

Circuit Court for Prince George's County
Case No. CAD 15-29999
Case No. CAD 29839

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2555

September Term, 2019

TERESA Y. NEAL

v.

ERNEST J. NEAL, JR.

Fader, C.J.,
Beachley,
Wilner, Alan M. (Senior Judge,
Specially Assigned,

JJ.

Opinion by Wilner, J.

Filed: March 12, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is the parties' third visit to this Court from decisions made by the Circuit Court for Prince George's County in their divorce case.

BACKGROUND

The first appeal was by Mr. Neal from the denial of his exceptions to a magistrate's recommendations regarding *pendente lite* spousal and child support and interim attorneys' fees. We affirmed the trial court's decisions. *Neal v. Neal*, No. 710, S.T. 2016 (June 9, 2017, Unreported). The case was then tried, and the court granted the divorce and made awards to Ms. Neal of alimony, child support, \$34,500 based on the value of marital property, and attorneys' fees. That produced an appeal by Ms. Neal, who complained about all three of the monetary awards. We sustained the trial court's attorneys' fee award but remanded the case for further clarification regarding alimony and the marital property award. *See Neal v. Neal*, No. 1140, S.T. 2017 (April 20, 2018, Unreported).

In light of Ms. Neal's subsequent remarriage, her request for alimony was withdrawn, so the sole issue on remand was the marital property award. No new evidence was presented. The court, in the first go-around, had found that the only marital asset of any substantial net value was Mr. Neal's 49% interest in a cyber security company known as Atlantic Systems Group, Inc. (ASG), whose income came principally from Government contracts. It is undisputed that that interest constitutes marital property that can serve as a basis for a monetary award under Md. Code, Title 8, Subtitle 2 of the

Family Law Article (FL). The court valued that interest at \$69,000 and awarded Ms. Neal half of that amount – \$34,500. The problem was that, based on the trial court’s remarks in announcing that award, neither the parties nor this Court could ascertain the basis for that award in light of the evidence.

As we explained in our earlier Opinion, ASG, which is a Subchapter S corporation, is not a public company; its stock is not traded, so there is no identifiable market value for it. In their Joint Statement of Marital and Non-Marital Property, filed pursuant to Md. Rule 9-207, Mr. Neal valued his interest in ASG at \$68,085; Ms. Neal valued it at \$252,000. In light of that disparity, upon a joint motion of the parties, the court appointed Andrew Runge, a business consultant and CPA, to serve as a “joint accounting expert of the parties” to prepare a report expressing his conclusion as to the fair market value of the 49% interest in ASG “based upon commercially reasonable professional standards within the accounting community.”

Mr. Runge rendered his report in September 2016. In subsequent testimony, he said that there were three “methodologies” for valuing a business where there is no market for its stock – the asset method, in which one values the assets of the company, subtracts its liabilities, and determines what is left; the income method, in which one determines from the company’s income stream what a third-party investor would pay to get that income stream; and the market approach, in which one looks at sales of comparable businesses.

Mr. Runge said that he used all three methods. His ultimate findings were as follows:

- (1) “The Value of Mr. Neal’s 49% interest in ASG, Inc. before consideration of personal goodwill and any outstanding loans is \$256,000.”
- (2) “The Value of Mr. Neal’s 49% interest in ASG, Inc. after consideration of personal goodwill is \$203,500 not considering any outstanding loan balance.”
- (3) “The outstanding loan balance as of December 31, 2015 between Mr. Neal and the Company was \$132,415 which after deducting his 49% interest in the loan leaves a net loan balance of \$67,532.”

It is that third conclusion, about which there is no direct dispute, that lies at the heart of the controversy. As an employee of ASG, Mr. Neal drew a salary. As a 49% owner of a Subchapter S corporation, he also received equity passthrough payments that were charged to his capital account. Without objection from his 51% co-owner, Mr. Neal was allowed to overdraw his capital account to pay personal expenses, the overdraw being regarded as a loan that constituted a lien on his stock in the company. The parties accepted Mr. Runge’s finding that the loan balance as of December 31, 2015 was \$132,415, 51% of which equals \$67,532.¹

The dispute central to this case was how much, if any, of the \$132,415 constitutes marital debt that lawfully may be deducted from the value of the marital asset in determining a monetary award pursuant to FL § 8-205. Although not so clearly stated in

