

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



[John Narron](#) is a Board Certified Family Law Specialist and has been practicing law in North Carolina since 1977, with a practice concentration in all manner of civil disputes that frequently involve complex equitable distribution proceedings, alimony trials, will caveats, employment disputes, personal injury trials and negotiations, and a wide variety of commercial business disputes. John has served as a mediator in more than 200 family law disputes in Wake County, Franklin County, Johnston County, Wayne County, Guilford County, Forsyth County, and Pender County.

Equitable Distribution When the Trial Judge Gets it Right

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It is not often in a complex equitable distribution case that we see a trial Judge's fair and well-reasoned decision reversed on appeal. However, that is precisely what happened in the April 18, 2017 Court of Appeals case of *Miller v. Miller*.

The facts and procedural posture of the Miller case were complex, but the primary reason for the reversal is relatively straightforward. Judge Lunsford Long presided over this case for over three years. When the trial concluded on equitable distribution, the Judge ordered an equal division of the marital assets. Two of the marital assets consisted of a home in Chatham County and property in Virginia. Neither the husband nor the wife wanted possession of the properties. Therefore, Judge Long did the logical and reasonable thing and ordered in his final decree that both properties be sold with the assistance of a realtor and that the net proceeds be divided equally between the parties. When Judge Long produced his equitable distribution spreadsheet, he did not place a value on these two properties since the net proceeds were going to be divided equally between the parties anyway. This approach to an equitable distribution spreadsheet is commonly used by family law practitioners and is mathematically correct since whatever the value of the two properties is or ultimately turns out to be will be divided equally between the husband and the wife.

However, on appeal, the Court of Appeals ruled that the trial court's role is to classify, value, and distribute property "not simply to order that it be sold." It was noted on appeal that the record was clear on the fact that neither party wanted possession of the Virginia property or the Chatham County home. However, there was nothing in the record to show that both sides agreed to sell the property. Quoting in part from the Rolling Stones the Court of Appeals said: "sometimes the law does not allow the parties to get what they want: but sometimes they might find that they get what they need."

The Court of Appeals did not refer to the case of *Wall v. Wall*, 140 NC App. 303 (2000) which is something of a mystery because the Wall case involved a Trial Judge who ordered a marital residence to be sold and the net proceeds divided. On appeal, the Court of Appeals, in that case, said, "...we find no abuse of discretion in the trial court's order that the home be sold and the proceeds divided between the parties." It would

seem that the result in *Wall v. Wall* would serve as a precedent for the decision by Judge Long to sell those two properties since neither party wanted possession of the property. However, that was not the case.

The Court of Appeals reversed Judge Long's decision and ordered him to place a value on the Virginia property and the Chatham County property, add those values to the spreadsheet and then determine whether an equal division of the marital property would be equitable. While reversing Judge Long, they also complimented him; "We commend the trial court's extensive and detailed orders addressing the facts and equities of this very unusual situation. ...we also appreciate the complexity of the case and the difficulty of dealing with all of the issues raised over several years of litigation. But for the reasons noted above we must reverse the equitable distribution order..."

On remand, Judge Long can perhaps get to the same place as he did in his first order by tinkering with his spreadsheet but only time will tell how this matter finally resolves itself.

It is our experience not to include the value of a property to be sold on the equitable distribution spreadsheet in cases where the parties agree to sell the property and divide equally the net proceeds. In virtually every instance, doing so is an exercise in futility since putting a hypothetical value on the spreadsheet then dividing that value equally between the parties results in the same math as putting nothing on the spreadsheet for the property that is to be divided equally.

From our reading of the Miller case, Judge Long handled the math regarding the property perfectly. And, although he accomplished an equitable distribution between the parties, he must now reopen the file and attempt to get to the same result, perhaps with hypothetical property values that may or may not be factually correct depending on the outcome of the real estate transactions.

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