

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

KANG WON HEE,
Plaintiff-Appellant,

v.

HYUNG KUEN OH,
Defendant-Appellee.

SUPREME COURT NO. 2010-SCC-0016-FAM
SUPERIOR COURT NO. 07-0290

Cite as: 2011 MP 18

Decided December 30, 2011

George Anthony Long, Saipan, MP, for Plaintiff-Appellants.
Stephen J. Nutting, Saipan, MP, for Defendant-Appellee.

BEFORE: MIGUEL S. DEMAPAN, Chief Justice (Ret.);¹ ALEXANDRO C. CASTRO, Acting Chief Justice;
JOHN A. MANGLONA, Associate Justice.

CASTRO, J.:

¶ 1 Plaintiff-Appellant Kang Won Hee (“Kang”) appeals the trial court’s distribution of marital property, arguing that the trial court erred by distributing all interests, both tangible and intangible, in their business, the Korean Business Center (“KBC”), to her former husband, Hyung Kuen Oh (“Oh”). For the reasons stated herein, we vacate the trial court’s distribution of KBC because the trial court did not make a valuation of KBC before making its distribution award to Oh and failed to support its award with specific findings of fact. We remand to the trial court for a proper valuation of KBC and for an equitable distribution thereof based on specific findings of fact.

I

¶ 2 Kang and Oh married in Korea in December 1979. The couple has three children who have all reached the age of majority. Oh moved to Saipan in 1986 and Kang followed with their children the next year. In May 1987, the couple opened KBC, a business incorporated under the name Pasipiko, Inc. KBC provides bookkeeping, accounting, tax preparation, and document handling services. Over the next several years, the couple opened another business known as Oasis Corporation (“Oasis”) and acquired real properties in Saipan and Korea. Oh has worked at KBC since its incorporation and Kang began to work at KBC in 1992.

¶ 3 In May 2007, Kang filed for divorce, alleging cruel treatment, neglect, and personal indignities. After filing for divorce, the couple attended marriage counseling but their differences were irreconcilable. Oh moved out of the family’s home but both Kang and Oh continued to work at KBC. Before the divorce, but after the parties became legally separated, Kang incorporated her own business, Provenance, Inc., doing business as Hanmi Professional Services (“Hanmi”). In August 2007, Kang began leasing a separate office space for Hanmi. During this time, Kang continued to work at KBC on a daily basis. Oh filed a motion to remove Kang from KBC, claiming that Kang was diverting customers and business to Hanmi. The trial court ordered Oh and Kang to divide the workday so that they would not be at KBC at the same time. Despite this court order, Kang and Oh continued to report problems working with one another.

¶ 4 In February 2008, the trial court issued a decree of divorce distributing some of the marital property pursuant to stipulations. However, this decree did not address the parties’ three corporations: KBC, Oasis, and Hanmi. Pending final distribution of the marital estate, the trial court ordered Kang to

¹ Former Chief Justice Miguel S. Demapan heard oral argument. He retired from the Commonwealth Judiciary prior to the issuance of this opinion.

vacate the premises of KBC and ordered Oh to continue to operate KBC. Kang continued to operate Hanmi during this period.

¶ 5 In November 2010, the trial court issued its amended findings of fact and conclusions of law distributing the outstanding marital property. Regarding the three corporations, the trial court: (1) equally distributed the stock of Oasis between Kang and Oh; (2) awarded all interests in Hanmi to Kang since Kang formed Hanmi after the couple separated; and (3) awarded all interests in KBC to Oh.² *Kang v. Oh*, No. 07-0290 (NMI Super. Ct. May 17, 2010) (Amended Findings of Fact and Conclusions of Law at 6-8) (“Amended Findings”). In refusing to distribute any interest in KBC to Kang, the trial court indicated that the “main factor” that influenced its decision was that Kang diverted several clients from KBC to Hanmi before the court ordered her to vacate KBC. Amended Findings at 7. Based on testimony from Oh, the trial court found that the clients who left KBC for Hanmi represented more than half of KBC’s annual revenue. It reasoned that, by effectively taking clients representing half of KBC’s revenue, Kang de facto distributed the business between herself and her former husband and that distribution of half of KBC’s stock to Kang would result in a “double award.” *Id.* at 7-8.

