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Property Settlements in Divorce Proceedings: Patterson v. Patterson Case

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PROPERTY SETTLEMENTS IN DIVORCE PROCEEDINGS: *PATTERSON v. PATTERSON*

Essentially two systems exist in the United States which provide for the division of property upon the dissolution of marriage. The first is the community property system[1] which treats the marriage as a partnership. Upon divorce, each spouse, or partner, is entitled to one-half of all the property acquired during the marriage by the joint effort of the spouses.[2] The second is the common-law property system. Although this system varies from jurisdiction to jurisdiction,[3] it essentially stresses the individuality of title to real and personal property.[4] That is, upon divorce, each spouse is entitled to such property which is in his or her own name.

A majority of jurisdictions have attempted to ameliorate the harshness of the common-law system by enacting statutes which provide for an equitable distribution of property upon divorce, without regard to which spouse actually owns the property.[5]

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[1] States having the community property system are: Arizona, California, New Mexico, Nevada, Idaho, Louisiana, Texas, and Washington. *See generally* Freed & Foster, *Divorce in Fifty States: An Overview as of 1978*, FAM. L. Q. 105 (1979) [hereinafter cited as Freed & Foster].

[2] *See* Greene, *Comparison of the Property Aspects of the Community Property and Common-Law Marital Property Systems and Their Relative Compatibility with the Current View of the Marriage Relationship and the Rights of Women*, 13 CREIGHTON L. REV. 71, 82 (1979).

[3] *Id.* at 99-100. The minority of common law property states cling to the concept of inviolability of title. But a majority of common law property states have enacted statutes providing for a more equitable division of real and personal property upon divorce. These statutes vary, but can be divided into three groups:

1) Statutes which provide that all property owned by the parties is subject to division.

2) Statutes which provide that only the property acquired during marriage is subject to division.

3) Statutes which provide that only the property acquired during marriage is subject to division, except that property acquired by

a) gift;
b) devise;
c) descent.

[4] *Id.* at 83.

[5] *E.g.*, MASS. GEN. LAWS ANN. ch. 208, § 34 (West 1981). This act provides:

Upon divorce or upon motion in an action brought at any time after

However, West Virginia still belongs to the minority of common-law property states where the courts have no general or equitable power to distribute property, and title alone controls.[6]

In the recent case of *Patterson v. Patterson*,[7] the West Virginia Supreme Court of Appeals decided, *inter alia*, three issues regarding property settlements. First, the court held that an action to impress a constructive trust[8] may be joined with a divorce action. In so holding, the court overruled two West Virginia cases, *State ex rel. Collins v. Muntzing*[9] and *State ex rel. Hammond v. Worrell*.[10] Secondly, the court held that a constructive trust may be impressed only in those cases where the spouse seeking the trust had contributed services to the other spouse's business, and was not adequately compensated. The court called these services "sweat equity" because they directly contribute to the equity of a family business.[11] Third, the court in *Patterson* stated that a spouse may receive a life estate in the

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a divorce, the court may make a judgment for either of the parties to pay alimony to the other. In addition to or in lieu of an order to pay alimony, the court may assign to either the husband or wife all or any part of the estate of the other. In determining the amount of alimony, if any, to be paid, or in fixing the nature and value of the property, if any, to be assigned, the court, after hearing the witnesses, if any, of each party, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount, and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court may also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates and the contribution of each of the parties as a homemaker to the family unit.

This statute gives the trial court judge a set of guidelines to follow to insure consistency and fairness. It is important to note that fault of the parties plays no part in the division of property or the award of alimony.

[6] Freed & Foster, *supra* note 1, at 116-17.

[7] 277 S.E.2d 709 (W. Va. 1981).

