A PROFESSIONAL DEGREE IS NOT MARITAL PROPERTY
UPON DIVORCE: STEVENS V. STEVENS

In Stevens v. Stevens\(^1\), the Ohio Supreme Court held that a professional degree or license is not marital property divisible upon divorce, but should be considered when making an alimony award.\(^2\) The trial and appellate courts did not consider the husband's degree when awarding alimony to the wife; this was erroneous and the case was remanded for reconsideration of the wife's alimony award.\(^3\)

Several Ohio appellate courts have decided this question in the past.\(^4\) These courts are split on the question of whether a professional degree and the accompanying increased earning capacity should be termed property. However, whether property or not, the courts do agree that the assets are not divisible upon divorce but should be considered under Ohio Revised Code Section 3105.18(B)(1) through (8), (10) and (11)\(^5\) when making an alimony award.\(^6\)

\(^{1}\)23 Ohio St. 3d 115, 492 N.E.2d 131 (1986).
\(^{2}\)Id.
\(^{3}\)Id. at 116, 492 N.E.2d at 132.
\(^{4}\)In Daniels v. Daniels, 90 Ohio Law Abs. 161, 164, 185 N.E.2d 773, 775 (App. Ct. 1961), the court held that a medical degree was property but did not designate it as "divisible" property. The court stated, "In our opinion, the right to practice medicine, being in the nature of a franchise, constitutes property which the trial court had a right to consider in making an award of alimony." The trial court awarded $24,000 in alimony. The opinions in Lira v. Lira, 68 Ohio App. 2d 164, 428 N.E.2d 445 (1980) and Pacht v. Jadd, 13 Ohio App. 3d 363, 469 N.E.2d 918 (1983) are consistent with the Daniels court.

Several courts have held that a degree is not property. In Colizoli v. Colizoli, 15 Ohio St. 3d 333, 474 N.E.2d 280 (1984) and in Gebhart v. Gebhart, 14 Ohio App. 3d 107, 470 N.E.2d 205 (1984) the courts stated that a professional degree is not marital property. The degree should, however, be considered when awarding alimony.

\(^{5}\)Ohio Rev. Code Ann. § 3105.18 (Page 1974) provides:
(A) In a divorce, dissolution of marriage, or alimony proceedings, the court of common pleas may allow alimony as it deems reasonable to either party.

The alimony may be allowed in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, as the court deems equitable.

(B) In determining whether alimony is necessary, and in determining the nature, amount, and manner of payment of alimony, the court shall consider all relevant factors, including:
(1) The relative earning abilities of the parties;
(2) The ages, and the physical and emotional conditions of the parties;
(3) The retirement benefits of the parties;
(4) The expectancies and inheritances of the parties;
(5) The duration of the marriage;
(6) The extent to which it would be inappropriate for a party, because he will be custodian of a minor child of the marriage, to seek employment outside the home;
(7) The standard of living of the parties established during the marriage;
(8) The relative extent of education of the parties;
(9) The relative assets and liabilities of the parties;
(10) The property brought to the marriage by either party;
(11) The contribution of a spouse as homemaker.
(C) In an action brought solely for an order for alimony under section 3105.17 of the Revised Code, any continuing order for periodic payments of money entered pursuant to this section is subject to further order of the court upon changed circumstances of either party.

\(^{6}\)See Colizoli, 15 Ohio St. 3d 333, 474 N.E.2d 280; Gebhart, 14 Ohio App. 3d 107, 470 N.E.2d 205; Pacht, 13 Ohio App. 3d 363, 469 N.E.2d 918; Lira, 68 Ohio App. 2d 164, 428 N.E.2d 445; Daniels, 90 Ohio Law Abs. 161, 185 N.E.2d 773.

