Do The Super Rich Have Different Divorces Than The Rest Of Us?

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Are the very wealthy different than the rest of the population when it comes to divorce? In the eyes of the legal system, they are not, but in the eyes of most, they may seem to have different divorces because of the sheer magnitude of the amount of income and value of the assets involved.

The very wealthy usually settle their matters outside of court. Therefore, when a divorce of a very wealthy couple is reported in the media, we are all interested.

We usually do not get the opportunity to see into their world and when the divorce is splashed in headlines, we shake our heads and wonder how two people could fight so desperately, with such animosity, when there appears to be enough money to go around.

Two years ago, I wrote an article about Harold Hamm of Continental Resources getting divorced in Oklahoma. I wondered then if he had a pre-nuptial agreement as New Jersey had just amended its Prenuptial statute. It turns out that Harold Hamm did not have a prenuptial agreement even though this was his second marriage and his wife was 10 years younger than he.

Mr. Hamm started Continental Resources more than two decades before he married. Ms. Hamm was a lawyer at Continental Resources when they married and worked in the company until 2008. The parties had been married over 20 years. Continental Resources owns one of the greatest oil discoveries in recent years - the Bakken Shale Plains in North Dakota, Montana, and parts of Canada.

Ms. Hamm made allegations that her husband was a philanderer and Mr. Hamm alleged that the marriage had been loveless for over a decade. Each hoped that those allegations would buttress his or her position in obtaining a larger or smaller share of equitable distribution. In the end, these facts mattered not at all to the judge. If those allegations were made in New Jersey, they would not affect equitable distribution either.

The Oklahoma judge heard the case for nine weeks and determined that Mr. Hamm's 68% share of Continental Resources stock was worth between 10 and 50 million dollars when the parties married and was worth between $18 and 27 billion dollars at the time of divorce according to Ms. Hamm's experts.

The first hurdle for Mr. Hamm was to convince the court to decide how many of his shares were premarital and thus, not subject to equitable distribution. In New Jersey, pre marital assets which have not been comingled or transformed into joint assets, will, in most cases, remain the property of the owner spouse. The court determined Mr. Hamm owed 122,000,000 shares of Continental Resources prior to this marriage.

In Oklahoma, as well as in New Jersey, if a person comes into the marriage with a business and the value of a business has increased, it may be subject to equitable distribution. Oklahoma law, like New Jersey's law, holds that if the increase in value of a business is attributable to the work of the owner, then the increase in value of the business shall be allocated at the time of divorce. If, however, the value of the business has increased as a result of market forces which are beyond the control of either spouse, then the increase in value is not allocable. This very important distinction was at the heart of the Hamm divorce litigation.

Did the value of Continental Resources increase because of Mr. Hamm's work efforts as Ms. Hamm alleged? Or, as Mr. Hamm argued, did it increase as a result of the increase in the market price of oil and new drilling methods, thus, not as a result of his efforts? Mr. Hamm had a tough road to hoe in asserting that claim because, over the years, he had stated in various proxy statements for Continental Resources that he was one of the driving forces of the business. He was praised for his "leadership and business judgment."

The court did not completely accept Mr. Hamm's rendition of the facts. It found that the increase in the value of Continental shares during the marriage was $18 billion dollars, but only $1.4 billion resulted from Mr. Hamm's efforts and skills was therefore subject to distribution.

The court awarded Ms. Hamm over $995,000,000 in cash, as her share of Continental Resources, in part because the oil industry is subject to market fluctuations. She was awarded more than a billion dollars in total, when others assets such as their $4,000,000 home in Oklahoma, and their $17,000,000 ranch in California were added in. This award is only about 6% of the total wealth which the parties acquired during the marriage.

Within a week or so of the decision, Ms. Hamm stated that she planned to file an appeal on the grounds that the court undervalued the marital estate and, therefore, undervalued her equitable share. Ms. Hamm's appeal alleges that it was unfair that her husband kept over 90% of the wealth they acquired during the marriage.

If one only looks at a percentage allocation of the assets and does not consider what the 6% means in real dollars, one could argue that that 6% is unfair, just as Ms. Hamm has done. On the other hand, as we have seen within the last several months, the huge dip in oil prices has reduced the value of Continental Resources substantially, validating the court's reasoning that a large part of the increase in value of the parties' wealth was related to the increase in the price of oil i.e. market forces outside the control of either party.

Here, Ms. Hamm would be paid cash with no risk, while Mr. Hamm would assume the risk of the ups and downs of the market place. It could be that the volatility of the price of oil formed the basis of the court's percentage allocation to Ms. Hamm.

As a result of the falling oil prices, in December 2014, Mr. Hamm filed a cross appeal, arguing that now the award was "erroneous and inequitable" because oil prices had fallen 60% since September 1st, 2014.

In late December 2014, Mr. Hamm paid Ms. Hamm $974.8 million dollars, in one check, which she at first rejected, but later cashed. Mr. Hamm's lawyers have argued that as a result of her signing and cashing the check she had waived her right to continue the appeal. His motion to dismiss her appeal is pending.

