

Bad spending habits? Or is it dissipation?



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How often does a client come in screaming about their soon-to-be ex's overspending? In my experience, nearly all divorce cases have at least a little bit of financial strife.

Typically, the client's main question is whether it's possible to get any of the ill-spent money back. The answer often turns on whether the other spouse's spending is considered dissipation under the eyes of the law.

Not all poor (or even egregious) spending is dissipation. While many a multiday trial has been spent on this topic, the Appellate Court of Maryland recently offered more insight into the doctrine of dissipation in its decision in *Goicochea v. Goicochea*.

The Goicocheas had a lengthy marriage that was marked by the ongoing adultery of the husband. After the initial affair partner was discovered, husband briefly moved out of the marital home. Ultimately, husband promised to cease contact with the affair partner and moved back into the family home with wife and their children.

Husband was not true to his word and, in fact, continued to financially support his initial affair partner for several years. He also began a second adulterous relationship

where he rented an apartment on his lover's behalf, contributed to her rent and bought a home that he ultimately moved into with the second paramour.

At trial, wife argued that the funds used on the affair partners and the property itself constituted dissipated funds that should be recaptured in a marital award. Husband also had his own claims against wife for dissipation.

As both claimed dissipation, each carried a burden of persuading the trial judge that the other had dissipated the funds in question.

However, once a *prima facie* dissipation case is made, i.e., the complaining party has shown that marital assets were taken by one spouse without the agreement of the other for the principal purpose of reducing the assets available for distribution, the burden shifts to the defending party to show that the spending of funds was appropriate.

At the trial court level, the court found that husband had dissipated \$609,111 of marital funds and wife had dissipated \$50,000 of funds that she had taken from a HELOC after learning of husband's initial affair and husband had restricted her use of other funds.

One of husband's contentions on appeal was that the trial court incorrectly found that he had dissipated those funds.

Husband argued, among other things, that dissipation cannot occur if the alleged dissipated property still exists, e.g. his new home with his paramour, and "urged" the court to consider a Virginia case that found dissipation did not occur where the funds were not expended for the primary purpose of depleting the marital estate and where the marriage was not yet irreconcilably broken down.

The court found no merit in

husband's argument or his request that it consider the Virginia case. It reasoned that Maryland law is clear that under *Omayaka v. Omayaka*, dissipation may occur even if the marriage is not undergoing an irreconcilable breakdown and/or the principal purpose of the expenditure was not for the purpose of reducing the amount available for distribution.

The analysis that the court found most critical to its application of the dissipation doctrine is, as explained in *Heger v. Heger*, "the purpose behind the expenditure. The doctrine of dissipation is aimed at the nefarious purpose of one spouse's spending for his or her own personal advantage so as to compromise the other spouse in terms of the ultimate distribution of marital assets."

The court reasoned that the trial record clearly established that the funds that husband put into the property no longer existed and that wife did not receive any benefit from the property itself. It also showed that husband had made several expenditures on his affair partners and also had large payments for which he was not able to account.

This ruling – that dissipation can occur even where the marriage has not yet undergone an irreconcilable breakdown and/or the principal purpose of the expenditure was not for the purpose of reducing the amount available for distribution – is important to note as it seemingly lightens the burden of the moving party to establish a *prima facie* case.

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