The Transferability Trap: Binary Thinking v. Nuance in Goodwill Valuation

by
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Recent high-profile divorce cases such as the Florida duo of *Rosenberg v. Rosenberg*[1] and *Conde-Berrocal v. Conde* (*Conde*)[2] have exposed a recurring trend in which family law courts increasingly default to "splitting" when addressing the value of goodwill. Historically, divorce courts throughout the United States have viewed goodwill through a binary prism—categorized as either personal goodwill or enterprise goodwill. That dualistic perspective fails to recognize that some personal goodwill can be transferred in certain transactions. Those outcomes reflect a shift away from a more economically grounded inquiry into whether goodwill is marketable, transferable, and distinct from future earning capacity. Instead of asking whether the value can be retained by the enterprise or conveyed to a buyer, personal goodwill is excluded and enterprise goodwill is included in marital estates.

While binary framing is administratively simple, it omits value that originated with individuals and later became pooled, protected, institutionalized, or saleable as part of an entity. This article considers three analytical frameworks: the traditional personal goodwill versus enterprise-goodwill classification, a spectrum approach that distinguishes transferable personal goodwill from non-transferable and pure personal goodwill, and a salability/marketability inquiry that asks whether the value can be sold, retained, or transferred apart from an individual's future labor. This article concludes that the salability/marketability analysis best captures value that is economically salable while still excluding value that remains inseparable from an individual's future earning capacity. Changing the

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1 391 So. 3d 975 (Fla. Dist. Ct. App. 2024).
2 391 So. 3d 518 (Fla. Dist. Ct. App. 2024).

focus to the transferability of goodwill from simple category labeling allows for a more equitable asset division by divorce courts.

The *Rosenberg* and *Conde* opinions apply a distinct line—splitting—between personal and enterprise goodwill in divorce cases. Splitting, also called binary, desktop, dichotomous, black-and-white, include or exclude, or all-or-nothing thinking, is a cognitive approach that considers two options without evaluating a wider range of possibilities.[3] Individuals commonly think in two extreme (*i.e.*, an individual's motivation and actions are *all* good or *all* bad with no middle ground) rather than acknowledging the existence and importance of nuance and other possibilities.

When evaluating goodwill, binary decision-making may not capture the realities of how personal goodwill is created, absorbed, and measured. By examining these two cases and other prior and recent authorities, the conclusion is that valuation analysts and courts should resist simplistic, dual frameworks and apply deeper rigor in all goodwill analyses. That rigor comes to the forefront through a critical assessment of the transferability of goodwill, which assessment critically analyzes whether a particular goodwill component adds value to the individual or the entity. That distinction correlates to marital property and non-marital property distinctions made by divorce courts.

Part I of this article defines personal goodwill and enterprise goodwill and explains the traditional binary approach used by many divorce courts. Part II proposes a more nuanced framework that focuses on transferability and distinguishes enterprise goodwill, transferable personal goodwill, non-transferable personal goodwill, and pure personal goodwill. Part III analyzes *Rosenberg* and *Conde* as recent examples of binary reasoning in multi-member professional-practice cases. Part IV contrasts those decisions with authorities that focus more directly on salability, transferability, and fact-specific proof. Part V concludes that goodwill should be classified based on whether it is economically transferable and salable and not merely by whether it originated with human effort. The takeaway is straightforward: for marital valuation purposes, the issue is whether goodwill can be transferred, retained, or sold, and not merely whether it began with a person.

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[3] *See, e.g.,* Takahiro Mieda, Kanako Taku, & Atsushi Oshio, *Dichotomous Thinking and Cognitive Ability*, 169 Personality & Individual Differences (2021).

I. Goodwill Defined

As a threshold matter, it is imperative to define what personal goodwill is, how it differs from enterprise goodwill, and why its treatment in legal and valuation contexts is so complex.

"Personal goodwill" is the value attributable to the reputation, skills, relationships, and unique attributes of a specific individual—often the owner or other key person."[4] Personal goodwill differs from enterprise goodwill in that personal goodwill represents the value stemming from an individual's personal importance to that business or professional practice, and is an asset owned by the individual rather than the business or professional practice.[5] This value encompasses an individual's professional reputation, personal relationships with customers or suppliers, technical expertise, or other distinct personal abilities which provide economic benefit to a business. This economic benefit exceeds any normal return earned on other tangible or intangible assets of the company.[6] This type of goodwill is not easily transferable; it may disappear if the individual leaves the business or professional practice. Many jurisdictions exclude personal goodwill from marital property because it is commonly viewed as future earning capacity rather than a marketable business asset.[7]

"Enterprise goodwill," in contrast, is the value that attaches to a business or professional practice itself, independent of any individual. It arises from factors such as the entity's name, location, reputation, systems, contracts, assembled workforce, and other attributes that would continue to generate income even if the current owner or key employees depart.[8] Enterprise goodwill is generally considered transferable and is in many jurisdictions included in the valuation of a business or professional practice for property division when part of the marital estate.[9]

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4 *See, e.g.,* Bruce L. Richman, *Personal Goodwill in Divorce What It Is and How One Can Value It*, Fam. Advoc., Winter 2025, at 30, 31.

