

Essay Question No. 9

Answer the question in booklet No. 9

After twelve years of marriage, Henry has come to your office seeking advice concerning ending his marriage to Winola. They have no children together.

Winola is an established artist who works part-time earning \$25,000 - \$30,000 per year. Henry earns \$80,000 a year working for a telecommunications company. All earnings were deposited in their joint accounts. Both are in their mid-forties and healthy.

Upon marriage, Henry moved into Winola's Anchorage home. They refinanced the mortgage in 2006 into both their names to pay off significant debts they had accrued both before and after their marriage. Henry's name is not on the title.

Winola has a trust established by her deceased first husband which is administered by Anco Bank. Trust income was withdrawn during the marriage to pay for vacations and Henry's son's college expenses.

Henry wants to know whether he has an interest in the house and the trust. Winola has told Henry that if he leaves her he will have to repay all the trust monies spent on his son's college education and one-half of the vacation expenses. She also told him she will get spousal support.

1. Discuss whether the house and the trust are part of the marital estate.
2. Discuss whether Henry will have to reimburse any of the expended trust monies.
3. Discuss what types of spousal support are available in Alaska and whether Winola is likely to prevail on her claim.

GRADER'S GUIDE
***** Question No. 9*****
Family Law

1. Discuss whether the house and the trust are part of the marital estate. (40 points)

In deciding an equitable division of the marital estate, a trial court must take three basic steps – (1) decide what specific property is available for distribution; (2) find the value of the property; and (3) divide it equitably. (Wanberg v. Wanberg, 664 P.2d 568, 570 (Alaska 1983)).

For the first step, the trial judge must determine whether a property is separate or marital. (Odom v. Odom, 141 P.3d 324, 330 (Alaska 2006)). This question only asks the examinee to discuss the first step of Wanberg.

The Alaska Supreme Court has laid out several factors for a court to determine whether there was an intent to treat a residence as marital. These factors are:

“(1)the use of the property as the parties’ personal residence, and (2) the ongoing maintenance and managing of the property by both parties, as well as (3) placing the title of the property in joint ownership and (4) using the credit of the non-titled spouse to improve the property.” (Cox v. Cox, 882 P.2d 909, 916 (Alaska 1994)).

All four factors do not have to be found for the trial court to find that separate property was transmuted into marital property. Chase v. Chase, 109 P.3rd 942,948 (Alaska 2005). Here the house was the parties’ personal residence for the last twelve years. The first factor is satisfied.

All earnings were placed in joint bank accounts. Since the parties had a mortgage, joint funds were expended to pay for the mortgage and the residence’s upkeep. The second Cox factor is satisfied. The third factor is not present because Henry’s name was not on the title.

Since a mortgage was obtained in both parties’ names, each spouse’s credit was utilized. Thus, the final Cox factor is present. The house has been transmuted to marital property and Henry has an interest.

As for the trust, there is nothing in the facts that indicated that Winola took any action to name Henry as a trust beneficiary. Since Anco Bank managed the trust, neither spouse had any involvement in its ongoing management.

2. Discuss whether Henry will have to reimburse any of the expended trust monies. (30 points)

The use of trust income to pay for occasional household expenses does not transmute the trust. Henry has no interest in the trust. Winola utilized trust monies to pay for vacations and college expenses. The court would find that these are gifts.

In Sanders v. Sanders , 902 P.2d 310 (Alaska 1995), the Alaska Supreme Court held that a marital asset is no longer part of the marital estate where both parties have agreed to transfer it to a third person. Winola had control of the trust income. She could do with it as she pleased. Even if she consulted with Henry on paying for his son's college expenses, under Sanders once the transfer to the third party occurred it became the property of the third party. Absent a document signed by the parties, Henry would not be obligated to reimburse her.

(3) Discuss what types of spousal support are available in Alaska and whether Winola is likely to prevail on her claim. (30 points)

In Alaska, there is a preference to resolve the financial concerns of a divorce by property division. (Morris v. Morris, 908 P.2d 425 (Alaska 1995)).

There are three types of alimony in Alaska – long term, rehabilitative and reorientative. Alimony awards are allowable when just and necessary. (Tybus v. Holland, 989 P.2d 1281 (Alaska 1999)).

In deciding whether to award spousal support, the trial court must utilize the Merrill factors which are codified at AS 25.24.160(a)(4)(A-1). These factors are:

- A. the length of the marriage and station in life of the parties during the marriage;
- B. the age and health of the parties;
- C. the earning capacity of the parties, including their educational backgrounds, training, employment skills, work experiences, length of absence from the job market, and custodial responsibilities for children during the marriage.
- D. The financial condition of the parties, including the availability and cost of health insurance;
- E. The conduct of the parties, including whether there has been unreasonable depletion of marital assets;
- F. The desirability of awarding the family home, or the right to live in it for a reasonable period of time, to the party who has primary physical custody of children;
- G. the circumstances and necessities of each party;

- H. the time and manner of acquisition of the property in question; and
- I. the income producing capacity of the property and the value of the property at the time of division.

Permanent awards of spousal support are disfavored. (Hanlon v. Hanlon, 871 P.2d 229 (Alaska 1994)). Permanent awards of spousal support are rarely given and usually only in cases where a spouse's age or health renders it almost impossible for the spouse to work. Here, Winola has no health issues and is earning a living.

Rehabilitative alimony is support to enable a spouse to receive education and/or training to become self-supporting. (Connor v. Connor, 68 P.3d 1232 (Alaska 2003)). Winola has been an artist for a number of years. Her artistic talent allows her to earn a living. There is nothing in the facts to suggest that Winola needs further education or training.

The third type of spousal support available in Alaska is reorientative support. The goal of reorientative is to allow the spouse the opportunity to adjust to the changed financial circumstances of the divorce. (Tollefson v. Tollefson, 981 P.2d 568 (Alaska 1999)).

A trial court can award a needy spouse both rehabilitative and reorientative support. (Money v. Money, 852 P.2d 1158 (Alaska 1993)). To award spousal support, the trial court must consider and make findings about both spouses' financial needs and abilities to pay. (Myers v. Myers, 927 P.2d 326 (Alaska 1996)).

Winola is a part-time artist who generates income. She is in good health. It can be assumed that if Winola increased her work output from part-time to full time that she would have a corresponding increase in her income.

Additionally, it appears she has access to trust monies to help her care for herself. There is nothing to suggest the trust has been depleted. It is unlikely that Winola would receive spousal support.