[8] A constructive trust has been defined by the West Virginia Supreme Court of Appeals as follows:

[T]hat where one obtains the legal title to property through the influence of a relation of confidence and trust, under such circumstances that he ought not in equity and good conscience to hold and enjoy the same as against the other party to the relation, equity will impress the property with a trust in favor of the latter. Kersey v. Kersey, 76 W. Va. 70, 78-79, 85 S.E. 22, 25-26 (1915).

[9] 151 W. Va. 843, 157 S.E.2d 16 (1967).

[10] 144 W. Va. 83, 106 S.E.2d 521 (1958).

[11] 277 S.E.2d at 716.

home property subject to remarriage, regardless of whether that spouse has custody of the children.[12] This statement, set forth in a footnote, expands upon the holding in *Murredu v. Murredu* which had limited the award of a life estate in the home property to one spouse only upon the condition that that spouse has custody of the couple's children.

The *Patterson* case began in March, 1974, when Edward James Patterson sued his wife, Amanda Maxine Patterson, for divorce in the State of Nevada.[14] Before learning of the Nevada divorce decree, Mrs. Patterson filed for divorce in the circuit court of Logan County. Mrs. Patterson was granted the divorce on the ground that she and her husband had lived separate and apart for one year.[15]

In addition to granting the divorce, the circuit court ruled upon two property issues. First, the court ruled that Mr. Patterson's attempted transfer of two parcels of land to his daughter was fraudulent.[16] Secondly, the circuit court impressed a constructive trust in the same property in favor of Mrs. Patterson. Mr. and Mrs. Patterson operated a grocery store, in which Mrs. Patterson worked but received no salary. With the profits realized from this joint effort, Mr. Patterson purchased two parcels of land in 1962 and 1966 respectively.[17] The circuit court felt that Mrs. Patterson showed that she was entitled to part of that property, and therefore the court allowed the constructive trust.

Mr. Patterson appealed the circuit court's ruling on the grounds that the court erred in two respects. First, he argued that the court should not have entertained a property dispute in the same proceeding as a divorce. Secondly, he claimed that the court should not have declared a constructive trust in the prop-

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[12] *Id.* at 712, n.1.

[13] 236 S.E.2d 452 (W. Va. 1977).

[14] The circuit court of Logan County found that the Nevada Court did not have jurisdiction over the subject matter because Mr. Patterson was not a *bona fide* resident of Nevada at the time he instituted the divorce proceeding. Therefore, the circuit court did not afford the Nevada decree full faith and credit.

[15] W. VA. CODE § 48-2-4 (1981 Replacement Vol.)

[16] W. VA. CODE § 40-1-1 (1933).

[17] One tract of land was purchased by Mr. Patterson in 1962 and is located in the Island Creek District of Logan County. The second tract of land was purchased in 1966 and is located in Logan District. Both parcels were titled in the name of Mr. Patterson only, and he operated a laundromat on each.

erty.[18] The supreme court of appeals, however, affirmed the circuit court and upheld the decisions regarding constructive trusts and joinder of divorce and property claims.[19]

In West Virginia, divorce is an area of law which is governed solely by statute.[20] In 1923, the statute which dealt with property proceedings in connection with divorce stated, in part: "Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce . . . the court may make such further decree as it shall deem expedient, concerning the estate and maintenance of the parties, or either of them. . . ."[21]

The supreme court of appeals in the 1928 case of *Philips v. Philips*[22] gave its most liberal interpretation of this statute by upholding the lower court's decision that an equitable property settlement may be made in the same proceeding that a divorce is granted. The court's reasoning in *Philips* is similar to that used by the court in *Patterson*, that is, that the ends of judicial economy and efficiency might better be served if the two issues were combined and heard in one suit.[23]

However, the interpretation of the 1923 statute by the West Virginia court in *Philips* has been seen as an anomaly.[24] To avoid such similar interpretations in the future, the West Virginia Legislature enacted a new statute in 1931, presently § 48-2-15, which was purposefully more restrictive. It states, in part:

> Upon ordering a divorce, the court may make such further order as it shall deem expedient, concerning the maintenance of the parties, or either of them; and upon ordering . . . a divorce, the court may make such further order as it shall deem expedient, concerning . . . the minor children. . . . For the purpose of making effectual any order provided for in this section the court

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[18] The West Virginia Supreme Court of Appeals also affirmed the circuit court's holdings that the Nevada divorce decree was invalid, and that the attempted transfer of property by Mr. Patterson to his daughter was fraudulent.