5 *See, e.g.,* Moore v. Moore, 779 S.E.2d 533, 546 (S.C. 2015) (providing a chart of indicators that distinguish personal goodwill from enterprise goodwill).

6 Wendy S. Ingalls & Lucas M. Parris, *An Overview of Personal Goodwill*, 2005-11 Value Matters, at 1 (Mercer Capital Dec. 5, 2005).

7 BVR Guide to Personal and Enterprise Goodwill, 115 (5th ed. 2012).

8 *See* Brett R. Turner, *Distinguishing Enterprise and Individual Goodwill*, 23 Equitable Distrib. J. 121 (Nov. 2006).

9 BVR Guide to Personal and Enterprise Goodwill, *supra* note 7 at 9.

These definitions are consistent with the broader valuation principles reflected in IRS Revenue Ruling 59-60,[10] a foundational business valuation authority. Revenue Ruling 59-60 instructs valuation analysts to consider all relevant factors, including the nature and history of the business, the economic outlook, financial condition, earning capacity, and intangible assets such as goodwill. Although Revenue Ruling 59-60 does not resolve the divorce-law distinction between personal and enterprise goodwill, its fact-specific framework supports a transferability-focused inquiry.

The majority of divorce courts that distinguish personal goodwill from enterprise goodwill exhibit binary thinking. For example, in *Thompson v. Thompson,*[11] the Florida Supreme Court held that personal goodwill of a solo professional practice is not a marital asset, because it represents future earning capacity tied to the individual and not the business. Only enterprise goodwill, which is marketable and transferable, is includable in marital property division. Likewise, in *Gaskill v. Robbins,*[12] the Kentucky Supreme Court recognized the distinction between personal and enterprise goodwill, ruling that personal goodwill is non-marital property that cannot be sold or transferred to another practitioner. Recently, in *Rosenberg*[13] and *Conde,*[14] Florida cases decided the same day that involved the same multi-professional medical practice, the Florida District Court of Appeals defaulted to binary decision-making in determining whether goodwill is personal or enterprise.

Binary classification is not the most reliable way to segregate marital and nonmarital goodwill. A more detailed transferability analysis better captures the portion of goodwill attributable to the entity because it asks whether the value can be sold, retained, or conveyed apart from the individual's future labor. That approach harmonizes disparate authorities and aligns goodwill classification with the economic realities of professional practice transactions. A more exacting analysis that concentrates on transferability may harmonize disparate court opinions and bring about a better, more reasoned allocation of goodwill that comports with the language and intent of legal standards. The result of this higher level of scrutiny

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10 Rev. Rul. 59-60, 1959-1 C.B. 237.
11 576 So. 2d 267 (Fla. 1991).
12 282 S.W.3d 306 (Ky. 2009).
13 391 So. 3d 975 (Fla. Dist. Ct. App. 2024).
14 391 So. 3d 518 (Fla. Dist. Ct. App. 2024).

is a focus on a segment of personal goodwill—*transferable personal goodwill*—as differentiated from *non-transferable personal goodwill*.

II. Nuance Matters: Transferable, Non-Transferable, and Pure Personal Goodwill

"Transferable personal goodwill" refers to relationships, skills, or knowledge that, while personal in nature, can be transferred to another person or entity. Examples include personal client lists, referral networks, or specialized expertise that can be taught or institutionalized. In these instances, the value inherent in the goodwill may be realized by a buyer, especially if supported by enforceable non-compete agreements or structured transition plans.

"Non-transferable personal goodwill" is tied so closely to the individual that it cannot be transferred under any circumstance. It may be personal relationships or specialized skills that are unique to the individual and cannot be fully transferred to others, and effectively are only purchased by a buyer, if at all, at a dramatic discount. The classic example is professional reputation and client loyalty that are inseparable from an individual's personal involvement with clients or patients. A buyer recognizes that, while an individual is not irreplaceable, it will take extra effort to fill that individual's place in the business or professional practice. Non-transferable personal goodwill is tied so closely to an individual that it cannot be transferred in any meaningful economic sense. It may consist of relationships, reputation, specialized skills, or client loyalty that depend on an individual's continuing involvement. A buyer may discount this value substantially because additional effort, transition time, or replacement resources would be required to preserve revenue after the individual departs.

"Purely personal goodwill" is the most extreme form of non-transferable personal goodwill. It is entirely dependent on the individual's unique attributes—his or her "star" status—that cannot be replicated or transferred, even with contractual mechanisms. Buyers recognize that this goodwill value will disappear when the individual leaves, and that it could leave a gaping hole in the market value of the business.

The following table provides a schedule of the types of goodwill and their transferability:[15]

Types of Goodwill

Type of Goodwill	Definition	Transferability	Example
Enterprise Goodwill	Value attached to the business itself, independent of any individual	Fully transferable	Brand, contracts, location, assembled workforce
Transferable Personal Goodwill	Personal relationships, skills, or knowledge that can be transferred to buyer or entity	Partially transferable	Client lists, referral networks, teachible expertise
Non-Transferable Personal Goodwill	Value tied to an individual that cannot be transferred, even with contracts	Not transferable	Unique reputation, persona-type relationships
Pure Personal Goodwill	Extreme form of non-transferable goodwill; entirely dependent on the individual's unique attributes		

Transferable personal goodwill may have value in a transaction to the purchaser and, theoretically, should be considered in marital property division. Some courts have endorsed this salability-centered view in substance, as discussed in greater detail in Section IV, below. Non-transferable and purely personal goodwill, in contrast, should be excluded from marital property division since it has no value to the enterprise and can only be realized by the individual. The binary approach to valuation does not consider this second level of distinction and risks misallocating goodwill value in divorce cases.

