

# Equitable Distribution and Legislative Update

September 19, 2024



# Agenda

1. §61.075(5) – Interim Partial Equitable Distribution
2. §61.075(6)(a) and (b) – Interspousal Gifts, Closely Held Businesses, and Nonmarital Assets and Liabilities
3. §61.075 Effective Date of July 1, 2024
4. §61.13 and §61.455, Chapter 741 – Child Exchange Locations
5. The Legislative Process



# §61.075(5) – Interim Partial Equitable Distribution

Presented by Kent Griffin



# A Quick Refresher...

- Fla. Stat. 61.075(5) allows the Court to enter an interim order partially distributing marital assets or liabilities while a divorce case is pending.
- “Good Cause” must be shown.
- “Good Cause” means extraordinary circumstances.

# ...Before the Update!

## What is the effect of the update?

- Provides clarification on what circumstances may constitute “extraordinary circumstances” justifying an interim partial distribution.
- Lists factors the Court must consider.

# What Changed?



## Old Wording:

(d) As used in this subsection, the term “good cause” means extraordinary circumstances that require an interim partial distribution.



## New Wording:

(d) As used in this subsection, the term “good cause” means extraordinary circumstances that justify an interim partial distribution. In determining if extraordinary circumstances exist for purposes of this subsection, the court must consider the following: (Lists 4 factors)



# 1st Factor

Fla. Stat. 61.075(5)(d)(1)

1. Whether there is a need for funds in order to avoid or prevent the loss of an asset through repossession or foreclosure, the loss of housing, the default by either party of a marital debt, or the levy of a tax lien.



# 2<sup>nd</sup> Factor

Fla. Stat. 61.075(5)(d)(2)

2. Whether there is a need for funds to pay an expense for a dependent child if nonpayment of the expense would be detrimental to the child.





# 3<sup>rd</sup> Factor

Fla. Stat. 61.075(5)(d)(3)

3. Whether one or both parties have a need to access funds in order to pay a reasonable amount of the attorney fees, court costs, or other suit money for maintaining or defending a proceeding under this chapter.



# 4<sup>th</sup> Factor

Fla. Stat. 61.075(5)(d)(4)

4. Any other circumstances that justify the entry of an order granting an interim partial equitable distribution.



# §61.075(6)(a) and (b) – Closely Held Businesses, Interspousal Gifts, and Nonmarital Assets and Liabilities

Presented by Deanne Castro and Boris Galustov



# MARITAL INTEREST IN A CLOSELY HELD BUSINESS

## Goodwill and the Multi-Member Practice

Presented by Deanne Castro



Personal goodwill is like your reputation – it follows you wherever you go. But enterprise goodwill stays with the company, **even when you're not in the business of sticking around!**

# Do We All Remember...



...Personal Goodwill vs.  
Enterprise Goodwill?



## A Brief History of Goodwill

Thompson v. Thompson, 576 So.2d 267 (Fla. 1991) – this involved personal goodwill of a *solo* practitioner.

Court answered the question certified by the 4<sup>th</sup> DCA: Whether in a DOM proceeding to which an owner of a professional association is a party, may the value of the professional association's goodwill be factored in when determining the professional associations value?



# And the answer is.....



## ...Florida Supreme Court answered = YES!

For goodwill to be a marital asset, it must exist separate and apart from the reputation or continued presence of the marital litigant.

Any value which attaches to the entity solely as a result of personal goodwill represents nothing more than probable future earning capacity, which is not a proper consideration in dividing marital property in a DOM proceeding.

# RECAP

## Personal Goodwill

- Represents a person's probable future earning capacity.
- This is attributable to the reputation and skill of a practitioner in a practice, and thus is non-marital.

## Enterprise Goodwill

- value from ongoing referrals to and patronage of the practice separate and apart from personal goodwill.

# But Wait!



...What if we have a multi-member practice?!

# We Turn to the Case Law, Of Course!

Rosenberg v. Rosenberg, 2024 WL 3076490 (Case Nos. 5D2023-1079, 5D2023-1410) June 21, 2024:

## **ISSUE:**

Whether the personal goodwill of medical practitioners in a multi-member practice is non-marital as well????



