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VALUATION DATE IN DIVORCES: WHAT A
DIFFERENCE A DATE CAN MAKE

I. Introduction

Valuation of property in divorce seems like a dry topic you see Jessica Simpson on the front cover of several magazines arguing her separation date is a month prior to the date her husband is claiming.¹ Some readers may just overlook what they are fighting about; however, the date of separation has an important impact on how their property will be characterized and, more importantly, when their property will be valued.

States differ dramatically in the ways they determine the date of valuation. In Montana, for example, the courts refuse to set out a uniform date for valuation, stating that, “the time for proper valuation cannot be tied to any single event in the dissolution process. The filing of a petition, trial of the matter, or even the granting of the decree of dissolution does not control the proper point of evaluation by the district court.”² While Montana’s practice of leaving the valuation date up to the discretion of the trial court affords flexibility, it is also unpredictable. This leads to uncertainty for husbands, wives, and attorneys who are attempting to figure out how to plan for life and litigation following a decision to end a marriage.³

Predictability is one of the reasons many states set out specific dates for valuation instead of leaving the date up to the discretion of the trial court. For example, Missouri uses the date of trial⁴ and South Carolina uses the date of filing⁵ of petition for dissolution as their respective dates for valuation. Even though many states have exact events that trigger valuation, most states have equitable exceptions like California’s which reads:

Upon 30 days’ notice by the moving party to the other party, the court for good cause shown may value all or any portion of the assets

¹ Julie Jordan, *Nick Lachey Could Seek Support*, PEOPLE, Feb. 17, 2006, available at <http://www.people.com/people/article/0m11161149,00.html>.

² *In re Marriage of Krause*, 654 P.2d 963, 968 (Mont. 1982).

³ *Id.*

⁴ *Morgan v. Ackerman*, 946 S.W.2d 865 (Mo. Ct. App. 1998).

⁵ *Gardner v. Gardner*, 628 S.E.2d 37 (S.C. 2006).

and liabilities at a date after separation and before trial to accomplish an equal division of the community estate of the parties in an equitable manner.⁶

While California has its exception well defined in a statute, other states' deviate from the general rule for the sake of equity range dramatically as to both the circumstances and the time frame appropriate for departure from the general rule.

The most common valuation dates are the date set at the discretion of the trial court, the date of separation, the date of filing of the petition for dissolution of marriage, the date of trial and the date of dissolution.

II. Discretionary Valuation Date

In Florida,⁷ Indiana,⁸ Massachusetts,⁹ Michigan,¹⁰ Montana,¹¹ Pennsylvania,¹² Washington¹³ and Wyoming¹⁴ it is up to the judge's discretion when the date of valuation should occur. In *Carter-Wallop v. Wallop*¹⁵ the court stated, that it recognized that there are many situations that could affect the date of valuation, including "post-separation changes in value due to the efforts of one party; a lack of financial involvement of one party; purposeful dissipation of assets subsequent to separation; and bad faith efforts to delay a divorce proceeding." When deciding the date of valuation the court, "is also sensitive to and encourages legitimate efforts by either party to reconcile differences after a separation in attempts to save the marriage. Thus, it is expected that trial courts will give full consideration to such efforts in determining what date is appropriate for valuation of the

⁶ CAL. FAM. CODE § 771 (2006).

⁷ FLA. STAT. § 61.075(7) (2003).

⁸ *Wilson v. Wilson*, 732 N.E.2d 841 (Ind. Ct. App. 2000).

⁹ *Hanify v. Hanify*, 526 N.E.2d 1056 (Mass. 1988).

¹⁰ *Gates v. Gates*, 664 N.W.2d 231 (Mich. Ct. App. 2003); *But see* *Byington v. Byington*, 568 N.W.2d 141 (Mich. Ct. App. 1997)(stating that courts should usually use date of trial or date of distribution).

¹¹ *In re Marriage of Krause*, 654 P.2d 963 (Mont. 1982).

¹² *Diamond v. Diamond*, 519 A.2d 1012 (Pa. Super. Ct. 1987).

¹³ *In re Marriage of Rubens*, 2003 Wash. Ct. App. LEXIS 1544.

¹⁴ *Carter-Wallop v. Wallop*, 88 P.3d 1022 (Wyo. 2004).

¹⁵ *Id.* at 1027.

assets.”¹⁶ The range of discretion in determining the date of valuation varies widely from state to state.