[19] However, the case was remanded to allow Mrs. Patterson to prove each element of the constructive trust.

[20] 144 W. Va. at 88, 106 S.E.2d at 524.

[21] Barnes' Code, ch. 64, § 11 (1923).

[22] 106 W. Va. 105, 144 S.E. 875 (1928).

[23] *Id.* at 109, 144 S.E. at 877.

[24] *See generally* MORRIS, LAW OF DOMESTIC RELATIONS IN WEST VIRGINIA (1st ed. 1973).

> may make any order concerning the estate of the parties, or either of them, as it shall deem expedient.[25]

In the case of *Selvy v. Selvy*,[26] which shortly followed the enactment of the above code section, the West Virginia Supreme Court of Appeals interpreted the new statute as limiting the trial court's power in handling property matters during a divorce hearing. In *Selvy*, the trial court granted the plaintiff a divorce along with an equitable division of property, which included a certain piece of real estate and $10,000 cash and securities which were in the defendant's possession but which allegedly belonged to the plaintiff.

The high court affirmed the divorce but remanded the issue regarding property rights in order that the matter be fairly adjudicated in a separate hearing. In doing so, the supreme court of appeals strictly construed the jurisdiction of the divorce court as to the property matters of the parties to the divorce as arising purely from the divorce statute. Furthermore, the last sentence of the first paragraph of the new statute[27] clearly states that the "court's control over the estate of the parties is indirect" and is "necessary only to enforce its decrees regarding alimony[28] and maintenance."[29] In other words, the court stated that neither real property nor certain personal property may be awarded as alimony; however, these types of property may be impressed as a guarantee for the payment of alimony.[30]

Wood v. Wood,[31] decided in 1943, also followed the restrictive interpretation of § 48-2-15. In *Wood*, the plaintiff sued for and was granted a divorce and custody of the children. By way of a cross-bill, the defendant requested a divorce, custody of the children, alimony, $175.00 representing money lent, and a settlement of property rights. The trial court awarded the defendant $1,375.00, representing the requested property settlement.

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[25] W. VA. CODE § 48-2-15 (1981 Replacement Vol.) Because the first version of this statute was enacted in 1931, it will be referred to in the text as either "the 1931 statute" or "the new statute."

[26] 115 W. Va. 338, 177 S.E. 437 (1934).

[27] W. VA. CODE § 48-2-15 (1981 Replacement Vol.).

[28] W. VA. CODE § 48-2-13 (1981 Replacement Vol.).

[29] 115 W. Va. at 342, 177 S.E. at 439.

[30] *See, e.g.*, Games v. Games, 111 W. Va. 327, 161 S.E. 560 (1931).

[31] 126 W. Va. 189, 28 S.E.2d 423 (1943).

However, on appeal, the court reversed that part of the case regarding the attempted property settlement, again pointing to the restrictiveness of § 48-2-15 in limiting the jurisdiction of the trial court over the property of the parties to a divorce. The court further suggested that the defendant could have brought an equitable claim to the property under § 48-2-19 of the West Virginia Code,[32] but stated that the grounds for equitable relief were not adequately set forth in the defendant's cross-bill. Moreover, the court concluded that even if the defendant had pleaded correctly under this statute, she would not have received a cash property settlement because the statute "clearly contemplated a restoration of the property *in kind* to the party entitled thereto, and not a money recovery for the value thereof."[33]

In a third case, *McKinney v. Kingdon*,[34] decided in 1979, the supreme court of appeals relaxed the restrictive interpretation given to § 48-2-15. In *McKinney*, the trial court granted the respondent a divorce, along with "exclusive possession and use" of the 1977 Volkswagen Rabbit motor vehicle, the title of which was registered in the name of the respondent's husband. The respondent averred that the automobile was a necessary item in the care and maintenance of her children.

