

SUPREME COURT OF VERMONT

Golden v. Cooper-Ellis

181 Vt. 359 (2007) · No. 2005-065 & 2005-169 · Decided March 2, 2007

SUMMARY

The Vermont Supreme Court affirmed orders dividing the marital estate and setting spousal maintenance and child support in a divorce proceeding. The court held that stock options, including unvested options awarded after separation, may be marital property, and explained that allocation requires analysis of whether options compensate for past, present, or future services rather than automatic application of a time rule. The court also upheld the family court’s findings and treatment of the disputed options.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Dooley, J.; Reiber, C.J.; Johnson, J.; Skoglund, J.; Burgess, J.
JURISDICTION	Vermont
DECIDED	March 2, 2007
DOCKET	2005-065 & 2005-169
DISPOSITION	affirmed
PROCEDURAL POSTURE	Husband appealed from the final divorce order dividing the marital estate and from orders denying his motions to modify spousal maintenance and child support. Wife cross-appealed from the original divorce decision.
STANDARD OF REVIEW	The Supreme Court reviewed equitable-distribution and valuation decisions for abuse of discretion, factual findings for clear error, maintenance and support awards for whether a reasonable basis supported them, and the denial of modification for erroneous or clearly unreasonable exercise of discretion.
PRECEDENTIAL VALUE	published
PARTIES	Peter Cooper-Ellis v. Jo-Ellen Golden (Cooper-Ellis)

TOPICS

- equitable distribution
- divorce
- spousal support
- child support
- appellate procedure

PRACTICE AREAS

family law

divorce

equitable distribution

spousal support

child support

QUESTIONS PRESENTED

1. Whether stock options awarded after the parties' separation but before the final divorce hearing could be included in the marital estate.
2. Whether unvested stock options should be apportioned between marital and separate property using a pension-derived time rule.
3. Whether the family court could assign a present value to unvested stock options subject to forfeiture if husband ceased employment.
4. Whether the family court improperly relied on outdated asset valuations.
5. Whether the family court properly valued husband's interest in real property co-owned with his brother based on record title.
6. Whether the maintenance and child-support awards were supported by the evidence and improperly double-counted stock options as both property and income.
7. Whether husband's reduced income and increased expenses constituted a real, substantial, and unanticipated change of circumstances warranting modification.
8. Whether wife's cross-appeal should be dismissed under her contingent waiver.

HOLDINGS

1. The family court acted within its discretion by including stock options acquired after the parties separated but before the final divorce hearing in the marital estate.
2. Unvested stock options may constitute marital property, and the family court did not clearly err in finding that all of husband's options awarded through the final hearing were marital property in this case.
3. A pension-derived time rule is not the exclusive method for allocating stock options. The court must first separate options granted for past or present performance from those granted for future performance; only the latter, when not attributable to the nonemployee spouse's contribution, may require a further temporal apportionment.
4. The family court may assign a present value to unvested stock options despite contingencies such as forfeiture upon termination of employment, when the valuation is supported by adequate findings and evidence.
5. The family court properly determined husband's marital-property interest in the real estate based on record title because it lacked jurisdiction to reform the deeds or adjudicate adverse-possession and quantum-meruit claims between the brothers.
6. The family court acted within its discretion in calculating husband's income at \$430,000 excluding stock-option income and approximately \$490,000 including anticipated stock-option income, and considering income-producing property in setting maintenance.

7. Husband failed to establish a real, substantial, and unanticipated change of circumstances sufficient to modify the child-support and spousal-maintenance orders three months after entry of the divorce decree.

KEY QUOTATIONS

“The part for present and past work is marital property in its entirety irrespective of when it becomes vested.” (¶ 23)

“The first is based on the purpose of the stock option grant and seeks to separate out options granted for future performance from those granted for present and past performance.” (¶ 24)

“A change in circumstances is a jurisdictional prerequisite to such modifications” (¶ 57)

FACTUAL BACKGROUND

The parties married in 1986 and had three children, including a daughter with Smith-Magenis Syndrome who required continuing adult supervision and for whom wife remained the primary caregiver. Husband became a senior executive at BEA Systems and received substantial compensation through stock options, including approximately 375,000 unvested options at the time relevant to the divorce. The family court included all options awarded through the final hearing in the marital estate, valued them, divided the estate approximately equally, and based maintenance and child-support awards on husband's salary, bonuses, and anticipated stock-option income.

PROCEDURAL HISTORY

The Windham Family Court entered a final divorce order that equally divided the marital estate, included husband's vested and unvested stock options as marital property, valued the options, and ordered husband to pay spousal maintenance and child support. The court later denied husband's motion to modify those awards based on alleged changes in income and expenses. The Vermont Supreme Court affirmed the divorce and post-judgment rulings and dismissed wife's cross-appeal pursuant to her contingent waiver.

DISPOSITION

affirmed

CASES CITED

- Hayden v. Hayden, 2003 VT 97, 176 Vt. 52, 838 A.2d 59
- McDermott v. McDermott, 150 Vt. 258, 552 A.2d 786 (1988)
- Russell v. Russell, 157 Vt. 295, 597 A.2d 798 (1991)
- Baccanti v. Morton, 752 N.E.2d 718 (Mass. 2001)
- Bornemann v. Bornemann, 752 A.2d 978 (Conn. 1998)
- Miller v. Miller, 915 P.2d 1314 (Colo. 1996)
- DeJesus v. DeJesus, 687 N.E.2d 1319 (N.Y. 1997)
- Valence v. Valence, 798 A.2d 35 (N.H. 2002)

- Kanaan v. Kanaan, 163 Vt. 402, 659 A.2d 128 (1995)
- Chilkott v. Chilkott, 158 Vt. 193, 607 A.2d 883 (1992)
- Cleverly v. Cleverly, 151 Vt. 351, 561 A.2d 99 (1989)
- Albarelli v. Albarelli, 152 Vt. 46, 564 A.2d 598 (1989)
- Sochin v. Sochin, 2004 VT 85, 177 Vt. 540, 861 A.2d 1089 (mem.)
- Mabee v. Mabee, 159 Vt. 282, 617 A.2d 162 (1992)
- Harris v. Harris, 168 Vt. 13, 714 A.2d 626 (1998)
- Habecker v. Giard, 2003 VT 18, 175 Vt. 489, 820 A.2d 215
- Taylor v. Taylor, 175 Vt. 32, 819 A.2d 684 (2002)