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## COMMENT

### MARITAL ALCHEMY: UNRAVELING BUSINESS GROWTH IN MARITAL DISSOLUTION

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#### Introduction

In the alchemy of marital dissolution, where assets transform through legal crucibles, defending separate property from equitable division is among the most contentious processes. In 2021, Oklahoma County recorded a staggering 14,941 divorce decrees,<sup>1</sup> involving a diverse range of litigants, including business owners intent on protecting their hard-earned assets. Among these cases were Frank and Celes Williams, whose legal dispute highlighted the complexities of asset division and the distinction between marital and separate property. Marital dissolution, guided by principles of equitable distribution, necessitates navigating these

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\* Juris Doctor candidate, Oklahoma City University School of Law, May 2026. I dedicate this comment to Angie Hill and Karina White for helping me find my voice as a writer, to my mother and brother for their unwavering support, and to my late father, the most zealous academic I have ever known.

1. Kathy Hamm et al., *Marriage and Divorce Statistics: 2010 - 2022 by County of Issuance*, OKLA. STATE DEP'T HEALTH (2023), [https://oklahoma.gov/content/dam/ok/en/health/health2/aem-documents/data-and-statistics/center-for-health-statistics/health-care-information/vital-statistics/Final\\_MarriageDivorce\\_Report2022\\_a.pdf](https://oklahoma.gov/content/dam/ok/en/health/health2/aem-documents/data-and-statistics/center-for-health-statistics/health-care-information/vital-statistics/Final_MarriageDivorce_Report2022_a.pdf) [https://perma.cc/AM7J-BE58].

distinctions to ensure fair outcomes amidst various financial circumstances, while also considering the ethical implications associated with the different types of businesses involved.

### I. Relevant Law

Marital dissolution involves the division of the marital estate, which consists of real and personal property. This process, known as equitable distribution, distinguishes between “marital property” and “separate property.”<sup>2</sup> Subject to division during a divorce, marital property includes all assets and liabilities acquired during the marriage, such as real estate, personal belongings, and financial assets.<sup>3</sup> Conversely, separate property refers to assets owned before marriage or acquired during marriage through gift or inheritance.<sup>4</sup> This distinction is crucial as separate property is not subject to equitable distribution.<sup>5</sup> Typically, courts narrowly interpret the definition of separate property, placing the burden of proof on the party claiming an item as separate property.<sup>6</sup> Therefore, failure to demonstrate that an asset is separate property results in its classification as marital property.<sup>7</sup>

Assets initially identified as separate property may become marital property eligible for equitable distribution if they are commingled with marital assets and cannot be traced back directly to their original separate property status.<sup>8</sup> This commingling must involve “treat[ing] [the] separate property in a manner so that it alters [the parties’] legal relationship to the property.”<sup>9</sup> Additionally, a party may claim entitlement to separate property by proving that an increase in property value, “resulting from the active efforts of the parties during the marriage,” makes it a divisible marital asset.<sup>10</sup> If a party claims that their separate property has appreciated in value during the marriage, the court must determine the current fair market value of the property minus any current liabilities.<sup>11</sup> The court must also establish the

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2. 134 AM. JUR. *Trials* 419 § 9 (2014).

3. *Id.*

4. 134 AM. JUR. *Trials* 419 § 10 (2014).

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Williams v. Williams*, 2024 OK CIV APP 8, ¶ 16, 544 P.3d 960, 965 (citing *Standefer v. Standefer*, 2001 OK 37, ¶ 16, 26 P.3d 104, 108).

10. *Id.* ¶ 21, 544 P.3d at 966.

11. 134 AM. JUR. *Trials* 419 § 11 (2014).

property's value as of the date of marriage, subtracting any liabilities from that time.<sup>12</sup> The difference between these values represents the "appreciation."<sup>13</sup>

Next, the court must decide whether this appreciation remains separate property or becomes marital property by examining whether the appreciation resulted from passive or active efforts. "Passive appreciation" occurs when property increases in value due to market forces rather than the efforts of the spouses during the marriage.<sup>14</sup> If appreciation is deemed passive, it remains separate property and is not subject to equitable distribution.<sup>15</sup> Conversely, "active appreciation" results from the active, ongoing efforts of one or both spouses during the marriage.<sup>16</sup> When appreciation is classified as active, it is considered marital property and is subject to equitable distribution.<sup>17</sup> Therefore, in business ownership, when a spouse starts and develops a business during the marriage, that business becomes marital property and is subject to equitable distribution. However, if one spouse enters a marriage with a pre-existing business (i.e., *separate property*), but both spouses' efforts increase the business' value, the appreciation becomes marital property and is subject to fair distribution.

