



FAMILY LAW Case Update



Decided...

Asset appreciation may include both separate and marital property

Miller v. Miller, 2009-Ohio-3330 (Dist. 7)

Mr. and Mrs. Miller were married 13 years when they filed for divorce. In the trial court's divorce decree, the Miller's home was determined to be a mixture of separate and marital property. Mrs. Miller (and Mr. Miller) appealed the ruling, assigning multiple errors, which included, among other things, the distribution of the value of their home.

Mrs. Miller owned the home free of debt prior to the marriage as it was awarded to her in a previous divorce. During her marriage to Mr. Miller, no improvements were made to the inside of the home, but the couple built a 40x60 foot pole building on the property, and Mr. Miller made various improvements to the attached garage and landscaping.

The magistrate found that the fair market value of the home on the date of marriage was \$53,000. Factoring in an appreciation rate of 5% per year, the value of Mrs. Miller's separate property in the house on the date of divorce was \$99,939. The remaining value of the home on the date of divorce was marital. To calculate this, the magistrate applied the value presented by Mr. Miller's valuation expert, which was \$250,000, making the marital value of the home \$150,061 (250,000-99,939=150,061).

Mrs. Miller argued that the home should have been categorized entirely as her

separate property since no improvements were made to the home itself.

On appeal, the court cited the trial court's records, which indicated that both Mr. Miller's and Mrs. Miller's valuation experts indicated that the home was worth more due to the existence of the pole building. Because the Millers built the pole building during the marriage and with marital funds, and because Mr. Miller made other improvements to the garage and landscaping, the appellate court determined that the appreciation on the home from the date of marriage was, indeed, marital property.

"When the parties contest whether an asset is separate or marital property, the presumption is that the property is marital, unless proven otherwise."

In the decision, the court cited the Ohio code, saying, "if the separate property of one spouse appreciates during the marriage due to the labor, monetary, or in-kind contribution of either spouse, the appreciation should be characterized as marital property".

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