

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2006*

**EDWARD A. WHALEN, JR.,**  
Appellant,

v.

**JEANNE SEMET WHALEN,**  
Appellee.

No. 4D05-3936

September 13, 2006

STONE, J.

We reverse this judgment of dissolution and remand for re-calculation of the husband's special equity in the parties' home.

The trial court, in applying the *Landay*<sup>1</sup> formula, correctly arrived at the number representing the husband's special equity – 24.35%. The husband contributed a \$76,000.00 down payment against the \$156,000.00 acquisition cost of the property. Its fair market value at the time of dissolution was \$400,000.00. The total of the first and second mortgages secured by the property is \$99,000.00.

*Landay* mandates the formula to be used where non-marital assets are used by a spouse as a portion of the consideration for the entireties' property. "[I]n addition to that spouse's automatic one-half share, the contributing spouse acquires a special equity in the property equal to one-half the ratio which that spouse's contribution bears to the entire consideration." *Landay*, 429 So. 2d at 1200. In other words, the starting place is a fifty/fifty split or automatic half interest. The formula is then used to "carve out from the other spouse's interest in the property his or her special equity." *Id.* In algebraic terms, the special equity formula is:

$$(.5)(76,000/156,000) = 24.35\%$$

(half)(down payment divided by purchase price)

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<sup>1</sup> *Landay v. Landay*, 429 So. 2d 1197, 1199 (Fla. 1983).

The trial judge calculated this figure correctly. Here, in order to arrive at the husband's entire interest, 24.35% is added to 50% (his automatic half), giving him 74.35% of the home's value. This allows the husband to "reap the fruits" of his original capital investment, while allowing the wife to share in the balance of the home's increased equity. *Id.* at 1199. *Landay* instructs on the calculation of the interest, but goes "no further in explaining the logistics of distributing sale proceeds" or figuring the appropriate credits. *Romano v. Romano*, 632 So. 2d 207, 212 (Fla. 4th DCA 1994).

In *Hess v. Hess*, 654 So. 2d 199, 200 (Fla. 4th DCA 1995), our court expressly stated that correct determination of a party's interest under the *Landay* formula required application to the fair market value of the property before reducing the share by half the amount of the mortgage.

In *Griffiths v. Griffiths*, 563 So. 2d 773 (Fla. 3d DCA 1990), the Third District clearly applied the contributing spouse's total interest to the gross value, then subtracted half of the mortgage amount to arrive at the value of each parties' interest. *Id.* at 775. *Donaldson v. Donaldson*, 481 So. 2d 101 (Fla. 2d DCA 1986), also clearly espouses this position. "[W]e believe that the formula must be applied to the total proceeds of sale, or total value of the property, rather than the excess proceeds." *Id.* at 102.

Here, the trial court calculated the proper percentage but erroneously applied it against half of the net equity in the property, after satisfaction of the two mortgages, rather than applying it as a percentage of the whole. Further, as indicated, the accepted procedure is to apply this against the market value, not the net proceeds.

The husband's special equity equals \$97,400.00 (\$400,000.00 fair market value x 24.35%), and his total interest in the property equals \$297,400.00 (half of the property + special equity). The wife's interest in the property is \$102,600.00. The outstanding mortgages are then subtracted from these numbers to determine the parties' individual net interests. The first mortgage is \$80,000; \$40,000.00 is apportioned to each. The husband has been assigned the entire second mortgage in the amount of \$19,000.00. So, the husband will ultimately net \$238,400.00 and the wife will net \$62,600.00.

Elsewhere in the judgment, the trial court discusses a \$19,000.00 second mortgage on the home obtained by the parties, the proceeds of which were used by the husband individually after separation. However,

in the balance sheet figuring the amount due to each party, the trial court lists the amount of this same second mortgage as \$20,000.00. Our record is insufficient to establish which amount is correct. This is apparently a scrivener's error which should be corrected on remand.

Accordingly, we reverse the judgment and remand for modification.

STEVENSON, C.J. and POLEN, J., concur.

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Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Jack H. Cook, Judge; L.T. Case No. 502003DR001054XXDIFB.

Troy W. Klein of Troy W. Klein, P.A., West Palm Beach, for appellant.

No appearance for appellee.

***Not final until disposition of timely filed motion for rehearing.***