# FACTS OF THE CASE:

- Involves calculation of personal goodwill in the same multi-member medical practice, North Florida Anesthesia Consultant (NFAC)
- 34 physicians were equal shareholders of NFAC
- NFAC was then sold to a corporation
- The physicians received a significant payment for their interest
- Each party hired an expert to value the personal and enterprise goodwill
- One expert took the approach that the goodwill of ALL the shareholder physicians is personal goodwill, and thus not subject to ED
- The other expert took the approach that effectively treated all the other shareholder physicians' personal goodwill as enterprise goodwill, to be apportioned in the marital award
- The Thompson case did not address how to deal with personal goodwill in a multi-member professional context

Rosenberg v.  
Rosenberg

ANSWER: YES

Personal goodwill of all  
shareholders in a multi-  
member practice = personal  
goodwill and thus non-  
marital!



# But WHY?

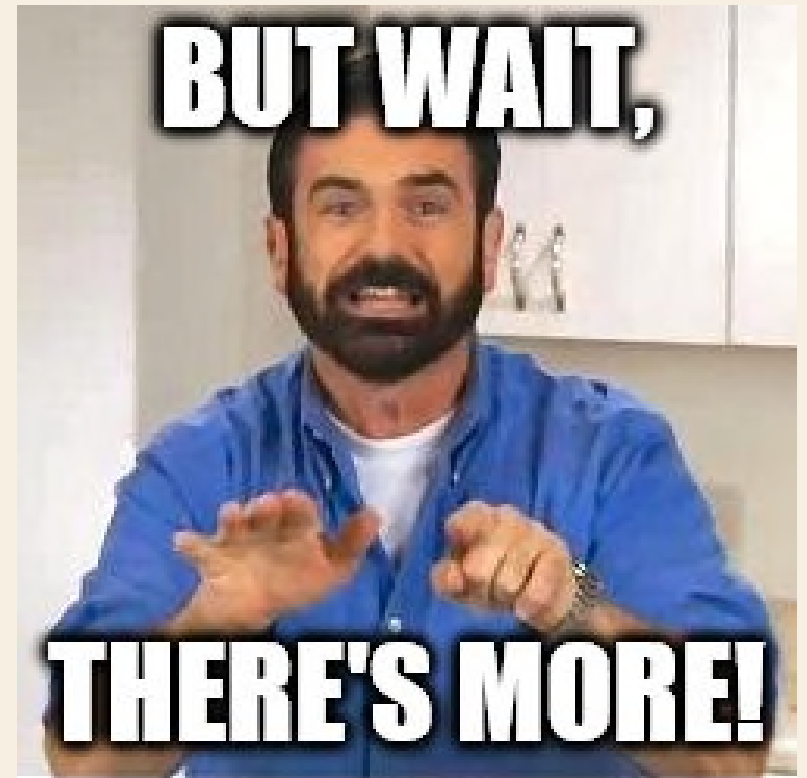
## **Conclusion:**

Personal goodwill of a professional is simply NOT a marital asset, whether it be of a divorcing spouse or one of the many other professionals in a multi-member profession. It is not a marketable asset distinct from the individual.

Thus, the personal goodwill of a multi-member profession must be excluded from the consideration of the market value of the profession, as it is collectively a non-marital asset of each of the respective professionals.

BUT WAIT!

There's more!



# Conde-Berrocal v. Conde, 2024 WL 3076633 (Case No. 5D2023-0449), June 21, 2024

## Facts of case:

- Involves a party who is a physician from NFAC same as in Rosenberg
- Wife was the physician-shareholder and she received a large sum for her share in NFAC and an additional \$25,000 to sign a noncompete agreement.
- Wife deposited all sale proceeds into a marital account
- *Husband's expert* opined that the \$25,000 was the entirety of the Wife's personal goodwill, as that was the amount of the noncompete payment
- *Wife's expert* opined that Wife had personal goodwill and lost future earnings above and beyond the \$25,000, reasoning:
  - The \$25,00 was likely a small part of the overall goodwill and likely the minimum amount possible because payment treated as ordinary income while the sale of goodwill is treated as capital gain, resulting in a substantial difference in tax treatment
  - Physicians reduced their future income for a lump sum payment upfront representing future earnings and Wife's lump sum represented both personal goodwill and lost future earnings
  - Expert opined almost impossible to separate personal goodwill and lost future income as they are so closely intertwined!



