

In re Marriage of Oliverrez

Now comes *Oliverrez II* on remand, following interesting *Oliverrez I* in 2015 [2015 Cal.Fam.Law 218 (September 2015)]. This is a rather difficult opinion to follow; distilling the legal principles is not an easy task.

DATE OF VALUATION ON REMAND: With respect to the date of valuation in the trial court after remand from the Court of Appeal, husband contended that the three parcels of real property should be valued as of the time of the original 2012-2013 trial. The court determined to have the properties appraised and sold as of the later date of remand from the Court of Appeal, finding that increases in property values made the earlier value obsolete. Relying on *In re Marriage of Hayden* (1981) 124 Cal.App.3d 72, the trial court acted within its discretion in ordering appraisal and sale of the three properties rather than valuing the properties based on the valuation at the time of the initial trial.

CHARACTERIZATION OF PROPERTY: The parties had entered into a Stipulation that certain property was community property and that husband was entitled to Family Code section 2640 reimbursement. Therefore, it was error for the trial court to characterize the property as partially husband's separate property and ordering a partial 2640 reimbursement. The Court of Appeal found that the trial court erred in characterizing a 20 acre parcel of property as part husband's separate property and part community property and this error constituted prejudice to husband, as there was insufficient information to know how the mischaracterization affected determination of husband's share of the proceeds from the sale of the property and his ability to be reimbursed for his separate property contribution. Directions were given on remand to the trial court to properly characterize the subject property as a community asset, then to consider the effect of that characterization on husband's reimbursement rights under Family Code section 2640.

EPSTEIN CREDITS: Husband claimed *Epstein* credits which the court combined with remaining offsetting claims, then dismissed those claims as not being sufficiently supported by credible evidence. The court questioned the legitimacy of the documents husband submitted. In addition, the trial court found that neither party was credible with respect to documentation or their trial testimony. In determining that the trial court properly denied husband's claim for *Epstein* credits, the court refused to disturb the finding that husband presented untrustworthy documentary evidence and that he deliberately presented such documents in an attempt to deceive the court; the trial court also found husband's testimony untrustworthy and gave a rational explanation for its view of husband's credibility and the conclusions it drew from the facts presented. The Court of Appeal found no basis for finding an abuse of discretion in denying husband's request for *Epstein* credits.

The complexity of the factual scenario, the disparate and vigorous contentions of the parties, trial court rulings from five judicial officers, a 15-day trial over nine months, two separate remands, and the trial court's questioning the credibility of both parties, can perhaps be better understood by the fact that wife had been represented by two different attorneys and husband had been represented by six different attorneys; further, since *Oliveres I*, each party had at least one additional attorney, if not two. Small wonder these fighting exes produced a confusing opinion the second time around.

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