SUPREME COURT OF GEORGIA

Barton v. Barton

281 Ga. 565 (2007) · No. S06F2159; S06X2160 · Decided January 8, 2007

SUMMARY

The Georgia Supreme Court held that, in valuing a closely held corporation for equitable division of marital property, a court is not bound by the buy-sell price in a shareholder agreement that was not signed by the non-shareholder spouse. The court affirmed the property division based on the stock's fair market value and dismissed the wife's cross-appeal regarding alimony.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Thompson, Justice
JURISDICTION	Georgia
DECIDED	January 8, 2007
DOCKET	S06F2159; S06X2160
DISPOSITION	affirmed
PROCEDURAL POSTURE	Husband appealed the equitable division of marital property, and wife cross-appealed the failure to award alimony. The superior court had adopted an arbitrator's award dividing the marital assets; wife withdrew her cross-appeal after the Supreme Court upheld the property division.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Husband v. Wife

TOPICS

equitable distribution · divorce · family law procedure · corporate law

PRACTICE AREAS

family law · corporate law

QUESTIONS PRESENTED

1. Whether, in valuing stock of a closely held corporation for purposes of dividing marital property in a divorce, the court is bound by the value specified in a buy-sell provision of a shareholder agreement that was not signed by the non-shareholder spouse.
2. Whether the superior court erred in adopting the arbitrator's division of marital property based on a fair-market valuation of the stock.
3. Whether wife's cross-appeal concerning alimony remained at issue after she withdrew it.

HOLDINGS

1. A court valuing an ownership interest in a closely held corporation for equitable division of marital property is not bound by the price specified in a buy-sell agreement that was not signed by the non-shareholder spouse. The agreement price may be considered along with other factors in determining value.
2. The arbitrator properly valued husband's Triad stock at $508,000 rather than being bound by the $342,200 formula price, and the division of marital property was affirmed.

KEY QUOTATIONS

> *“The short answer is “no.””* (281 Ga. at 565)

> *“However, a “clear majority of courts hold that the value established in the buy-sell agreement of a closely-held corporation, not signed by the non-shareholder spouse, is not binding on the non-shareholder spouse but is considered, along with other factors, in valuing the interest of the shareholder spouse.””* (281 Ga. at 565)

> *“The rationale for the majority rule is simple — the buy-sell price in a closely-held corporation can be manipulated and does not necessarily reflect true market value.”* (281 Ga. at 565-566)

FACTUAL BACKGROUND

The parties had been married for 29 years when wife sued husband for divorce. Husband owned one-half of the stock of Triad Specialities, Inc., a closely held corporation, and the stock was subject to a buy-sell provision establishing a formula price of $342,200 upon specified triggering events. The arbitrator instead determined that the stock's fair market value was $508,000 and used that valuation in dividing the marital property.

PROCEDURAL HISTORY

After wife filed for divorce seeking equitable division of property and alimony, the matter was referred to an arbitrator. The arbitrator divided the marital assets without awarding alimony, and the superior court adopted the award. Husband appealed the valuation and division of his closely held corporate stock, while wife cross-appealed the denial of alimony; she later expressly withdrew her cross-appeal.

DISPOSITION

affirmed

CASES CITED

- Hertz v. Hertz, 657 P2d 1169 (N.M. 1983)
- McDiarmid v. McDiarmid, 649 A2d 810 (D.C. 1994)
- Cole v. Cole, 110 SW3d 310, 314 (Ark. App. 2003)
- Bettinger v. Bettinger, 396 SE2d 709, 714-715 (W.Va. 1990)
- Bosserman v. Bosserman, 384 SE2d 104, 108 (Va. App. 1989)

OPINION

THOMPSON, J.

Thompson, Justice. This divorce case presents a question of first impression in this State: In placing a value on the stock of a closely-held corporation for purposes of dividing marital property, is the court bound by the value set forth in a buy-sell provision of the stockholder agreement?

The short answer is "no." The parties had been married for 29 years when wife sued husband for divorce, seeking an equitable division of property and alimony. The matter was referred to an arbitrator who divided the marital assets, but did not award alimony.

The arbitration award was adopted by the superior court. In Case No. S06F2159, husband appeals, assigning error to the division of marital property. Wife cross-appeals in Case No. S06X2160, asserting the court erred in failing to award her alimony.1 1. Case No. S06F2159. Husband owns one-half of the stock of Triad Specialities, Inc., a closely-held corporation.

The stock is subject to a buy-sell provision in the stockholder agreement which provides that in the event of husband's death, disability, bankruptcy, or other specified triggering event, the other shareholder has a right to purchase husband's stock at a price to be determined by a formula.

Under that formula, the value of husband's stock would have been fixed at $342,200. Nevertheless, the arbitrator placed a fair market value on the stock of $508,000, and the division of marital property was based on that valuation. Citing Hertz v. Hertz, 657 P2d 1169 (N.M. 1983), husband asserts that, in valuing the Triad stock, wife should be bound by the terms of the buy-sell agreement.

We disagree. We recognize that a minority of jurisdictions hold that in a divorce case the non-shareholder spouse should be bound by the shareholder spouse's valuation agreement. Hertz v. Hertz, supra. See also McDiarmid v. McDiarmid, 649 A2d 810 (D.C. 1994).

However, a "clear majority of courts hold that the value established in the buy-sell agreement of a closely-held corporation, not signed by the non-shareholder spouse, is not binding on the non-shareholder spouse but is considered, along with other factors, in valuing the interest of the shareholder spouse." Cole v. Cole, 110 SW3d 310, 314 (Ark. App. 2003).

See also Bettinger v. Bettinger, 396 SE2d 709, 714, 715 (W.Va. 1990), and cases cited therein. The rationale for the majority rule is simple — the buy-sell price in a closely-held corporation can be manipulated and does not necessarily reflect true market value. *566Bettinger v. Bettinger, supra; Bosserman v. Bosserman, 384 SE2d 104, 108 (Va. App. 1989).

In our view, the majority rule is more sound and it was applied properly in this case. Decided January 8, 2007 Reconsideration denied February 5, 2007. John T. Garcia, for appellant. Mirshak & Smith, Timothy S. Mirshak, for appellee. 2. Case No. S06X2160.

In view of our ruling in Division 1 upholding the division of marital property, wife expressly withdraws the cross-appeal. Judgment affirmed. All the Justices concur. These discretionary appeals were granted pursuant to this Court’s pilot project in domestic cases.