The supreme court of appeals agreed with the trial court, and, in fact, granted respondent *ownership* of the automobile.[35] In applying § 48-2-15, the court reasoned that the decree awarding the automobile, which concerned the estate of the parties, was such as to make effective the divorce decree concerning the maintenance of the minor children. It is important to note that the court's holding was limited to automobiles; it maintained that its holding was "not intended to affect the existing law concerning real property or drastically alter the way personal property is currently disposed of in divorce actions."[36]

The most important change made in domestic relations law by the court in *Patterson* was that a circuit court may combine a

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[32] Today, the applicable code section is W. VA. CODE § 48-2-21 (1980 Replacement Vol.).

[33] 126 W. Va. at 193, 28 S.E.2d at 425.

[34] 251 S.E.2d 216 (W. Va. 1979).

[35] The court reasoned that *title* to the automobile was essential to its use and possession, for purposes of paying taxes and getting insurance, for example. *Id.* at 220.

[36] 251 S.E.2d at 219.

divorce proceeding with a property proceeding. In so holding, the supreme court of appeals overruled the *Muntzing* and *Worrell* cases. Although these two cases involved property matters, the only real similarity between them and *Patterson* is that the three were divorce cases. *Patterson* is more akin to *Philips*, *Selvy*, *Wood*, and *McKinney* in that each involved one spouse requesting the trial court to grant a particular item of property or an equitable share of real or personal property titled in the name of the other spouse.

The property issue involved in *Muntzing* and *Worrell* differs markedly from that in *Patterson*. Each of those cases involved a partition agreement whereby the couple seeking a divorce agreed to allow the trial court to sell their real property and have the judge divide the proceeds of the sale between the two parties.[37]

In each case one party had a change of heart and had decided against the sale. In *Muntzing*, the supreme court of appeals again strictly construed § 48-2-15 as limiting the trial court's jurisdiction in a divorce matter to only that part of the estate that would make effectual a decree for alimony or child custody. Therefore, the court held that a judicial sale of real property, although agreed to by both parties, is clearly beyond the power accorded to the trial court by statute.[38] Furthermore, the court concluded "jurisdiction could not be conferred upon the court by consent or agreement of the parties. . . ."[39]

Nevertheless, the court in *Patterson* construed the West Virginia Rules of Civil Procedure[40] as permitting the joinder of the divorce and property proceeding, "to promote [judicial] efficiency and economy."[41] The court reasoned it was unnecessary to require a circuit court judge to "wear separate hats and to conduct separate hearings, one to determine divorce . . . and another to adjudicate equitable claims to property. . . ."[42] The

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[37] Collins v. Muntzing, 151 W. Va. 843, 157 S.E.2d 16 (1967); Hammond v. Worrell, 144 W. Va. 83, 106 S.E.2d 521 (1958).

[38] 151 W. Va. 843, 157 S.E.2d 16.

[39] *Id.* at 848, 157 S.E.2d at 19.

[40] The West Virginia Rules of Civil Procedure for Trial Courts of Record were adopted and promulgated by the Supreme Court of Appeals on October 13, 1959, to become effective on July 1, 1960.

[41] 277 S.E.2d at 715.

