



Shannon Pratt's BUSINESS VALUATION®

UPDATE

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Expert with credentials wins the credibility game

Powell v. Powell, 2003 Tenn. App. LEXIS 281 (Tenn. Ct. App. Apr. 7, 2003). Judge Farmer.

Key words:



Marital dissolution, Fair market value, Going concern value, Revenue Ruling 59-60, Limited liability company, Witness credibility, Expert qualifications, Check cashing outlets

Experts:

Robert Vance, Jr., CPA, CVA, CFP (for wife)
Robert Vance & Associates, CPAs & Consultants

Kenny Noble, CPA (for husband)

The issue in this marital dissolution was the valuation of husband's interest in several check cashing outlets that he owned with his brothers. The outlets were organized as limited liability companies (LLCs). Husband owned a minority interest in each LLC, with his largest holding being a 50% interest in two of the businesses. Only one of the businesses was started prior to the marriage.

The trial court valued the businesses based on the testimony of wife's expert, and awarded wife one-half that value. The court of appeals affirmed, finding that the trial court's credibility determination was supported by the record and the valuation was within the range of evidence presented.

Valuation evidence

Both parties presented the testimony of a valuation expert. Wife's expert, **Robert Vance, Jr.**, opined that husband's interest, including the appreciation in value of the one premarital business, was worth \$2,290,000 on a going concern basis, "specifically for divorce purposes." Vance testified that this value was not equivalent to fair market value.

Husband's expert, **Kenny Noble**, opined that the fair market value of husband's interest in the businesses was \$385,482. Noble used the methodology set forth in Revenue

Ruling 59-60.

Editor's note: The court of appeals does not detail the methodology or calculations of either expert witness.

The trial court also considered financial statements that husband had submitted to various financial institutions for credit purposes. The financial statement from February 2001, 10 months prior to the marital dissolution, indicated that husband's business interests were worth \$3,370,000. The financial statement from March 1997, when the husband had only one store, valued that one business at \$595,000. Husband testified that those financial statements were inaccurate.

Trial court findings

The trial court accepted Vance's valuation, finding that he was more credible and qualified. The court awarded the wife \$1,119,000 for her one-half interest in the businesses.

Editor's note: The opinion does not explain the \$52,000 difference between Vance's opinion of value and the trial court's award to the wife times two.

Holding on appeal and rationale

On appeal, husband argued that the trial court erred in not valuing his business interest at fair market value according to the formula of Revenue Ruling 59-60. The court of appeals rejected this argument, finding that there is no one correct method for valuing an LLC.

The court said, "Rev. Rul. 59-60 is intended to be only a guide. It was never intended to be an inflexible rule."

The court of appeals also found that the financial statement evidence supported the higher value determined by the trial court.

Credibility issue

The court of appeals also noted that a trial court's determination of credibility will not

be overruled unless there is "clear and convincing evidence" to the contrary.

The court of appeals found that the trial court's determination that Vance was more credible than Noble was supported by the record, in particular by the fact that Noble's qualifications "paled in comparison" to Vance's.

Editor's note: This is yet another case that illustrates the importance of appraiser education and credentials. The appraiser who can demonstrate that he or she has kept abreast of current business valuation techniques and the state of the profession is going to win the day in court, and have his or her opinion upheld on appeal. BVU

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