With this backdrop, the compelling question is: What elements do valuation analysts consider when making personal and enterprise goodwill distinctions under either a binary or nuanced analysis?

A. *Size Matters (e.g., Maturity)*

One consideration is the size of the entity. In the abstract, the larger the entity, the lesser the existence of non-transferable personal goodwill and pure personal goodwill. The smaller the entity,

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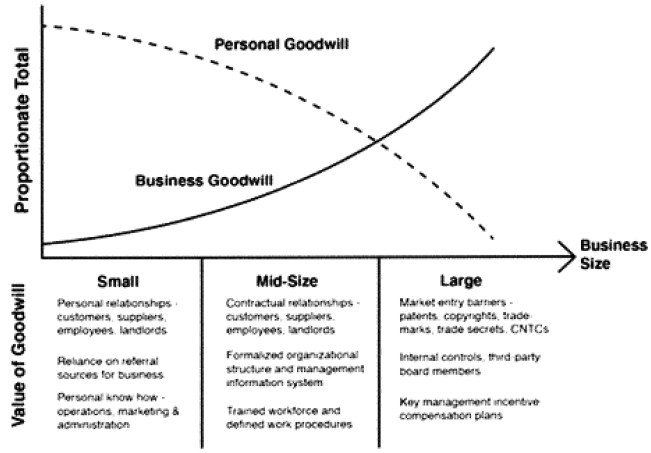
15 Adapted from James Alerding's commentary and analysis of *McReath*.

the greater the existence of non-transferable personal goodwill and pure personal attributes. Generally, as professional practices and businesses grow in size and institutional complexity, the relative weight of pure personal goodwill decline.

The Goodwill Transition from Personal to Enterprise, Relative to Business Size

The image below illustrates the relationship of changing attributes of business size relative to the proportion of personal versus business/enterprise goodwill.



Source: BVR's Guide to Personal v. Enterprise Goodwill

The inverse relationship between business size and percentage allocation makes intuitive sense. One person can only work so much, and their personal impact cannot be scaled like an enterprise, increasing the value attributable to the platform, i.e. the business itself.

Larger organizations are more likely to have entity-level contracts, centralized billing, shared workforce capacity, institutional referral channels, brand recognition, and governance structures that reduce dependence on any single professional. Size does not eliminate personal goodwill, but it changes the transferability inquiry by increasing the likelihood that some value has been absorbed by the enterprise.[16]

16 *Id.* at 372.

B. *Follow the Money*

Another method of determining which form of goodwill is being valued is to follow the money. How much entity revenue is related to an individual owner's or professional's reputation? How much of this goodwill is, or could be, transferred to other personnel in the entity? Does the entity experience excess earnings based on the "star" quality or productivity of a single owner or professional? What are the economic benefits attributable to each owner or professional? Do the economic benefits differ from one owner or professional to another? Will a prospective purchaser pay for this goodwill? All of these factors are considerations when evaluating the presence and type of goodwill.

Reasonable or replacement compensation may factor in a goodwill analysis.[17] If reasonable or replacement compensation is removed from a business or professional practice valuation, a question arises as to whether that removal fully accounts for future earnings and effectively removes personal goodwill from the equation. There are differing perspectives on this topic. One view is that reasonable or replacement compensation can only be a surrogate for post-divorce earnings, since to say otherwise would double count that value. Another view is that reasonable or replacement compensation covers both concepts.[18] In reality, reasonable or replacement compensation cannot be the default measure of calculating personal goodwill.

The standard of value may impact on this analysis. For example, if the standard of value is investment value (i.e., value to the holder) as opposed to fair market value, does the answer differ? It may. Likewise, under the income approach, the conclusion may differ depending on if the discounted cash flow method or capitalization of cash flow method is applied under the income approach. Standard of value, valuation approach, and valuation method choices may impact goodwill assessments and vary the impact of reasonable or replacement compensation as to ultimate valuation conclusions. Reasonable or replacement compensation

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17 Janani S. Rana & Robert O. Watts, *What Every Business Owner Should Know About Divorce in Orange County*, Orange Cnty. Law., June 2023, at 52, 54.

18 *See* AICPA, Statement on Standards for Valuation Services (VS Section 100) No. 1 (June 4, 2025), https://www.aicpa-cima.com/resources/download/statement-on-standards-for-valuation-services-vs-section-100.

is a significant variable in goodwill analysis because normalization of owner compensation affects the earnings stream being capitalized or discounted. Increasing replacement compensation generally reduces excess earnings and, therefore, may reduce measured goodwill; decreasing replacement compensation generally has the opposite effect. The analytical issue is not whether compensation mechanically eliminates personal goodwill, but whether the selected compensation adjustment adequately removes the value of the individual's future labor from the enterprise earnings stream.

