

# State of New Hampshire Supreme Court

NO. 2002-218

2002 TERM

AUGUST SESSION

IN THE MATTER OF

AMAL JAWA

&

VINOD K. JAWA

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RULE 7 APPEAL FROM FINAL DECISION  
OF ROCKINGHAM COUNTY SUPERIOR COURT, FAMILY DIVISION

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BRIEF OF RESPONDANT, VINOD JAWA

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## **QUESTION PRESENTED**

1. Did the court make arithmetic errors by miscalculating the value of stock shares, and by double-counting the assets used to purchase the stock?

## **STATEMENT OF FACTS AND STATEMENT OF THE CASE**

Ms. Amal Jawa and Mr. Vinod Jawa were married in 1995 after a short courtship, and separated in April 2000. Both have professional careers and adequate earning capabilities – Amal is a doctor and Vinod is an engineer. Although Amal has a child who Vinod adopted, this appeal does not concern the child's custody or welfare.

In the divorce case, numerous matters were litigated. This appeal, however, involves just two narrow issues regarding the court's miscalculation of the value of property to be divided.

## **SUMMARY OF ARGUMENT**

Mr. Jawa first describes the court's arithmetic error regarding purchase and sale of stock, and notes that there is no logical explanation for the court's order except a misreading or misunderstanding of financial documents.

Mr. Jawa then describes, with reference to documents, the court's error in double-counting the assets used to purchase the stock.

## ARGUMENT

### I. Erroneous Award of Stock Account

The court below noted that the parties bought shares of stock through their broker, Quick & Reilly, and awarded each party \$70,723.00 purportedly representing its value. This figure is one-half of \$141,446.76, which is the gross proceeds of the various sales of Microsoft stock during the year 2000. DECREE ¶ 14.F, *appx. to N.O.A.* at 12; QUICK & REILLY, 2000 Form 1099, Account of Vinod Jawa (Dec. 29, 2000), *appx. to brief* at 11, 12. The table below summarizes the record of purchases and sales of stock in the Quick & Reilly account. See QUICK & REILLY, *Account History*, Account of Vinod Jawa (Year 2000) at 3-4, *appx. to brief* at 20, 21-22.

COST OF SHARES BOUGHT					PROCEEDS OF SHARES SOLD					NET
Date	Action	# of shares	Price per share	Value	Date	Action	# of shares	Price per share	Value	Profit (loss)
4/12	buy	75	79.3750	5,978.76						
4/12	buy	300	80.3125	24,196.20	4/18	sell	375	80.6875	30,241.85	66.89
4/14	buy	125	75.5625	9,460.26	4/19	sell	125	80.625	10,062.84	602.58
4/18	buy	375	79.8125	29,944.64	4/19	sell	375	81.1875	30,429.34	484.70
4/19	buy	500	79.2500	39,644.95	4/27	sell	500	69.25	34,603.89	(5,041.06)
4/28	buy	500	68.5000	34,269.95	5/01	sell	500	72.25	36,108.84	1,838.89
<b>TOTAL</b>		<b>1875</b>		<b>143,494.76</b>			<b>1875</b>		<b>141,446.76</b>	<b>(2,048.00)</b>
5/2	buy	500	70.2500	35,144.95						n/a

As noted, in dividing the asset, the court equally split the gross proceeds from the sale of the stock. That number, \$141,446.76, is italicized in the table above.

The correct way to value the asset, however, is represented in the following equation:<sup>1</sup>

$$\begin{array}{llll} \text{Value of Asset} & = & \text{number of shares still held} & + & \text{net gain or loss from shares sold} \\ & = & 500 \text{ shares} & + & (\$2,048) \end{array}$$

Thus, the asset to be split between the parties is 500 shares, minus the loss of \$2,048.

The lower court valued the asset to be split as \$141,446.76, which is merely the proceeds of the sales-side alone. The court did not take into consideration the dollars used to *buy* the stock. As the table notes, 1,875 shares of Microsoft were bought, and the same 1,875 were sold. These transactions resulted in a net *loss* of \$2,048, not in a *gain* of \$141,446.76 as the lower court apparently assumed.

There is no logical explanation for the court's error except that it misread or misunderstood the Quick & Reilly statement or the federal tax form 1099 prepared by Quick & Reilly. In any event, the error is worth about \$100,000.

To remedy this situation, this Court should order that the asset to be split between the parties is 500 shares, minus the loss of \$2,048.

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<sup>1</sup>It should be noted that because the price of stock at purchase and sale fluctuates, there may be more accurate ways than this equation to calculate profits and losses from stock sales. *See e.g.*, I.R.S. Form 1041 Schedule D; INTERNAL REVENUE SERVICE, Publication 551, *Basis of Assets* (Rev. December 2000) <<http://www.irs.gov/pub/irs-pdf/p551.pdf>>. But such methods are more complex than necessary here, and in any event the lower court did not err in using a too-accurate calculation. The date at which the valuation is made may be a further complication. *See e.g.*, *In the Matter of Dolan and Dolan*, \_\_ N.H. \_\_, 786 A.2d 820 (2001).