Mr. Hamm's argument, that one cannot accept the benefit of the award and then appeal it at the same time, a concept New Jersey endorses, can pose a hardship on a divorced spouse (not Ms. Hamm!), who may need the award to survive while the appeal is pending. Stay tuned for the rest of this story.

Another high profile divorce is presently unfolding in Chicago. It is the divorce of hedge fund billionaire, Ken Griffin and his wife, Anne Dias Griffin. They have been married for 11 years and unlike the Hamms, they have a prenuptial agreement. Ms. Griffin, however, wants it thrown out. She alleges that she signed it under duress, only three hours before the rehearsal dinner, after they had argued about it for days. If the prenuptial agreement were to be enforced, it would leave Ms. Griffin with 1% of her Husband's $5 – $6.5 billion dollar estate or $50,000,000 and no alimony (maintenance) for her. An overriding concern to courts, however, is that after divorce, as a result of enforcing a prenuptial, a spouse should not become a public charge. This, of course, is usually not an issue for the super rich.

In New Jersey, prenuptial agreements will be enforced if they are fair when the agreement is signed. Prior to June 28, 2013, the prenuptial agreement had to be fair at the time one sought to enforce the agreement.

Illinois is like New Jersey in that, in general, it will enforce prenuptial agreements. New Jersey's present law provides that a prenuptial agreement has to be fair at the time it was signed. Here, because there is no maintenance provided, if Ms. Griffin were not part of a high wealth divorce where she will receive substantial assets, a New Jersey court could award support if, at the time of the divorce, it perceived her to be a dependent spouse "in need." A New Jersey court would not permit a spouse to be impoverished and a public charge when the supporting spouse has the ability to pay maintenance.

While the divorce is pending, having failed in her quest for Griffin to pay her interim alimony/maintenance, Mrs. Griffin has requested that her husband pay her $1,000,000/month for living expenses/child support. Included in her lifestyle is $6800/month for groceries, $300,000/month for a private jet, $8000/month for gifts and $60,000/month for private staff.

The Walmart heiress, Paige Dubbert, granddaughter of Sam Walton, is divorcing her high school sweetheart, Patrick Dubbert, after a 6 year marriage. The parties signed a prenuptial agreement where he agreed, that upon divorce, she would pay him $30,000/month in support for half the length of their marriage. Dubbert has filed an application to overturn the prenuptial agreement alleging he was forced to sign the agreement, or else his Walton in-laws would not pay the $100,000 due the wedding planner. He has asked for $400,000/month in support, while litigation is pending. This amount includes expenses for a personal chef and a personal trainer, $30,000/month for vacations including "NetJets" (private planes) and $2500/month for charitable donations.

In New Jersey, regardless of the wealth of the parties, or their lifestyle, when asked to order support, a court would maintain the financial "status quo" until there was a final resolution of all issues in the divorce. If the Griffin case were before a judge in New Jersey, and the wife asked for support, it would award a sum consistent with how the parties lived during the marriage balanced against the spouse's ability to pay. A court will want to be fair to both parties, not just one, regardless of other facts.

The three cases just discussed deal with the division of assets and spousal support. But what about child support? Case law in New Jersey holds that children should be supported consistent with the economic good fortunes of their parents, but only up to the point where it is "reasonable" in the context of the standard of living of the family. This concept, often referred to as the "three pony rule," which states that "no child, no matter how wealthy the parents, needs to be provided with more than three ponies," can limit the award of child support.

Most would not disagree that children of wealthy parents live differently than others in that advantages abound for such children, such as: living in a large home, being driven around in expensive cars, wearing upscale clothes, going on frequent vacations with parents and flying in private jets. This lifestyle is amply demonstrated by the support applications in the Griffin and Dubbert cases, even if their budgets are inflated.

Again, most times, the very wealthy settle these issues privately, so a judge never has to make such a decision, but there is one reported case in New Jersey about a high wealth, well known individual, and that is Michael Strahan. When this case was decided, Michael Strahan had just retired and had not yet gone on to his successful career in broadcasting. He had twins under the age of 3. The Appellate Division, in that case, rejected the trial court's $15,000/month child support award, as being excessive for the then 18 month old children and characterized it as being nothing more than a guise for alimony.

However, New Jersey courts are not offended if a child support award provides "incidental benefits" to the custodial parent. This is a difficult task for a judge to perform. In Strahan, the court found, for example, paying for the nanny and her family to vacation in the Caribbean was not a part of child support, nor was it any appropriate "incidental benefit" to the custodial parent. But, what about the custodial parent asking for increased children support so that parent could afford a new car, or an upgraded house? One could argue those expenses would be an appropriate "incidental benefit" to the custodial parent.

New Jersey judges strive to make fair and equitable decisions for all New Jersey litigants, no matter their economic status; a lofty but important goal.