C. *Contractual Relationships*

Another potential indicator of goodwill is whether the business or professional practice has contracts with third parties that would survive the departure of an owner. If survivable, that suggests the goodwill component of the contract is transferable and owned by the enterprise. If not survivable, that suggests that the value of the contract is not transferable and inherent to the owner.

D. *Legal Controls*

An additional way to determine goodwill attributes is to examine legal controls, such as non-compete and non-solicitation agreements, that are in place within the entity. The presence of legal controls can alter the economic reality of a business transaction or marital property division by providing enforceable boundaries on the actions of key individuals after the transaction or divorce.

Restrictive covenants do not create goodwill, but they can affect whether existing goodwill can be retained and transferred.[19] A noncompete provision may reduce the risk that patronage follows the departing professional and may support the conclusion that some otherwise personal-origin goodwill has become salable. The inquiry remains fact specific and depends on the scope, enforceability, and practical effect of the covenant in light of the entity's contracts, customer relationships, and operating structure.[20] A covenant not to compete may indicate that a buyer is concerned about goodwill leakage, but it does not by itself answer whether

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19 Reese v. Reese, 671 N.E.2d 189 (Ind. Ct. App. 1996).

20 *See* Martin Ice Cream Co. v. Comm'r, 110 T.C. 189, 207-08 (1998); Howard v. United States, 448 F. Appx. 752 (9th Cir. 2011); McReath v. McReath, 800 N.W.2d 399, 411-12 (Wis. 2011).

the goodwill is enterprise or personal. Its significance depends on whether, in combination with other contractual and operating controls, it preserves salable value within an entity.

Non-solicitation agreements prevent former owners or professionals from actively soliciting clients, customers, or employees of the entity after their departure. These controls further protect the entity's relationships and help ensure that the value attributed to personal goodwill remains with the entity, rather than walking out the door with the individual.

Legal controls can materially affect goodwill classification and valuation because they bear directly on whether relationship-based value can be retained by the entity. In *McReath v. McReath*, the salability of professional goodwill was supported by transaction features that included the seller's name, a noncompete clause, and an employment agreement requiring the seller to introduce the buyer to existing patients.[21] In the tax context, *Martin Ice Cream Co. v. Commissioner* and *Howard v. United States* similarly illustrate that employment agreements, covenants, and other legal controls may determine whether relationship-based goodwill remains personal to an individual or has been transferred to an entity.[22] Legal controls are not just formalities—they are essential tools for converting personal goodwill from a non-transferable, ephemeral asset into a marketable, enforceable component of business and professional practice value as enterprise goodwill. Their presence or absence should be a central consideration in any goodwill analysis, and should require careful assessment of their scope, enforceability, and practical impact.

III. Recent Decisions Regarding the Calculation of Personal Goodwill

Rosenberg involved the calculation of personal goodwill in the sale of a multi-member medical practice, North Florida Anesthesia Consultants ("NFAC") to a corporation.[23] At the outset, the court defined personal goodwill as "the value attributable to the reputation and skill of the physician-shareholders in providing medical

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21 *McReath*, 800 N.W.2d at 411-12.

22 *Martin Ice Cream Co.*, 110 T.C. at 207-08; *Howard* 448 F. Appx. at 753-54 (9th Cir. 2011).

23 *Rosenberg*, 391 So. 3d at 976.

services to their patients."[24] Conversely, the court defined enterprise goodwill as "value from ongoing referrals to and patronage of the medical practice that is separate and apart from personal goodwill."[25] The issue before the court was whether the personal goodwill of a medical practitioner in a multi-member practice, like the personal goodwill of a medical practitioner in a solo medical practice, was non-marital property.[26]

Around 1996, the husband became a shareholder in NFAC.[27] In January 2016, the parties agreed in a consent judgment that the husband would retain his interest in NFAC and its corporate affiliate, North Florida, Inc. ("MediBill"), for $122,800 and $26,557, respectively.[28] However, prior to the consent judgment, the husband failed to disclose to the wife, including in a deposition, the efforts to sell NFAC and MediBill.[29] In April 2016, the 35 physician-shareholders of NFAC sold NFAC and MediBill to Sheridan Healthcorp, Inc. ("Sheridan") for $99,450,000.[30] The husband received approximately $2,650,000 for his NFAC and MediBill interests, plus approximately $150,000 to be paid in 2017 and 2018 and an additional $56,000 for his shares in MediBill.[31] The wife later learned of this transaction and, upon the wife's motion, the trial court vacated the consent judgment.[32]

On remand, the trial court heard evidence to determine the value of the husband's interests in NFAC and MediBill.[33] The husband's expert, Alexander Rey, testified that the entire value of NFAC was composed of intangible assets in the form of personal goodwill and enterprise goodwill because the medical practice's balance sheet showed no meaningful tangible assets.[34] Based on his revenue model, Rey estimate that the total value of the sale to Sheridan was $71,660,000, consisting solely of personal goodwill

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24 *Id.*
25 *Id.*
26 *Id.* at 977.
27 *Id.*
28 *Id.*
29 *Id.*
30 *Id.*
31 *Id.*
32 *Id.*
33 *Id.*
34 *Id.* at 977-78.