Under Oklahoma law, fair distribution is not synonymous with "equal."<sup>18</sup> According to OKLA. STAT. tit. 43, § 121(B) (2012):

[The court may mandate] division [of jointly acquired real or personal property] between the parties as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to be paid such sum as may be just and proper to effect a fair and just division thereof.<sup>19</sup>

Thus, the court has the discretion to determine what constitutes a "fair" and "equitable" division based on the weight of the evidence presented.<sup>20</sup> The party

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12. *Id.* § 13.

13. *Id.*

14. *Id.* § 11.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Williams v. Williams*, 2024 OK CIV APP 8, ¶ 7, 544 P.3d 960, 963 (citing *Gray v. Gray*, 922 P.2d 615, 620 (Okla. 1996)).

19. OKLA. STAT. tit. 43, § 121(B) (2012).

20. *Williams*, ¶ 31, 544 P.3d at 969 (citing *Thielenhaus v. Thielenhaus*, 890 P.2d 925, 931 (Okla. 1995)).

seeking appreciation must prove that the increase in value resulted from either spouse's efforts. However, the opposing spouse is not required to prove that part of the increase was due to passive factors.<sup>21</sup> The opposing spouse can disagree and present evidence, "but it [is] inequitable and illogical to require the non-owning spouse to do so."<sup>22</sup>

## II. The Case

In 2010, Frank Williams started Williams Gas Compression, LLC.<sup>23</sup> He and his future wife, Celes, invested significant resources and effort into kickstarting the business.<sup>24</sup> To support the business's formation, Celes's father, Mr. Sutton, signed a \$100,000 line of credit, which Frank repaid; however, "[n]o physical evidence regarding the line of credit was presented to the Court."<sup>25</sup> Celes and Mr. Sutton also signed the LLC's organizing document.<sup>26</sup> On September 15, 2010, the company changed its name to Snyder Energy Solutions, LLC ("Snyder").<sup>27</sup> The Operating Agreement listed Frank as the sole member owning 100% of the shares.<sup>28</sup> Neither Mr. Sutton nor Celes appeared as members or owners of the company on any documentation.<sup>29</sup> Tax documents confirmed Frank as the only shareholder of Snyder.<sup>30</sup>

At their wedding in December 2012, the business had little value.<sup>31</sup> During their marriage, both Frank and Celes worked extensively for Snyder; however, Celes never received compensation, and neither partner took a full salary.<sup>32</sup> Frank's efforts were significant, handling 80 to 150 business emails and 125 to 160 business calls daily, totaling about 10,500 monthly communications.<sup>33</sup> He directed operations, met

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21. *Id.* ¶ 30, 544 P.3d at 969.

22. *Id.*

23. *In re Marriage of Williams: Decree of Dissolution of Marriage*, FD-2018-149, ¶ 10 (Okla. Cnty. 2018).

24. *Williams*, ¶ 5, 544 P.3d at 963.

25. *Id.* ¶¶ 3, 9, 544 P.3d at 962, 964 (footnote omitted).

26. *Id.* ¶ 3, 544 P.3d at 962.

27. *In re Marriage of Williams*, *supra* note 23.

28. *Williams*, ¶ 4, 544 P.3d at 962-63.

29. *Id.* ¶ 8, 544 P.3d at 963-64.

30. *Id.* ¶ 9, 544 P.3d at 964.

31. *Id.* ¶ 25, 544 P.3d at 967.

32. *See id.* ¶ 27, 544 P.3d at 968, n.8 [Celes] did not receive a salary, and [Frank] eventually received a salary for tax purposes, but of only \$40,000. The experts opined a salary for [Frank] of either \$100,000 or \$150,000 would have been more realistic."

