

## COA: Workers' compensation benefits are marital property to the extent compensatory for wages lost during marriage

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In a case of first impression, the Michigan Court of Appeals ruled in *Cunningham v. Cunningham*, No. 285541, that workers' compensation benefits received during a marriage are marital property only to the extent that they compensate for wages lost during the marriage. The Court further ruled that the workers' compensation benefits paid during the marriage, but for wages lost by one of the parties before the marriage, were separate property. However, when these separate funds were used to purchase the jointly titled marital home, they were commingled and became marital property.

The parties divorced after 25 years of marriage. Before the marriage when Mr. Cunningham was 16 years of age, he was seriously and permanently injured while employed in construction work. After the injury, he filed a claim under the Workers' Disability Compensation Act (WDCA). The claim took years to settle, and before the claim was settled, the parties were married. Five years after the marriage, the claim was resolved, resulting in a lump-sum retroactive payment to Mr. Cunningham of \$150,000 as well as lifetime benefits of \$2,850 per month.

The parties purchased a home using \$90,000 of the lump sum award, and over the next 20 years they spent the remaining \$60,000 of the award. At trial, the judge awarded Mr. Cunningham a portion of the down payment for the home because the court determined that the WDCA benefits were Mr. Cunningham's separate property. Mrs. Cunningham appealed.

The Court of Appeals noted that the classification of WDCA benefits as separate versus marital property has been addressed by the Michigan appellate courts in the past. Generally, benefits received for lost wages during the marriage are considered marital since a parties' earnings during the marriage are considered marital. Wage loss benefits attributable to a period of time either before the marriage or after the divorce are deemed to be separate.

The Court of Appeals held that the lump sum retroactive award portion of Mr. Cunningham's WDCA benefits were his separate property because it compensated him for lost wages for a period before the marriage, but that the ongoing benefits received during the period of marriage would be considered marital. The court went on to hold that Mr. Cunningham's commingling of his separate WDCA benefits into the equity of the jointly titled home represented his intent to contribute those separate funds to the marital purpose of purchasing a new home.

In conclusion, workers' compensation awards received during a marriage are not necessarily marital property. The courts must first determine what portion of the award, if any, compensates for wages lost during the marriage. Even after this determination is made, the benefits earned for a period predating the marriage might be considered marital if they are commingled or otherwise used for a marital purpose.