and enterprise goodwill.[35] Rey calculated that there was 50% personal goodwill and 50% enterprise goodwill.[36] Rey concluded that the value of the husband's NFAC practice interest for marital estate purposes was $1,000,000.[37]

The wife's expert, Josh Shilts (co-author of this article), used Rey's formula and calculations generally but, excluded only the husband's personal goodwill from the transaction.[38] Shilts calculated that, due to the husband's greater productivity in the practice, the value of the husband's personal goodwill was 3.55% of the value of the transaction, or $2,544,000.[39] Shilts subtracted that amount from the $71,660,000 total transaction value to arrive at a value of $69,116,000 net of the husband's personal goodwill.[40] Shilts then divided that amount by the 35 physicians, resulting in his $1,977,000 estimate of value of the husband's NFAC practice interest for marital estate purposes.[41] This approach effectively treated all of the other physicians' personal goodwill or nonmarital property.[42]

The trial court, the same as in *Conde,* adopted Rey's methodology and valued the husband's marital property interest in NFAC at $1,000,000.[43] The wife appealed and the Florida District Court of Appeal affirmed. Noting that Florida case law did not address or adequately explain how personal goodwill is calculated in a multi-member professional practice, the court looked to *Thompson*[44] for guidance.[45] Crystallizing the issue as whether the personal goodwill of all physicians in a practice or only the personal goodwill of a physician party to a divorce is to be excluded from marital estates, the *Rosenberg* court assessed that *Thompson* did not address how to deal with personal goodwill in a multi-member professional practice context.[46] The court reviewed other Florida

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35 *Id.* at 978.
36 *Id.*
37 *Id.*
38 *Id.*
39 *Id.*
40 *Id.*
41 *Id.*
42 *Id.*
43 *Id.* at 979.
44 *Thompson*, 576 So. 2d 267.
45 *Rosenberg*, 391 So. 3d at 979.
46 *Id*.

precedent and concluded that it was evident "that personal goodwill of a professional simply is not a marital asset in Florida."[47]

The *Rosenberg* court went on to express that personal goodwill, whether of a divorce litigant or any other physician-shareholder in a medical practice, is "not a marketable asset distinct from the individual" who performs the services.[48] The court looked to the Missouri Supreme Court in *Hanson v. Hanson*,[49] which instructed that irrespective of the setting the meaning of goodwill does not change.[50] Since personal goodwill cannot be considered in the division of marital estates and is not part of enterprise goodwill, it must be excluded in calculating the value of a marital asset in a divorce case.[51] That principle required the exclusion of all 35 NFAC physician-shareholders' personal goodwill from the consideration of the market value of transaction in issue since it was collectively a nonmarital asset of each of the respective physicians.[52] To do otherwise, the court indicated, would allocate the entirety of the physicians' personal goodwill to former spouses and leave the 35 physicians with next to nothing.[53] In a case of first impression, the *Rosenberg* court held that the trial court was correct in adopting a valuation methodology that excluded the personal goodwill of all of the physicians from the net value of the sale of NFAC and certified the question to the Florida Supreme Court.[54] Subsequently, the Florida Supreme Court declined to address the certified question since *Rosenberg* settled while on appeal.[55]

Conde, a companion case to *Rosenberg,* also involved the calculation of NFAC personal goodwill.[56] In this case, the husband claimed that the trial court erred in accepting the personal goodwill and lost future income conclusion of his physician wife's expert.[57] In April 2016, the NFAC physician-shareholders sold their medical practice to Sheridan for $99,450,000, with each

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47 *Id.*
48 *Id.*
49 738 S.W.2d 429, 434 (Mo. 1987).
50 *Rosenberg*, 391 So. 3d at 980.
51 *Id.*
52 *Id.*
53 *Id.*
54 *Id.*
55 *Id.*
56 *Conde*, 391 So. 3d at 519.
57 *Id.*

physician receiving approximately $2,650,000.[58] Additionally, each physician was required to work for NFAC for five years and sign a noncompete agreement for which each was paid $25,000.[59] The wife deposited the net buyout funds of $2,643,566 into a joint brokerage account of the parties.[60]

Each party had an expert testify as to whether any of the wife's NFAC net proceeds was non-marital personal goodwill or payment for lost future income—each of which was nonmarital property.[61] The wife's expert, Josh Shilts (co-author of this article) opined that the $25,000 value of the wife's noncompete payout was the entire value of her personal goodwill.[62] The husband's expert, Donald Wiggins, opined that the wife had personal goodwill and lost future earnings above the $25,000 noncompete payout because large transactions of this type are often structured to allocate taxes in a favorable way.[63] Wiggins indicated that the physicians in the NFAC transaction agreed to reduce future income for a lump-sum upfront payment that represented future earnings, and that the lump sum paid to the wife represented both personal goodwill and lost future earnings that were inseparable non-marital property.[64] At the time the husband filed his divorce petition, the wife had worked 51 of the 60 months under her noncompete agreement, leaving 9 months, or 15% of the total 60-month term post-petition.[65] Wiggins added in monies held in escrow for the wife and concluded that $408,159—the same amount assigned as nonmarital property in *Rosenberg* for post-petition work efforts—was nonmarital property of the wife.[66]

