



LONG SEPARATIONS AND PROPERTY ISSUES

The most cooperative separations – ones that couples maintain comfortably for many years – can result in intricate questions of law. Should the property be divided at the values on the date of the separation or on the date of the divorce? Does it make a difference if they believed they were already dividing everything? What difference should changes in values or forms of property have in the divorce?

The general rule in Minnesota is that property is valued as of the date of the initially scheduled prehearing settlement conference. Minn. Stat. Sec. 518.58, Subd. 1. Typically, marital property acquired up to the valuation date will be considered subject to division while property acquired by a spouse after the valuation date will be defined to be that party's nonmarital property and not subject to division unless it falls within a limited exception. Minn. Stat. sec. 518.54, Subd 5(d).

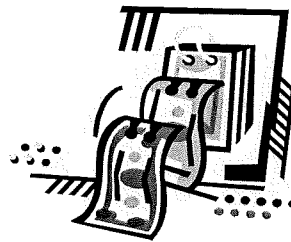
How can the date of separation become the valuation date? The

parties could agree to use the separation date as the valuation date, or the Court could determine that the separation date is "fair and equitable." Minn. Stat. Sec. 518.58, Subd 1.

One statute often used to support an argument that the separation date should be used requires the court to conclusively presume "that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife." Minn. Stat. Sec. 518.58, Subd. 1. (emphasis added).

If the parties were separated for a long time, there is no presumption that each made a substantial contribution, and each party must then establish the actual contribution that he/she made to income and property after that date – so the argument goes.

What other factors might make the separation date "fair and equitable"? Case law suggests that each case must be evaluated on its own facts. Some factors found important are whether the parties di-



vided assets at the time of the separation and then exercised individual control over those assets allocated to him/her; whether the parties were financially independent from each other after the separation; the degree of dependency that one party had on the other; and the degree of difference between the parties' financial circumstances at the time of the divorce. See March v. March, 435 N.W.2d 569, 571, Letsch v. Letsch, 409 N.W. 2d 239 (Minn. App. 1987), Desrosier v. Desrosier, 551 N.W. 2d 507 (Minn. App. 1996), Kitchar v. Kitchar, 553 N.W.2d 97 (Minn. Ct. App. 1996), Haasken v. Haasken, 396 N.W.2d 253, 260 (Minn. Ct. App. 1986), Reynolds v. Reynolds, 498 N.W.2d 266 (Minn. Ct. App. 1993).

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CHECKLIST FOR THE UPCOMING TWO MONTHS

- Confirm winter break and winter holiday parenting time schedules.
- Check when semester report cards come out. Contact the teacher or school to arrange for your own copy.
- Plan your (new) holiday traditions. Think simple, low-cost and personal connections.
- Consider giving a holiday gift for your child's future—savings bonds, money for savings, plus something to build your child's own holiday celebrations such as one holiday ornament each year.
- Use the holidays to teach your children kindness, generosity and compassion—give extra money at church, help wrap gifts for the needy, sponsor a holiday meal or donate holiday items to a food shelf.

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"A lot of people have asked me how short I am. Since my last divorce, I think I'm about \$100,000 short".

[Mickey Rooney (b. 1920), U.S. actor, entertainer. Chicago Sun-Times (June 22, 1978).]



"You have many choices. You can choose forgiveness over revenge, joy over despair. You can choose action over apathy.... You hold the key to how well you make the emotional adjustment to your divorce and consequently how well your children will adapt".

[Stephanie Marston (20th century), U.S. parent educator, author. The Divorced Parent, ch. 3 (1994).]

Even if the separation date is used for the valuation date, statutory authority exists which may have a significant impact on the actual property division.

First, if there has been a substantial change in the value of an asset between the date of the valuation and the final distribution, the Court may adjust the value of the asset as necessary to effect an equitable distribution. Also Minn. Stat. Sec. 518.58, Subd. 1.

Second, the court is required to make a just and equitable division of marital property, looking to a number of factors, such as those listed below, and may give one party more than half of the marital property (i.e., in the context of this discussion, the property existing on the date of separation) if that is warranted:

- The length of the marriage.
- Any prior marriages of either party.
- The ages of the parties.
- Each party's health.
- Station in life.
- Occupation.
- Amount and sources of income.
- Vocational skills.
- Employability.
- Estate.
- A party's liabilities.
- Each party's Needs.
- Opportunity for future acquisition of capital assets.
- Income of each party.

Minn. Stat. Sec. 518.58, Subd. 1.

Third, the Court has the power to award up to one-half of a party's post-separation (i.e. in the context of this discussion, nonmarital property) if the other spouse's portion of the marital property (i.e., the property existing at the time of separation) is so inadequate as to work an unfair hardship. Minn. Stat. Sec. 518.58, Subd. 2.

In addition to legal complexity, long separations may generate factual complexities as well, if there were numerous property transactions during the separation or many changes were made in a property or encumbrances were placed on property and then paid off, etc.

Long separations generate few easy answers to the complex questions they raise.

HOPE

"To hope" is defined as cherishing a desire with the expectation of success. "To hope against hope" is to hope without any basis for expecting fulfillment, and this is the theme of the song "Wo Ya Ya" by Art Garfunkel. The lyrics were expanded in a rendition of the song by the now-retired St. Paul Acappella group Dare to Breathe.

In the Garfunkel version, the singer expresses hope against hope that "We are going, we don't know where." Yet "we'll know we're there."

Dare to Breathe adds the hope

"We will gather, we don't know where...we don't know how. We will gather. We know we will."

These are sustaining songs for troubled times, when the direction into the future is not clear and success is uncertain. They emphasize the singer's conviction to continue. They value the simple act of moving ahead as best we can.

Implicitly, they also attest to the capacity of the human spirit to find or redefine success so that we always end up "there."



You can purchase a copy of the Dare to Breathe CD at:

www.daretobreathe.com

You can purchase a copy of the "Angel Clare" album by Art Garfunkel at:

www.amazon.com



HOLIDAYS



Holidays can be traditional or innovative, simple or complicated, religious or secular, relaxed or busy, at home or away, planned down to the last detail or totally spontaneous, one event or a series of events,

quiet or noisy, celebrations of solitude or a gathering of the clans, plain or fancy, etc.

Celebrating holidays for the first time after a family has separated into two holidays can be a challenge.

Remembering that holidays can be celebrated in many ways is an important first step as the holiday season approaches. Consider focusing on easily achieved, reliable plans for the holidays.

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the drop of one stone...

a single event transforming the lake...

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