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Double Dipping Reconsidered: Developments in Recent Case Law

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Introduction

The concept of "doubling dipping" is undergoing reconsideration in several Ohio appellate districts. "By double dipping we mean computing a value based, at least in part, on the spouse's future earnings for property division, and then using the future earnings capacity as a basis for determining spousal support or alimony payments." [1] While the concept dates back several years, [2] double dipping was first considered in detail in *Heller v. Heller*. [3] *Heller*, however, has been reconsidered and partly overruled by the Tenth District Court of Appeals and has been distinguished in several other appellate districts in recent cases. The doctrine of double dipping is, therefore, evolving and the trend in the case law is against the application of a strict prohibition against the double dip.

The Double Dip Prior to *Heller*

An early treatment of the concept can be found in *Bagnola v. Bagnola*. [4] There, the Eighth District Court of Appeals rejected an argument of the husband that the division of assets, being based upon his earned income, was improperly used for spousal support calculation, constituting an impermissible double dip. While the Court of Appeals did not directly address the double dip issue, it held:

> "Appellant's earned income from the three business ventures is inextricably tied to the valuations of each company and is necessarily a basis for determination of spousal support." [5]

Bagnola was later followed by a 2008 case from the Second District Court of Appeals *Ulliman v. Ulliman*, [6] In *Ulliman*, the trial court did not consider retained earnings of a limited liability corporation for spousal support determination. The husband owned 50% of the LLC and the business valuations from both spouses' experts used a capitalization of earnings model. The trial court had concluded that a double dip would occur if the retained earnings were also considered for spousal support. The wife appealed. The Court of Appeals affirmed the trial court on the basis that the double dip issue had not been properly presented on appeal; consequently, it did not directly address the issue. The Court of Appeals did note that the trial evidence was weak that husband's control over the retained earnings allowed him unilateral access for personal reasons. [7] Arguably, then, the degree of control a spouse exercises over business or corporate income for personal purposes is a consideration in double dip analysis. The Court of Appeals further stated:

> "Courts should consider the business-related reasons that prompt an owner to retain earnings, when deciding whether these earnings should be considered that spouse's income for support purposes." [8]

The business purpose of the retained earnings, like the degree of control over them, appear to be factors which may permit a trial court to double dip.

The *Heller* Decisions

Beginning in 2008, the Tenth District Court of Appeals issued three *Heller* decisions. Heller I [9] was the first decision clearly addressing the concept of the double dip. In that case, the husband owned a 39.5% interest in a Sub-Chapter S Corporation and drew a salary and received ownership distributions. Experts for both parties valued the business interest using an income method, the capitalization of earnings. Both experts also assigned a salary and commission income of $300,000 to husband. His total income including shareholder distributions was in excess of $600,000. The business value found was divided equally and awarded to husband with an offset against other property to wife. The trial court also awarded wife 20% of husband's future shareholder distributions to wife. Husband appealed arguing that future corporate profits had been divided twice: once in the division of the corporate interest and again as spousal support.

Considering double dip as a matter of first impression, the Court of Appeals noted that the valuation of the business properly separated the salary and commission income—which would have been paid to an employee to perform the duties carried out by husband—from the shareholder distributions which represented excess profit. The value of the corporate interest "…represented the discounted present value of the future earnings (or stock dividends) of the company. In other words, for purposes of valuation of this marital asset, the concepts of defendant's salary and ownership profits were apparently kept separate. However, the trial court combined them in awarding spousal support." [10]

The double dip, therefore, occurred when the business owner's excess earnings were used to value his interest in the business and also included in total income for spousal support purposes. The statutory basis for this conclusion was R.C. § 3105.171(c)(3) which requires the equitable division of marital property prior to making any spousal support award. The Court of Appeals further cited R.C. § 3105.18(A) that spousal support is not to include any payment to a spouse that is made as part of property division. From these two statutes, the Court discerned a statutory mandate to keep property division and spousal support separate. As will matter in subsequent decisions, the Court did not consider R. C. § 3105.18(C)(1)(a) which requires consideration for spousal support of income from all sources. Consequently, *Heller* 1 recognized the concept of a double dip and prohibited it:

> "Trial courts may treat a spouse's future business profits either as a marital asset subject to division, or as a stream of income for spousal support purposes, but not both." [11]

