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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Maynard, Justice, dissenting:

I dissent to the majority decision in this case because I do not believe that the family court erred by splitting the marital estate 35/65 with Mr. Arneault receiving the larger share. Furthermore, I do not believe that in-kind distribution of Ms. Arneault's portion of the MTR stock as ordered by the majority is appropriate. I would have affirmed the decision of the family court which allowed Mr. Arneault to retain all the MTR stock but ordered him to pay Ms. Arneault for her share of the stock over a period of ten years at a two percent interest rate.

With regard to the division of the marital estate, I agree with the family court's conclusion that the contributions to the marriage made by Mr. Arneault make it completely inequitable to order equal distribution. The evidence presented in this case showed that the Arneaults lived and worked in separate states for more than a decade. After Mr. Arneault took over as President and CEO of MTR Gaming, he began spending most of his time in West Virginia although he returned to Michigan a few days a week to participate in various activities with his children. It is undisputed that much of MTR's success is a result of Mr. Arneault's considerable efforts. More importantly, it is undisputed that the financial success

and wealth of the Arneaults is solely the result of Mr. Arneault's employment. While Ms. Arneault started her own business to provide consulting services to high school students applying to college, her efforts did not result in much income.

The majority opinion finds that a 50/50 split of the marital estate is warranted in this case because Ms. Arneault equally contributed to the marriage by raising the parties' children and maintaining the family household. The majority states that Ms. Arneault's responsibilities "were manifestly increased by the fact that Mr. Arneault was completely absent from the marital home during the work week[.]" Maj. op. at 10. However, the record does not support these conclusions. While it is true that Mr. Arneault was absent from the marital home for considerable periods of time because of his employment, Ms. Arneault conceded that he was an involved father who returned home almost every weekend and made time to coach his son's athletic teams. Moreover, Mr. Arneault's financial success allowed Ms. Arneault to have a comfortable lifestyle even in his absence as third-parties provided many housekeeping and childcare services.

There is also simply no evidence to support Ms. Arneault's assertion that she provided substantial assistance to Mr. Arneault's success with MTR. She was not a host for her husband's business functions nor did she have anything to do with MTR. In fact, the record indicates that Ms. Arneault rarely traveled to West Virginia. Ms. Arneault was simply not a "corporate spouse" who made substantial sacrifices to ensure the success of her

husband's business. Therefore, I believe it is inequitable for her to receive 50 percent of the MTR stock at issue.

After finding that the marital estate should be equally divided, the majority opinion goes on to find that Ms. Arneault's portion of the stock should be distributed to her in-kind. In doing so, the majority fails to comply with the provision of W.Va. Code § 48-7-105 requiring courts to consider the effect on the business entity when stock is divided. Specifically, the statute provides that courts "shall also consider the effects of transfer or retention in terms of which alternative will best serve to preserve the value of the business entity or protect the business entity from undue hardship or from interference caused by one of the parties or by the divorce[.]" W.Va. Code § 48-7-105. By awarding Ms. Arneault in-kind distribution, the majority has unnecessarily put MTR at risk. In particular, the majority's decision effectively reduces Mr. Arneault's interest in MTR by half. Because Mr. Arneault is President and CEO of MTR, such a significant reduction in his holdings could cause the value of the stock to fall precipitously and weaken the corporation as a business entity. Furthermore, there is nothing to prevent Ms. Arneault from cumulatively voting her stock and putting her divorce attorney on the board of MTR which would clearly be devastating to the company.

The record in this case reflects that Mr. Arneault has been a critical factor in developing MTR into a very successful business and providing many jobs to the citizens of

this State. As President and CEO, Mr. Arneault is the public face of MTR. Should the market lose confidence in the stability of MTR's management, the result could be a disaster for MTR and its innocent employees who depend upon the company for their livelihood. By improperly interfering in MTR's corporate affairs, the majority may have placed the jobs of MTR employees and the investments of many individual stockholders in jeopardy. Accordingly, I respectfully dissent from the majority's decision in this case.