# Findings in Conde-Berrocal

At the very least, the \$25,000 is non-marital personal goodwill as reflected in the noncompete payment, and deemed ordinary income for tax purposes, BUT the bulk of the personal goodwill and lost future income was contained in the larger payment

## **Conclusion:**

- Citing Thompson, because personal goodwill and lost future income are so closely intertwined, and difficult if not impossible to separate, it was not improper to include the proceeds from the NFAC buyout was non-marital .
- Language of Thompson could be applied to a multi-member professional practice

## Also, an interesting note:

- \* The experts used different accounting methods.
- \* Husband effectively argued that Wife's expert ran afoul of Daubert
- \* Wife argued that the Florida Supreme Court only required the trial Court's conclusion be supported by competent, substantial evidence
- \* 5<sup>th</sup> DCA found the Wife's experts methodologies were not arbitrary and were supported by enough competent substantial evidence to render it "legally adequate"

Crap! What  
about the  
statute?



**Florida Statute 61.075 - Changes to business interest approved and went into effect on July 1, 2024.**

**Marital Assets include:**

(f) The marital interest in a closely held business. The Court shall determine the value of the marital interests in a closely held business as follows:

(I) The standard of value of a closely held business is fair market value. For purposes of this sub-subparagraph, the term “fair market value” means the price at which property would change hands between a willing and able buyer and a willing and able seller, with neither party under compulsion to buy or sell, and when both parties have reasonable knowledge of the relevant facts.

**(II) If there is goodwill separate and distinct from the continued presence and reputation of the owner spouse, it is considered enterprise goodwill, which is a marital asset that must be valued by the court.**

(III) The court must consider evidence that a covenant not to compete or a similar restrictive covenant may be required upon the sale of the closely held business, but such evidence alone does not preclude the court from finding enterprise goodwill.



# From Heartfelt to Court-Felt: The Journey of Interspousal Gifts and Non-Marital Property in Divorce

Presented by Boris Galustov



When it comes to interspousal gifts in divorce, it's the thought that counts – until the Court has a say in who keeps the presents!



# History time!

Not so long ago, the Florida legislature felt that the term “interspousal gifts” did not need to be further defined.

F.S. 61.075(6)(a)(1)(d) (2023):

(6) As used in this section:

(a)1. “Marital assets and liabilities” include:

[...]

d. Interspousal gifts during the marriage.



As a result, we ended up with beautiful caselaw like Hooker v. Hooker, 220 So.3d 397 (Fla. 2021).

Hooker v. Hooker, 220 So.3d 397 (Fla. 2021)

- The parties were married in 1987 with a prenuptial agreement in place, agreeing to keep their premarital assets separate
- Husband acquired two properties during the marriage, one in 1989 and another in 1997, and both parties signed mortgage
- In 1997, Husband created a business to hold the 1989 property, and the Wife signed the warranty deed transferring the 1989 property to the business

## Supreme Court of Florida

No. SC15-1881

**NANCY HOOKER,**  
Petitioner,

vs.

**TIMOTHY L. HOOKER,**  
Respondent.

No. SC16-589

**TIMOTHY L. HOOKER,**  
Petitioner,

vs.

**NANCY HOOKER,**  
Respondent.

[March 30, 2017]

...and so, the Supreme Court of Florida, in true court fashion, affirmed a Third DCA scheme set forth in *Vigo v. Vigo*, 15 So. 3d 619, 622 (Fla. 3d DCA 2009) for establishing “interspousal gifts” consisting of 3 elements:

- (1) donative intent,
- (2) delivery or possession of the gift, and
- (3) surrender of dominion and control of the gift.



