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Boats and Divorce

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Boats and Divorce

Robert M. Jarvis* and Phyllis Coleman**

I INTRODUCTION

When couples who have a boat get divorced, they often face two questions: 1) who owns it?; and, 2) if it is jointly owned, how much is it worth? Other issues also can arise, especially if a pre- or post-nuptial agreement exists, a third party (such as the government, a lender, or a repairman) asserts a lien, or the divorce occurs in the context of a bankruptcy.¹

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¹State divorce courts, not federal admiralty courts, have long been recognized as the proper forum in which to resolve these matters. See, e.g., *Lee v. Motorship Ella D*, 1931 AMC 922, 922 (S.D. Cal. 1931) (“Admiralty has no jurisdiction to determine title and right to possession of a vessel sold by a receiver appointed by a state court in a divorce action unless a showing is made that the state court was without jurisdiction to appoint the receiver and approve the sale.”). See also *Abrams v. Sailboat Cutter, “Slow Dancer,”* 700 F.2d 569 (9th Cir. 1983) (in case involving competing spousal claims to a vessel’s rents and profits, federal district court acted properly in following divorce court’s directions). For a further discussion, see Robert M. Jarvis, *Rethinking the Meaning of the Phrase “Surviving Widow” in the Jones Act: Has the Time Come for Admiralty Courts to Fashion a Federal Law of Domestic Relations?*, 21 CAL. W. L. REV. 463 (1985).

Canada follows the same rule. See *Ricci v. Tully*, [2009] F.C. 493, at ¶ 36 (“[T]his Court clearly has the jurisdiction to deal with the Sailboat. However, the Federal Court should not become a surrogate divorce court for warring spouses to engage in a battle over family assets when the proceedings should properly be brought in the Provincial Family Courts.”).

From 1873 to 1970, England’s High Court of Justice had a Probate, Divorce, and Admiralty division, often humorously referred to as “the Division of Wills, Wives, and Wrecks.” Many sources credit the nickname to A.P. HERBERT, *HOLY DEADLOCK* 109 (1934). See *Merchant v. American S.S. Co.*, 860 F.2d 204, 209 n.6 (6th Cir. 1988).

Somewhat surprisingly, previous commentators have all but overlooked these subjects.² Accordingly, this article collects and discusses the existing case law.³ Of course, the U.S. Supreme

²Various judges, however, jokingly have compared divorces to sinking boats:

At the outset, we are compelled to say that this 'marital ship' is in worse shape than the one described in *Paxton v. Paxton*, Mo.App., 319 S.W.2d 280, 287, which was 'hard aground on reefs and rocks.' This vessel has suffered such a barrage of divorce actions as to spring every plank and founder.

Lovingood v. Lovingood, 472 S.W.2d 58, 59 (Mo. Ct. App. 1971). See also *Zimmerman v. Zimmerman*, 236 A.2d 785, 790 (Pa. 1968) (Musmanno, J., dissenting) ("The ship of matrimony in this case began its marital journey on tranquil and promising waters [but] [a]fter a quarter of a century of voyaging with fair winds and clear skies, the ship ran into storms and controversy which so damaged it that it had to put into the drydocks of the courts, where it now awaits whatever repair the law can bring to a disabled craft."); *Mathie v. Mathie*, 363 P.2d 779, 780 (Utah 1961) ("The matrimonial barque has seen tempestuous seas, including a prior divorce action in 1953, which was dropped when a reconciliation was effected."); *State v. Miller*, 10 P.2d 955, 955 (Idaho 1932) ("[T]he matrimonial barque encountered squalls, culminating in a decree of divorce granted the wife after default[.]"); *Delfino v. Delfino*, 77 Cal. Rptr. 526, 527 (Ct. App. 1969) ("It might be said that this appeal does not involve the main ship—the divorce case—but only the flotsam and jetsam."). In a similar vein, one wag on the internet has posted a list of boat names for the newly divorced and soon-to-be divorced. See <http://www.allthingsboat.com/boat-names/boat-name-ideas/>. Among his suggestions are "After You," "My Wife's Mink," and "Next Chapter."

Even Hollywood has taken notice. In the 1995 movie *Fair Game*, for example, Cindy Crawford is

Kathryn "Kate" McQuean, a Miami lawyer handling a nasty divorce. With the help of his smarmy lawyer Walter Hollenbach (played by Dan Hedaya), the husband, Emilio Juantorena (Miguel Sandoval), has been hiding marital assets. McQuean therefore decides to go after the TORTUGA, a 157-foot freighter that Juantorena owns and that is currently anchored in local waters.

Robert M. Jarvis, *The Admiralty Lawyer in Popular Culture*, 37 J. MAR. L. & COM. 23, 37 (2006) (footnote omitted).

³As will be seen, most of the cases are fairly recent. In part, this reflects the fact that until the 1950s, when fiberglass hulls began to be mass produced, only the very rich could afford to own vessels:

Fifty years ago, if you wanted a yacht, it would be custom built for you, as a one-off, usually by fastening together hundreds of separate hand-crafted pieces of wood. Most boats of any size, including working craft, were built this way. Only the well-off could afford them.

But the boat building industry was about to jump ship from wood to a novel 'wonder' material. Fibreglass, as it was generally known, offered the prospect of continuous monocoque structures that would start and stay watertight, along with ease of building whole series of identical boats. Fibreglass/glass reinforced plastic (GRP) went on to transform boat building from a small-scale enterprise steeped in wood and tradition to what is rapidly becoming a commodity industry. Today

Court's 2015 decision legalizing gay marriage⁴ only increases the chances of a lawyer becoming involved in a "boat divorce" case.

It is important to note that every state has its own body of family law and no two states' laws are exactly the same. Thus, this article provides only a birds-eye view of the topic and should be regarded merely as a primer.⁵

even median earners can aspire to a new Jeanneau, Beneteau, Bavaria etc.

Workboat numbers have multiplied alongside the ensuing leisure craft explosion.

