

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

CAROL A. HELFER,

Petitioner/Respondent below,

v.

CASE NO. 02-D-209

ROBERT J. HELFER,

Respondent/Petitioner below.

2008 SEP 28 PM 3:34

ORDER

On a previous day, came the Petitioner/Respondent below, pursuant to her appeal of the Family Court Order of March 28, 2008.

The Court has reviewed the Petition for Appeal, the Family Court Order of March 28, 2008, and all applicable authority. In determining whether to accept an appeal from the Family Court, this Court "shall review the findings of fact made by the family court judge under the clearly erroneous standard and shall review the application of law to the facts under an abuse of discretion standard." W.Va. Code § 51-2A-14(c) (Supp. 2006).

The present appeal reaches this Court following remand to the Family Court to determine the value of enterprise goodwill attributable to the Respondent's chiropractic business. The West Virginia Supreme Court of Appeals found error with the Family Court's order of May 3, 2006, in that it failed to "attribute any value to, or otherwise consider, enterprise goodwill in valuating Appellee's business." Helfer v. Helfer, 221 W.Va. 625, 656 S.E.2d 70, 73 (2007) (per curiam).

435

The Supreme Court of Appeals found that the lack of any valuation for enterprise goodwill, as well as a lack of explanation for omitting enterprise goodwill from the court's analysis, was error. Id. On remand, the Family Court was instructed that,

[T]he valuation of Appellee's business should include a reasonable approximation of the business' enterprise goodwill, if any, based upon competent evidence and on a sound valuation method. If the lower court finds there to be no enterprise goodwill, it is essential that the court not only articulate that finding, but also explain its reasons for making such finding.

Helfer, 221 W.Va. 625, 656 S.E.2d at 73-74 (internal citation and footnote omitted).

On March 28, 2008, the Family Court issued its Order upon Remand Supplementing and Clarifying the Final Order Regarding Equitable Distribution entered on the 3rd day of May, 2006. The Family Court made findings that the enterprise goodwill attributable to the chiropractic business had a value of zero dollars (\$0.00). It is from the Family Court's Order of March 28, 2008, that the Petitioner now appeals.

In its Order on Remand, the Family Court expressed that the value for enterprise goodwill attributable to the business is zero dollars (\$0.00). The Family Court also expressed that its reasoning for adopting that value is lack of evidence in the record to the contrary. The Family Court addressed the concerns expressed by the Supreme Court of Appeals, and this Court finds no clear error or abuse of discretion. Accordingly, it is hereby

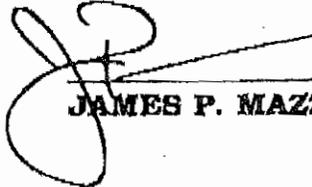
ORDERED that the Petition for Appeal is **REFUSED**.

This is a **FINAL ORDER** disposing of the appeal.

All objections and exceptions are noted and preserved.

The Clerk is directed to forward attested copies of this order upon entry to The Honorable William Sinclair, Family Court of Ohio County; Kevin M. Pearl, Esq., 337 Penco Road, Weirton, WV 26062; and Mark D. Panepinto, Esq., 955 National Road, Wheeling, WV 26003.

ENTERED this 26th day of June, 2008.



JAMES P. MAZZONE, JUDGE

ENTERED IN FAMILY COURT
OHIO COUNTY
AT WEIRTON, WV
JUN 26 2008
CLERK OF THE COURT
COURT HOUSE, WHEELING, WV

6-26