[42] *Id.*

court based this opinion upon rule 18 of the West Virginia Rules of Civil Procedure which states, in part, that "[a] party asserting a claim to relief . . . may join . . . as many claims, legal or equitable, as he has against the opposing party."[43] This rule is subject to the exceptions listed in rule 81 of the West Virginia Rules of Civil Procedure; however, the court in *Patterson* noted that these exceptions to certain domestic relations issues did not apply to the present situation.[44]

The *Patterson* court stated that *Worrell*, in ruling that the circuit court lacked jurisdiction to hear a divorce proceeding along with a property one, ignored § 48-2-19 of the West Virginia Code.[45] Although it is true that this statute confers jurisdiction to hear property cases in a divorce court, the statute is limited to that situation in which certain real or personal property belonging to one spouse "is in possession, or under the control, or in the name, of the other" spouse.[46]

But it must be pointed out that in neither *Muntzing* nor *Worrell* did either party attempt to prove a constructive trust in the property. Neither party averred that real or personal property belonging to him or her was in the name of the other party. Rather, in each case the circuit court judge attempted to partition the property of the parties pursuant to an oral agreement allowing the court to do so. Therefore, § 48-2-19 was not pertinent to the court's determination in those cases.

Another argument that can be made against the court's jurisdictional reasoning is the requirement found in rule 82 of the West Virginia Rules of Civil Procedure. This rule, mentioned by the court in *Muntzing*, states: "[t]hese rules shall not be construed to extend or limit the jurisdiction of the courts or the venue of the actions therein."[47] Rule 82 therefore would seem to

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[43] W. VA. R. CIV. P. 18 (1960). The rule states, in part:

(a) Joinder of claims.—A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as an independent or alternate claims, as many claims, legal or equitable, as he had against an opposing party.

[44] 277 S.E.2d at 715 n.5.

[45] 277 S.E.2d at 714. Today, the applicable statute is W. VA. CODE § 48-2-21 (1969).

[46] W. VA. CODE § 48-2-21 (1969).

[47] W. VA. R. CIV. P. 82 (1960).

apply here to prevent the supreme court of appeals from extending jurisdiction in a divorce matter.

The most troubling aspect of the court's decision concerning the joinder of property settlements with divorce proceedings was that the court was unclear in articulating to what extent it overruled *Muntzing* and *Worrell*. The court stated that it was overruling these two cases to a limited extent.[48] However, because the tenor of the opinion goes to the substance of the cases, a circuit court judge might reasonably interpret these cases to be overruled *in toto*. Therefore the decision seems to suggest that in a divorce proceeding, a circuit court can now partition a party's property and divide the proceeds from the judicial sale among both parties to the divorce.

The second aspect of the *Patterson* decision set forth certain requirements which must be proven by one party before a circuit court will impress a constructive trust upon the property of the other party to the divorce. These elements are:

1) that the party overcome the presumption of a gift, W. Va. Code § 48-3-10 (1931); and
2) that the party show that he or she is otherwise entitled to the declaration of the constructive trust. This showing of entitlement requires: (a) a showing that the party transferred to the other spouse money, property, or services, which were actually used to procure the property in the other spouse's name only; and (b) that the transfer was induced by: fraud, duress, undue influence, mistake, breach of implicit fiduciary duty, or, that in light of the dissolution of the marriage the other spouse would be unjustly enriched by the transfer.[49]

Furthermore, the court limited its holding regarding constructive trusts to apply only to business property, and to that individual who was a business partner with the other spouse during the course of the marriage. The court referred to the circumstances giving rise to this relationship as "sweat equity."[50]

The court limited its holding in this way to make it clear that West Virginia was not moving toward a community prop-

[48] 277 S.E.2d at 713.
[49] *Id.* at 716.
[50] *Id.*

erty system. The court emphasized that alimony would still be the type of compensation awarded to that spouse who gave valuable years of his or her life to the marriage. But to those spouses who can prove the "sweat equity" elements of a constructive trust and who are also engaged in business with the other spouse, the court may award a portion of real property and/or personal property which had been in the name of the other spouse.

The elements set forth by the court as necessary for the creation of a constructive trust are well chosen for the reasons mentioned above. However, the decision, by limiting the use of constructive trust to only those spouses involved in a joint business venture, will prevent those spouses who perhaps contribute heavily to the marriage by performing such "routine duties that a housewife normally performs such as taking care of children, entertaining business friends, and otherwise being supportive of her husband . . . ,"[51] from having the opportunity to prove a constructive trust. Although these spouses will, in most instances, receive alimony, this remedy may not be sufficient in all cases.