George Marsh, *50 Years of Reinforced Plastic Boats*, MATERIALS TODAY, Oct. 8, 2006, at <http://www.materialstoday.com/composite-applications/features/50-years-of-reinforced-plastic-boats/>. For a further discussion, see DANIEL SPURR, HEART OF GLASS: FIBERGLASS BOATS AND THE MEN WHO BUILT THEM (2004) (pointing out, *id.* at 136, that "[b]etween 1950 and 1960, the number of boats owned in the United States doubled, from 3.5 million to more than 7 million. Fiberglass played a major role in this growth.").

In the interest of space, cases only tangentially on point have been omitted. See, e.g., SEC v. Homa, 2000 WL 1700139, at *2 (N.D. Ill. 2000) ("Carlson testified that on one such occasion on July 16 Lurie confided in him that he had sold his boat because he found himself in need of \$30,000 to pay his divorce attorney and that he intended to use the proceeds from the sale of the duplex to replace it."); Aetna Ins. Co. v. Rizzo, 1985 WL 2453, at *7 (N.D. Ill. 1985), *aff'd*, 799 F.2d 753 (7th Cir. 1986) (plot to defraud insurance company by staging phony boat theft began with principal defendant telling co-defendant that he needed co-defendant to act as the front man, because principal defendant "did not want the boat in his name until after the completion of divorce proceedings had gone through."); *In re Brissont*, 250 B.R. 413 (Bankr. M.D. Fla. 2000) (husband's claim that he had moved onto couple's Cabin Cruiser after pair decided to separate rejected due to lack of evidence); *May v. State*, 175 P.3d 1211, 1214 n.9 (Alaska 2007) (commercial fisherman who was denied new license because he had not used his old license enough explained: "I had to sell the [CIGALE] to settle the [divorce]. Now I am getting a new boat and would like to try again."); *Krize v. Krize*, 145 P.3d 481 (Alaska 2006) (trial court did not err in valuing divorcing couple's charter boat business at \$50,000); *Tidwell v. Tidwell*, 152 So. 3d 1045 (La. Ct. App. 2014) (husband granted divorce after wife found having sex on another man's boat); *Lee v. Hasson*, 286 S.W.3d 1 (Tex. Ct. App. 2007) (in suit by financial advisor seeking 10% of client's divorce settlement, latter introduced evidence that she "did not want a divorce . . . [and had] purchase[d] a boat for [her husband] Pai in the hope that the gift would help to effect a reconciliation.").

⁴See *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

⁵Like every other area of the law, a boat divorce case contains pitfalls for the unwary. For a boat divorce case in which a lawyer was sued for legal malpractice, see *Clauson v. Kirshenbaum*, 1997 WL 1051019 (R.I. Super. Ct. 1997) (ordering the lawyer to pay \$88,000 for failing to advise the husband that he should consider purchasing the couple's fishing trawler rather than allowing it to be sold at auction), later proceedings at *Clauson v. New Eng. Ins. Co.*, 83 F. Supp. 2d 278 (D.R.I. 2000), *aff'd* in part and remanded in part, 254 F.3d 331 (1st Cir. 2001). See also *Cortinez v. Brighton*, 894 S.W.2d 919 (Ark. 1995) (billing dispute arising out of attorney's handling of divorce case in which two boat slips were deemed to be the wife's separate property).

It also is worth mentioning that divorces, which by their nature tend to be acrimonious affairs, frequently become even more heated when a boat is involved. This is because one spouse usually has much stronger feelings for the vessel than the other spouse, which allows the latter to use these sentiments as a weapon.⁶

II OWNERSHIP

A. Boats Acquired Before Marriage

Generally speaking, assets that a spouse brings into a marriage are considered “non-marital.” Thus, in the event of a divorce, the other spouse has no claim to them. Boats are no different—if a spouse owned it before the marriage, it will remain a non-marital asset unless that spouse has made it, either intentionally or inadvertently, a marital asset.⁷ To the extent that marital funds are

⁶ A good example of this can be found in *In re Dunwoody's Estate*, 1970 WL 9101 (Pa. C.P. 1970). In the course of its opinion, the Pennsylvania Court of Common Pleas observed:

In applying equitable doctrines to this case, we cannot overlook the fact that in one of the lawsuits between these hostile parties in the Montgomery County Common Pleas Court, Mrs. Bedford challenged Mr. Bedford's ownership and right of possession in the racing sailboat “Windborne” which was titled “in joint names” but which was purchased for \$31,000 by Mr. Bedford with the \$19,000 net proceeds he received from the sale of his first boat which he, himself, built on weekends and holidays over a period of three years, together with other moneys which he was able to borrow. We have been informed by counsel that this litigation has [resulted] in the sale of “Windborne” by a court-appointed trustee and that the net proceeds, which will be considerably less than the cost thereof, is in the process of being distributed equally between the parties.

Id. at *33. See also *Choplin v. Choplin*, 1991 WL 127130 (Conn. Super. Ct. 1991) (“The marriage has broken down irretrievably with no hope of reconciliation. The cause of the breakdown appears to be a combination of circumstances . . . [including] arguments about [the husband's] desire to buy a boat. When the plaintiff threatened to divorce him if he bought the boat, he did not buy the boat . . .”).

⁷ See, e.g., *Backstrom v. Backstrom*, 56 P.2d 114, 114 (Or. 1936) (“Defendant . . . agreed, in the event of a divorce, to give his wife an undivided one-half interest in his houseboat at an agreed value of \$400 . . .”).