II

¶ 6 The Supreme Court has appellate jurisdiction over judgments and orders of the Superior Court of the Commonwealth. 1 CMC § 3102(a).

III

A. *Kang’s Failure to Prepare a Transcript*

¶ 7 Oh argues that this Court cannot find the trial court erred in distributing KBC because Kang failed to submit an adequate record on appeal. Specifically, Oh argues that since Kang neither ordered a transcript nor certified that no transcript would be ordered, she violated Supreme Court Rule 11-1(b). According to Oh, Kang’s violation of the Supreme Court Rules necessitates dismissal of the appeal since, without the transcript, this Court does not have an adequate evidentiary record to review the trial court’s decision.

¶ 8 In order to review factual determinations made by trial courts, an appellant must provide this Court with an adequate evidentiary record. *See Commonwealth v. Camacho*, 2009 MP 1 ¶ 20 (stating that, without the transcript, the Court was unable to review the jury’s finding of guilt); *Commonwealth v. Repeki*, 2003 MP 1 ¶ 18 (declining to reach issue of whether trial court erred in closing the courtroom, because defendant did not provide relevant portion of the transcript). Because Kang failed to provide a transcript, we cannot determine whether the evidence considered by the trial court supported its findings.

² Neither party contests the trial court’s distribution of Oasis, Hanmi, or any other marital property apart from KBC.

However, Kang’s failure to file a transcript is not fatal to her appeal.³ The main issue in this appeal is whether the Commonwealth requires valuation of a closely-held corporation⁴ supported by specific findings of fact before distribution by the trial court. This issue is a question of law which we review de novo. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 4 (questions of law are reviewable de novo). Since this is a question of law reviewed de novo, we do not need a transcript to decide the issue.

B. Distribution of KBC

¶ 9 “The division of marital property is subject to the broad discretion of the trial court, whose determinations will be upheld on appeal unless there is a clear showing of an abuse of discretion.” *Reyes v. Reyes*, 2004 MP 1 ¶ 3 (citing *McNett v. McNett*, 501 P.2d 1059, 1061 (Idaho 1972)). After the court determines which property is marital property, it must equitably distribute that property. *Ada v. Sablan*, 1 NMI 415, 429 (1990); 8 CMC § 1311 (“In granting or denying an annulment or a divorce, the court may make such orders for . . . the disposition of either or both parties’ interest in any property in which both have interests, as it deems justice and the best interests of all concerned may require.”). Spouses have an undivided one-half interest in marital property. *Reyes*, 2004 MP 1 ¶ 27; 8 CMC § 1820(c) (“Each spouse has a present undivided one-half interest in marital property . . .”). Marital property should be divided equally unless there are strong circumstances that warrant an unequal division, such as fraud or waste. *Id.* ¶¶ 27-33. Here, there are no circumstances that warrant an unequal division. The trial court did not find that either of the parties committed fraud or waste, and neither party makes any claim as to fraud, waste, or other extenuating circumstances on appeal. See *Santos v. Nansay Micronesia, Inc.*, 4 NMI 155, 160 n.2 (1994) (noting that when a party does not discuss an issue in its brief, that issue is generally considered waived). Thus, Kang has an undivided one-half interest in all marital property and was entitled to an equitable distribution thereof.

1. Valuation of Marital Property Generally

¶ 10 The only marital property at issue in this case is KBC, a closely-held corporation owned by Kang and Oh. The trial court distributed all interests in KBC to Oh. Amended Findings at 8. On appeal, Kang argues that the trial court was required to make a valuation of KBC before distributing it. Appellant’s Opening Br. at 6-8 (citing *Reyes*, 2004 MP 1). We agree with Kang. In *Reyes*, we held that “[marital] property is to be valued as close as practicable to the date of trial.” 2004 MP 1 ¶ 73 (citations omitted). The necessary starting point for this statement is that all marital property in dispute must be valued prior

³ Our decision today should not be read to countenance the flaunting of the Supreme Court Rules. Every effort should be made to follow the Supreme Court Rules regardless of any party’s theory as to why compliance with the Supreme Court Rules may be unnecessary in a given context.