Heller II [12] addressed the decision of the trial court upon remand that a rigid rule prohibiting a double dip may lead to an unfair result in some cases. Based upon that belief, the trial court again awarded wife 50% of the corporation as an asset and 20% of the shareholder distributions as spousal support. Again, the Court of Appeals reversed but somewhat softened the holding of *Heller* I:

> "In the first appeal, there was no language in our decision to suggest that this court intended to promulgate a flat prohibition against double dipping applicable to every income-producing asset; rather, this court addressed the 'double dip" issue only as it applies to the facts of this case." [13]

Heller III [14] resulted from the trial court's decision upon remand to eliminate the payment of 20% of future shareholder distributions but increase spousal support from $8,000 per month to $18,000 per month. The Court of Appeals noted that "[b]ecause the trial court did not indicate what portion of defendant's income it relied upon in setting defendant's spousal-support obligation at $18,000 per month, the trial court's decision arguably is consistent with our decisions in Heller I and

II."[15] Nonetheless, because the trial court could not consider the shareholder distributions for spousal support, the Court of Appeals found the spousal support award an abuse of discretion because the award equaled 75% of husband's salary and commissions. Pursuant to App. Rule 12(B), the Court of Appeals ordered $8,000 in spousal support plus the payment of wife's health insurance.

Post-*Heller* Decisions

Among the post-*Heller* decisions are two significant and somewhat contradictory decisions by the Tenth District Court of Appeals. The first of the two is *Gallo v. Gallo*.[16] In *Gallo* the husband owned a professional ocular surgery practice and an ownership interest in two surgical centers. The values of the practice and of one surgery center were stipulated based upon an asset-based methodology. The second surgery center (Ohio Valley) value was stipulated based upon the 2013 share price. Husband's income included shareholder distributions from Ohio Valley surgery center. After an award of spousal support of $12,000 per month, husband appealed arguing that the Ohio Valley surgery center was valued using its future earnings which were also included for spousal support purposes.

The Court of Appeals took a fresh look at the holdings in the *Heller* cases and held that *Heller* I's "…general definition is misleading, and its specific definition is too constrained."[17] The general definition of double dipping referred to is the double counting of a marital asset, once in the property division and again in the spousal support award.[18] The Court explained:

> "Double dipping, however, does not entail the double counting of a <u>marital asset</u>. Rather, a double dip occurs when a court twice counts a <u>future income stream</u>—once in the valuing the marital asset and once in deciding the economically superior spouse's ability to pay spousal support. It is the future income stream, not the marital asset, that is the subject of the doubling in the double dip. Thus, if the marital asset is valued without specific reliance on a future income stream—say, through a market-based or asset-based approach—then no double dipping occurs.
>
> **…**
>
> "Defining 'double dipping' as *Heller* does equates the marital asset (the interest in the business) and income the asset produces (the business's earnings). However, a business and its income are separate entities, with the income merely serving as a tool for valuing the business."[19]

Therefore, a spouse who receives income-producing property receives both the fair market value of the asset and the income from it. The receipt of income from it does not diminish the value of the asset which can still be sold.

The specific definition referred to the limitation of double dipping to situations where excess earnings arising from the business interest will constitute part of the future income stream. This definition is "too constrained because it only encompasses businesses valued on excess earnings. Numerous types of assets may be valued based upon future income streams, including pensions, business and professional good will, and dividend-yielding stock. [Citation omitted.] Moreover, business valuations may be premised on future income streams, even if a calculation of excess earnings is not a step in the valuation method. Occurrences of double dipping, therefore, are not limited to situations where excess earnings factor into the valuation of a business."[20]

Consequently, double dipping may be seen by a court to occur in a broader variety of situations other than the valuation of a business by an excess earnings methodology.

Upon review of the trial testimony, the Court of Appeals determined that the valuation of Ohio Valley was based upon an income analysis and noted that two principal income-based methods are the capitalization of earnings and discounted cash flow. *Heller* I was further criticized as identifying the valuation method therein as capitalization of earnings whereas the testimony revealed it was actually based upon a discounted cash flow analysis. The distinction between the two income-based methods is that the capitalization of earnings uses a business'historical earnings as an indication of a perpetual stream of future earnings whereas the discounted cash flow method uses an equation to project future earnings over a chosen forecast period. [21]