The burden of proof is on the spouse claiming the boat should be treated as separate property. See, e.g., *Rodvik v. Rodvik*, 151 P.3d 338, 346 (Alaska 2006) (“Given that Karsten's testimony was unequivocal and Maureen allowed that she was not sure when the canoe was purchased and that it could have been premarital property, we remand to

used to maintain or improve the vessel, the non-owning spouse normally will receive a credit and may even be entitled to a ruling that the boat has become a marital asset.⁸

In *Marriage of Johnston*,⁹ the wife claimed she was entitled to one-half of a boat. The Montana Supreme Court disagreed:

[T]he boat was acquired prior to Ellen and Stanley's second marriage. Nothing in the record indicates that Ellen contributed in any way to an increase in value of . . . the boat. Therefore, [it] is not an asset of the marital estate [W]hether we have included preacquired, gifted or inherited property in the marital estate and held that it must be distributed to the spouse to whom it was given or by whom it was preacquired, or simply held that it is not part of the marital estate, we have consistently treated such property differently than property acquired during a marriage through the joint efforts of the couple.¹⁰

In *Dietrich v. Dietrich*,¹¹ the husband purchased a power barge in 1978 and converted it to a fish processing ship in 1980. In 1981, he met his future wife while the pair were working in Togiak, Alaska. After several years of dating, the couple married in 1984. Following the wedding, they spent \$75,000 lengthening the ship, which greatly increased its profitability. As a result, in 1985 the pair was able to buy a commercial building in Seward. In 1987, the couple separated and later filed for divorce.

the superior court to revise its distribution of property to reflect that the canoe was Karsten's premarital property and thus is excluded from the property division."); *Mitchell v. Mitchell*, 1998 WL 225043, at *6 (Ohio Ct. App. 1998) ("[T]he trial court stated that no evidence had been put forth to show what equity, if any, had been created prior to the second marriage, and concluded, therefore, that all of the equity in the boat was marital property. A review of the record indicates that these findings are also supported by competent, credible evidence. Again, there is no evidence in the record showing how much the original loan was when the boat was first purchased or how much that loan was reduced prior to the second marriage. Assignment of error number six is overruled.").

⁸The opposite also is true. If a separately-owned boat is used to produce income for the marital estate, some or all of its expenses are likely to be charged to the marital estate. See, e.g., *Bare v. Bare*, 64 Cal. Rptr. 335 (Ct. App. 1967).

⁹2000 WL 1863554 (Mont. 2000).

¹⁰*Id.* at *4.

¹¹1989 WL 1600757 (Alaska 1989).

The trial judge awarded the ship to the husband and the building to the wife. On appeal, the husband argued that the trial court erred in treating the ship as a marital asset. The Alaska Supreme Court disagreed:

The Seward property awarded to Marilyn was acquired during coverture. Its value is balanced by Manfred's retention, under the superior court's property division, of the improvements to, and appreciation in the value of, the vessel the "Flying D" which occurred during coverture. Given Marilyn Dietrich's active contributions to the "Flying D" after the parties' marriage, we hold that the superior court did not abuse its discretion in making the subject property division.¹²

In *Lundquist v. Lundquist*,¹³ the Alaska Supreme Court again reached the same conclusion on nearly identical facts:

George bought the F/V Koosh-da-kaa for \$95,000, putting \$25,000 down and executing a note for the balance of the purchase price. At the time of the parties' marriage, George owed \$60,094 towards the purchase of the F/V Koosh-da-kaa. When the parties separated, the principal balance was \$36,106. The value of the vessel at the time of the divorce was \$80,000. The trial court found that the equity in the F/V Koosh-da-kaa was \$43,893. The trial court then determined that the F/V Koosh-da-kaa was marital property.

Jean presented evidence of the parties' intent to treat the F/V Koosh-da-kaa as marital property. Jean testified that she took an active role in the fishing venture and contributed substantial efforts towards it. She detailed her contributions as "working on the boat, working on the fishing gear, frequent grocery shopping and cooking for the crew, going out on the boat and working as a deck hand, tending to the business needs of the enterprise while George was out fishing, and helping to pay for the boat by contributing to the growing equity in the Koosh-Da-Kaa."

Jean further argues that the parties always referred to the fishing business as "our business" and agreed that whatever they acquired during marriage would be marital property. Further, the improvements to the boat were paid for with marital funds.

Marital funds were used to pay off a substantial portion of the loan on the F/V Koosh-da-kaa, as well as to fund a major capital

¹²*Id.* at *1.

¹³923 P.2d 42 (Alaska 1996).

improvement. Jean presented evidence that she made substantial contributions to the fishing enterprise and the operation of the F/V Koosh-da-kaa. While George disputed Jean's version of events, the trial court apparently gave more weight to her testimony than to his. Based on these facts, it was not an abuse of discretion for the trial court to characterize the F/V Koosh-da-kaa as marital property.¹⁴

B. Boats Acquired During Marriage

In contrast to vessels acquired before the marriage, boats acquired during the marriage usually are deemed marital property and therefore are divisible.¹⁵ This rule will not be

¹⁴*Id.* at 47.