Noting that *Rosenberg* concluded that that the personal goodwill of all medical practitioners in a multi-member practice such as NFAC was nonmarital property, the Florida District Court of Appeal framed the issue differently due to a differing position

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58 *Id.*
59 *Id.* at 519-20.
60 *Id.* at 520.
61 *Id.*
62 *Id.*
63 *Id.*
64 *Id.*
65 *Id.*
66 *Id.*

taken by the non-physician spouse.[67] The husband in *Conde* did not claim an entitlement to a portion of personal goodwill of other former NFAC physicians; his claim was that error occurred in the award of a portion of the NFAC payment to the wife as nonmarital property personal goodwill or for lost future income.[68]

Neither party disagreed that at least $25,000 of the payments to the wife were nonmarital personal goodwill, as reflected in the husband's noncompete agreement.[69] But that noncompete agreement did not end the story. The NFAC-Sheridan transaction was structured to have a minimal noncompete payment of $25,000 for personal goodwill, which was deemed ordinary income for tax purposes, while the bulk of the personal goodwill and lost future earnings allocated in the NFAC payment was treated differently and more favorably under a capital gains analysis.[70] The *Conde* court, as did the *Rosenberg* court, concluded that personal goodwill and lost future income were "so closely intertwined, and difficult or impossible to separate" that it was not improper for the trial court to conclude that the entire value of the wife's NFAC buyout proceeds was personal goodwill and therefore nonmarital property personal goodwill.[71] Wiggins' allocation of 15% post-petition escrowed nonmarital property value also was affirmed on appeal.[72]

Rosenberg and *Conde* exemplify binary thinking. In each case, the trial court was affirmed based upon general assumptions about the nature of goodwill in a multi-member practice. The decisions recognized actual legal controls and contractual terms in place and attempts to place value on those restrictions. However, there is little scrutiny of how these legal controls and contractual terms (*i.e.*, noncompete agreements) may transform personal goodwill into transferable enterprise goodwill. A closer inspection of the non-transferable and transferable attributes and legal controls may result in valuations that understate the economic value of transactions. It also may reduce the risk of misallocation of enterprise and individual value. This closer inspection and risk

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67 *Id.*
68 *Id.*
69 *Id.* at 521.
70 *Id.*
71 *Id.* at 521-22.
72 *Id.*

reduction also minimizes the potential for misallocation of personal goodwill and enterprise goodwill, and misstatement of marital estate values.

IV. The Consequences of Binary Reasoning v. Its Alternatives

A. *Rosenberg: The Binary Trap in Multi-Member Practices*

Rosenberg demonstrates a binary, "all-or-nothing" approach to personal goodwill when considering a multi-member professional practice interest. Rather than looking at the transferability of goodwill, *Rosenberg* accepted the methodology of an expert who excluded the personal goodwill of all 35 physician-shareholders as nonmarital property. That approach may not have evaluated whether the husband-physician received value from his ownership in NFAC independent of his personal goodwill. If not considered, the husband-physician may have excluded from his divorce case the personal goodwill of other physician-shareholders that effectively to him was enterprise goodwill.

The *Rosenberg* court's criticism of a transferability analysis of goodwill (*i.e.*, excluding only the divorcing spouse's personal goodwill would result in "almost the entire net value" of the transaction being awarded to a former spouse) is based on a hypothetical that ignores how personal goodwill is absorbed and institutionalized in larger organizations. As professional practices grow and mature, individual reputations and relationships become part of the enterprise, and the value attributable to any one person diminishes. The binary exclusion of all personal goodwill may fail to recognize this absorption effect and undermines the integrity of the valuation process.

B. *Conde: Inseparability, Classification, and Valuation Evidence*

Conde also defaulted to binary decision-making in concluding that the entire value of the wife physician-shareholder buyout proceeds was non-marital because personal goodwill and lost future income were "so closely intertwined, and difficult or impossible to separate."[73] This approach does not recognize the spectrum of value that exists in real-world transactions and the need to parse

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73 391 So. 3d at 521-22.

out the components of goodwill value. The decision also accepted an allocation analysis that relied heavily on transaction-tax structure and expert judgment, rather than a direct transferability-based allocation of personal goodwill, enterprise goodwill, and future income.

C. *Brooksby v. Brooksby and May v. Petersen: The Start of Pleasant Contrasts*

Not all courts default to binary thinking when assessing personal and enterprise goodwill. The Arizona Court of Appeals decision in *Brooksby v. Brooksby*[74] provides an important contrast to the binary approaches to goodwill valuation exhibited in *Rosenberg* and *Conde* and focuses on the evidence presented. In 2016, the husband formed Focus Wealth Group, LLC ("FWG"), a business that sold life insurance.[75] The wife asked the trial court to appoint Derrick Doba to value FWG and the trial court granted that request.[76] Doba testified that as of January 31, 2023, the investment value of FWG applying the discounted cash flow method under the income approach was $1,973,000 and the fair market value of FWG applying the same method and approach with a 31.23% discount for lack of marketability was $1,357,000.[77] Doba attributed nearly all of FWG's value to personal goodwill arising from the husband's relationships with clients.[78] The husband contended FWG was worth only $240,000 and questioned how Doba could have valued FWG at more than its $140,000 asset value.[79] The husband argued that the business was worth only its tangible assets and asserted that any goodwill was solely the product of the husband's future earning capacity and thus not divisible.[80] The trial court valued FWG at the wife's expert's $1,973,000 conclusion of value.[81]