The calculation of business value from a future income stream "…constitutes the hallmark necessary for the danger of double dipping to arise." [22] Consequently, there was double dipping in *Gallo*; however, the analysis does not stop there. *Heller* II stated that *Heller* I did not contain "…a flat prohibition against double dipping applicable to every income-producing asset" [23] and pointed out the inconsistency in double dip cases which allowed pension income to be considered for spousal support even though the pension asset had already been valued and divided as marital property. Citing Laura W. Morgan's influential article "'Double Dipping': A Good Theory Gone Bad," [24] the Court drew a parallel between business assets valued on an income approach and pensions which are valued upon their future income streams. [25] Interestingly, while relying on the Morgan article in support of weakening a strict application of double dipping in business valuation cases, the Court ignored Morgan's argument that the double dipping concept is most applicable to pension cases wherein the pension asset is valued and divided and then considered a second time for spousal support. [26]

The distinction from Morgan's approach is found in Ohio statutes. *Heller* I's statutory analysis was premised upon R.C. § 3105.171(c)(3) which requires a court to provide for an equitable division of marital property "…prior to making any award of spousal support…and without regard to any spousal support so awarded." *Heller* I also cited R.C. § 3105.18(A) which provides that "[s]pousal support does not include any payment made to a spouse…that is made as part of a division or distribution of property…under [R.C.] 3105.171." Based upon the foregoing statutory analysis, the *Heller* court discerned a "statutory mandate" to keep marital property division and spousal support separate and to consider the potential double dip when ruling on those issues. [27]

Gallo, however, focused its statutory analysis on R.C. § 3105.18(c)(1)(a) which requires a court to consider, for spousal support purposes, income "…from all sources, including, but not limited to, income derived from property divided, disbursed or distributed under Section 3015.171 of the Revised Code." [28] Consequently, a double dipping analysis starts with R.C. § 3105.18(C)(1)(a): "R.C. § 3105.18(C)(1)(a) precludes us from adopting an outright prohibition of double dipping. To the extent that *Heller* did that, we must overrule *Heller*." [29]

Thus, *Gallo* clarifies that while there is no strict prohibition of double dipping a trial court must comply with the statutory mandate to consider whether a double dip exists. That consideration is to be based upon equitable concepts:

> "Thus, in the interest of equity, trial courts should factor the impact of double dipping into their property division and spousal support decisions. With an eye to avoiding unfairness, trial courts should carefully consider the division of income producing and non-income producing assets and the probable effects of that division on the availability of income and need for support." [30]

Gallo suggests two approaches to "ameliorate" [31] the inequity inherent in double dipping. One, the court may divide the income producing property between the parties rather than offset 50% of the value against other marital property. Two, the court may consider other circumstances of the parties, such as disparity in income, that may override the unfairness in double dipping. [32]

Gallo also clarified that no double dip exists for child support. The income from assets valued on an income-based analysis may also be used for the payment of child support because there is no double dip for the child; the court dips only once when child support is ordered. [33]

Two weeks after the release of *Gallo*, a different panel of the Tenth District Court of Appeals issued *Eddington v. Eddington*. [34] In *Eddington* the parties stipulated to a joint forensic expert's business valuation and trial proceeded upon the limited issues of spousal support and whether any adjustment in the agreed valuation should be made for husband's 50% interest in a limited partnership. After trial, the court ordered $1,800 per month in spousal support and made no adjustment to the business valuation. Husband appealed arguing a double dip in that business profits were included in the income projection for husband's spousal support payments as well as being the basis for the valuation of the business interest which was also divided.

The *Eddington* court defined the holding in *Heller* I as "…when one spouse can expect to earn money from a business in the future, a trial court may either project an average income from that source and use it when computing the spouse's average total income, or the trial court may discount the sum of all projected future earnings to present value and use that present discounted 'asset' in calculating the fair division of assets. [Citation omitted.] However, if a trial court uses the discounted value of future payments in computing a division of assets, it cannot use the expected future payments when calculating income and vice-versa; to do otherwise is to impermissibly 'double dip.' " [35]

Applying this approach to the facts of the case, the Court of Appeals held that while the trial court used husband's expected future earnings from his business interests to calculate spousal support, the court did not use the discounted present value of husband's future earnings in making a division of assets because the business value was in the real estate owned by the partnerships. Therefore, there was no double dip. While the *Eddington* court did not address the equitable issue raised in *Gallo*, the apparent, although not clearly stated, distinction between the cases is that the business valuation in *Eddington* was asset-based and therefore did not double count a stream of income.