¹⁵See, e.g., *Wells v. Wells*, 2014 WL 495402 (Nev. 2014) (couple's boat was marital property); *Forbis v. Forbis*, 203 P.3d 421 (Wyo. 2009) (Crestliner boat acquired during marriage was marital property); *McKay v. McKay*, 8 S.W.3d 525 (Ark. 2000) (jointly-purchased houseboat was marital property); *Tiger v. Tiger*, 65 N.Y.S.3d 302 (App. Div. 2017) (treating four boats as marital property); *Harter v. Harter*, 2012 WL 4831549 (Ohio Ct. App. 2012) (where husband did not object to trial court's treatment of couple's sailboat as marital asset, issue could not be reviewed on appeal); *Intrator v. Intrator*, 929 N.Y.S.2d 587 (App. Div. 2011) (husband held in contempt after he failed to either sell the couple's boat and divide the proceeds with the wife or buy out the wife's interest in the boat); *Kimbrough v. Kimbrough*, 76 So. 3d 715 (Miss. Ct. App.), cert. denied, 76 So. 3d 169 (Miss. 2011) (trial court did not err by giving wife sole possession of the couple's pontoon boat to even out other assets given to husband); *Dunfee v. Dunfee*, 2010 WL 5287502 (Va. Ct. App. 2010) (apportioning both the couple's Maxum boat and its related debt); *Baker v. Baker*, 2009 WL 5150260 (Ohio Ct. App. 2009) (trial court erred when it failed to distribute couple's marital boat); *Humphries v. Humphries*, 904 So. 2d 192, 199 (Miss. Ct. App. 2005) ("The pontoon boat was acquired during the marriage. Accordingly, it is a marital asset."); *In re Marriage of Eastman*, 2003 WL 22700556, at *2 (Iowa Ct. App. 2003) ("Cheryl also received . . . \$1,250 for one-half of the value of a jet ski purchased during the marriage."); *Cutsinger v. Cutsinger*, 917 S.W.2d 238, 243 (Tenn. Ct. App. 1995) ("[T]he trial court found that the pleasure boat was marital property . . . [and] [a]ll evidence presented at trial indicated that the boat was purchased during the marriage. Thus, there is no reason to question the trial court's factual finding."); *Matter of Marriage of Dubnicay*, 830 P.2d 608 (Or. Ct. App. 1992) (where husband and wife traded in husband's boat for larger one, the new vessel was marital property); *Hamiter v. Hamiter*, 351 S.E.2d 581, 582 (S.C. Ct. App. 1986) ("The husband also assigns error to the family court's equitable distribution of the property. Specifically, he claims the court erred in awarding the wife a fifty (50) percent interest in a boat The record reveals the boat was purchased during the marriage and the wife testified she contributed to the boat's purchase [W]e affirm the equitable distribution award."); *Antonini v. Antonini*, 473 So. 2d 739 (Fla. Dist. Ct. App. 1985), review denied, 484 So. 2d 7 (Fla. 1986) (couple's sailboat was marital property); *Leonard v. Leonard*, 389 So. 2d 256 (Fla. Dist. Ct. App. 1980), review denied, 399 So. 2d 1144 (Fla. 1981) (houseboat that was jointly titled was marital asset); *Garmon v. Garmon*, 357 So. 2d 487, 488 (Fla. Dist. Ct. App. 1978) ("The subject of this appeal is

followed, however, where the boat was purchased with non-marital funds¹⁶ or is otherwise fairly attributable to just one

the trial court's award to the husband of the wife's interest in a jointly-owned 32-foot yacht. The award is erroneous because the husband did not plead special equity or other theory justifying the award to him of the wife's interest On dissolution of the marriage here, the parties became tenants in common of the yacht."); *Rocco v. Continental Ins. Co.*, 2003 AMC 1237, 1237 n.1 (Conn. Super. Ct. 2003) ("When Rocco was divorced in April of 1997, he obtained under the divorce decree sole title to the boat and had the right to use the Sea Scape until she was sold. His ex-wife, Helen Rocco had the right to one-half of the proceeds when the boat was sold and therefore had an insurable interest in the Sea Scape. Rocco and Helen had agreed that he would sell the boat within two years.").

In *Pestrikoff v. Hoff*, 278 P.3d 281 (Alaska 2012), the wife died. As a result, the husband claimed he now was the sole owner of their boat. Her children objected, insisting that the presumption of divisibility applied in both divorce cases and probate cases. In rejecting this argument, the Alaska Supreme Court wrote: "For equitable distribution purposes, all property acquired during a marriage is presumed to be marital property. But the concepts of marital property and its equitable distribution do not apply at the death of a spouse." *Id.* at 284–85. The same result has been reached in RICO actions. See, e.g., *United States v. Strube*, 58 F. Supp. 2d 576, 584 (M.D. Pa. 1999) (denying wife's claim to one-half of husband's yacht after finding that right to equitable distribution of marital property confers no "ownership independent of a divorce proceeding.").

In *Velzy v. Estate of Miller*, 502 So. 2d 1295 & 1297 (Fla. Dist. Ct. App. 1987), a husband improperly retitled the couple's Matthews boat as his own just before the couple's divorce became final. The wife did not challenge this change until years later, after the husband had died and the time for creditor claims had closed. As a result, the Florida District Court of Appeal dismissed her claim:

Appellant alleges she had no knowledge of the whereabouts of the boat but the record shows her receipt in 1980 from the Coast Guard of a complete abstract of title pertaining to the boat reflecting that it was titled in Florida. While she alleges that she did not know the estate was to be probated, she does not deny the publication of notice, nor has she ever alleged, below or here, that she did not have knowledge of the probate of decedent's estate in time to timely file her claim. Therefore, we conclude that the motion to strike appellant's claim below was properly granted as being untimely filed. We further conclude that appellant has neither adequately pled estoppel nor offered facts which are not clearly and unequivocally refuted by the record to sustain an estoppel if properly pled.

Id. at 1297.

¹⁶See, e.g., *Comninellis v. Comninellis*, 99 S.W.3d 502, 511 (Mo. Ct. App. 2003) ("The record demonstrates that the yacht is Husband's separate nonmarital property and not marital property."); *In re Marriage of Buijnorouski*, 2002 WL 31684973, at *6 (Cal. Ct. App. 2002) ("Substantial evidence supports the court's finding. Lynda provided no evidence that community funds were used to purchase the Patriot. In contrast, Henry's testimony and the documentary evidence support Henry's position that he used separate funds to purchase the Patriot."); *Noffsinger v. Noffsinger*, 620 A.2d 415, 424 (Md. Ct. Spec. App.), cert. denied, 627 A.2d 539 (Md. 1993) ("Mrs. Noffsinger also contends that the trial judge erred in finding Dr. Noffsinger's 22-foot Seafarer boat nonmarital

spouse.¹⁷ In “mixed” cases, where both separate and joint funds were used to make the purchase, the vessel normally will be treated as marital property.¹⁸

In *Laird v. Laird*,¹⁹ the wife claimed that a Chris-Craft boat was marital property. The husband objected, arguing it was his separate property, and the California District Court of Appeals agreed:

Plaintiff’s contention that she is entitled to an interest in the proceeds from the sale of a Chris Craft boat presents the same basic question as does her claim to an interest in the Cadillac automobile. Defendant testified that he sold a parcel of real estate which was his separate property, deposited part of the proceeds in the joint account

property There is sufficient evidence for the trial judge to conclude that the boat had been purchased with nonmarital funds.”); *Meek v. Meek*, 486 So. 2d 663 (Fla. Dist. Ct. App. 1986) (wife failed to show she was entitled to a share of husband’s sailboat); *Culver v. Culver*, 572 S.W.2d 617, 621 (Ky. Ct. App. 1978) (“With respect to the houseboat, the trial judge clearly erred in finding that it was marital property. Both Mr. and Mrs. Culver testified that the houseboat was purchased with funds inherited by Mr. Culver from his father.”); *Zaugg v. Zaugg*, 357 So. 2d 201, 202 (Fla. Dist. Ct. App. 1978) (“[The] record contains evidence that the yacht was purchased solely with the husband’s funds, some of which his family gave or loaned him, some from an inheritance he received and the remainder from the proceeds of the sale of the boat which he previously solely owned.”); *Whitaker v. Whitaker*, 30 P.2d 538, 541 (Cal. Dist. Ct. App. 1934) (“All of the facts and circumstances show conclusively that the yacht is appellant’s separate property.”). See also *Banks v. Evans*, 364 S.W.3d 746 (Ark. 2002) (holding that a pontoon boat was not marital property because it was purchased and owned by husband’s corporation).

¹⁷See, e.g., *Knight v. Knight*, 195 So. 3d 895 (Miss. Ct. App. 2016) (fishing boat debt assigned solely to husband); *Quigley v. Quigley*, 2004 WL 1088481, at *9 (Ohio Ct. App. 2004) (“As to whether the trial court abused its discretion by ordering Dale to pay the \$80,000 loan that resulted from the repossession of the sailboat, evidence was presented at the hearing that Dale unilaterally applied for a loan to purchase the boat. Diana testified at the hearing that she did not want Dale to purchase the boat, and her name did not appear on the loan application, the loan documents, or the title to the boat. In addition, Dale admits on appeal that the boat was repossessed because Diana did not make the payments after he was sent to prison. Under such circumstances, we cannot say that the trial court abused its discretion by ordering Dale to pay the remaining outstanding loan on the sailboat as part of the division of marital property.”); *Glidewell v. Glidewell*, 859 S.W.2d 675, 679 (Ky. Ct. App. 1993) (“The last debt in question is the \$3,965.14 debt on the Searay boat awarded to him. The trial court found and Danny does not deny that the boat was purchased solely for Danny’s benefit. Hence, we cannot say it was improper for the trial court to assign him the full debt on the boat.”).

¹⁸See, e.g., *Ranney v. Ranney*, 608 S.E.2d 485, 494 (Va. Ct. App. 2005) (“[W]ife’s evidence was insufficient to prove, by a preponderance of the evidence, that an identifiable portion of her separate funds was used to purchase . . . the SeaRay boat[.]”).

¹⁹21 Cal. Rptr. 924 (Dist. Ct. App. 1962).

of the parties, and used \$3,000 of the funds in this joint account to apply on the \$11,000 purchase price of the boat. Later defendant sold the boat and deposited the proceeds in his separate account. He also testified that he intended no gift of the \$3,000 to plaintiff, that the transfer was a matter of convenience. The trial court believed defendant. We find nothing in the record indicating that his testimony was inherently improbable, so we cannot set aside this finding of the trial court simply by reweighing the evidence.²⁰

In *Skutt v. Skutt*,²¹ the husband insisted that a boat given to him by his father was his separate property. In rejecting this claim, the Wisconsin Court of Appeals wrote:

Jason testified that his father bought the Skeeter boat for Jason from funds his father inherited. Lori acknowledged that the boat was purchased by Jason's father with inherited funds. Jason also testified that the boat was titled in both his and Lori's names. His testimony supports the circuit court's finding that the boat was titled in both Jason's and Lori's names. Even if, as Jason contends, the boat was gifted only to him, the act of titling the boat in both of their names shows it was converted to divisible property Jason has failed to meet his burden of proving that the Skeeter boat was not divisible property.²²

In *Carter v. Harmon*,²³ the husband asserted that a boat bought for \$35,000 was not a marital asset. The trial court disagreed and held that the wife was entitled to half its value. On appeal, the Delaware Supreme Court affirmed:

In his opening brief on appeal, Husband argues that the Family Court erred in finding that the boat was a marital asset. He contends that Wife's testimony was not true, that the boat belonged to his daughter, and that no marital funds were used to purchase the boat

In this case, the Family Court considered the testimony and evidence presented by both parties. The Family Court simply did not find Husband's testimony that he was merely an agent in purchasing the boat for his daughter to be credible. The Family

²⁰*Id.* at 927.

²¹2013 WL 1459193 (Wis. Ct. App. 2013).

²²*Id.* at *1.

²³2013 WL 53905 (Del. 2013).

