

# Another Look At Goodwill

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Until this week, *In re Marriage of Zells*, 143 Ill.2d 251 (Ill. 1991), was the leading Illinois case dealing with goodwill of a spouse's professional practice. In *Zells*, the wife contended that goodwill of her husband's law practice should be considered in the distribution of their marital property. The Illinois Supreme Court disagreed with Mrs. Zells and held that goodwill was "merely the ability to acquire future income"; therefore, as a personal asset to the professional spouse, it should not be included in the marital estate for purposes of division and distribution of the business itself. However, personal goodwill is a factor the court should consider in examining the income potential of the professional spouse for purposes of determining maintenance and support. Any additional consideration of goodwill value would be duplicative and improper.

Subsequently, the Illinois Supreme Court expanded that principle to cases involving other types of non-professional businesses. In *In re Marriage of Talty*, 166 Ill.2d 232 (Ill. 1995), which involved an automobile dealership, the Court held that personal goodwill should not be considered property but instead should be considered as an aspect of income potential under the statutory factors bearing on property division. Notably, in *Talty*, no award of maintenance or child support was made but the Court still held that personal goodwill should not be valued as a separate asset of the business.

In 2003, the Appellate Court took a divergent view of the aforementioned principles and held that the *Zells* case applies only where maintenance is also awarded, so that any division of goodwill would be a double recovery. *In re Marriage of Schneider*, 343 Ill.App.3d 628 (2d Dist. 2003). Because no maintenance was awarded in *Schneider* (Mrs. Schneider waived her right to maintenance) the Appellate Court held that professional goodwill of a dental practice could be treated as marital property. The Court reasoned that, where a spouse waives maintenance, there is no danger of double counting from the same income stream because the same goodwill is not being applied to an award of maintenance.

On Friday, the Illinois Supreme Court reversed that portion of *Schneider*, No. 97430 (Ill. Jan. 21, 2005), which held that personal goodwill should have been included in the valuation of the husband's dental practice. The Court held that the Appellate Court misinterpreted *Zells* by believing that personal goodwill must be reflected in both the maintenance and child support awards; otherwise, exclusion of it from the valuation of the business would result in an unfair and unjust distribution of marital property. However, as the Supreme Court made clear in *Talty* and in *Zells*, the basis for not separately valuing personal goodwill is because such goodwill is already reflected in other factors the Court must consider in making an equitable division of property; it has little to do with whether maintenance and child support are awarded.

In *Schneider*, as in *Talty*, the personal goodwill of the husband's dental practice was already considered in deciding to award the wife a disproportionate share of the marital assets. Any further consideration of that goodwill in valuing the practice would be impermissible double counting.