## Applying its 3 elements, the Hooker Court concluded (at 406):

“While one factor independently – such as Wife signing the Warranty Deed or being listed on the mortgage, or Wife’s unfettered access to and autonomy in residing, maintaining, and improving [the 1989 property] – does not establish an interspousal gift for purposes of equitable distribution in a dissolution of marriage, viewing Husband’s actions comprehensively leads us to conclude that competent, substantial evidence supports the trial court’s finding that [the 1989 property] was an interspousal gift, of which Husband intended to divest himself of complete dominion and control to his Wife.”

The Hooker Court determined (at 406):

“The transfer of [the 1989 property] through [the business created to hold it] is the most **significant indication of donative intent.**”

# Time For The Legislature To Step In!

Of course, the legislature could not let the Supreme Court run amok, so the statute was amended to further define “interspousal gifts.”

F.S. 61.075(6)(a)(1)(d) (2024):

(6) As used in this section:

(a)1. “Marital assets and liabilities” include all of the following:

[...]

d. Interspousal gifts during the marriage. **An interspousal gift of real property may not be made in the absence of a writing that complies with the requirements of s. 689.01. The joinder of a spouse in the execution of a deed with the sole purpose of the conveyance of homestead real property to any person or entity other than the other spouse or both spouses jointly does not change the character of the real property being conveyed, or any proceeds from the sale thereof, to marital property.**





## ...and what are the requirements of §689.01?

FS 689.01 (2024):

No estate or interest of freehold, or for a term of more than 1 year, or any uncertain interest of, in, or out of any messuages, lands, tenements, or hereditaments shall be **created, made, granted, transferred, or released in any manner other than by instrument in writing, signed in the presence of two subscribing witnesses** by the party creating, making, granting, conveying, transferring, or releasing such estate, interest, or term of more than 1 year, or by the party's lawfully authorized agent, unless by will and testament, or other testamentary appointment, duly made according to law; and no estate or interest, either of freehold, or of term of more than 1 year, or any uncertain interest of, in, to, or out of any messuages, lands, tenements, or hereditaments, shall be **assigned or surrendered unless it be by instrument signed in the presence of two subscribing witnesses** by the party so assigning or surrendering, or by the party's lawfully authorized agent, or by the act and operation of law [...].

The legislature also amended the statute as it relates to “nonmarital assets and liabilities” to conform with its new definition of “interspousal gifts” and, naturally, to replace semi-colons with periods.

**F.S. 61.075(6)(b)(1)-(6) (2024):**

(6) As used in this section:

[...]

(b) “Nonmarital assets and liabilities” include **all of the following**:

1. Assets acquired and liabilities incurred by either party prior to the marriage, and assets acquired and liabilities incurred in exchange for such assets and liabilities.
2. Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent, and assets acquired in exchange for such assets.
3. All income derived from nonmarital assets during the marriage unless the income was treated, used, or relied upon by the parties as a marital asset.
4. Assets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties, and assets acquired and liabilities incurred in exchange for such assets and liabilities.
5. Any liability incurred by forgery or unauthorized signature of one spouse signing the name of the other spouse. Any such liability is a nonmarital liability only of the party having committed the forgery or having affixed the unauthorized signature. In determining an award of attorney fees and costs pursuant to s. 61.16, the court may consider forgery or an unauthorized signature by a party and may make a separate award for attorney fees and costs occasioned by the forgery or unauthorized signature. This subparagraph does not apply to any forged or unauthorized signature that was subsequently ratified by the other spouse.

**6. Real property acquired separately by either party by noninterspousal gift, bequest, devise, or descent for which legal title has not been transferred to the parties as tenants by the entireties in accordance with this section.**

# So, what does all of this mean?

Did the Wife in Hooker get a windfall?

Does the new statute neutralize the entire issue of donative intent when it comes to real property?

Does this mean less fighting in family court?