In Massachusetts the general rule is discretion; however, the courts give preference for the day of distribution when present “valuation is uncertain or impractical.”¹⁷ In cases involving stock options and pension benefits the court will allow for valuation at an unknown date in the future ordering “that any future recovery or payment be divided, if and when received, according to a formula fixed in the property assignment.”¹⁸

The Pennsylvania Superior Court emphasized the importance of the trial court having discretion over the valuation date, holding that “to recognize a specific valuation date as a matter of law would deprive the trial court of the necessary discretion required to effectuate economic justice.”¹⁹ Pennsylvania case law allows valuation from the separation²⁰ date to the distribution date²¹ to arrive at appropriate results in individual cases. In *Drake*, the issue was whether the valuation date should be the date of separation since a Pennsylvania statute states that the assets should be appraised as of the date of commencement.²² The court in *Drake* held that just because the valuation date for the appraisal is the date of commencement does not mean that is the appropriate valuation date for the equitable division of property.²³ For example, at the time of filing when a house is appraised it may be worth \$150,000 and by the time the trial occurs it is worth \$200,000. In that case the *Drake* decision says the court should use the current value, which makes sense because the additional \$50,000 needs to be counted.²⁴

While some states afford their courts discretion to set one valuation date to cover all marital assets, Washington state has no particular valuation date and, “a court has discretion to deter-

¹⁶ *Id.*

¹⁷ *Hanify v. Hanify*, 526 N.E.2d 1056, 1059 (Mass. 1988).

¹⁸ *Id.*; *See also* *Early v. Early*, 604 N.E.2d 17, 21 (Mass. 1992) (holding that courts should use language “if and when received” for valuation of pension benefits).

¹⁹ *Diamond*, 519 A.2d at 1017.

²⁰ *Id.*

²¹ *DeMarco v. DeMarco*, 787 A.2d 1072 (Pa. Super. Ct. 2001).

²² *Drake v. Drake*, 1982 Pa. Dist. & Cnty. Dec. LEXIS 286.

²³ *Id.*

²⁴ *Id.*

mine the appropriate valuation date for *each* asset [in a marital dissolution].”²⁵ In a case in which the trial court valued everything else at the time of trial but valued the husband’s business at the time of separation (when it was worth nothing), the Washington Court of Appeals held, “the trial court did not abuse its discretion in accepting the value of the practice at the time of separation.”²⁶

While these six states rely heavily on the discretion of the trial court to decide the date of valuation, most states allow the trial court to deviate from one of the following general rules under certain circumstances.

III. Date of Separation

The general rule used by Virginia²⁷ and North Carolina²⁸ is the date of separation. If the separation date is the date upon which to guide the valuation of property the date must be agreed upon, the court must determine the separation date or the court can rely on a legal separation date where an actual legal separation was filed and a judgment was sought from the court.

Revaluation of property is a consistent theme in Virginia case law. Revaluation may be more important in Virginia because the valuation date is the date of separation, which occurs earlier in time than valuation dates used by other states. In *Ragsdale v. Ragsdale*,²⁹ the court held “the starting valuation date in connection with all marital investments and retirement accounts shall be on the date of separation.”³⁰ However, the court also emphasized that the parties must submit evidence of the appreciation of accounts to make sure the outcome is not wholly inequitable.³¹ Therefore, while the date of separation is important, under certain circumstances the court will use alternative dates. For example, in *Rowe v. Rowe*,³² it was necessary to exercise discretion when the marital asset is retained by one of the parties

²⁵ *In re Marriage of Rubens*, 2003 Wash. Ct. App. LEXIS 1544.

²⁶ *Id.*

²⁷ *Ragsdale v. Ragsdale*, 516 S.E.2d 698 (Va. Ct. App. 1999).

²⁸ N.C. GEN. STAT. § 50-20(b) (2006).

²⁹ *Ragsdale*, 516 S.E.2d 698.

³⁰ *Id.* at 700.