Other appellate districts have also addressed *Heller* and its approach to the double dip concept.

Sieber v. Sieber [36] was issued on June 15, 2015, after both *Gallo* and *Eddington*. In *Sieber* husband was president and CEO of two Sub-Chapter S corporations in which he had a minority interest—a single share of each corporation. Wife's expert used both an asset-based and income-based valuation method. Husband's expert used an income-based method. The trial court adopted wife's expert's valuation and also made a spousal support award. Husband appealed arguing a double dip when the court divided the stock and K-1 shareholder distributions. The Court of Appeals disagreed.

> "The trial court did not consider the future benefits or potential future income stream from the ownership. [Citation omitted.] Rather, the court considered the present, fixed assets of the two companies, valued the businesses based upon those assets, and divided the marital property using this valuation. The potential future K-1 earnings were not included in the asset-based valuation. The trial court, therefore, did not 'double dip' when it ordered Husband to pay Wife 40% of his gross bonuses, including K-1 shareholder distributions." [37]

Consequently, the *Sieber* court followed *Heller* but did not find a double dip because the business interest valuation was not income-based.

The Second District Court of Appeals took an interesting approach to distinguishing *Heller* in *Bohme v. Bohme*. [38] Here, husband owned a dental practice. One of his experts used a market-based approach and a second expert of his used an income-based approach with a 30% marketability discount. Wife's expert used an income-based approach with no marketability discount. Husband paid himself a salary of $212,000 but had total income, including other distributions, in excess of $500,000.

The trial court based its spousal support order upon the total income figure of $500,000 and husband appealed based upon a double dip theory.

The Court of Appeals rejected husband's argument of an abuse of discretion in a double dip by the trial court:

> "The double-counting analytical framework works well for fixed assets that produce an income stream, such as a pension or annuity. But, it is not as easily applied for suggesting that income from a closely-held business, particularly a wholly-owned professional practice, is counted twice when that income is considered as a tool to value the business and then as actual income for a spousal support calculation." [39]

Citing only the Morgan article in reaching this conclusion, the *Bohme* court states that the case "…clearly illustrates the analytical difficulty" [40] in double dip analysis. The Court of Appeals noted that nothing prevented husband from electing to receive the entire $500,000 in annual income as salary. This approach, though, ignores the analytic valuation step of separating out excess income from salary in order to determine business value. Following Morgan's argument, the Court of Appeals also suggests that income retained by the business, although used to arrive at fair market value, is not necessarily "counted" against husband. Valuation based upon income, as Morgan argued, is one of three methods of business valuation; the Court states that a double dip would not have occurred if the valuation was based upon an asset-based or market-based approach. [41]

The *Bohme* court then took a further step and supplied its own calculation of the value of husband's income stream over a 20 year period before when it assumed retirement would occur. The court stated that because the value of that income stream over that 20 year period vastly exceeds business value, "…valuing the business using an income methodology does not 'double count' income to Richard's detriment. [42] Further, citing the Morgan article with approval, the Court of Appeals holds that the double dipping concept should be limited to pension-type assets where the asset is income, but not to businesses where asset value and the income it produces are separate entities. [43]

The *Ulliman* decision is distinguished because that decision was not based upon a double dip analysis since that issue was not properly before the court. But, the *Bohme* court further distinguishes it on that basis that husband in *Ulliman* was only a 50% owner whereas husband in *Bohme* was sole owner and "…his family's lifestyle resulted from unfettered access to the business income." [44] *Heller* was also distinguished on the basis that there the husband had only a minority interest without indication of exclusive control. [45] The *Bohme* court declined to follow *Heller* "…because of the difficulty in the double-dipping analysis when dealing with solely-owned closely-held business valuation as opposed to defined-income stream distribution." [46] Husband's complete control over the practice income prevented the trial court decision, therefore, from being an impermissible double dip. [47]

Potter v. Potter [48] decided December 15, 2014, by the Twelfth District Court of Appeals touched on the issue of a double dip where the valuation expert based his determination upon a "multiple of revenue" method. This method simply took the total revenue of the business and applied a multiple of one, less a debt owed to husband, and a marketability discount of 20%. However, because appellant had not raised the double dip issue at trial, it was not properly before the Court of Appeals. The Court did, though, opine that there was a question whether the methodology used would raise a double dip issue had the issue been preserved for appeal. While not clear from the decision, this methodology appears to market-based, and, therefore, may not raise the use of an income stream twice. [49]

