

## CASE NOTE

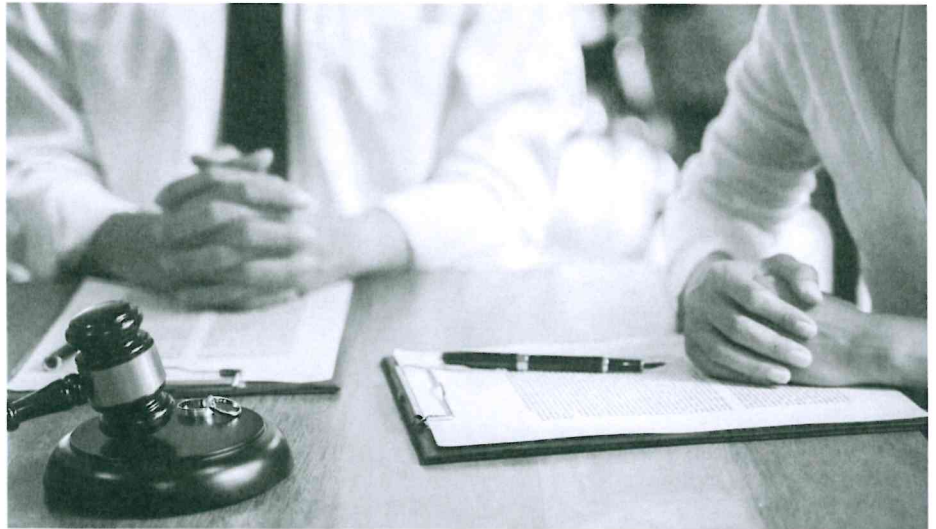
By Sarah K. Jacobs, Esquire

*Wasylyuszko v. Wasylyuszko*, No. 2220, September Term 2019, provides a real road map to monetary award cases with regards to retirement. The case went to the Court of Special Appeals on a monetary award analysis. The focus of this Case Note discusses how to analyze the non-marital and marital portions of retirement assets.

The parties were married in August of 1998 and had two children. The parties were able to reach a custody agreement, the only two remaining issues for the trial court to hear was Ms. Wasylyuszko's request for a monetary award and contribution to her attorney's fees. At the time of the divorce, Mr. Wasylyuszko owned various retirement and non-retirement accounts that totaled slightly under 2 million dollars.

The trial judge had found that Mr. Wasylyuszko's Fidelity BSO Retirement, Janus Henderson Account, DWS Equity Fund, and Fidelity IRA #3342, were marital in their entirety. Thereby the Court awarded Ms. Wasylyuszko a monetary award in the amount of \$840,000.00 and \$15,000.00 in attorney's fees. Mr. Wasylyuszko appealed, claiming that the Judge erred when determining that the four accounts were marital in their entirety when evidence was presented that demonstrated that portions were directly traceable to pre-marital contributions.

The opinion provides a breakdown of what defines marital property and how a practitioner should determine the non-marital shares. Mr. Wasylyuszko argued that the non-marital portions should be determined by using a "source of funds" theory, wherein you would use the pre-marital value of the account as the numerator and the sum of all the non-marital and marital contributions, including dividends and interest as the denominator. The COSA disagreed with this formula and used a pre-share value at the time of the divorce. The COSA took the number of the shares that Mr. Wasylyuszko owned at the time the parties were married and multiplied by the value of shares at the time of divorce to determine the value of Mr. Wasylyuszko's non-marital shares. While the lower court correctly identified Mr. Wasylyuszko's Fidelity BSO Retirement, Janus Henderson Account, DWS Equity Fund as marital accounts, COSA found that a portion of the accounts were marital and non-marital, since Mr. Wasylyuszko had



contributed to the accounts during their marriage. The lower court correctly identified the 4<sup>th</sup> account, Fidelity IRA #3342, as entirely marital as Mr. Wasylyuszko failed to prove that any portion as non-marital as he had withdrawn funds from this account during the marriage.

Mr. Wasylyuszko also appealed on the basis that the trial judge abused his discretion by not specifically explaining how the Court's consideration of the monetary award factors resulted in a monetary award of \$840,000.00. The appellate court found that because this case did not result in a substantial disparity in the distribution of marital property that the Court did not have to explain or justify the award. In fact, the appellate court pointed out that that disparity in the award actually favors Mr. Wasylyuszko, the appellee. Due to the small disparity the lower court was not required to explain their findings to justify the monetary award ordered.

This opinion is helpful for a practitioner when preparing a 9-207, a settlement offer or for trial when dealing with a retirement or non-retirement account that has both a marital and non-marital classification. This opinion also provides practitioners a formula to determine the value of the non-marital shares, which makes high asset cases easier to handle.

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