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This Note first analyzes the Stevens court's opinion and concludes that it fails to give sufficient direction on how to determine the amount of the alimony award in order to sufficiently compensate the supporting spouse. Second, this Note explores the ways in which courts in other jurisdictions have attempted to compensate the supporting spouse. Finally, this Note proposes two alternative methods of valuing the supporting spouse's contribution. One method applies if the court, as in Stevens v. Stevens, holds that contribution toward a technical degree is not divisible marital property but should be considered when awarding alimony. The second method, and perhaps the more equitable one, can be used to determine an award based on restitution limited to direct expenditures and cost of lost opportunity.

THE COURT'S ANALYSIS

The Majority Opinion

The parties in this case were married in 1967. By mutual agreement, the wife, Sandra Stevens, attended secretarial school rather than college so that she could support Robert, her husband, while he obtained his undergraduate degree and his Doctor of Veterinary Medicine degree. Throughout the first eight years of their marriage, Sandra supported the household and paid Robert's educational expenses while working in various secretarial and administrative positions. Robert did not work and received no loans or scholarships to pay educational expenses during this period.

In 1977, after eight years of school, Robert was awarded his degree and accepted a job at Sea World of Ohio at a salary of approximately twenty-two thousand dollars per year. In July 1983, Robert transferred to Sea World in Orlando, Florida where he worked earning a salary of approximately forty thousand dollars per year. Sandra had worked sporadically since 1975 and was unemployed.

In March 1984, the parties were granted a divorce. There were few assets to divide. The trial court awarded Sandra, appellant here, the family home which was mortgaged and one of the family cars, also mortgaged. In addition, Sandra was awarded sustenance alimony of four hundred dollars per

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1 Stevens, 23 Ohio St. 3d at 115, 492 N.E.2d at 131.
2 Id.
3 Id. at 115, 492 N.E.2d at 132.
4 Id.
5 Id.
6 Id.
7 Id. at 115-16, 492 N.E.2d at 132.
8 Id. at 116, 492 N.E.2d at 132.
9 Id.
10 Id.
11 Id.
month subject to termination:

1) three years from the date of divorce,
2) unless appellant remarried, or
3) unless appellant lived in a state of concubinage, or
4) unless appellant became gainfully employed.\(^8\)

Sandra received custody of their child and Robert was ordered to pay sixty dollars per week child support.\(^9\)

On appeal, appellant, Sandra Stevens, contended that appellee’s veterinary degree was marital property divisible upon divorce and that the alimony award was grossly unfair considering Robert’s earning potential.\(^10\) The court of appeals disagreed and affirmed the trial court’s decision.\(^21\)

The Ohio Supreme Court held that a professional degree, or its future value, is not a marital asset.\(^22\) The court quoted the opinion in *In re Marriage of Graham*:\(^23\)

An advanced degree is a cumulative product of many years of previous education, combined with diligence and hard work. It may not be acquired by the mere expenditure of money. It is simply an intellectual achievement that may potentially assist in the future acquisition of property. It has none of the attributes of property in the usual sense of the term.\(^24\)

The court in *Stevens* further stated: “Although not an asset, the future value of a professional degree or license acquired by one of the parties during the marriage is an element to be considered in reaching an equitable award of alimony in accordance with R.C. 3105.18.”\(^25\)

While the court here did not consider the professional degree to be a marital asset, it did hold that the alimony award at the trial court level constituted an abuse of discretion.\(^26\) The court considered the sum of four hundred dollars per month to be grossly inadequate and the conditions attached to the award to be unfair.\(^27\) First, the court held that the three year limitation on the alimony payments was incorrect given appellant’s needs and appellee’s financial situation.\(^28\) Secondly, because the appellant is gainfully employed does not

\(^{18}\) *Id.*

\(^{19}\) *Id.*

\(^{20}\) *Id.*

\(^{21}\) *Id.*

\(^{22}\) *Id.* at 120, 492 N.E.2d at 134.

\(^{23}\) *Id.* at 117-18, 492 N.E.2d at 133.

\(^{24}\) *Id.* at 117-18, 492 N.E.2d at 133.