Moreover, if the spouse is able to show the existence of a business relation prior to the divorce, he or she is faced with the heavy burden of proving the elements of the constructive trust.[52] The most difficult of these is overcoming the presumption of a gift between spouses.[53] Furthermore, the spouse attempting to prove the trust must also prove that the business services were "of such a nature that they, in a measurable way, directly contribute to the equity of a family investment undertaking or business."[54] Therefore, it is arguable that since the burden of establishing a constructive trust is so great, even though the court has expanded jurisdiction of circuit courts in divorce proceedings to include property settlements, the net

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[51] *Id.* at 712.

[52] *See* note 38 *supra.*

[53] *Id.* W. VA. CODE § 48-3-10 (1981 Replacement Vol.). This statute provides:

> [w]here one spouse purchases real or personal property and pays for the same, but takes title in the name of the other spouse, such transaction shall, in the absence of evidence of a contrary intention, be presumed to be a gift by the spouse so purchasing to the spouse in whose name the title is taken.

[54] 277 S.E.2d at 716.

result is not much different than before this case because so few people would be able to meet the requirement to benefit from such a settlement.

Another problem arising from the imposition of a constructive trust concerns the valuation of the services of that spouse seeking to impress the trust. The *Patterson* court states that "there is absolutely no presumption that business property should be divided evenly."[55] The court stated that the spouse seeking to impress the trust will receive property to the extent that the other spouse was unjustly enriched by his or her contribution. The difficulty arises in measuring the extent of that contribution when determining what percentage of the property that spouse deserves. The court gave absolutely no guidance in this matter.

The third change in domestic relations law fashioned by the *Patterson* court was to allow a circuit court to award a life estate in the home property, regardless of whether that spouse has custody of the children. Prior to *Patterson*, the West Virginia court in the case of *Kinsey v. Kinsey*[56] had held that the circuit court could award the wife and children the use of a house, but that this would not be a life estate. The court upheld this proposition in *Murredu*.[57] However the *Patterson* court, in a footnote, expanded the holdings of *Kinsey* and *Murredu* by stating that this award of the house is a life estate, and it is not contingent upon the spouse's having custody of the children.[58]

Two problems exist regarding the court's discussion of the award of a life estate in a divorce. First, since the court removed the condition of custody of the children before obtaining a life estate in the home property, it is now apparent that a person having no children may obtain a life estate. Furthermore, the court fails to state which elements a circuit court would consider in determining whether a life estate should be awarded. Second, there is serious doubt as to what precedential value should be afforded to the discussion regarding a life estate, since it was set forth in a footnote rather than in the text and also because it was dicta rather than a topic at issue.

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[55] *Id.*
[56] 143 W. Va. 574, 103 S.E.2d 409 (1958).
[57] 236 S.E.2d 452 (W. Va. 1977).
[58] 277 S.E.2d at 712 n.1.

In conclusion, the *Patterson* court, by extending the jurisdiction of circuit courts in divorce proceedings to include property settlements, has brought this area of domestic relations law full circle. Originally these two matters could be brought before a circuit court in one proceeding, but the state legislature enacted § 48-2-15 to prevent this extended jurisdiction. Because of this decision, the circuit courts can once again exercise that extended jurisdiction. Though the court provided well reasoned standards as conditions for the imposition of a constructive trust in a divorce proceeding, the burden of proof will be difficult to meet and the value of services rendered will be difficult to estimate. Moreover, because the court was unclear in the extent to which it overruled two prior cases concerning partitioning of marital property and because the court was unclear about defining the circumstances necessary for a possible award of a life estate in the home property of the divorced parties, circuit courts may still be at a loss as to how to distribute property in divorce proceedings.

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