⁴ Closely-held corporations are “corporations of which the shares are owned by a relatively limited number of shareholders.” *Estate of Jelke v. Comm’r*, 507 F.3d 1317, 1322 (11th Cir. 2007) (citing an administrative ruling by the United States Internal Revenue Service)

to distribution. Without proper valuation, the trial court would have no ability to equitably divide marital property between the parties when, as is the case with KBC, the value of a particular asset is not immediately apparent.

2. Valuation of a Closely-Held Corporation

¶ 11 Having established that marital property must be valued before distribution, we must determine how this general rule applies in the context of closely-held corporations. Since there is no Commonwealth case that addresses this issue, we seek guidance from other jurisdictions that distribute marital property under an equitable distribution theory. *Santos v. Santos*, 2000 MP 9 ¶ 18 (looking to other United States jurisdictions for guidance in divorce context). The North Carolina Supreme Court addressed this issue in *Patton v. Patton*, 348 S.E.2d 593 (N.C. 1986). In *Patton*, the trial court’s findings of fact listed a number of factors the court analyzed to value a closely-held corporation before stating its conclusion regarding the corporation’s value. *Id.* at 594-95. The trial court did not, however, elaborate on whether certain factors influenced the court’s decision more than others and did not assign specific monetary values to the various factors. *Id.* The North Carolina Supreme Court reversed the trial court, holding that specific findings of fact are required in order to provide appellate courts with adequate evidence to review the trial court’s decision. *Id.* at 595. The court continued that, while the trial court need not recite every piece of evidence presented at trial, “precise findings and determinations of ultimate facts” are necessary to allow for informed appellate review. *Id.* We agree with the reasoning of the *Patton* court and hold that valuation of a closely-held corporation must be supported by specific findings of fact.

¶ 12 We must also assess whether there is a preferred method of valuing a closely-held corporation. “There are probably few assets whose valuation imposes as difficult, intricate and sophisticated a task as interests in close corporations.” *Dugan v. Dugan*, 457 A.2d 1, 6 (N.J. 1983) (citation omitted). As such, “[t]here is . . . no universal formula for determining the value of a closely held business.” *Nardini v. Nardini*, 414 N.W.2d 184, 189 (Minn. 1987); *see also id.* (“we are cognizant of the difficulty and the imprecision of valuing a closely held corporation . . .”). Given these difficulties, appellate courts have been hesitant to mandate the use of a specific approach to value closely-held corporations and choose instead to leave the initial decision of which method to use to the trial court’s discretion. *See, e.g., Miller v. Miller*, 705 S.E.2d 839, 842 (Ga. 2010) (“[T]here is no single best approach to valuing a professional association or practice . . .”) (internal quotations omitted). The Supreme Court of Wyoming aptly explained the reasoning behind this hesitance:

If we were to adopt a single bright-line method for evaluation of closely-held corporate stock, we would unnecessarily inhibit the invocation by trial courts of methods developed in the future for valuation of stock in a closely-held corporation. Furthermore, we would inhibit other methods that might be appropriate in a particular case.

Neuman v. Neuman, 842 P.2d 575, 582 (Wyo. 1992). With these concepts in mind, we will explore methods used to value closely-held corporations in other jurisdictions.

¶ 13 In *Grelier v. Grelier*, an Alabama appellate court discussed two methods of valuing a closely-held corporation: the “fair market value” and “fair value” methods. 44 So. 3d 1092, 1097-98 (Ala. Civ. App. 2009). The court noted that the laws of other states relating to the distribution of marital assets call for a determination of the assets’ fair market value, which would establish the value of a closely-held corporation as “the price a willing buyer would pay to a willing seller in a hypothetical sales transaction.” *Id.* at 1097. However, the court rejected the fair market value method because Alabama’s marital property distribution statute simply called for equitable distribution of assets, a standard which “implies that the valuation must be fair to all parties concerned.” *Id.* Instead of the fair market value method, which the court determined was not necessarily fair to all parties concerned, the court indicated its preference for a fair value method of valuing closely-held corporations. *Id.* at 1098. The court borrowed the fair value method from Alabama’s dissenting shareholder jurisprudence. *Id.* The purpose of the fair value method is to fairly compensate those with interests in the corporation even if this compensation is not exactly the same as a free market’s judgment would be regarding value. *Id.* The court noted that the fair value method is particularly useful in the closely-held corporation context because closely-held corporations are not publicly traded and therefore technically have no fair market value. *Id.* Because of the benefits of the fair value method, the court ultimately reversed the trial court’s use of the fair market value method of valuating the closely-held corporation at issue. *Id.*