\(^{25}\) *id.* at 120, 492 N.E.2d at 134.

\(^{26}\) *id.* at 117-18, 492 N.E.2d at 133.

\(^{27}\) *Id.* at 120, 492 N.E.2d at 135.

\(^{28}\) *Id.* at 122, 492 N.E.2d at 136.
mean that her compensation for employment is adequate. Also, she had been laid off in the past and could be again in the future. Thirdly, the restriction terminating alimony if appellant lived in "a state of concubinage" was directly contrary to the prior decision in Wolfe v. Wolfe: "Post divorce unchastity upon the part of the former wife is not grounds for automatically terminating the alimony award but may be considered in a subsequent modification proceeding insofar as it is relevant to the issues of continued need for such alimony and the amount."

In summary, the Stevens court held that the trial court failed to consider the future value of appellee's degree as an element of the alimony award. The judgment was reversed and remanded to the trial court for redetermination of the alimony award. The court did not, however, provide any guidelines on the appropriate way in which to value a professional degree or how the trial court was to consider the degree in relation to the alimony award.

The Dissent

Like the majority, the dissent rejected the conclusion that a professional degree is property divisible upon divorce. It disagreed, however, with the decision to require courts to consider the future value of the professional degree when determining an alimony award. The dissent had two concerns. First, because alimony is essentially used to provide support, the supporting spouse might not be awarded sufficient funds to provide educational opportunities. This would not be fair to a spouse who paid for her husband's educational expenses. Secondly, alimony is dependent upon factors such as income and marital status. If the supporting spouse were to remarry or receive an increase in salary, the amount received might not be adequate compensation.

The dissent stated that a better approach would be to reimburse the supporting spouse for actual expenditures plus interest. This would minimize speculation as to future earning potential and would provide an equitable

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9Id.
10Id.
11Id. at 121, 492 N.E.2d at 136.
12Id. at 123, 492 N.E.2d at 137 (Douglas, J., dissenting).
13Id. at 124, 492 N.E.2d at 138.
14Id.
15Id.
16Id.
17Id.
18Id.
award for the supporting spouse.\textsuperscript{42}

\textbf{COMPARISON TO DECISIONS IN OTHER JURISDICTIONS}

Other state courts have also answered the question of whether a professional degree is divisible marital property upon divorce. These responses can be divided into five basic categories.

1) Several courts have considered the professional degree and the potential increased earning capacity as marital property divisible upon divorce.\textsuperscript{43} For example, the court in \textit{Woodworth v. Woodworth}\textsuperscript{44} stated that an advanced degree is marital property because it was the result of mutual sacrifice and effort by both husband and wife.\textsuperscript{45} Fairness dictates that the supporting spouse be compensated. These courts have assigned a value to the professional degree and increased earning potential and have included this amount in the property distribution.\textsuperscript{46} In the case of \textit{Diment v. Diment}\textsuperscript{47}, the supporting spouse was awarded a $39,600.00 property award for the contributions made to the husband's increased earning capacity.\textsuperscript{48}

2) Other courts have stated that a professional degree is not marital property but that the supporting spouse's contribution should be considered when dividing the marital assets.\textsuperscript{49} In \textit{Hughes v. Hughes}\textsuperscript{50}, the court held that an educational degree is not property subject to distribution because its value is too speculative to calculate.\textsuperscript{51} However, the husband's education should be considered when distributing the marital assets.\textsuperscript{52} In \textit{Tremayne v. Tremayne},\textsuperscript{53}

\textsuperscript{42}Id.


\textsuperscript{45}Id. at 260, 337 N.W.2d at 334.


\textsuperscript{47}531 P.2d 1071.

\textsuperscript{48}Id.


\textsuperscript{50}438 So. 2d 146 (Fla. Dist. Ct. App. 1983).

\textsuperscript{51}Id.

\textsuperscript{52}Id.