33. *Id.*

with customers, communicated regularly with bankers, and served as the “keyman and sole executive.”<sup>34</sup> Celes described her role in the business as “minimal” before the marriage but took on a “larger role” afterward and contributed significantly to the business while raising their two children.<sup>35</sup>

Further evidence suggested that Frank possibly compromised Snyder’s separate status during the marriage. Celes stated that they used business funds to purchase a boat and an Audi, along with various trucks.<sup>36</sup> Frank explained these as business expenses, with the boat specifically bought for entertaining clients.<sup>37</sup> He also sold a drill truck for \$165,000 during the marriage and deposited the proceeds into a personal account because the buyer wrote the check in his name.<sup>38</sup> Following his CPA’s advice, he “transferred \$77,000 to a business account[] and took the remaining amount . . . as ‘a draw,’” which he reported on his taxes.<sup>39</sup> The couple used this money during the marriage.<sup>40</sup>

Celes and Frank separated around August 2017, and Celes filed a Petition for Dissolution of Marriage in January 2018.<sup>41</sup> By the trial date for the dissolution of the marriage, Snyder had risen from zero value to an estimated marital value of \$3,000,000; however, expert opinions may have inflated this value, as recorded in other petition records.<sup>42</sup>

In sum, throughout the marriage, Frank’s dedication to the business was evident in his relentless work schedule, acting as the primary decision-maker and strategist for Snyder. Meanwhile, Celes balanced her increased responsibilities at the company with raising their children, demonstrating a significant shift from her minimal involvement before the marriage to a more substantial role afterward. Frank’s leadership and Celes’s growing participation highlighted the complex interplay of personal and professional contributions within their marital partnership and growing business, foreshadowing the battle over appreciation to come.

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34. *Id.*

35. *Id.* ¶ 8, 544 P.3d at 964.

36. *Id.* ¶ 17, 544 P.3d at 966.

37. *Id.*

38. *Id.* ¶ 18, 544 P.3d at 966.

39. *Id.*

40. *Id.*

41. *In re Marriage of Williams*, Dist. Court No. FD-2018-149, at 2 (Okla. Cnty. 2018), petition for cert. filed (Okla. May 5, 2023) (No. 119960).

42. *See Williams*, ¶¶ 25-26, 544 P.3d at 967.

*A. Procedural History*

In the September 2021 Decree, the District Court of Oklahoma County ruled that Snyder Energy Solutions, LLC, along with all its assets and liabilities, belonged solely to Frank.<sup>43</sup> The court carefully examined the roles played by Celes and her father, noting that while her father had facilitated a \$100,000 line of credit to start the company—a debt which Frank repaid—and served as the service agent, these actions did not confer partnership status or membership in the LLC to Celes or her father.<sup>44</sup> The Operating Agreement clearly designated Frank as the sole owner, a designation corroborated by tax documents submitted to the court.<sup>45</sup>

Despite Celes bearing the burden of proving that the business appreciated in value during their marriage, the district court concluded that her expert witness failed to substantiate any increase attributable to the efforts of either spouse.<sup>46</sup> While Celes undeniably contributed to the business, the extent and impact of her contributions were disputed by Frank, who minimized her role.<sup>47</sup> The court found that the evidence presented by Celes fell short of demonstrating a value increase beyond what could be attributed to market forces, thus affirming that any appreciation was passive rather than active.<sup>48</sup>

Consequently, the court affirmed that Snyder Energy Solutions, LLC remained Frank's separate property and was therefore not subject to equitable distribution between the parties.<sup>49</sup> Celes subsequently appealed this decision to the Court of Civil Appeals of Oklahoma in April 2023, seeking a review and reversal of the district court's findings.<sup>50</sup>

*B. The Court's Analysis*

In its 2024 mandate, the Court of Civil Appeals evaluated Celes's four main arguments on appeal by applying Oklahoma precedent: (1) the district court erred in ruling that the business was Frank's separate property before the marriage; (2) even if the business was Frank's separate property before marriage, the efforts of both parties converted it into marital property; (3) Frank commingled the business's

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43. *Id.* ¶ 3, 544 P.3d at 962.

44. *Id.*

45. *Id.* ¶ 4, 544 P.3d at 962-63.