Court was in the best position to assess the credibility of the witnesses. We do not find the Family Court's ruling to be clearly erroneous.²⁴

In *Kess v. Kess*,²⁵ the husband claimed that a Sea Ray boat was not marital property because he had purchased it using an inheritance. The trial court disagreed and the Ohio Court of Appeals affirmed:

Husband next contends the trial court erred when it found the Sea Ray Boat was marital property, not Husband's separate property. Husband testified he used inherited funds to purchase the Sea Ray Boat. Wife testified the funds to purchase the boat came from marital funds out of a joint account. The Sea Ray Boat was jointly titled in both Husband's and Wife's name

In this case, the trial court found Husband did not establish by a preponderance of the evidence that the Sea Ray Boat was separate property. Husband testified the boat was purchased with separate funds; Wife testified the boat was purchased with marital funds. The Sea Ray Boat was titled in both parties' names and Husband testified Wife was given approximately half of the proceeds after the sale of the boat by the bankruptcy trustee. We find no plain error for the trial court to designate the Sea Ray Boat as marital property.²⁶

In *MacKool v. MacKool*,²⁷ the Arkansas Court of Appeals encountered a husband who could not keep his story straight:

Finally, the appellant argues that the chancellor erred in awarding the appellee one-half of the proceeds from the sale of the parties' Supra ski boat. The appellant's testimony at trial concerning the boat was internally contradictory. His testimony included statements that, although he had possession of the boat, it always belonged to his father; that, around the time of the separation, he sold the boat to his father for \$10,000.00; and that, when he was in bankruptcy, the trustee allowed him to give the boat to his father to settle debts owed to his father. The appellee testified that the boat was purchased in

²⁴ *Id.* at *1.

²⁵ 2018 WL 1750932 (Ohio Ct. App. 2018).

²⁶ *Id.* at *9.

²⁷ 1992 WL 302390 (Ark. Ct. App. 1992).

1988 and that the funds for the purchase came from the \$25,000.00 received from the refinancing of the house

In the case at bar, the chancellor obviously believed the appellee's testimony that the boat was purchased with marital funds. We, therefore, defer to the chancellor's opportunity to personally observe the witnesses and to evaluate their credibility and the weight to be given their testimony. Accordingly, we hold that the chancellor's finding that the boat was marital property is not clearly erroneous.²⁸

Because of the risk that a boat will be found to be a marital asset, spouses sometimes attempt to hide their interest in it.²⁹ In *The Lady Jane*,³⁰ Israel and Mary Kashow divorced in California, a community property state. This meant Mary was entitled to 50% of Israel's assets, including an ocean-going schooner. Israel, however, claimed he did not own the vessel but was merely leasing it from a third party.

Matters came to a head when the ship docked in Honolulu and Israel's story was challenged by a property receiver appointed by the divorce court to protect Mary's interests. The Hawaii Supreme Court needed just a few paragraphs to expose Israel's lie:

The first question for the Court to determine is, who is the owner of this vessel? Is it Israel Kashow, or Elisha Bloomer? It is contended

²⁸*Id.* at *2-*3.

²⁹It is, of course, illegal to provide such assistance to a spouse. In civil actions, however, the treatment of such conduct depends on the claim being asserted:

Manown's clean hands defense to Count I, even if applicable to a claim "at law," cannot be predicated on Adams's transfer of the boat to Manown in fraud of the potential claims against him by his wife in their anticipated divorce action. The clean hands doctrine is not applied for the protection of the parties nor as a punishment to the wrongdoer; rather, the doctrine is intended to protect the courts from having to endorse or reward inequitable conduct In the instant matter Adams does not claim the value of the boat from Manown. Any fraud committed by Adams in concealing the existence of the boat from his wife in the divorce proceedings is independent of Adams's claim against Manown for the \$43,000 used toward purchase of the Frederick house.

Adams v. Manown, 615 A.2d 611, 616-17 (Md. 1992).

While spouses usually hide vessels from each other, they sometimes hide them from others. In *United States v. Baker*, 2015 WL 4886081 (D. Mass. 2015), for example, a couple went through a sham divorce in an effort to keep the IRS from collecting on a \$5 million tax debt owed by the husband. "After the divorce the couple continued to hide assets—keeping a boat and gym equipment on the property of friends[.]" *Id.* at *14.

³⁰1 Haw. 162 (1855).

by Kashow that the [ship's] register is the legal and proper evidence of ownership, behind which we cannot go, and that by the said register, Bloomer appears to be the owner, and must be considered as such

A vessel may be, and often is, registered in the name of a person who has not a farthing's interest in her, while the equitable title and real ownership is in another person, and where there is proof of the ownership being in some other party, the register, unless auxiliary proof is brought in aid of the same, will avail but little. Now, has such auxiliary proof been furnished in this case? Most clearly not. There is not a particle of evidence on this point aside from the naked register, and is it reasonable to suppose, that if Bloomer was the real, bona fide owner of this valuable vessel, he would have hired her to Kashow for the small sum of three hundred dollars per annum? It appears by the evidence of the master who sailed the ship from New York to Honolulu, and others, that Kashow frequently declared himself to be the owner of the schooner "Lady Jane," and that he has acted as such from the time he built her up to December last when this dispute arose. It further appears that while he invariably represented himself as the owner of the "Lady Jane," he repeatedly stated that he had caused her to be registered in the name of Elisha Bloomer, because he was afraid if she stood in his own name she would be taken away from him at the suit of Mary Kashow I am convinced that Kashow is the real and equitable owner of the schooner "Lady Jane" . . . [and] . . . that the libellant, as . . . receiver, is entitled to the possession of the vessel at the present time.³¹

An equally outlandish story was rejected by the Connecticut Supreme Court in *Arrigoni v. Arrigoni*:³²

One dispute centers about whether the defendant still retained an ownership interest in a forty-two foot boat which he had purchased for \$76,000 in 1977, and which he claimed to have sold for \$65,000 in September, 1978, and to have used the proceeds to repay some loans from his mother and to defray some personal living expenses. He testified that the boat had been sold to the woman he was living with at the time of trial and that she had subsequently sold the boat to someone in Rhode Island. Two investigators employed by the defendant testified, however, that the plaintiff had told them he still

³¹*Id.* at 163–64.

