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Steven Lee Ballas v. Cathy T. Ballas, 2004-Ohio-5128.

The Ohio Court of Appeals for the Seventh District affirmed the decision regarding the valuation of a cardiology practice.

Two witnesses were called at trial to testify to the value of the practice. The doctor called the office manager of the cardiology center, who testified as to the amount that the doctor would receive if the doctor left the practice. The spouse presented independent professional expert testimony regarding the value of the cardiology center. The expert prepared his valuation based upon documents provided to him by the center and three different valuation approaches that were averaged together. The difference of opinion was significant. The office manager's value was \$100,000 plus a pro rata share of accounts receivable. The expert's opinion of value was just above \$505,000. The trial court determined that the doctor's interest in the practice was \$505,000.

The doctor argued at trial that the estimate offered by his witness was more accurate since it reflected the amount that he would unconditionally receive from the cardiology center without having to negotiate with an outside purchaser. His second argument was that expert did not consider the value of the first option buy-out that the center retained.

The spouse countered the arguments by contending that there is no set formula that a domestic relations court must follow when valuing a business and that the court has broad discretion in deciding which testimony to believe, if any. Additionally, she insisted that the opinion of her expert was more reliable since it took into consideration more than one approach.

The court of appeals affirmed the trial court's decision to rely on the expert's testimony since it was "very credible" since he looked at numerous factors and used three methods of valuation.

Valuation Commentary

I find it interesting that this case is nearly the opposite opinion decided in *Herron v. Herron* discussed in the December newsletter. Recall that in *Herron*, the buy/sell agreement was used to determine the value of the business.

In the *Ballas* case, the testimony of the office manager only considered the amount that the doctor would receive if the doctor left the practice, essentially relying on the buy/sell agreement in place at the cardiology center.

The trial court's ruling ultimately was determined based on the credibility of the expert's testimony. Since the expert provided a valuation (presumably) using proper valuation theory, the court favored the position over the buy out amount. The credibility of the witness led to the decision.

What are the lessons found in both of these cases? There are at least two lessons.

First, the proper use of an expert opinion is important. The outcome of this case may have changed if an expert would have provided detail regarding the terms of the buy sell agreement, and an analysis as to why using the agreement to determine fair market value would be appropriate. I would caution that this is only one piece of the puzzle, however, since a business valuation opinion can only be offered if all of the procedures of a business valuation are completed.

Second, the reliance on a buy/sell agreement alone to determine fair market value is dangerous. Buy sell agreements are established for many reasons. Sometimes the agreement is put into place to restrict transferability of the shares or to "handcuff" the shareholders. Other times they are established at fully arms length terms to allow for ease of transferability. As mentioned last month, the buy/sell agreement is only one factor that needs to be considered among the countless other factors that influence the value of a business or practice.