46. *Id.* ¶ 5, 544 P.3d at 963.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* ¶ 6, 544 P.3d at 963.

assets and expenses, blurring corporate distinctions and making the business marital property; and (4) the business appreciated due to the combined efforts and skills of both parties during the marriage, warranting a fair distribution of this increased value to Celes.<sup>51</sup> The court's standard of review on appeal allows a challenge to the trial court's property division only if there is clear evidence of abuse of discretion or if the decision contradicts the weight of evidence.<sup>52</sup>

*i. Separate Property*

Celes argued that the district court erred in determining the business belonged to Frank as separate property before marriage.<sup>53</sup> The court noted that the Williams' circumstances regarding separate property are distinguishable from the case of *Thielenhaus v. Thielenhaus*.<sup>54</sup> In *Thielenhaus*, a husband and wife sought a divorce, each reclaiming their separate property and equitably dividing marital assets.<sup>55</sup> The husband, employed at a company for forty years, participated in the company retirement plan.<sup>56</sup> The independently managed retirement account had no contribution from the wife or her family, rendering the plan separate property.<sup>57</sup> In contrast, Celes's father provided a \$100,000 line of credit, yet the testimony and evidence did not disprove Frank as the sole owner of Slyder.<sup>58</sup>

Although Celes's father was named as the service agent for the company, and both Celes and her father signed Slyder's organizing document filed with the Secretary of State, testimony clarified that Oklahoma does not require ownership to be listed with the Secretary of State.<sup>59</sup> Furthermore, the Operating Agreement specifies Frank as the sole owner.<sup>60</sup> Celes acknowledged during the trial that no documents granted her ownership, and tax documents confirmed Frank as the sole shareholder.<sup>61</sup> Also, the business began in 2010 while Frank and Celes were dating, with a separation from early 2011 to summer 2012.<sup>62</sup> There was also no physical evidence of the line of credit, and the court accepted Frank's testimony that Celes's

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51. *Id.* ¶¶ 8-21, 544 P.3d at 963-67.

52. *Id.* ¶ 7, 544 P.3d at 963.

53. *Id.* ¶ 8, 544 P.3d at 963-64.

54. *Id.*

55. *Thielenhaus v. Thielenhaus*, 890 P.2d 925 (Okla. 1995).

56. *Id.* at 927.

57. *Id.* at 932.

58. *Williams*, ¶ 8, 544 P.3d at 963-64.

59. *Id.*

60. *Id.*

61. *Id.* ¶¶ 8-9, 544 P.3d at 963-64.

62. *Id.* ¶ 8, 544 P.3d at 964.

father was merely a cosigner who did not contribute financially, aligning the Williams to the *Thienlenhaus* parties.<sup>63</sup> Based on this evidence, the court ultimately affirmed that Snyder was Frank's separate property before the marriage.<sup>64</sup>

*ii. Commingling—Treatment of the Property*

Next, the court considered Celes's argument that even if Frank's property is to be considered separate, the couple "changed the [character of the] property . . . to marital property . . . through their combined . . . efforts and skills in building [the business]" through the treatment of the property.<sup>65</sup> In support, Celes pointed the court to *Standefer v. Standefer* and *Umber v. Umber*. In *Standefer*, a husband suffered severe electrocution, and his wife assisted with his recovery.<sup>66</sup> During their marriage, the couple filed a lawsuit against the tortfeasor for his injuries and her loss of consortium.<sup>67</sup> The couple chose a joint settlement, using the funds for medical expenses and investing the remainder in three annuities benefiting both.<sup>68</sup> Upon marital dissolution, the court determined that their separate interests in the claims became marital property.<sup>69</sup> Thus, the settlement funds, cash, and annuities were subject to equitable distribution, as they were acquired during the marriage.<sup>70</sup>

Similarly, in *Umber*, during their marriage, a wife and her husband managed their jointly owned pharmacy and divided their assets equally upon divorce.<sup>71</sup> The wife contributed \$3,700, an automobile, and furniture, which, along with the husband's \$25,000, they used to purchase the pharmacy, merging their separate property into marital property.<sup>72</sup> To operate the pharmacy, the wife obtained her pharmacy degree and worked there without receiving a salary, significantly contributing to building a marital estate totaling \$150,000 over twenty years.<sup>73</sup> Consequently, the court ruled that the property the husband owned before marriage lost its separate status due to commingling funds, thereby becoming marital

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63. *Id.* ¶ 10, 544 P.3d at 964.

64. *Id.* ¶ 10, 544 P.3d at 964-65.

65. *Id.* ¶ 11, 544 P.3d at 964-65.

66. *Standefer v. Standefer*, 2001 OK 37, ¶¶ 3-4, 26 P.3d 104, 106.

67. *Id.* ¶ 5, 26 P.3d at 106.

68. *Id.* ¶¶ 5-7, 26 P.3d at 106.