³²440 A.2d 206 (Conn. 1981).

owned the boat at the time of trial and kept it in South Carolina. The plaintiff made no effort to produce anything to corroborate his own testimony that the boat had been disposed of. The trier's decision against him upon this factual question is adequately supported by the evidence.³³

In *Beech v. FV Wishbone*,³⁴ Adam Beech was hired by Gene Warhurst, an attorney, to renovate the cabin of a fishing boat that Warhurst and a group of investors were planning to buy to start a chartering business. Rather than pay Beech for his work, Warhurst convinced him to accept a \$25,000 stake in the operation. When the enterprise failed and the boat was sold to another group, Beech claimed in an Alabama federal court that he had a maritime lien on the vessel. Asked why he had no documentation memorializing his deal with Warhurst, Beech blamed Warhurst:

The parties did not reduce this agreement to writing because Beech "was going through a divorce at the time" and [Warhurst] "didn't want to show me having any ownership in the boat or ownership in anything until I got my divorce settled, because it would just be something else I had to fight over." . . . By the time Beech's divorce proceeding had concluded, in his words, "the boat had vamoosed," so Beech never documented this agreement with Mr. Warhurst.³⁵

In *Rutledge v. Chaprales*,³⁶ the defendant testified during his divorce that he did not own a particular boat. In a subsequent probate proceeding, however, he claimed to have a 100% beneficial interest in the vessel. Finding that both stories could not be true, the Massachusetts Superior Court held he was judicially estopped from denying his first statement:

[I]t is not controverted that Arthur made sworn statements in connection with his 2001 divorce wherein he denied that he had any beneficial interest in the . . . yacht.

Arthur also denied under oath any ownership interest in the . . . yacht in his November 2, 2001 answers to his then-wife Bonnie's interrogatories filed in the divorce proceedings

³³*Id.* at 208.

³⁴113 F. Supp. 3d 1203 (S.D. Ala. 2015).

³⁵*Id.* at 1207.

³⁶2010 WL 3038320 (Mass. Super. Ct. 2010).

Then, in his divorce “agreement” dated December 13, 2001, which gained the Probate Court’s approval, he stated under oath in para. 32 that he denied any “beneficial interest” in the boat

The Court concludes that the criteria for application of judicial estoppel to Arthur’s claims in this case are met. First, Arthur’s position in this case is “directly inconsistent” with the position he asserted in the prior divorce proceedings

With respect to the second requirement for application of judicial estoppel, that “the party must have succeeded in convincing the court to accept its prior position,” Arthur’s dishonest sworn statements submitted to the court disclaiming any beneficial interest in . . . a boat valued at \$150,000, resulted in the Probate Court’s giving its approval to a divorce settlement

The Court finds that Arthur has been “playing fast and loose with the courts” and “improperly manipulating the machinery of the judicial system” so that application of judicial estoppel is warranted.³⁷

Sometimes, a spouse will spend his or her own money on a marital boat. In such cases, a credit normally is earned. In *Robeaux v. Robeaux*,³⁸ the husband used his separate funds to pay the couple’s monthly boat mortgage. Due to a lack of proof, however, the Louisiana Court of Appeals denied him a credit:

Though the record establishes that Mr. Robeaux used his separate property to make payments on the boat loan, there is no evidence in the record to establish the amount of these payments. Thus, we do not find that the trial court abused its discretion in failing to reimburse Mr. Robeaux for sums not clearly ascertainable by the record.³⁹

³⁷*Id.* at *1-*3.

³⁸129 So. 3d 659 (La. Ct. App. 2013).

³⁹*Id.* at 666. In *Smith v. Smith*, 410 N.W.2d 334 (Minn. Ct. App. 1987), the husband maintained the couple’s boat during the pendency of the divorce. He therefore asked for a credit. In denying his request, the Minnesota Court of Appeals wrote: “The court can consider the cost of maintaining property during the pendency of the action as one of the factors influencing its equitable division of property In this case, the parties separated more than two years prior to the final hearing. During that time, appellant had use of the boat. As a result, we conclude that it was within the trial court’s discretion to decline to give appellant credit for the cost of repairing the boat.” *Id.* at 337.

C. Boats Acquired After Initiation of Divorce Proceedings

A boat that is acquired after the parties have filed for divorce normally will not be deemed marital property.⁴⁰

D. Boats Gifted by One Spouse to Another Spouse

If a spouse uses his or her own funds to buy a boat and then gifts it to the other spouse, it normally will be considered the latter's property. To qualify for such treatment, however, there must be clear proof that both requirements have been met.⁴¹

In *Higgins v. Higgins*,⁴² the wife insisted that the couple's boat belonged to her because she had received it from the husband as a Christmas gift. The trial court agreed but the Florida District Court of Appeal reversed and remanded for additional fact finding:

The former wife argues that the trial court made a credibility determination and believed her, but the court did not make any findings relating to the former wife's testimony that the former husband gifted her the . . . boat. This lack of findings makes review impossible. For that reason, we must reverse and remand . . .⁴³

In *Will of Quackenbush*,⁴⁴ the wife claimed the husband gifted her an antique motorboat. The New York Surrogate's Court disagreed:

The third principal issue raised in this proceeding concerns ownership of an antique motor boat called the "Rideau." The

⁴⁰See *Sprole v. Sprole*, 45 N.Y.S.3d 233, 239 (App. Div. 2016) ("The husband's boat, on the other hand, was his separate property inasmuch as it was acquired subsequent to the commencement of this action."). See also *In re Marriage of Hitchcock*, 309 N.W.2d 432, 435 (Iowa 1981) ("[Husband] makes no objection to the inclusion of a sailboat and trailer as marital assets, despite the fact he bought them after the divorce decree."); *Rankin v. Belvin*, 507 S.W.2d 908, 912 (Tex. Ct. App. 1974) ("Stanley Belvin disclosed that he owned as separate property one C[h]ris-Craft motor boat He further stated that his wife had agreed that she would lay no claim to the boat, as he had purchased it after their separation. The divorce decree awarded the motor boat to Stanley Belvin as his separate property.").

⁴¹For an odd case in which a wife unsuccessfully claimed that the husband purchased and gifted her a boat after their divorce, see *Beavers v. Harris*, 93 So. 2d 161 (Ala. 1956).

⁴²226 So. 3d 901 (Fla. Dist. Ct. App. 2017).

⁴³*Id.* at 905.