A majority of the Arizona Court of Appeals affirmed the trial court's acceptance of the wife's expert's investment value

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74 No. 1 CA-CV 24-0509-FC, 2025 WL 2078394 (Ariz. Ct. App. July 24, 2025).
75 *Id.* at *1.
76 *Id.* at *1-2.
77 *Id.* at *2-3.
78 *Id.* at *3-4.
79 *Id.* at *3.
80 *Id.* at *6-7.
81 *Id.* at *4.

approach, finding sufficient evidence that goodwill existed and was a divisible community asset.[82] Importantly, the majority recognized that goodwill is the value in excess of the business's tangible assets, often arising from reputation and relationships developed during the marriage.[83] The majority also emphasized that there is "no rigid and unvarying rule for determining the value of goodwill" and that "each case must be determined on its own facts and circumstances."[84] The majority reviewed the facts and determined that, while there was risk that an income approach to valuation leaves the potential to improperly divide a spouse's post-divorce work efforts, that did not occur here since the husband's future salary was excluded from FWG's projected cash flows in the business valuation.[85] The majority also noted that Doba's statement that all of FWG's goodwill resulted from the husband's efforts did not change the inclusion of the goodwill in the marital asset value because the husband's efforts occurred during the marriage.[86]

The dissent rejected this conclusion, noting that Doba did not attempt to determine whether any part of FWD's value was attributable to residual income from insurance policies sold during the marriage or to anticipated income from new clients referred by existing clients or professionals with whom the husband had built a relationship during the marriage.[87] In other words, the dissent opined that Doba made no effort to determine what portion of FWG's goodwill, if any, was attributable to the husband's labors during the marriage.[88] From the dissent's perspective, Doba conflated the business's goodwill with the earnings the Doba expected the husband to generate from his post-divorce work efforts.[89] The dissent concluded that the husband's $240,000 value of FWG should be adopted since the wife's expert's two conclusions of value were flawed.[90]

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82 *Id.* at *9.
83 *Id.* at *6.
84 *Id.*
85 *Id.* at *7-8.
86 *Id.* at *8.
87 *Id.* at *11.
88 *Id.*
89 *Id.* at *12.
90 *Id.* at *13.

May v. Petersen,[91] decided in the same general period but reaching a different outcome, is a useful companion to *Brooksby* because it also resisted a purely label-driven analysis. While *Brooksby* involved evidence supporting the existence of divisible goodwill, *May* centered on whether the law firm's goodwill was marketable and concluded that the record did not establish salability. The husband had a 50% ownership interest in Denali Law Group ("DLG").[92] The husband's expert valued DLG based on its tangible assets and determined it had no marketable goodwill.[93] A majority of the Alaska Supreme Court affirmed the trial court, observing that enterprise goodwill is marketable and can be sold and that personal goodwill is dependent upon the individual and is not marketable and cannot be sold.[94] The majority reasoned that, if a party to a divorce is awarded a business interest with marketable goodwill and ordered to pay half of the business value to the other party, the party who receives the business interest could sell the interest to satisfy the property settlement award.[95] Conversely, the majority observed that if personal goodwill were divisible, it would be marketable, would keep divorcing spouses from having a clean break, and could only be realized through future earnings.[96] No evidence existed that DLG could be sold and the firm's goodwill was not salable.[97] The majority also determined that there was no evidence to support the wife's claim that law firm contracts with third parties were marketable.[98]

The dissent quoted the dissent of Justice Rabinowitz in *Richmond v. Richmond,*[99] which argued that all goodwill of a business or professional practice should be divided at divorce since the value of the business or professional practice arose from efforts during the marriage, was consistent with the concept of equitable distribution, and was distinguishable from education, degrees, and licenses.[100]

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91 565 P.3d 194 (Alaska 2025).

92 *Id.* at 200.

93 *Id.*

94 *Id.* at 202-03.

95 *Id.* at 203.

96 *Id.*

97 *Id.* at 206.

98 *Id.* at 206-07.

99 *Id.* at 214 (quoting 779 P.2d 1211, 1218 (Alaska 1989) (Rabinowitz, J., dissenting)).

100 *Id.*

Brooksby reinforces the premise that goodwill is not simply present or absent, nor is it always entirely marital property or non-marital property. Instead, its value must be carefully analyzed, considering the facts, the nature of the business, and the timing of its development. It highlights the fact that only through nuanced, case-specific analysis can courts ensure fair and accurate division of marital property, a principle echoed in *May* with additional emphasis on a transferability analysis. At first glance, both opinions seem binary, the majority and dissenting opinions in each provoke a careful review as to whether goodwill is salable as the central criterion for determining inclusion or exclusion in marital estates.