69. *Id.* ¶ 23, 26 P.3d at 110.

70. *Id.*

71. *Umber v. Umber*, 591 P.2d 299, 300 (Okla. 1979).

72. *Id.* at 302.

73. *Id.*

property.<sup>74</sup> This decision allowed the wife to share equally in the division of assets at the time of divorce.<sup>75</sup>

*Standefer* and *Umber*, though persuasive caselaw in other factual scenarios, do not align with the present case because Frank started the business before the marriage. Therefore, the court explained that discussions regarding acquiring funds during marriage as in *Standefer* and commingling assets for business purchase as in *Umber* do not apply. Thus, the court maintained the district court's decision that *Slyder* remains separate property.<sup>76</sup>

### iii. *Commingling—Abuse of Corporate Distinction*

In arguing that *Slyder* remained Frank's separate property but should still be equitably divided due to alleged commingling and abuse of corporate distinction, the court found insufficient trial evidence to support these claims.<sup>77</sup> Celes contended that vehicles were purchased through the business.<sup>78</sup> Conversely, Frank testified these acquisitions, such as the Audi and a boat used for client entertainment, were legitimate business expenses, not instances of corporate abuse.<sup>79</sup> He also described selling a business vehicle, transferring \$77,000 to a business account, and withdrawing the remainder as a "draw," leaving it in his personal account and reportedly accounting for it on his taxes.<sup>80</sup> Despite Celes's claims that business funds were used for personal expenses, she conceded the funds were placed in personal accounts for tax purposes, consistent with expert testimony.<sup>81</sup> Thus, the court upheld the district court's conclusion that Frank did not abuse corporate funds, which would have constituted commingling.<sup>82</sup>

### iv. *Increase in Value During the Marriage*

Finally, Celes argued that she and Frank enhanced the business through their joint efforts and skills in the process of active appreciation, rather than by passive

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74. *Id.*

75. *Id.*

76. *Williams v. Williams*, 2024 OK CIV APP 8, ¶ 10, 544 P.3d 960, 964.

77. *Id.* ¶ 17, 544 P.3d at 965.

78. *Id.*

79. *Id.* ¶ 17, 544 P.3d at 965.

80. *Id.* ¶ 18, 544 P.3d at 966.

81. *Id.* ¶ 19, 544 P.3d at 966.

82. *Id.* ¶ 20, 544 P.3d at 966.

appreciation of market forces.<sup>83</sup> To bolster her argument, Celes referenced two compelling cases: *Moyers v. Moyers* and *Templeton v. Templeton*. In *Moyers*, a wife owned and operated an electric company.<sup>84</sup> The husband, originally an employee, began co-managing the company after their marriage.<sup>85</sup> The couple jointly operated the business, with the husband taking primary management from 1948 to 1952 when it was sold.<sup>86</sup> Despite initial denials, evidence showed the husband contributed to the company. The court determined that the company's growth and profits, resulting from joint efforts, were marital property.<sup>87</sup>

While Celes argued that her case closely aligned with *Moyers*, she distinguished it from *Templeton*. In *Templeton*, when a wife and husband married, the wife owned an apartment complex purchased with her inheritance, and the husband contributed no funds to the property.<sup>88</sup> The property's value increased mainly due to inflation (i.e., *passive appreciation*), while the husband provided minor labor and management skills.<sup>89</sup> However, the husband received a salary for his efforts and was largely dependent during the marriage, compensating for any contributions he made to the business.<sup>90</sup> The court ruled that the husband's efforts did not constitute active appreciation, so he was not entitled to the apartment complex's increased value.<sup>91</sup>

The court in its decision determined Celes's efforts surpassed those of the husband in *Templeton*. Rather, her contribution to SLYDER's growth "from nothing to something" mirrored the husband in *Moyers*.<sup>92</sup> Expert testimony indicated that the active appreciation of the business, due to marital efforts, ranged between \$584,100 to \$2,822,600.<sup>93</sup> A causal connection was established between Celes's role, albeit smaller compared to Frank's, and the business's value growth, rather than passive market forces. Therefore, the court determined that Celes was entitled to an interest and reversed the part of the Divorce Decree that had designated the increase in the business's value during the marriage as Frank's separate property. Upon remand, the court instructed the district court to evaluate the portion of the

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83. *Id.* ¶ 21, 544 P.3d at 966.