\textsuperscript{53}116 Utah 483, 211 P.2d 452 (1949).
the court held that the husband's degree was not property subject to division but did grant the supporting spouse four-fifths of the property accumulated during the marriage.54

3) Another response is to compensate the supporting spouse in an award of maintenance.55 In Mahoney v. Mahoney56, the court stated that where the supporting spouse has deferred her own education, an award of rehabilitative alimony is appropriate to allow her to enhance her own earning capacity.57 Other courts recognize the contribution of the supporting spouse as a basis for an alimony award, but do not give a formula for determining the amount.58 This is the approach used by the court in Stevens.59

4) Still other courts hold that a professional degree is not property but the supporting spouse is entitled to reimbursement of the contribution made toward the attainment of the degree.60 In Inman v. Inman61, the supporting spouse was awarded the amount spent for direct support and school expenses plus reasonable interest and adjustments for inflation.62 This method of restitution allows reasonable certainty in valuing the supporting spouse's contribution.

5) The fifth and final approach is to simply refuse to compensate the supporting spouse for contributions to the professional degree.63 A court refused to grant an award primarily because there did not seem to be a legal reason to do so.64 The degree was not considered property and therefore was not included in the property division.65 The court held that an alimony award should be based on ability to support oneself and not on contributions to educational opportunities of the spouse.66

54 Id.
57 Id.
59 Stevens, 23 Ohio St. 3d 115, 492 N.E.2d 131 (1986).
61 578 S.W.2d 266 (Ky. Ct. App. 1979).
62 Id.
64 Id. (The court stated that increased earning potential derived from the husband's medical degree was not property and therefore was not a marital asset divisible by the court. The court found no basis to consider the wife's contribution to the husband's degree.)
65 Id.
66 Id.
TWO METHODS OF VALUING A PROFESSIONAL Degree

Value of a Professional Degree — Determining the Alimony Award

The *Stevens* court held that the value of a professional degree and the associated increased earning potential should be considered when determining an alimony award. However, the court failed to provide a method for determining the value and did not instruct the trial court on how to apply a value to the alimony award. One possible method is to grant a year of maintenance for each year the spouse contributed to the education. There have been several methods proposed which consider the increased earning potential over the lifetime of the degreed spouse.

Perhaps a more equitable approach would be to consider the earning potential only for a period equal to the period of time the supporting spouse contributed to the degree. This is not as speculative as considering the entire lifetime earning potential since it is a much shorter period. While it is true that during the first years of employment earning potential is relatively low, it seems unfair to consider increases in earning which will be due to additional experience and training in the chosen field.

An alternative method of valuation is as follows:

1) Determine the number of years the supporting spouse contributed to the academic endeavors. For example, in the *Stevens* case, the wife supported her husband for eight years.

2) Subtract from the above the number of years the parties lived together after the spouse received the degree and became employed in the professional field. In the *Stevens* case the parties lived together for eight years after the husband received his degree and therefore the result would be zero.

3) Determine the average annual income of the degreed spouse for the period of years calculated in step two.

4) Determine the average annual income the spouse could have expected without the degree. This could be calculated by considering the spouse's field

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67 *Stevens*, 23 Ohio St. 3d at 122, 492 N.E.2d at 137.
68 Id.
70 See, e.g., Id., at 336-40. (Formulation premised upon the difference in potential earning capacity with and without the degree for each year of the expected working life of the spouse with the professional education.);
71 Note, *Equitable Interest in Enhanced Earning Capacity: The Treatment of a Professional Degree at Dissolution*, 60 WASH. L. REV. 431, 454-59 (1985) (Capitalize present value of enhanced earning capacity for the working life of the professional spouse and award to supporting spouse an equitable portion of the amount for the number of years required to obtain the degree. No definition of equitable portion is given.)
72 *Stevens*, 23 Ohio St. 3d at 115, 492 N.E.2d at 132.
73 Id.
of employment prior to the degree or by referring to data regarding average income of persons without advanced educational degrees.\textsuperscript{74}

5) Subtract the income figure derived in step four from the figure calculated in step three. This represents the increased annual earnings resulting from the professional degree.