³¹ *Id.*

³² 532 S.E.2d 908 (Va. Ct. App. 2000).

for a period of time after valuation but before the equitable division occurs and the asset significantly increases or decreases in value during that time through either the efforts or fault of either party, neither party should disproportionately suffer the loss or benefit from the windfall. Likewise the facts in *Patel v. Patel*³³ were that the husband had control over four bank accounts that the court characterized as marital property from the time of separation to the time of the trial. There the court held that the trial court correctly valued the bank accounts as of the date of separation rather than the date of hearing, particularly because the accounts had been severely depleted by the husband in the interim.³⁴

In North Carolina the legislature passed a statute as guidance for the courts to follow regarding valuing property “upon application of a party.”³⁵ The courts have interpreted this to mean the date of separation. The purpose of freezing the date at the date of separation is to protect one spouse from the other depleting the property.³⁶ The court in *Dalgewicz v. Dalgewicz*³⁷ stated, “any conversion of marital property for individual purposes may be charged against the acting spouse’s share.”³⁸ Not only does North Carolina take valuation at the date of separation so seriously that its courts will just automatically use the value at the time of separation, but the courts have the authority to impose sanctions upon a party that has “willfully obstructed or unreasonably delayed or attempted to obstruct or unreasonably delay any pending equitable distribution proceeding.”³⁹ This emphasizes North Carolina’s policy on not wanting to use any valuation date other than the date of separation and if there was an unnecessary delay in time between the date of separation and the trial date the court would need to use a different valuation date. Thus, in addition North Carolina courts have the authority to impose sanctions as a means of sticking to the date of separation as the date of valuation.

³³ *Patel v. Patel*, 2006 Va. Ct. App. LEXIS 418.

³⁴ *Id.*

³⁵ N.C. GEN. STAT. § 50-20(a) (2006).

³⁶ *Dalgewicz v. Dalgewicz*, 606 S.E.2d 164 (N.C. App. 2004).

³⁷ *Id.*

³⁸ *Id.* at 170.

³⁹ *Id.* at 171; *See also* N.C. GEN. STAT. § 50-21(e)(1) (2003).

IV. Date of Filing

Three states look to the date of filing the petition for dissolution of marriage when valuing property. The general rule for the valuation date in Kansas,⁴⁰ New York,⁴¹ and South Carolina⁴² is the date of filing. The date of filing is a solid date. It is the official commencement of the divorce and therefore the date will be known to both parties and the court, making the date of valuation one less issue to resolve in the litigation.

Neither Kansas courts nor the legislature has made law selecting the date of filing as the set valuation date stating, “The date of filing the action may be the logical and appropriate date for valuation of marital assets in many, if not most, cases, [but] nothing in the statutes require the use of such date.”⁴³ For example in *In re Marriage of Cray*,⁴⁴ the trial court was found to not have abused its discretion when it used a pre-filing separation date. The court stated, “A plain reading of the language of both Kan. Stat. Ann. § 23-201(b) and Kan. Stat. Ann. § 60-1610(b) indicates that the legislature did not set a fixed or absolute date to value marital assets.”⁴⁵ Practitioners in Kansas look to section 23-201(b) of the Kansas Statutes as the source of the idea that the date of filing is the date of valuation. However, the court in *Cray* further clarifies by stating that the statute, “Merely creates a specific date or time when the property owned by both parties to a marriage becomes ‘marital property’ with a common ownership. It in no way requires that the property be valued as of the same time that the common ownership vests.”⁴⁶ The *Cray* court focuses on the fact that Kansas is an equitable distribution state and that the circumstances must be looked at on a case by case basis to provide equity: “The specific duty of the trial court is found in Kan. Stat. Ann. § 60-1610(b) (1992 Supp.), which directs the court to make a just and reasonable division of the property

⁴⁰ *In re Marriage of Cray*, 867 P.2d 291, 297 (Kan. 1994).

⁴¹ N.Y. DOM. REL. LAW § 236 (2006).

⁴² *Gardner v. Gardner*, 628 S.E.2d 37 (S.C. 2006).

⁴³ *Cray*, 867 P.2d at 297-98.

⁴⁴ *Id.* at 291.

⁴⁵ *Id.* at 297.