# The Answers (in Order)

**Yes.**

**Probably.**

**Probably not.**

# §61.075: WHEN DOES THE NEW STATUTE APPLY?

Effective Date of July 1, 2024

Presented by General Magistrate Beth Luna



# IS IT PROSPECTIVE OR RETROACTIVE?

## Retroactive

Is the new statute procedural or substantive?

- \* Procedural only may be applied retroactively.
- \* Substantive may not be applied retroactively.

## Prospective

If there are no constitutional rights for the courts to protect, it applies prospectively.

# Child Exchange Locations

## §61.13 and §61.455, Chapter 741

Presented by General Magistrate Beth Luna





## Safe Exchange of Minor Children ("Cassi Carli Law")

- **HB 385:** Signed by the Governor on June 5, 2024.
- **Effective Date:** July 1, 2024.
- **Focus:** Ensures safe child exchange between parents when there's risk or imminent threat.




# Key Changes to Florida Statutes (§61.13 & §61.455)

- \* Amends §61.13 and creates §61.455.
- \* Courts can order child exchanges at neutral locations if there's a risk of imminent threat of harm to a parent or child and it is in the child's best interests.
- \* Applies to parenting plans and final injunctions.



# Temporary Time-Sharing (§741.30)



When awarded to the respondent, exchanges **must** occur at neutral locations or supervised programs where it is in the child's best interest.

Court considers all factors from §61.13(3) for child's best interest.

# Parenting Plan Requirements (§61.13)

Must specify an exchange locations.

Ensures safe locations or supervised visitation for high-risk cases.

## Conditions for Neutral Locations (§61.13(2)(b))

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Court may order a neutral or supervised locations if there's risk to a party or a child during child exchange and it is in the child's best interest.

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Safety measures prioritize child and parent well-being.

# New Safe Exchange Locations (§61.455 & §125.01)

- Sheriff's Offices designate a neutral exchange location with 24/7 access, purple lighting, and video surveillance.
  - In Duval County, it is the parking lot at the Police Memorial Building in downtown Jacksonville at 501 E Bay St.
    - The entrance is on Forsyth street between the county jail and the PMB.
  - Clay County will have two locations, to be determined.
- Locations must keep video recordings for 45 days.

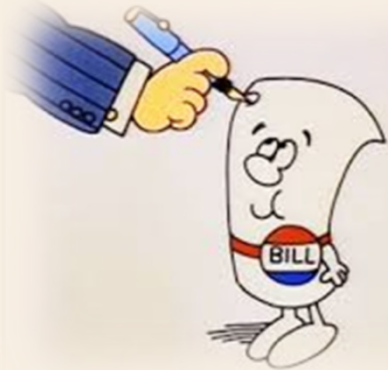
# The Legislative Process

Presented by General Magistrate Beth Luna





# LEGISLATIVE PROCESS: How a bill becomes law

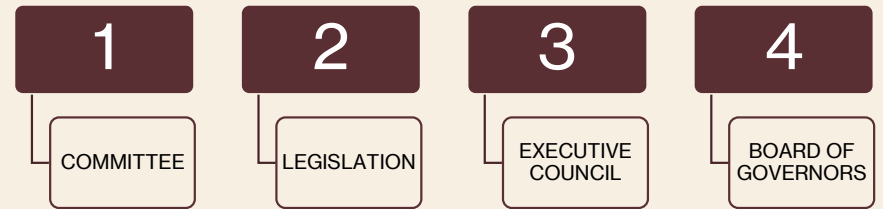


Idea  
↓  
Bill Sponsors  
↓  
Bill Drafting  
↓  
Committee  
References  
↓  
Committee  
Hearings

To "The Floor" for  
Full Chamber Vote  
↓  
"Bounce" until  
Each Chamber  
Votes on  
↓  
Identical Bill  
To the Governor

**Most Important Rule:  
There Are No Rules**

# The Family Law Section's Role in the Legislative Process



# HOW TO TRACK A BILL?



Senate Tracker Login - The Florida Senate

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# How to track a bill?

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<https://www.myfloridahouse.gov/Sections/MyHouse/login.aspx>



# Thank You

We hope you enjoyed the  
show!

