

## Stock Awards in Divorce Revisited

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Article By

[John S. Eory](#)

[Stark & Stark](#)

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To be or not to be vested—that is the question. Well, at least that was the question considered by a New Jersey appeals court in the recent decision of M.G. v. S.G.

Otherwise stated, the question concerned whether a stock award which was issued to an employee *prior* to a divorce filing but which was vested *after* the divorce complaint was filed be subject to equitable distribution between the parties. Typically, any assets obtained prior to the date of the divorce filing are subject to be included as a marital asset under New Jersey law. While this may seem cut and dry at first glance, nuance can be found in all aspects of law. This recent decision sheds some light on this sort of question which has vexed divorce lawyers and now appears to have an answer, albeit one that requires still more lawyering.

The court reaffirmed that although marriage is a “shared enterprise,” the date an award is received does not necessarily govern the outcome which rests on the employer’s requirements for the award to vest—that is, to become available to the employee.

As a “high level corporate employee in a highly competitive industry” M.G.’s stock award were “subject to his level of proficiency” rather than merely good work or continued employment. Since M.G.’s post complaint efforts were an essential element of the calculus, a portion of the stock award was therefore not divisible with S.G.

The court went on to establish a standard for future cases by reviving the “marital momentum” theory which many lawyers had prematurely discarded from their tool kits. In essence, the party seeking to exclude a stock award issued during marriage

would have the burden of proving that the award was made for future services instead of a form of deferred compensation relating back to the award date.

While this involves a legal balancing act, the court skillfully identified and resolved the problem for which it deserves credit from lawyers, judges and divorcing parties in the months and years ahead.

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