

GUEST COLUMN

Court takes the “analytical approach”

Several months after Anthony and Teresa Murray separated, Teresa settled an employment discrimination and wrongful discharge suit she had filed during their marriage. In their Montgomery County divorce case, Anthony claimed that the \$550,000 settlement proceeds were marital property, thus subject to Maryland's equitable distribution laws.

**By F. Kirk
Kolodner, Esq.**

In *Murray v. Murray*, (2010), a reported opinion filed February 24, 2010, the Court of Special Appeals of Maryland (CSA) adopted “the analytical approach” in ascertaining whether settlement proceeds or awards of an employment discrimination and wrongful discharge claim are marital property.

The CSA held “that the analytical approach is to be employed by the trial court to determine whether all or part of employment-related discharge or discrimination settlement proceeds or awards constitute marital property.” In so doing, the CSA extended the application of the analytical approach doctrine beyond personal injury and workers’ compensation recoveries.

Just what is the analytical approach? Quoting from *Newborn v. Newborn*, 133 Md. App. 64, 90 (2000), the *Murray* court stated that “[t]he analytical approach ‘asks what the award, settlement, or judgment was intended to replace and looks to the nature of the...award or settlement to explain why the property is the separate asset of a spouse or why it should be considered marital subject to equitable distribution. The approach was endorsed by Judge Chasanow in *Blake v. Blake*, 341 Md. 326 (1996)] and also in both *Queen v. Queen*, 308 Md. 574 (1987)] and *Lowery v. Lowery*, 113 Md. App. 423 (1997)].... Recompense to the

injured spouse for non-economic damages – such as pain, suffering, disability, and loss of ability to lead a normal life – are not considered marital property.”

As stated, Maryland courts already apply the analytical approach in the context of both personal injury tort and workers’ compensation claims. Under this approach, “[o]nly that portion of such claim proceeds which compensated the claimant spouse for lost wages or earning capacity during the marriage, medical expenses paid from marital funds, or for joint loss of consortium, is marital property subject to equitable distribution.” *Blake*, 341 Md. At 344-45.

“By contrast, to the extent the proceeds compensate the injured spouse for future post-marital wages, bodily injury, or pain and suffering, they constitute the non-marital property of the recipient spouse. *** The rationale for treating economic and non-economic loss differently for purposes of identifying the marital pool subject to equitable distribution, is that damages for bodily pain, suffering, and loss are ‘uniquely personal’ to the injured spouse.” (citations

omitted). The *Murray* court applied this reasoning to settlement proceeds of an employment discrimination and wrongful discharge suit.

In *Murray*, Teresa’s settlement proceeds were not allocated specifically to a category of damages. Had she been able to do so, Teresa possibly could have avoided the uncertainty and risk resulting from the analysis the trial court will conduct on remand. That analysis will focus on the type of compensatory loss her settlement was intended to remedy. The type of loss determines the classification of the recovery proceeds as being marital property or the separate property of the claimant spouse.

In remanding the case to the trial

court, the *Murray* court stated that the trial court must “review the evidence presented regarding the underlying case and make its own allocation as to the different types of loss.” The CSA went on to state that the allocation as to economic and non-economic loss is a question of fact and will not be reversed if there is any credible evidence to support its allocation.

If Teresa had the opportunity to structure her settlement to allocate damages primarily for future lost income, the trial court on remand likely would find that the future lost income portion of her recovery is her non-marital property on the basis that she was compensated for a loss occurring after the marriage.

Perhaps Teresa deliberately preferred no allocation of her recovery when she settled if she knew that the bulk of her settlement was for past lost income which would constitute marital property.

Could Teresa have taken steps to shield her settlement proceeds from Anthony? That question will be answered on remand when Anthony gains access to pleadings, demand letters, documents, affidavits, deposition transcripts and other materials relevant to Teresa’s discrimination and wrongful discharge claim. This evidence may establish that Teresa was compensated for lost wages or earning capacity during the marriage.

With the application of the analytical approach to employment discrimination settlement proceeds, Maryland lawyers likely will see the application expand to proceeds resulting from other tort, contract and statutory claims.

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F. Kirk Kolodner, a member of Adelberg, Rudow, Dorf & Hendler, LLC (ARD&H), concentrates his practice on family law and general litigation. For more information, call 410-986-0830 or visit www.AdelbergRudow.com.