¹ Mr. Runge explained the reason for that deduction. If the entire loan balance were repaid, Mr. Neal would be paying himself 49% of it, so the only detriment to him from the repayment would be the other 51%.

the Code, it is well-established by judicial gloss, beginning with *Schweizer v. Schweizer*, 301 Md. 626, 636-37 (1984) and continuing with *Niroo v. Niroo*, 313 Md. 226, 238-39 (1988), that, when dealing with a marital asset that is burdened by a debt, the court must act as follows. First, it must determine whether the debt is a marital or non-marital debt. A marital debt is one that “is directly traceable to the acquisition of marital property.” *Schweizer*, at 636-37. To the extent that the debt is a marital debt, it reduces the value of the marital asset for purposes of determining any monetary award under FL § 8-205. To the extent that the debt is non-marital, it does not reduce the value of the marital asset but may be considered in determining whether or how much of a monetary award should be made. *Id.* at 637.

Although Mr. Neal’s estimate of \$68,085 was in evidence, the debate in the trial proceeding centered on Mr. Runge’s analysis – whether to start with \$256,000 or \$203,500, or \$94,000, a figure he used in the net asset method of valuation. Ms. Neal’s preference, of course, was \$256,000 but she found \$203,500 acceptable as well. She insisted, however, that none of the \$132,415 debt was marital, none of it, therefore, should be deducted, and that the value of the 49% interest should be at least \$203,500. Mr. Neal argued that the entire debt should be deducted. As noted, in the end, the court picked \$69,000 as the value of that interest but failed to explain how it arrived at that number.

When the case returned, the court explained at the beginning of the hearing that it had simply added a few dollars to Mr. Neal’s estimate of \$68,085 but said that it was willing to reconsider that conclusion. That produced an arithmetic avalanche. A wide and bewildering array of numbers was tossed about by the lawyers – \$136,000, \$119,041, \$238,963, \$119,481, \$186,463, \$93,231, \$84,714, \$90,084, each having an asserted basis.

The court held the matter *sub curia* for 15 months and, in a written memorandum opinion issued December 30, 2019, decided that (1) no part of the \$132,415 debt would be deducted from the \$203,500 value found by Mr. Runge “because the evidence does not support a finding of what amount of the loan related to marital debt,” and “[u]nder Maryland law, the Court is precluded from deducting non-marital debt from the gross value of marital property when determining monetary award.” It then added:

“Given the lack of proof to determine the marital portion of the loan debt, the Court accepts Mr. Neal’s value of his ASDG interest reflected on the Joint Statement. Mr. Neal is familiar with the business, his capital account and his spending history and he placed a value of \$68,084.89 (rounded to \$69,000). Additionally, the Court considered the fact that ASG had only one (1) contract subject to expire April 2017.”

The court then made specific findings with respect to the eleven factors specified in Md. Code, § 8-205 of the Family Law Article, including a finding that the total value of all of the marital property, including Mr. Neal’s interest in ASG was \$69,000, and decided that it “will not grant a monetary award in addition to the amount of \$34,500 awarded in the Court’s Order entered August 1, 2017.” The court explained:

“[Mr. Neal] testified that as of September 2016 he had a lien of \$123,000 to \$124,000 against his shares in ASG. Because Mr. Neal used his capital account to pay the mortgage and family expenses, some portion of the 2016 loan was related to family expenses, however that amount was not shown at trial. Under Maryland law, the Court is precluded from deducting non-marital debt from gross value of marital property when determining monetary award. Some portion of the loan amount would be non-marital debt but because Mr. Neal commingled his income with business and family expenses, the Court finds that the marital portion of the loan is undetermined.”

Upon that finding, the court “accepts Mr. Neal’s value of his ASG interest reflected on the Joint Statement,” noting that “Mr. Neal is familiar with the business, his capital account and his spending history.”

Although the court stated that a separate Order would be entered, we are unable to find one in either Ms. Neal’s record extract or the Appendix to Mr. Neal’s brief; nor has either party supplied the docket entries that would have noted such an Order. In the absence of any complaint from the parties, we shall assume that such an Order was entered and that it was consistent with the court’s memorandum.

DISCUSSION

Ms. Neal makes two complaints in this appeal. First, she contends that the court erred in finding that Mr. Neal had valued his interest in ASG at \$68,085 when, in his testimony, he expressly adopted Mr. Runge’s determination that the value of that interest was \$136,000. Second, she insists that the case be remanded again for the court to recalculate the value by adding the \$67,000 in non-marital debt that Mr. Neal had subtracted in reaching his valuation of \$136,000. Mr. Neal responds that Ms. Neal’s first

complaint is based on her misinterpretation of what he said and that the court had the discretion to accept Mr. Neal’s valuation of just under \$69,000.

