COA Opinion: Fluctuations in Individual Retirement Account did not modify property settlement agreement

5-27-2011 by Michael Azzi

In Smith v. Smith, No. 295243, the Michigan Court of Appeals affirmed the trial court's decision not to modify the parties' property settlement agreement after the market value of the defendant's IRA increased by nearly $1.4 million.

As part of their divorce, the parties entered into a Property Settlement Agreement ("PSA"). While dividing the retirement accounts for the PSA, the value of the defendant's IRA was calculated using a February 2009 statement. However, the parties did not negotiate and sign the PSA until August of 2009. In the interim, the value of the IRA had increased by approximately $1.4 million. The plaintiff moved to include the increase in value of the IRA in the judgment of divorce. The plaintiff also argued that the defendant was required to disclose the increase in value of the IRA under the judgment of divorce. The circuit court concluded that the defendant was not required to disclose the increase in value because he provided the plaintiff with the February IRA statement and she could have calculated the increase in value on her own. Additionally, the circuit court declined to revise the parties' PSA because they had used fixed values when they originally divided the retirement accounts. The plaintiff appealed.

In affirming the lower court, the Court of Appeals held that the terms of the PSA were clear and unambiguous, and that there was no indication in the PSA that when dividing the retirement accounts, the parties intended to take account of changes in the market. Accordingly, the trial court and the parties were bound by the terms of the PSA, which included the February 2009 value of the IRA. The Court cited *Marshall v Marshall*, 135 Mich App 702; 355 NW2d 661 (1984), for the proposition that a court will not reform a property settlement agreement if there is merely a mistake related to an extrinsic fact rather than an error within the instrument itself. The Court reasoned that the increase in value of the IRA was an extrinsic fact and not a mistake regarding the instrument, holding the parties to their original agreement. Furthermore, the Court held that the defendant did not violate a duty to disclose and that the parties could have modified the PSA at any time, for example by providing that the division of the retirement accounts would be subject to revision based on market fluctuations.