

Family Law Case Capsule

in Business Valuation

In Marriage of Cooksey, the 4th Judicial Court Underscores Need for Appraisers to Articulate Reasoned Facts and Arguments to Support Their Opinion of Value

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In Marriage of Cooksey (Case No.: 2016-DR-0021, March 27, 2018), the husband owned Ambient Air Services, Inc. As of the 2018, he was the sole owner with 10 employees with on average five years of experience. Two of his employees had signed non-compete agreements. The husband was responsible for all major customer relationships and was the main client contact for the Company's top 20 customers. The husband also testified it was hard to keep a qualified workforce in place.

Both husband and wife provided business valuation expert witnesses. The husband's expert utilized a "With and Without Analysis" focused on the high

likelihood that the husband would be required to sign a non-compete agreement as part of any hypothetical sale of the company. He appraised the business at \$1,079,312. He also opined that 91% of the goodwill was personal in nature to the husband (and therefore not includable in the marital estate).

The wife's expert placed a value of \$1,620,000 on Ambien Air Services, Inc. The wife's expert had initially 70% of goodwill as personal. However, he specifically broke-out values for other intangible assets, including trade name, workforce in place and license. When including these intangible asset values as part of all of goodwill, then the personal goodwill

is only 53% of all goodwill. The Court did not find the wife's expert to have credibly determined the value of these intangible assets. First, the husband testified that he was contemplating changing the business's name. Second, the company didn't possess a license but rather an accreditation.

The Court also criticized the wife's expert for not providing enough adequate foundation for his opinion of value. For example, the expert stated that he valued the Company's Trade Name based upon a percentage from a chart. Additionally, he did not interview any of the employees as part of his valuation of the workforce in place. In sum, the Court did not find that the wife's expert's opinion of value on his goodwill analysis was based on any documented facts or reason. The case's opinion quotes:

“No weight may be accorded an expert opinion that is totally conclusory in nature and is unsupported to any discernible, factually-based chain of underlying reasoning.”

M.A. Hajianpou, M.D., P.A. v. Khosrow Maleki, P.A., 932 So. 2d459, 464 (Fla 4th DCA 2006).

The Court gave no weight to the wife's expert's opinion of value concerning the allocation of goodwill.

It is clear from our perspective (CVS) that the facts supported a very high level of personal goodwill – in this instance. Also, the wife's expert did not do the type of due diligence to bring forth facts that might support a higher level of enterprise goodwill.

Take-away: CVS performs multiple analyses when determining a proper allocation of goodwill. Goodwill allocation in the family law context is viewed as highly subjective. Therefore, we utilize a layered approach and specifically tie our analysis to specific facts within the case itself. It's the facts in the case, that give the color of our Opinion of Value to Triers-of-Fact.

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