As we noted, in the joint statement of marital property filed pursuant to Rule 9-207, Mr. Neal valued his interest in ASG at \$68,084.89. That statement was filed on August 2, 2016, before Mr. Runge was appointed to make his assessment. In testimony given in January 2017, Mr. Neal was shown Mr. Runge’s report and was asked “what do you believe is the value of your share in Atlantic Systems Group,” to which Mr. Neal responded “*according to the Runge report* it’s about – it’s a little less, but about \$136,000.” (Emphasis added). When the court asked where he was getting that from the report, he explained that the number came from deducting \$67,000 of the loan from the \$203,500 value Mr. Runge found. Given the fact that he continued to insist throughout that the value of his interest was less than \$69,000, we do not construe that colloquy, and the trial court obviously did not construe it, as Mr. Neal’s *acceptance* of a \$136,000 net value. He was simply explaining, in response to a question, what Mr. Runge thought the value was.

There are two principles that govern our analysis. The first is that the party asserting a marital interest in property has the burden of producing evidence as to that claim, including the value of the property. *Malin v. Mininberg*, 153 Md. App. 358, 428 (2003); *Newborn v. Newborn*, 133 Md. App. 64, 94 (2000); *Murray v. Murray*, 190 Md. App. 553, 570 (2010). The second is that that part of marital property encumbered by a

marital debt – a debt directly traceable to the acquisition of marital property – is not regarded as having been acquired for purposes of an equitable distribution, and the value of that marital property is adjusted downward by the amount of that debt. *Schweizer v. Schweizer, supra*, 301 Md. 626, 636-37; *Niroo v. Niroo, supra*, 313 Md. 226, 238-39. Conversely, a non-marital debt does not reduce the value of the marital property but may be considered in the ultimate determination of any monetary award. *Schweizer*, at 626.

Applying these two principles, it was Ms. Neal’s burden to establish the value of Mr. Neal’s interest in ASG. Both parties offered evidence. Ms. Neal’s evidence was that the value was at least \$203,500, with no deduction for the debt, which she claimed was entirely non-marital. Mr. Neal offered evidence that the value was \$68,085 *after deducting the debt*. Mr. Neal never explained the underlying basis of that assessment – what he regarded as the gross value of his interest in the business and how much of the debt he deducted from that gross value. When asked, he simply said that it was a “guestimation.” He added, “I took a guess what the value *might be* then deducted what my loans were against my shares and came up with that number.” (Emphasis added).

Relying on that was clear error. The court itself concluded that part of the loan was non-marital and recognized that it was “precluded” from deducting that amount. It was undisputed that at least \$34,000 of the debt was used to help finance Ms. Neal’s purchase of a bowling league, which no longer existed and could not be regarded as extant marital property. The only evidence of the gross value of Mr. Neal’s interest in

ASG came from Mr. Runge, and there was no significant attack on his calculations. The only real dispute was how much of the undisputed \$132,415 debt that existed in December 2015 was marital and could be deducted. The burden of at least producing evidence of the marital nature of the debt was on Mr. Neal, who was claiming the deduction. If there was insufficient evidence for the court to make a finding of what, if any, part was marital, the entire debt should have been disallowed as non-marital. The court was free to consider any non-marital portion of the debt in adjusting the monetary award as part of Step 3 of the statutory process, but not to consider it in valuing the marital property. The case will be remanded for that purpose.

Upon the remand, the court should use \$203,500 as the gross marital value of Mr. Neal's interest in ASG, as that is the only gross value supported by the evidence. Having concluded that there was insufficient evidence of what, if any, portion of the \$132,415 debt was used to acquire marital property, the court must make no deduction for any part of that debt. Subject to any further claim for attorneys' fees, that leaves as the only issue how much, if any, of a monetary award should be made to Ms. Neal based on the \$203,500 value of Mr. Neal's interest in ASG. In making that determination, the court may consider all, none, or any portion of the \$132,415 debt.

**JUDGMENT VACATED; CASE REMANDED
FOR FURTHER PROCEEDINGS IN
ACCORDANCE WITH THIS OPINION;
APPELLEE TO PAY THE COSTS.**