitt, 749 P.2d 343, 346-48 (Alaska 1988)
- Schmitz v. Schmitz, 88 P.3d 1116, 1125 (Alaska 2004)
- Harrower v. Harrower, 71 P.3d 854, 858 (Alaska 2003)
- Green v. Green, 29 P.3d 854, 858 (Alaska 2001)
- Abood v. Abood, 119 P.3d 980, 986-87 (Alaska 2005)
- Bibo v. Jeffrey's Rest., 770 P.2d 290, 293 (Alaska 1989)
- Keturi v. Keturi, 84 P.3d 408, 412 (Alaska 2004)

- Harrelson v. Harrelson, 932 P.2d 247, 250 (Alaska 1997)
- Silvan v. Alcina, 105 P.3d 117, 123-24 (Alaska 2005)
- Burrell v. Burrell, 696 P.2d 157, 166 (Alaska 1984)
- Lowe v. Lowe, 817 P.2d 453, 456 (Alaska 1991)
- Ford v. Ford, 68 P.3d 1258, 1263 (Alaska 2003)
- Notkin v. Notkin, 921 P.2d 1109, 1112 (Alaska 1996)
- Shelby County R-IV Sch. Dist. v. Herman, 392 S.W.2d 609, 614 (Mo. 1965)

INSTRUCTIONS FOR AN AI ASSISTANT