## II. Double-Counting of Stocks and Assets Used to Purchase Them

In addition to miscalculating the value of the parties' stock asset, the court also double-counted it.

The court said that in April 2000, Mr. Jawa withdrew \$32,000 from a Monex account and put it into his HP Credit Union account. The court neglected to notice, however, that the same amount of money was transferred from the HP Credit Union Account via a Bank of Boston account into the Quick & Reilly stock account, and was used for the initial April 12 purchase of 375 shares of Microsoft noted in the table above.

While the record is somewhat complex, it is possible to follow the money.

1. The court said that in April 2000, \$32,000 was moved from Monex to the Hewlett Packard Credit Union account. DECREE ¶ 13.B.3, *appx. to N.O.A.* at 11.
2. On April 13, \$30,000 was withdrawn from the Hewlett Packard Credit Union account. HP FAMILY FEDERAL CREDIT UNION, *Statement, Account of Vinod Jawa* (April 1, 2000 through April 30, 2000), *appx. to brief* at 13.
3. Also on April 13, that \$30,000 was deposited into Mr. Jawa's Bank of Boston account. BANKBOSTON, *Statement of Accounts, Account of Vinod Jawa* (March 30, 2000 through April 27, 2000) at 2, *appx. to brief* at 14, 15.
4. Several days later, on April 18, the same Bank of Boston statement notes that check number 167, written in the amount of \$30,174.96 cleared the bank. *Id.*
5. Although check number 167 is not part of the record (and is not necessary to trace the money), its face shows that it was written by Mr. Jawa to Quick & Reilly in the amount of \$30,174.96. CHECK #167 DRAWN ON BANKBOSTON (April 13, 2000) *appx. to brief* at 19.
6. Documents from Quick & Reilly (which are part of the record) show several things. First, there was no activity in the Quick & Reilly account until April, 2000. QUICK & REILLY, *Account History, Account of Vinod Jawa* (Year 2000) at 1, *appx. to brief* at 20.

7. The Quick & Reilly documents also show the record of buys and sells that are summarized in the table above. There were two purchases of Microsoft stock made on April 12: one for 75 shares, the second for 300 shares. *Id.* at 3-4, *appx. to brief* at 21-22. The document notes the share prices at the time of purchase. *Id.* The document also notes that the first purchase of 75 shares cost \$5,978.76, and the second purchase of 300 shares cost \$24,196.20. *Id.* Those two transactions total \$30,174.96, the exact amount that was withdrawn from the Bank of Boston account.

The error is this: The court divided money that was withdrawn from the Monex account, but it failed to notice what became of the money. When the court awarded Ms. Jawa “\$16,000 as her share of the Hewlett-Packard Credit Union account,” DECREE ¶ 13.B.3, *and also* awarded her half the (erroneously calculated) shares of stock that were purchased with the money, it counted the same asset twice.

Ms. Jawa should either get her share of the money used to buy the asset, or her share of the asset itself. But to give her both is double-counting.

### III. Arithmetic Errors Should be Corrected

RSA 458:16-a provides that “an equal division of property is presumed equitable unless the trial court decides that an equal division would not be appropriate or equitable after considering a number of factors.” *In the Matter of Telgener and Telgener*, \_\_ N.H. \_\_ (decided July 20, 2002). “[I]n the absence of . . . special circumstances the distribution should be as equal as the court can make it.” *McAlpin v. McAlpin*, 129 N.H. 737, 740 (1987) (quotation omitted); *Hoffman v. Hoffman*, 143 N.H. 514 (1999). An unequal division requires an explanation. *Magrauth v. Magrauth*, 136 N.H. 757 (1993).

The Supreme Court may correct arithmetic errors apparent on the face of the record. *In re Estate of Fontaine*, 128 N.H. 695, 697 (1986).

There is no indication here that the court intended anything but an equal division of property. An unequal division would have required a consideration of the various factors, and an explanation of whatever special circumstances the court might have found. There is nothing like that here.

Moreover, each of the court’s calculations throughout the decree show that it was attempting to divide the assets exactly in half. Rather than making an intentional decision that an unequal division was equitable, the court made significant errors in calculation which should be corrected.

## **CONCLUSION**

Mr. Jawa requests that this Court correct the lower court's arithmetic mistakes as noted above.

Respectfully submitted,

Vinod K. Jawa  
By his Attorney,

**Law Office of Joshua L. Gordon**

Dated: August 19, 2002

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## **REQUEST FOR ORAL ARGUMENT AND CERTIFICATION**

Vinod Jawa requests that his counsel be allowed 15 minutes for oral argument.

I hereby certify that on August 19, 2002, copies of the foregoing will be forwarded to Amal Jawa, to Ronald G. Sutherland, Esq., and to Ms. Elaine Dolph, GAL.

Dated: August 19, 2002

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## APPENDIX

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