6) Multiply the increased annual earnings by the period of time calculated in step two and divide by two. This division is necessary because the supporting spouse is entitled to only one-half the increased earnings. This results in the amount of alimony the supporting spouse should be awarded as compensation for contribution to attainment of the professional degree.

The above method details that portion of the alimony award directly attributable to the educational support. It only compensates the supporting spouse for financial contributions. In addition, the supporting spouse could also receive rehabilitative alimony as compensation for lost educational opportunities.

If this method were applied to the fact situation in Stevens, the supporting spouse would receive no additional compensation for her contribution to her husband's technical degree. The parties were married for eight years after the husband received his degree, during which time the husband assumed virtually all of the family support.\textsuperscript{75} Since the spouse only provided support for eight years, she has already received a return on her investment through the support she enjoyed during their last eight years of marriage.

Critics of this method might point out that the supporting spouse only enjoys the increased earnings for a short period of time while the professional spouse enjoys a lifetime of enhanced potential.\textsuperscript{76} It is significant, however, that the supporting spouse generally realizes a return of several hundred percent. The percent return will depend upon the earning potential of the spouse and the length of the marriage. When compared to other types of investment, stocks or real estate for example, this is a reasonable return on investment.

\textit{Restitution}

An alternative method of compensating a supporting spouse is to provide for the reimbursement of the actual expenditures plus interest.\textsuperscript{77} This approach is more favorable for the supporting spouse than the above alternative if the

\textsuperscript{74}Note, \textit{supra} note 70, at 456-59 (For persons who were employed prior to pursuing the advanced degree, previous salaries could be used to determine the average annual income without the advanced degree. In the case of persons who were not previously employed, actuarial tables could be used to determine potential income.)

\textsuperscript{75}Stevens, 23 Ohio St. 3d at 115, 492 N.E.2d at 132.

\textsuperscript{76}Note, \textit{supra} note 70.

\textsuperscript{77}Moore, \textit{Should a Professional Degree be Considered a Marital Asset Upon Divorce?}, 15 Akron L. Rev. 543 (1982).
marriage is of long duration. The dissent in *Stevens* advocated this approach because it involves minimal speculation as to increased earning potential.\(^7\)

Calculating the amount of restitution is relatively easy. Simply calculate the total amount that the wife contributed to the educational expenses, add to this one half of the contribution for living expenses and calculate the interest owed on the total.\(^8\)

This method eliminates the need to speculate concerning the future earning potential of the educated spouse but may not provide adequate compensation.\(^9\) The supporting spouse essentially receives no earnings, above interest, on the investment. Also, the supporting spouse probably provided moral support and assistance which is not compensated when this method is used.

**Conclusion**

When a wife has contributed to the attainment of her husband's professional degree, this contribution is an investment in their future together. When divorce intervenes and a return on this investment is not realized, it seems only equitable that the supporting spouse should be compensated.

The problem in this situation is how to adequately compensate the supporting spouse without subjecting the husband to a life of servitude. It seems unfair to consider the lifetime earnings of the husband when these earnings will increase due to his own hard work and additional experience in his chosen profession. The wife should only receive compensation for the amount of time she contributed to the attainment of the degree. It is important to note that this amount is independent of child support, rehabilitative alimony, or ordinary maintenance deemed equitable by the court for other reasons.

The court in *Stevens* stated that the contribution of the supporting spouse should be considered in the determination of the alimony award, but failed to give a method by which this determination could be made.\(^10\) The methods suggested in this note seem to strike a balance between no compensation at all and enjoying the lifetime earnings of the husband.

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\(^7\) *Stevens*, 23 Ohio St. 3d at 124, 492 N.E.2d at 138 (Douglas, J., dissenting).

\(^8\) Id.


\(^10\) *Stevens*, 23 Ohio St. 3d at 122, 492 N.E.2d at 136.