



DOMESTIC Cases Updated



Decided...

In valuation, a "one size fits all" approach doesn't cut it.

Sweet v. Sweet, 2009-Ohio-1924

Lori and Gregory Sweet of Ashtabula County were divorced in 2006. In the original divorce decree, the trial court determined the value of various marital assets, including Mr. Sweet's car dealerships and antique car collection. Mrs. Sweet appealed the trial court's decision, in part, because of the value given to these two marital assets.

In valuing the antique car collection, the trial court relied upon a valuation expert. He calculated the value of the car collection to be \$211,500, less a 10% sales commission, and less a lien on the cars of \$39,465, which equaled a net value of \$150,885. On appeal, Mrs. Sweet disagreed with this valuation because there was never any intent to sell the cars, and thus, subtracting the commissions from the value was inappropriate.

In valuing the car dealerships, the trial court relied upon a different valuation expert, who valued the sum of the three dealerships at a total of \$1,762,000, less a discount for lack of marketability of \$318,000 for a net value of \$1,444,000. On appeal, Mrs. Sweet disagreed with the valuation of the dealerships. Her argument was that because there were no plans to sell the businesses, the valuator should not have subtracted a discount for lack of marketability to calculate the value.

The appellate court agreed with Mrs. Sweet only in part. In their decision, the Court acknowledged the trial court erred in the

valuation of the antique car collection, but held they were correct in the value of the car dealerships.

In the case of the antique car collection, the appellate court ruled that commissions should not have been deducted from the value because there was no

evidence the sale was actually contemplated. The appellate court concluded that the trial court's decision to deduct the commission costs was speculative, and thus, an abuse of its discretion.

However, in the case of the car dealerships, the appellate court ruled that, unlike a reduction for cost of sale, the discount for lack of marketability is a factor in calculating the value of a business and is not dependent on the likelihood of the business being sold. Under a fair market value standard, a marketability discount should be applied because the court is, by definition, determining the price at which a willing buyer and willing seller would agree. Thus, the discount for lack of marketability was appropriate.

"Consideration of the costs of sale is only appropriate 'so long as those consequences are not speculative'."

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Rebekah Smith, CPA, CVA, CFFA
Director of Dispute Advisory & Forensic Services
614.947.5300