⁴⁶ *Id.*

after considering all of the relevant factors and circumstances of the particular case.”⁴⁷

Similar to Kansas, South Carolina has a statute stating that the filing date is the time upon which property becomes marital property.⁴⁸ However, unlike Kansas, the courts in South Carolina have interpreted that statute to mean that the legislature was implying the date of filing was also the valuation date.⁴⁹ South Carolina courts, however, still observe that even though the valuation date is the date of filing, “[b]oth parties are entitled to appreciation in marital assets which occurs after the parties separate but before the parties are divorced.”⁵⁰ The court in *Dixon v. Dixon*⁵¹ explained why the trial court must have some discretion to deviate from the valuation at the time of filing: “given the volume of cases handled by our family courts, there often is a substantial delay between the commencement of an action and its ultimate resolution. Thus, it is not unusual for the value of marital assets to change. . . . between the time the action was commenced and its final resolution.”⁵²

Unlike Kansas and South Carolina, New York has a statute not just stating that the property becomes marital property but explicitly stating the state’s preference for the date of filing as the valuation date.⁵³ It requires the court to value assets in matrimonial suits “as soon as practicable.”⁵⁴ While the date of filing is the preferred valuation date, courts do have the discretion to use alternative dates like in *Enzien v. Enzien*⁵⁵ where the, “record reveal[ed] numerous disputed factual issues [in order for the court] to completely assess equities of the situation so as to insure fair disposition of assets, [the] matter was properly deferred until a later point in the action.”⁵⁶

⁴⁷ *Id.*

⁴⁸ S.C. CODE ANN. § 20-7-473 (2006).

⁴⁹ *Dixon v. Dixon*, 512 S.E.2d 539, 542 (S.C. Ct. App. 1999).

⁵⁰ *Smith v. Smith*, 363 S.E.2d 404, 409 (S.C. Ct. App. 1987).

⁵¹ 512 S.E.2d 539.

⁵² *Id.* at 542.

⁵³ N.Y. DOM. REL. LAW § 236 (B)(4)(b)(2007).

⁵⁴ *Id.*

⁵⁵ *Enzien v. Enzien*, 149 A.D.2d 783 (N.Y. App. Div. 1989).

⁵⁶ *Id.* at 784.

V. Date of Trial

The trial occurs in between the time of separation and the time of distribution, making the use of the trial date a reasonable point in time to value property. It allows for the capturing of an increase or decrease of property since the date of separation or filing, which is sometimes a large gap in time. Additionally, it is the logical point in time to value property since the court can hear the evidence at the current value and rule accordingly without having to retain jurisdiction, this supports the public policy of judgment finality. Therefore, while some states place the valuation date at separation or filing and others allow the valuation date to go all the way to the date of distribution, more states use the date of trial as the general rule for valuing property.

In at least eight states the trial date is the general rule used for the valuation date. Those states include Alaska,⁵⁷ Arizona,⁵⁸ California,⁵⁹ Georgia,⁶⁰ Louisiana,⁶¹ Missouri,⁶² North Dakota,⁶³ and Texas.⁶⁴ However, many more states likely use the date of trial as their general rule even without an express pronouncement. The states that do not expressly state the rule about the date of valuation seem to implicitly set their date of valuation at the time of trial and that is just so normal they may feel they do not need a rule discussing valuation date. For example, South Dakota has no “black letter law” that stands out as to the “valuation date.” Instead, the court in *Edinger v. Edinger*⁶⁵ states “in divorce cases, the trial court is required to place a value upon all of the property held by the parties and to make an equitable distribution of that property,”⁶⁶ without reference to the property value at a different time.

In Alaska the trial date is the general rule, although the court leaves exceptions for special circumstances. In *Doyle v.*

⁵⁷ *Doyle v. Doyle*, 815 P.2d 366, 369 (Alaska 1991).

⁵⁸ *Kelsey v. Kelsey*, 918 P.2d 1067 (Ariz. Ct. App. 1996).

⁵⁹ CAL FAM. CODE § 2552 (2007).

⁶⁰ *Wagan v. Wagan*, 434 S.E.2d 475, 477 (Ga. 1993).

⁶¹ LA. REV. STAT. ANN. § 9:2801(A)(4)(a) (2006).

⁶² *Taylor v. Taylor*, 736 S.W.2d 388, 391 (Mo. 1987).

⁶³ *Grinaker v. Grinaker*, 553 N.W.2d 204 (N.D. 1996).

⁶⁴ *Grossnickle v. Grossnickle*, 935 S.W.2d 830 (Tex. Ct. App. 1996).

⁶⁵ 724 N.W.2d 852 (S.D. 2006).

⁶⁶ *Id.* at 856 (citation omitted).