Kellam v. Bakewell [50] involved an alleged double dip in the division of a law practice. There, husband entered into an of counsel agreement which trial court determined was the equivalent to a sale. No double dip was found on appeal by the Sixth District Court of Appeals, and *Heller was* distinguished, because "…the value of the law practice was determined in the marital division, but the spousal support was based upon appellant's income in general." [51] Therefore, the Court of Appeals relied upon R.C. § 3105.18(c)(1)(a)—income from all sources—as the statutory justification for the spousal support award.

Heller was also distinguished by Ninth District Court of Appeals in *Organ v. Organ*. [52] The trial court had awarded wife 33% of husband's income from company stock and husband appealed arguing that the court had, in effect, distributed the stock to her impermissibly as a double dip. The Court of Appeals distinguished *Heller* by concluding that the stock was husband's separate property; therefore, there was no second division of it in the spousal support award, which was based upon R.C. § 3105. 18(c)(1)(a).

Corwin v. Corwin was an earlier Twelfth District case in which both experts used a capitalization of earnings method for valuation of husband's 1/3 interest in various LLCs. Husband argued a double dip on appeal because his expert had testified at trial that a "very large component" of husband's income was taken into account in the business valuation. [53] The Court of Appeals agreed that a portion of husband's income was included for both business valuation and for calculation of spousal support, and, therefore, an impermissible double dip had occurred in regard to the double counted income. [54]

The Eight District Court of Appeals faced a double dip argument in a post-decree motion to terminate spousal support in *Kline v. Kline*. [55] Husband had retired and filed a motion to terminate his spousal support obligation arguing that because his pension had been divided as property division, a double dip would occur to also include it for prospective spousal support payments. The Court of Appeals disagreed, but distinguished *Heller* by citing the divorce decree language that the pensions were divided "free and clear of any claim of the other." [56] Therefore, the pension could not "fund" [57] spousal support but it could be taken into account as income pursuant to R.C. § 3105. 18(c)(1)(a).

In *Kraft v. Kraft* [58] the Fifth District Court of Appeals held that husband's rental income, was a proper factor for the trial court to consider in determining the spousal support obligation even though husband claimed that he would be required to utilize the rental income to pay the cash property division he owed wife. The Court cited R.C. § 3105. 18(c)(1)(a) as the basis for the spousal support order.

Conclusion

The *Heller* decisions have engendered what is still a developing area of the law. While is apparent that a absolute rule prohibiting a double dip is not the law in the Tenth and Second Appellate Districts, the courts are still working to balance the inequity of dividing an income stream twice with the statutory requirement to consider all sources of income in determining spousal support. The direction in the case law is for a trial court to a) examine whether a double dip exists and b) to consider whether other equitable factors may weigh in favor of a double dip.

Additionally, the application of various business valuation approaches in double dip analysis is also still evolving. Although the case law has focused on income-based valuation approaches as leading to a double dip, that approach may also be ultimately applied to market-based analyses. Shannon Pratt argues:

> "The potential for this problem [the double dip] arises when an income approach, an excess earnings method, or a market approach is used for the valuation. If these methods reflect an implication that the operating revenue will continue to operate, the value of that spouse's future efforts is impounded, at least to some extent, in the distributive value. If payments are then ordered out of the earnings from that spouse's efforts, double-counting is the potential result." [59]

Footnotes

1 Shannon Pratt, *The Lawyer's Business Valuation Handbook: Understanding Financial Statements, Appraisal Reports, and Expert Testimony*, page 348.

2 *See, e.g.*, Bagnola v. Bagnola, 2003-Ohio-5916, 2003 WL 22501764 (Ohio Ct. App. 5th Dist. Stark County 2003).

3 Heller v. Heller, 2008-Ohio-3296, 2008 WL 2588064 (Ohio Ct. App. 10th Dist. Franklin County 2008) (Gallo v. Gallo, 2015-Ohio-982, 2015 WL 1197666 (Ohio Ct. App. 10th Dist. Franklin County 2015)).

4 Bagnola v. Bagnola, 2003-Ohio-5916, 2003 WL 22501764 (Ohio Ct. App. 5th Dist. Stark County 2003).

5 *Id*., at ¶68.