¶ 14 The Wyoming Supreme Court analyzed several other methods of valuing a closely-held corporation in the context of the distribution of marital property in *Neuman v. Neuman*. 842 P.2d at 579. Four methods of valuing closely-held corporations were identified: (1) book value; (2) capitalization of earnings; (3) historical earnings; and (4) comparable sales. *Id.* Book value is determined through “taking the aggregate equity of the stockholders in the company and dividing it by the number of outstanding shares.” *Id.* The capitalization of earnings method values a corporation by taking an average accumulation of earnings, discounting from that average for factors such as a lack of marketability, and multiplying the discounted average by “an appropriate capitalization factor.” *Id.* The historic earnings method “represents an attempt to adjust, by price level adjustment, the historical cost statements for earnings power over the life of the entity.” *Id.* Finally, the comparable sales approach bases the value of a corporation on a comparable sale of another closely-held entity. *Id.* However, the comparable sales approach is not always workable since there is not always another sale of a closely-held corporation for comparison purposes.

¶ 15 After considering the four valuation methods, the trial court adopted the capitalization of earnings approach and valued the stock in the closely-held corporation based on a capitalization of earnings analysis prepared by the wife’s expert. *Id.* at 580. The *Neuman* court upheld the trial court’s decision,

noting that the capitalization of earnings approach is useful because it focuses on the value of the business at the time of the divorce and “avoids the problem of valuing a business on the basis of post-divorce earnings and profits.” *Id.* at 581 (citation omitted). However, its decision to uphold the trial court was not based solely on the valuation method adopted by the trial court. *Id.* at 582. Regardless of the method of valuation ultimately chosen by the trial court, the main reason the Wyoming Supreme Court upheld the trial court’s decision is that the record clearly showed that the trial court considered and evaluated all testimony before making its conclusion and supported its conclusion with “nearly five pages of explanation” in its findings of fact on the issue. *Id.* at 581-82.

¶ 16 Yet another approach to valuing closely-held corporations was identified by the Minnesota Supreme Court in *Nardini v. Nardini*. 414 N.W.2d at 190. In reviewing a trial court decision which valued a closely-held corporation using the book value approach, the *Nardini* court sought guidance from the United States Internal Revenue Service and ultimately adopted a factor test from an administrative ruling by that agency. *Id.* The *Nardini* court held that trial courts should consider the following factors when valuing a closely held corporation:

1. The nature of the business and the history of the enterprise from its inception.
2. The economic outlook in general and the condition and outlook of the specific industry in particular.
3. The book value of the stock and the financial condition of the business.
4. The earning capacity of the company.
5. The dividend-paying capacity.
6. Whether or not the enterprise has goodwill or other intangible value.
7. Sales of the stock and the size of the block of the stock to be valued.
8. The market price of stocks of corporations engaged in the same or a similar line of business having their stocks traded in a free and open market.

Id. (citing U.S. I.R.S. Rev. Rul. 59-60, 1959-1 C.B. 237). Additionally, as part of the valuation process, the *Nardini* court held that courts should also consider “the application of common sense, sound and informed judgment, and reasonableness to the process of weighing those facts and determining their aggregate significance.” *Id.* (internal quotation omitted). Because the *Nardini* court saw book value as merely “an appropriate starting point” in valuing the corporation, it reversed the trial court’s decision. *Id.*