Doyle,⁶⁷ the court held, “in special situations, the trial court may value marital property as of the date of separation of the parties. However, in that event, there should be specific findings as to why the date of separation is the more appropriate choice for valuation.”⁶⁸

In California the general rule laid out by the legislature is to use as close to the trial date as possible.⁶⁹ The statute passed in 1976 reads,

For the purpose of division of the community estate upon dissolution of marriage or legal separation of the parties, except as provided in subdivision (b), the court shall value the assets and liabilities as near as practicable to the time of trial. [Subdivision (b) provides:] Upon 30 days' notice by the moving party to the other party, the court for good cause shown may value all or any portion of the assets and liabilities at a date after separation and before trial to accomplish an equal division of the community estate of the parties in an equitable manner.⁷⁰

Additionally, California has a statute that reads, “The earnings and accumulations of a spouse and the minor children living with, or in the custody of, the spouse, while living separate and apart from the other spouse, are the separate property of the spouse.”⁷¹ Therefore, California states a preference for the date of separation as the valuation date and it appears to be the general rule practice. However, California has been categorized as a date of trial state as opposed to a date of separation state because the legislature has specifically said that the general rule is the date of trial. In California if it benefits a client to use the date of separation, the attorney would invoke this exception within the thirty days. However, like the opening story, then a date of separation must be decided to value the property as of the date of separation.

In North Dakota, unlike North Carolina, a date of separation state where revaluation is emphasized, the North Dakota courts will not revalue the property after the date of trial. The court in *Grinaker v. Grinaker*⁷² stated that marital property should “be valued as of the date of trial, rather than the date of

⁶⁷ 815 P.2d 366 (Alaska 1991).

⁶⁸ *Id.* at 369.

⁶⁹ CAL. FAM. CODE § 2552 (2007).

⁷⁰ *Id.*

⁷¹ *Id.* at § 771(a) (2006).

⁷² 553 N.W.2d 204 (N.D. 1996).

distribution,” and the parties should not be permitted to file further evidence of a change in value after trial where there is no opportunity for cross-examination.⁷³ This is an important reason not to deviate from the general rule because if values are later presented without cross-examination the court cannot judge the credibility of the witnesses as to why or how the property decreased or increased.

In Georgia not only is the date of valuation the date of trial but the jury decides valuation.⁷⁴ Only a couple of states, including Georgia, even allow juries in domestic cases.⁷⁵ There is no rule on valuation in Georgia; however, one can deduce that it is that date of trial since no other date is set forth in the case or statutory law, the jury is presented with evidence and then makes a decision, and the court explicitly states, “the [trial] court may not amend the judgment so as not to follow the verdict.”⁷⁶ Therefore, since the court could not reconvene the jury some arbitrary date in the future, the date of trial must be the valuation date. Even in a case in which the husband was seeking a motion to modify where the jury had found that there would be no property division, the court would not disturb the valuation made at the date of trial.⁷⁷

Similarly in Texas a jury trial can be requested by either party⁷⁸ and the “jury findings as to the characterization and valuation of property are binding upon the trial court.”⁷⁹ Texas’ preference for the date of trial as the valuation date is shown by Texas allowing a jury to make decisions about valuation at the time of trial. The court in *Grossnickle v. Grossnickle*⁸⁰ stated, “In spite of the flexibility that may be given to the court in limited situations for the purposes of equity, the better rule—and the rule generally followed in Texas—is to value the community assets as of the date of the divorce.”⁸¹ Therefore, the court is

⁷³ *Id.* at 208-09.

⁷⁴ GA. CODE ANN. § 19-5-13 (2006).

⁷⁵ *Wagan*, 434 S.E.2d 475, 476 (Ga. 1993).

⁷⁶ *Id.* at 476.

⁷⁷ *Mitchell v. Mitchell*, 430 S.E.2d 350 (Ga. 1993).

⁷⁸ TEX. FAM. CODE ANN. § 6.703 (2007).

⁷⁹ *Grossnickle v. Grossnickle*, 865 S.W.2d 211, 212 (Tex. Ct. App. 1993).

⁸⁰ 935 S.W.2d 830 (Tex. Ct. App. 1996).

⁸¹ *Id.* at 837.

recognizing a reservoir of discretionary authority but pointing out the preferred rule, which is the date of trial.