6 Ulliman v. Ulliman, 2008-Ohio-3876, 2008 WL 2942213 (Ohio Ct. App. 2d Dist. Montgomery County 2008). While *Ulliman* was issued approximately one month after *Heller*, it did not cite or discuss *Heller*.

7 *Id*., at ¶15.

8 *Id*., at ¶19.

9 Heller v. Heller, 2008-Ohio-3296, 2008 WL 2588064 (Ohio Ct. App. 10th Dist. Franklin County 2008) (Gallo v. Gallo, 2015-Ohio-982, 2015 WL 1197666 (Ohio Ct. App. 10th Dist. Franklin County 2015)).

10 *Id*., at ¶19.

11 *Id*., at ¶23.

12 Heller v. Heller, 2010-Ohio-6124, 2010 WL 5141713 (Ohio Ct. App. 10th Dist. Franklin County 2010).

13 *Id*., at ¶8.

14 Heller v. Heller, 195 Ohio App. 3d 541, 2011-Ohio-5364, 960 N.E.2d 1055 (10th Dist. Franklin County 2011)

15 *Id*., ¶17.

16 Gallo v. Gallo, 2015-Ohio-982, 2015 WL 1197666 (Ohio Ct. App. 10th Dist. Franklin County 2015).

17 *Id*., at ¶16.

18 *Id*., at ¶18.

19 *Id*., at ¶18-19.

20 *Id*., at ¶20.

21 *Id*., at ¶25.

22 *Id*., at ¶26.

23 *Id*., at ¶28.

24 25 J. Am. Acad. of Matrim. Law. 133 (2012).

25 *Id*., at ¶29.

26 Morgan writes that double dipping "…must be confined to pension-type assets where the asset is the income…." 25 J. Am. Acad. of Matrim. Law. 135.

27 *Heller* I at ¶21.

28 *Gallo*, at ¶31.

29 *Id*., at ¶32.

30 *Id*., at ¶33.

31 *Id*., at ¶34.

32 *Id*.

33 *Id*., at ¶36.

34 Eddington v. Eddington, 2015-Ohio-1233, 2015 WL 1432607 (Ohio Ct. App. 10th Dist. Franklin County 2015).

35 *Id*., at ¶7.

36 Sieber v. Sieber, 2015-Ohio-2315, 2015 WL 3740722 (Ohio Ct. App. 12th Dist. Butler County 2015).

37 *Id*., at ¶57.

38 Bohme v. Bohme, 2015-Ohio-339, 2015 WL 408723 (Ohio Ct. App. 2d Dist. Montgomery County 2015).

39 *Id*., at ¶25.

40 *Id*., at ¶26.

41 *Id*., at ¶28.

42 *Id*., at ¶29.

43 *Id*., at ¶31.

44 *Id*., at ¶32.

45 *Id*., at ¶33.

46 *Id*.

47 *Id*.

48 Potter v. Potter, 2014-Ohio-5490, 2014 WL 7014906 (Ohio Ct. App. 12th Dist. Butler County 2014).

49 Shannon Pratt, *The Lawyer's Business Valuation Handbook: Understanding Financial Statements, Appraisal Reports, and Expert Testimony*, pages 144-156.

50 Kellam v. Bakewell, 2014-Ohio-4635, 2014 WL 5332876 (Ohio Ct. App. 6th Dist. Erie County 2014), appeal not allowed, 142 Ohio St. 3d 1465, 2015-Ohio-1896, 30 N.E.3d 974 (2015).

51 *Id*., at ¶24.

52 Organ v. Organ, 2014-Ohio-3474, 17 N.E.3d 1192 (Ohio Ct. App. 9th Dist. Summit County 2014).

53 *Id*., at ¶52.

54 *Id*., at ¶54.

55 Kline v. Kline, 2012-Ohio-479, 2012 WL 424910 (Ohio Ct. App. 8th Dist. Cuyahoga County 2012).

56 *Id*., at ¶10.

57 *Id*., at ¶11.

58 Kraft v. Kraft, 2009-Ohio-5444, 2009 WL 3261253 (Ohio Ct. App. 5th Dist. Fairfield County 2009).

59 Shannon Pratt, *The Lawyer's Business Valuation Handbook: Understanding Financial Statements, Appraisal Reports, and Expert Testimony*, page 348.

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