D. *McReath v. McReath: Back to the Salability Beginning*

McReath[101] is the 2011 case that brought salability into the spotlight for goodwill analysis. In this case, the Wisconsin Supreme Court held that the salable professional goodwill of a professional practice is divisible marital property.[102] At the outset, the court defined professional goodwill as including both personal and enterprise goodwill.[103] The husband, a dentist, was the sole owner of Orthodontic Specialist, S.C. ("Orthodontic Specialists").[104] The wife's expert, Craig Billings, valued Orthodontic Specialists at $1,058,000.[105] The husband's expert, Dennis Kacinski, valued Orthodontic Specialists at $415,000.[106] The trial court adopted Billings' $1,058,000 valuation.[107] The husband appealed and the Wisconsin Court of Appeals affirmed.[108] The Court of Appeals noted that the husband had paid for the personal goodwill of the dentist from whom he purchased Orthodontics Specialist for approximately $930,000 in 1995, and observed that any hypothetical buyer would require a noncompete agreement as did the husband in this purchase.[109] Since no rule existed to exclude salable goodwill from divisible property, the trial court did not err when it

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101 800 N.W.2d 399.
102 *Id.* at 403.
103 *Id.* at 403 n.3.
104 *Id.* at 403-04.
105 *Id.* at 405.
106 *Id.*
107 *Id.*
108 McReath v. McReath, 789 N.W.2d 89 (Wis. Ct. App. 2010).
109 *McReath*, 800 N.W.2d at 406.

included personal goodwill in the marital estate.[110] The Wisconsin Supreme Court recounted prior Wisconsin case law and a current statute, and concluded that when valuing a business interest in divorce cases a trial court shall include the value of salable professional goodwill in the marital estate.[111]

The husband contended that trial courts should be required to first divide professional goodwill into personal goodwill and enterprise goodwill, and to create a presumption that personal goodwill was excluded from marital estates.[112] The *McReath* court noted that some courts presumed that enterprise goodwill was salable while personal goodwill was not, but chose not to require trial courts to draw a distinction between personal and enterprise goodwill because the premise that enterprise goodwill was salable and personal goodwill was not salable was mistaken.[113] In this case, nearly 90% of the husband's roughly $930,000 purchase price was for the professional goodwill.[114] Moreover, the husband testified that the purchased professional goodwill included elements of the seller's personal goodwill: "name, the noncompete clause, and the employment agreement that [the seller] would introduce [the husband] to his existing patients."[115] *McReath* demonstrates that, in some situations, personal goodwill is salable.[116]

V. Conclusion: Towards a Nuanced, Fact-Driven Goodwill Valuation

Rosenberg and Conde together illustrate the pitfalls of binary thinking, methodologies insufficiently tied to transferability evidence, and limited scrutiny of legal controls in the valuation of professional goodwill. In these cases, the courts defaulted to "all-or-nothing" decisions—excluding all personal goodwill from marital estates without analyzing the salability of each component of goodwill. Both decisions risk subordinating nuanced economic reality to a binary outcome.

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110 *Id.*
111 *Id.* at 407-12.
112 *Id.*at 411.
113 *Id.* at 411-12.
114 *Id.* at 412.
115 *Id.*
116 *Id.*

Brooksby demonstrates both the necessity, and the challenge, of distinguishing personal goodwill from future earning capacity. In that case, the majority recognized that goodwill is a divisible marital asset when properly supported by evidence and methodology, while the dissent cautioned against conflating goodwill with post-dissolution income-producing efforts. *May* supports the need for careful review as to whether personal goodwill is transferable. Both decisions start to articulate the need for a nuanced approach to the assessment of goodwill that looks at whether goodwill is salable or transferable rather than imposing a simple personal goodwill versus enterprise goodwill dichotomy. *McReath,* ahead of its time, remains the clearest reminder that salability, rather than label alone, should drive goodwill analysis.

The transferability inquiry ultimately asks whether value flows from the organization or from an individual. In a pooled, institutionalized practice, goodwill is supported by shared reputation, entity-level contracts, governance, systems, workforce depth, referral channels, and legal controls. That value is more likely to survive the departure of a professional and may be transferable. In a star-dependent practice, goodwill rests primarily on a professional's reputation, relationships, skill, and personal following. That value is less likely to survive that individual's departure and is more likely to constitute non-transferable personal goodwill.

Across these cases, a clear lesson emerges for valuation analysts, attorneys, and judges: personal goodwill needs a higher level of scrutiny than simply estimating its value. Its value exists on a spectrum, shaped by the facts, the nature of the business or professional practice, and the timing of its development. Relying on conjecture, unsupported methodologies, or simplistic frameworks can lead to outcomes that misrepresent reality, hinder fair, accurate, and equitable division of marital estates, and undermine the integrity of the legal process. This scrutiny must be performed in the context of the standard of value, valuation approaches, and valuation methods applied. The question should not be whether goodwill had a human origin—in professional services, it almost always does. The question is whether the goodwill was individually dependent, collectively pooled, institutionally controlled, and transferable. Boiled down to its

essence, the essential question is: Can goodwill, regardless of label, be sold?

Courts would be well advised to adopt this higher level of scrutiny when reviewing the existence and allocation of goodwill in divorce cases rather than defaulting to the simplistic dichotomy between personal and enterprise goodwill. Doing so provides a fundamentally different analytical lens, one that challenges how courts reconcile theoretical constructs with real-world transactions and leads to more accurate business valuations in divorce cases regardless of the applicable legal standard.