The trial date for valuation in Texas is specifically the date of a trial on the merits and not just an evidentiary hearing or a hearing where a settlement agreement is put on the record. In *Baccus v. Baccus*,⁸² another Texas case, the judge verbally ruled that the divorce was granted but no final decree of divorce was submitted. Thereafter, both parties withdrew from portions of the separation agreement and the court held a trial on the merits sometime later and then entered a decree. The appellate court held that the date of the trial on the merits should be used as the valuation date.⁸³ Thus the date of valuation in Texas is not necessarily a hearing date but it is either the date of the trial on the merits or the date of a hearing where a decree is also submitted. However, instead of using the trial date, the court in *McElwee v. McElwee*,⁸⁴ used its discretion twice, once when deciding the original valuation date and the second time by deciding not to revalue the bank accounts even though there was an extreme disparity of money between the separation date and date of trial.⁸⁵ The first use of discretion was allowed; however, the second use of discretion was found to be improper.⁸⁶ The court held that when the trial court fails to re-value the property when a party has made a timely option to do so and is prepared to present evidence on the issue it is an abuse of discretion.⁸⁷ This follows the logic of most states. As emphasized previously in the line of cases out of North Carolina,⁸⁸ states that use solid dates of valuation will revalue or adjust the time of valuation if the general rule is exceptionally inequitable.

Although these states will at times deviate from the date of trial, it is a solid and reliable valuation date upon which the factfinder, whether jury or judge, can fairly assess the valuation of assets to reach a fair outcome.

⁸² 808 S.W.2d 694 (Tex. Ct. App. 1991).

⁸³ *Id.* at 699

⁸⁴ *McElwee v. McElwee*, 1999 Tex. App. LEXIS 4174.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See *Dalgewicz v. Dalgewicz*, 606 S.E.2d 164 (N.C. App. 2004).

VI. Date of Dissolution

At least six states, Connecticut,⁸⁹ Illinois,⁹⁰ Idaho,⁹¹ Tennessee,⁹² Utah,⁹³ and Wisconsin⁹⁴ clearly use the date of dissolution as their general rule for the date of valuation.

Some states use the date of trial and the time of the divorce decree synonymously; however, these could be very different dates. Sometimes courts use the term “date of dissolution” to mean the trial date where a decree was presented to the court and other times they are referring to the date the decree was entered. So one must look carefully to figure out to which date the court is referring. For example in Utah, a court has said, since a “marital estate should be valued as of the time of the divorce decree,” the court erred in valuing a spouse’s corporation as of one year before the trial rather than as of the time of trial.⁹⁵ This Utah court has used the time of trial and the time of the divorce decree interchangeably within the same sentence. It could be that the date of trial and the date of dissolution occurred on the same date. However, often there is a time lag between the date of trial and the date of dissolution so the language of the date of valuation should be specific. Most courts use the term the “date of dissolution” or “date of decree” as the date the judgment is entered, which leaves room for changes in value between the time of hearing and time of judgment.⁹⁶

Tennessee sets forth its valuation date in a statute. The statute specifies the date of valuation when considering a legal separation as well as a divorce. In a divorce action, all marital property shall be valued as of a date as near as possible to the date of entry of the order finally dividing the marital property.⁹⁷ Similarly, if there is a legal separation:

⁸⁹ *Sunbury v. Sunbury*, 583 A.2d 636 (Conn. 1990).

⁹⁰ *In re Marriage of Stone*, 507 N.E.2d 900 (Ill. Ct. App. 1987).

⁹¹ *Brinkmeyer v. Brinkmeyer*, 21 P.3d 918 (Idaho 2001).

⁹² TENN. CODE ANN. § 36-4-121(b)(1)(A) (West 2008).

⁹³ *Berger v. Berger*, 713 P.2d 695 (Utah 1985).

⁹⁴ *Wikel v. Wikel*, 483 N.W.2d 292, 295 (Wis. Ct. App. 1992), and *In re Marriage of Hurd*, 848 P.2d 185 (Wis. Ct. App. 1993).

⁹⁵ *Berger*, 713 P.2d at 697.

⁹⁶ *Wendt v. Wendt*, 757 A.2d 1225, 1332 (Conn. App. Ct. 2000).