84. *Moyers v. Moyers*, 372 P.2d 844, 845 (Okla. 1962).

85. *Id.*

86. *Id.*

87. *Id.* at 846.

88. *Templeton v. Templeton*, 656 P.2d 250, 251 (Okla. 1982).

89. *Id.* at 253.

90. *Id.*

91. *Id.* at 252.

92. *Williams v. Williams*, 2024 OK CIV APP 8, ¶ 25, 544 P.3d 960, 967.

93. *Id.* ¶ 26, 544 P.3d at 967.

business's value that the parties jointly acquired during the marriage based on the presented evidence and to divide this portion equitably between both parties.<sup>94</sup>

### III. Parting Words

*Williams v. Williams* illustrates the Oklahoma Supreme Court's commitment to following Oklahoma's legal precedents in navigating complex property division issues in divorce cases, ensuring fair treatment and distribution based on each case's factual and legal framework. The court conducted a rigorous review of the case, actively seeking clear evidence of any abuse of discretion or decisions conflicting with the weight of evidence, thereby ensuring that the trial court decision was grounded in substantial evidence presented during the proceedings.

When evaluating the business's appreciation, the court considered expert testimony and precedent cases, recognizing Celes's contributions to its growth. This recognition prompted a revised decision favoring equitable distribution in the divorce proceedings. By remanding the case for a reassessment of the portion of the business value accrued during the marriage, the court ensured that both parties would receive a fair share based on their respective contributions and the evidence presented. Such a decision underscores the court's dedication to fairness and justice in dividing marital assets; however, courts have yet to fully explore the broader implications of this precedent.

### IV. An Ethical Dilemma

From thriving oil and gas enterprises to bustling apartment complexes and community pharmacies, ownership in business ventures presents numerous challenges for owners as couples unravel both their romantic and business partnerships. The doctrine of appreciation of separate assets in marital dissolution potentially creates an ethical dilemma by permitting non-owners to benefit from the growth of their partners' businesses due to joint efforts. Suppose a practicing attorney opens a small law firm in downtown Oklahoma City. After successfully establishing her practice and operating for several years, she falls in love with a man. Following their marriage, her husband insists on assisting her with the firm, volunteering as her receptionist without pay. As time passes, the couple's efforts transform the small firm into a multi-million-dollar enterprise, representing Oklahoma's largest clientele. Whether due to the pressures of the legal profession or other irreconcilable differences, the couple decides to file for divorce. The

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94. *Id.* ¶ 31, 544 P.3d at 969.

husband relies on *Williams* and its citing authorities in bolstering his argument that the growth in assets of the wife's firm, though separate property, is subject to equitable distribution. However, the question remains as to whether the husband's uncompensated joint efforts, akin to those of Celes in *Williams*, will entitle him to share in the profits and revenue of the law firm.

According to the Model Rules of Professional Conduct Rule 5.4 and Rule 5.4 of the Oklahoma Rules of Professional Conduct, law firms are prohibited from providing non-lawyers with ownership or any form of investment or revenue-sharing opportunities.<sup>95</sup> Both rules outline specific exceptions, such as allowing lawyers to include non-lawyer employees in compensation or retirement plans based on profit-sharing arrangements.<sup>96</sup> However, forming partnerships with non-lawyers for activities involving law practice is strictly forbidden.<sup>97</sup> Additionally, non-lawyers cannot have ownership interests in professional corporations or associations practicing law for profit, nor can they direct or regulate a lawyer's professional judgment in legal matters.<sup>98</sup> However, these exceptions do not include the active appreciation of law firms as separate property in marital dissolution proceedings.<sup>99</sup> As such, it remains uncertain how an Oklahoma court would address the hypothetical law firm owner and her husband and whether the court would apply the American Bar Association's Rule 5.4 and Oklahoma's Rule 5.4 to bar the non-lawyer spouse from benefiting from the firm's appreciation. To explore how an Oklahoma court might address this supposed scenario, it is useful to consider cases from the Tenth Circuit that, while focused on different legal issues, shed light on the treatment of law firm assets and their appreciation in marital dissolution.<sup>100</sup>

*Draskovich v. Draskovich* involved an attorney who established and operated a law group valued at over a million dollars.<sup>101</sup> Because the attorney owned the business before the marriage, the business was considered his separate property, with any subsequent increase in value presumed to remain separate as well. In divorce proceedings, the firm was contested as marital property, or "community

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95. MODEL RULES OF PRO. CONDUCT, r. 5.4 (AM. BAR ASS'N, 2024); OKLA. STAT. tit. 5A, app 3-A R. 5.4.

