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Howard L. Covert v. Carol Hart Covert, 2004-Ohio-3534 (released June 28, 2004).

The Ohio Court of Appeals for the Fourth District affirmed the valuation of an optometry practice below the value determined by the only expert to testify.

The expert determined the value of the business by applying three approaches, the asset approach, the income approach and the market approach, which is consistent with valuation theory promulgated by Revenue Ruling 59-60 issued by the Internal Revenue Service.

But the expert opinion was rejected by the trial court for several reasons. First, the court concluded that the expert made errors in applying the capitalized excess earnings method under the income approach. Second, the court rejected the expert's decision to average the results of the three valuation approaches since it was in direct contravention of Revenue Ruling 59-60. Third, the court found that the expert did not give sufficient weight to the most recent financial results that were affected by increased competition from a newly opened Wal-Mart.

The revaluation of the expert's opinion is not overly surprising since the valuation of property in a divorce case is a question of fact. It has been ruled that when valuing a marital asset, a trial court is neither required to use a particular valuation method, nor precluded from using any method. In this case, since errors were uncovered during the trial, it makes sense that the court reconsidered the facts.

But what I found most interesting in this case was that the business owner did not introduce an expert witness. Instead, he testified to what he believed the value of the business to be worth. Ironically, the trial court's conclusion was found to be closer to the amount that was introduced by the business owner. Although the appellant provided argument against the court's consideration of the appellee's opinion, since an objection to the admission of the testimony was not raised at the time of trial, the court was free to consider his testimony.