⁹⁷ TENN. CODE ANN. § 36-4-121(b)(1)(A) (2006).

the court may make a final disposition of the marital property either at the time of entering an order of legal separation or at the time of entering a final divorce decree. . . . If the marital property is divided as part of the order of legal separation, any property acquired by a spouse thereafter is deemed separate property of that spouse.⁹⁸

In Connecticut courts use the date of dissolution to value the assets, not the date of any subsequent hearing, the last day of trial or the date of financial affidavit.⁹⁹ The date of dissolution is the date that the court actually signs the judgment and the judgment is entered. This could be anytime after the trial date and well before any subsequent hearings that may occur. As opposed to some states where the separation date is an acceptable date for valuation, Connecticut courts have specifically held that trial courts have erred in their “division of the parties’ assets due to [their] valuation of those assets as of the date of the parties’ separation.”¹⁰⁰

As with all set dates of valuation, the courts in Connecticut deviate from the general valuation date for equitable reasons. In Connecticut the courts use the term “exceptional intervening circumstances”¹⁰¹ to define when they will stray from the date of dissolution. The court in *Cuneo v. Cuneo*¹⁰² draws a hard line in keeping with the date of divorce, “recogniz[ing] that in the ordinary marital dissolution case there may be a time lag between the presentation of evidence and the decision of the trial court.”¹⁰³

The rule from *Sunbury v. Sunbury*¹⁰⁴ determines when it is acceptable to use a date other than the date of judgment. In *Sunbury* the court made the date of valuation the date of dissolution rather than the date of hearing.¹⁰⁵ *Sunbury* involved asset increases that occurred post dissolution, not between the parties’ separation and the decree.¹⁰⁶ The rule from *Sunbury* is that “an increase in the value of the property following a dissolution does

⁹⁸ *Id.*

⁹⁹ *Sunbury v. Sunbury*, 583 A.2d 636 (Conn. 1990).

¹⁰⁰ *Zern v. Zern*, 544 A.2d 244 (Conn. App. Ct. 1988).

¹⁰¹ *Sunbury*, 583 A.2d at 638.

¹⁰² 533 A.2d 1226 (Conn. App. Ct. 1987).

¹⁰³ *Id.* at 1230.

¹⁰⁴ *Sunbury*, 583 A.2d 638.

¹⁰⁵ *Id.* at 636.

¹⁰⁶ *Id.*

not constitute such an exceptional intervening circumstance.”¹⁰⁷ Likewise, in *Zern v. Zern*¹⁰⁸ the appellate court found that the trial court erred in setting the valuation date as the date of separation because the court did not follow the proper two step process of first, valuing the assets as of the date of the decree, and second, evaluating “the efforts of each spouse that contributed to that value, including the lack of one spouse’s efforts post separation, [should] be taken into account by the trial court in determining the division of property incident to a dissolution of marriage action.”¹⁰⁹

The Connecticut cases offer an excellent tool to use when trying to understand the effects of using different valuation dates. The court in *Sunbury* even goes on to evaluate four choices the court has when deciding what to do in difficult valuation situations.¹¹⁰ In *Kremenitzer v. Kremenitzer*,¹¹¹ the Connecticut appellate court discusses consent as a date for valuation stating, the separation agreement unmistakably showed that the intent of the parties was to divide the assets on the basis of values as of the day of dissolution or as close to the date as values could be obtained; that intent, as a matter of law, controlled the date of valuation of the asset.¹¹²

The date of dissolution is an exact date to use as the date of valuation. However, query how reasonable it is to use the dissolution date as the general rule when generally most evidence is presented at the time of trial. This would seem to make the time of trial the most practical time of valuation, with the date of dissolution offering an exception for those instances in which the record is left open after the trial. This exception might be triggered by default in date of dissolution states when the decree is signed the day of trial or no evidence is presented following the trial.

¹⁰⁷ *Id.* at 638.

¹⁰⁸ *Zern v. Zern* 544 A.2d 244 (Conn. App. Ct. 1988).

¹⁰⁹ *Id.* at 246.

¹¹⁰ *Sunbury*, 583 A.2d 636 (Conn. 1990).

¹¹¹ 838 A.2d 1026 (Conn. App. Ct. 2004).

¹¹² *Id.* at 1030.

VIII. Conclusion

Jessica and Nick ended up settling their valuation dispute out of court. However, if Jessica's attorney filed the statutory notice required to use the separation date as the date of valuation, the separation date would have been the material fact in deciding how much money Nick would have received. Just knowing that the valuation date could be later than what she perceived the date to be and knowing that the court could use its discretion in deciding the valuation date to make it an even later date in time might have played a significant part in their settlement negotiations.

Toni Hendricks