¶ 17 After considering the various methods of valuing closely-held corporations, we observe that the most versatile method is the approach articulated in *Nardini*. Due to its broad number of factors as well as the catch-all reasonableness consideration, the *Nardini* valuation approach provides a great deal of flexibility. This flexibility is beneficial because no two corporations are exactly alike; methods based on complex mathematical formulas which may be useful in valuing certain corporations will be entirely unhelpful in accurately valuing others. Another reason for our approval of the *Nardini* valuation approach is that it integrates elements of other valuation methods. The fair market value and comparable sales approaches previously discussed are essentially the same as factor number eight. The fair value approach

used by the *Grelier* court is essentially a balancing test based upon the eight factors. Similarly, the capitalization of earnings approach upheld in *Neuman* is a balancing of factors one, three, four, and six. The book value approach discussed in *Neuman* is the same as factor number three, and the historic earnings approach is similar to factor number one. Finally, the *Nardini* valuation approach provides a useful and straightforward roadmap for the trial courts to follow when valuing corporations. This method should provide a useful starting point for analysis in light of our holding that trial courts must make specific findings of fact regarding valuation of closely-held corporations that are marital property.

3. *The Trial Court's Distribution of KBC*

¶ 18 Turning to the case at bar, the trial court awarded all interests in KBC to Oh. The trial court's basis for this distribution was that Kang had taken clients from KBC who represented half of KBC's annual revenue. Amended Findings at 7. As an initial matter, we note that the trial court failed to make specific findings regarding the evidence it relied upon in determining that the clients who moved their business to Kang's other corporation represented half of KBC's annual revenue. The trial court's only support for this determination is testimony from Oh. In light of our holding that specific findings are necessary when valuing closely-held corporations, this failure to provide specific findings regarding the evidence relied upon to determine that the clients Kang took represented half of KBC's revenue is an adequate ground to reverse the trial court.

¶ 19 Even assuming that the clients Kang took constituted half of KBC's annual revenue, this alone is insufficient to support the trial court's distribution of all interests in KBC to Oh. The trial court's conclusion would be accurate if revenue was the only relevant determinant of a closely-held corporation's value. However, revenue is but one component of the value of a closely-held corporation. The value of an ownership interest in a business such as a closely-held corporation is also known as "equity." *See* Black's Law Dictionary 444 (7th ed. abridged 2000) ("An ownership interest in property, esp. in a business"). "The term 'revenue' is defined as . . . 'the annual or periodical rents, profits, interest or issues of any species of property . . . ; income of individual, corporation, government, etc.'" *North Carolina ex rel. Utils. Comm'n v. N.C. Natural Gas Corp.*, 375 S.E.2d 147, 153 (N.C. 1989) (quoting Black's Law Dictionary 1185 (5th ed. 1979)). Revenue is certainly one component of a closely-held corporation's equity and a factor that must be considered when valuing a corporation. However, it is clear from these definitions, our previous case law, and the *Nardini* valuation approach that the equity value of a closely-held corporation encompasses more than just the corporation's annual revenue. *Reyes*, 2004 MP 1 ¶ 34 n.9 (recognizing that a closely-held corporation's revenue is distinct from the corporation's total value); *Nardini*, 414 N.W.2d at 190 (noting that book value, which includes revenue, is but a "starting point" in valuing a closely-held corporation). Indeed, the trial court implicitly recognized as much by stating that KBC has assets and equity value apart from its annual revenue in the form of "equipment, furnishings and

other personality.” Amended Findings at 8. The trial court erred by failing to value KBC’s assets before deciding on an equitable distribution of KBC.⁵

IV

¶ 20 For the foregoing reasons, we VACATE the trial court’s conclusion that all of KBC’s assets should be distributed to Oh, and REMAND for a valuation and distribution of KBC based on specific findings of fact and consistent with this opinion.

SO ORDERED this 30 day of December, 2011.

ALEXANDRO C. CASTRO
Acting Chief Justice

JOHN A. MANGLONA
Associate Justice

⁵ We do not suggest that the trial court must distribute KBC equally between Kang and Oh on remand. To the contrary, a determination of the total equity value of KBC at the time of the divorce may show that the clients who left KBC and followed Kang to Hanmi truly did provide Kang with an equitable distribution of KBC. However, without a proper valuation of all of KBC’s assets, the trial court had no ability to determine that the distribution was equitable.