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. See *Draskovich v. Draskovich*, 545 P.3d 96 (Nev. 2024); *In re Marriage of Zells*, 572 N.E.2d 944 (Ill. 1991); *Musser v. Musser*, 909 P.2d 37 (Okla. 1995).

101. *Draskovich*, 545 P.3d at 98.

property.”<sup>102</sup> The district court ruled the firm was community property.<sup>103</sup> However, the Nevada Supreme Court later held the firm to be separate property of the attorney.<sup>104</sup> Nevertheless, the court acknowledged the potential impact of community resources on the firm’s growth during the marriage and, accordingly, remanded the case.<sup>105</sup> On remand, the wife was given the opportunity to present clear and convincing evidence to establish the extent of the community’s contribution to the firm’s growth and to facilitate a fair apportionment of any resulting value.<sup>106</sup> Thus, upon remand, the district court of *Draskovich* likely grappled with ethical considerations, exemplifying a scenario where a non-lawyer might have the opportunity to receive benefits from a law firm.

Conversely, *In re Marriage of Zells* analyzed the treatment of contingency fees in marital dissolution between a lawyer and a non-lawyer and focused on whether the lawyer’s contingency fees and professional goodwill—reflecting the professional’s skill, expertise, and reputation—are marital assets.<sup>107</sup> The court concluded that contingency fees and professional goodwill do not qualify as marital assets for valuation, division, or distribution.<sup>108</sup> The court briefly considered the implications of the Illinois Rules of Professional Conduct,<sup>109</sup> equivalent to the Model Rules of Professional Conduct, but ultimately concluded that because it deemed the property separate with no option for equitable distribution, no ethical rule concerns arose, as it “decline[d] to enlarge the [Rule 5.4 of the Illinois Rules of Professional Conduct’s] exceptions to include a contingent fee fee-sharing arrangement resulting from a judgment of dissolution.”<sup>110</sup> Moreover, in *Musser v. Musser*, the court addressed contingency fees in divorce proceedings between an attorney and a non-attorney, concluding that the lawyer’s 400 contingency fee cases could not be considered assets for marital property or factored into property division alimony, as the fees “do not have the same expectation of vesting which permits greater certainty in fixing value and for establishing present worth.”<sup>111</sup>

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102. *Id.* at 99.

103. *Id.* at 101.

104. *Id.*

105. *Id.* at 100-01

106. *Id.*

107. *In re Marriage of Zells*, 572 N.E.2d 944 (Ill. 1991).

108. *Id.* at 945.

109. ILL. SUP. CT. R. PRO. CONDUCT r. 5.

110. *In re Marriage of Zells*, 572 N.E.2d at 945.

111. *Musser v. Musser*, 909 P.2d 37, 41 (Okla. 1995) (quoting *Beasley v. Beasley*, 518 A.2d 545, 555 (Pa. Super. Ct. 1986)).

Thus, these cases indicate a trend where courts shield law firm assets from division in divorce, particularly when the assets are considered separate property and not subject to joint marital efforts. This protection aligns with the principle that the appreciation of assets, driven by the professional efforts of a lawyer's spouse, remains insulated from equitable distribution unless clear evidence of marital contribution exists. The dicta of *Williams*, particularly proving that "marital efforts were a causal factor in the enhancement in value of [a] business" demonstrates how courts evaluate the intersection of personal and professional contributions in marital dissolution cases.<sup>112</sup> Such an approach suggests the importance of balancing asset protection with preserving the independence of the legal profession in marital dissolution in the legal field.

### V. Conclusion

The case of *Williams v. Williams* demonstrates the need for careful legal consideration in property division during marital dissolution, ensuring that both parties receive a fair share based on their contributions and efforts. Such a quest for fairness in marital dissolution has the potential to transform every asset into either gold or lead. *Williams* sets a precedent for future cases in Oklahoma, raising potential ethical questions about non-owners benefiting from their partners' business appreciation and highlighting challenges in cases involving professional practices and business ventures.

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112. *Williams v. Williams*, 2024 OK CIV APP 8, ¶ 29, 544 P.3d 960, 968 (footnote omitted).