⁴⁴578 N.Y.S.2d 983 (Sur. Ct. 1991).

decedent purchased this boat with his own funds on or about June 15, 1985. It was listed as his asset on his statement of net worth filed in conjunction with the divorce action between the parties. The boat was not listed on the widow's statement of net worth also filed in the divorce action on or about September 28, 1990.

The boat was housed at Friendly Island, which was owned by the decedent alone since May 16, 1985, or one month prior to the purchase of the "Rideau." The decedent was the principal operator of the boat, although the widow has also operated the boat with the decedent on board. The decedent paid all expenses connected with the "Rideau."

The widow was precluded from offering convincing testimony regarding a gift of the "Rideau" by CPLR 4519 [New York's Dead Man's Statute], and the seller of the boat was not present to testify concerning the transaction. In addition, neither party had caused the "Rideau" to be registered at the Department of Motor Vehicles (as required by law), so that no inferences as to title could be drawn from that act. A purported registration was offered but not accepted into evidence due to conflicting testimony regarding the handwriting thereon.

In short, the widow failed to meet her burden to prove by clear, convincing and satisfactory evidence that the "Rideau" belonged to anyone other than the decedent alone. There was no acceptable evidence of the decedent's intent to make an immediate gift, or of delivery. Likewise, there was no proof of joint ownership on any other theory. Therefore, the "Rideau" is an asset of the decedent's estate.⁴⁵

In *Woodie v. Patterson*,⁴⁶ the Ohio Court of Appeals reversed a contempt citation against the husband because the wife could not prove the husband had gifted her the boat:

Deanna testified the Jon boat was a gift from James to her many years ago. Further, that James told her the boat was hers, so she does not know why there were checkmarks beside both of their names on the personal property division form in the agreed judgment entry and decree of divorce. Though she admitted there were checkmarks in both columns, Deanna assumed the boat was hers . . .

We find the trial court erred in finding James in contempt for taking possession of the Jon boat . . . Here, the parties each had a

⁴⁵*Id.* at 988.

⁴⁶2014 WL 3058471 (Ohio Ct. App. 2014).

checkmark by their name on Exhibit B with regards to the Jon boat and each testified they thought the Jon boat belonged to them due to the confusion with the dual checkmarks. Accordingly, we find there was no competent and credible evidence to support the trial court's decision that James was in contempt for taking the Jon boat because the agreed judgment entry and divorce decree is not clear, is ambiguous, and is subject to dual interpretations with regards to the Jon boat, as testified to by both parties. Having concluded that the trial court's decree was ambiguous as to the Jon boat, we find the trial court's finding of contempt based upon this ambiguous provision was unreasonable.⁴⁷

E. Turnover

If a boat that has been awarded to one spouse is in the physical possession of the other spouse, the latter must surrender the vessel.⁴⁸

In *Ewing v. Ewing*,⁴⁹ however, the Mississippi Court of Appeals reversed the trial court's order holding the wife in contempt for failing to deliver two jet skis to the husband:

[T]he chancellor was not free to simply disregard Mrs. Ewing's evidence that the skis were stolen before Mr. Ewing's right to exclusive possession arose. If, in fact, Mrs. Ewing was playing fast and loose with marital assets by secreting the skis in the days leading up to the divorce trial and falsely reporting them as stolen, and if she persisted in that subterfuge through a subsequent contempt proceeding, then a ruling of contempt despite her claim of theft would be supportable If, however, the skis were actually stolen, then Mrs. Ewing simply cannot be in contempt for

⁴⁷*Id.* at *2, *7.

⁴⁸See *McArthur v. McArthur*, 1988 WL 68745 (Ark. 1988) (punishing husband for turning couple's pontoon boat over to a third party instead of wife); *Rowan v. Rowan*, 2005 WL 195117 (Tenn. Ct. App. 2005) (holding husband in contempt for failing to deliver houseboat to wife).

For a case in which a couple owned multiple kayaks, the divorce court ordered the husband to give one of them to the wife, he did so, and the wife then complained that she was entitled to a different one, see *Rose v. Rose*, 2006 WL 5838943 (Vt. 2006) (concluding that the trial court did not err when it directed the husband to make the substitution demanded by the wife).

The turnover rule also applies to a boat's title. See *Briggs v. Moelich*, 2012 WL 896254 (Ohio Ct. App. 2012).

⁴⁹749 So. 2d 223 (Miss. Ct. App. 1999).

her failure to accomplish an act that was impossible to perform for reasons beyond her control. Which conclusion is supported by the evidence is a question that has not been properly resolved at this point insofar as the record now before us reveals We determine, therefore, that we must reverse and remand this contempt judgment for further proceedings⁵⁰

A former spouse who has turned over a boat pursuant to a divorce decree cannot subsequently take it back. In *Wilson v. Commonwealth*,⁵¹ the divorce court ordered the couple's boats to be given to the husband. The wife complied but after the husband died, she retitled one of the boats in her name. When the state accused her of theft, she argued she had done nothing wrong. In upholding her conviction, the Virginia Court of Appeals wrote:

In this case, Wilson voluntarily relinquished "any and all interest" . . . to the boat and trailer by entering into the property settlement agreement and addendum, which were incorporated by reference into the 2007 final divorce decree The agreement vested Jones with "sole use, possession, and enjoyment" of the boat and trailer "as of the date of the execution of this agreement" No later amendment changed this provision of the agreement. No later court order amended the final decree incorporating the agreement

Having established that Wilson had no ownership interest, the evidence amply supports the conclusion that she committed grand larceny of the boat. The property settlement agreement and divorce decree vested Jones with "sole use, possession, and enjoyment of said items as of the date of the execution of this agreement" Jones maintained possession of the boat until his death.

These facts negate Wilson's alleged ownership interest in the boat Wilson's successful attempt, just weeks after Jones's death, to manipulate [the government] into issuing a new title to her and her new husband (claiming the original document was lost) only strengthens the incriminating evidence of her larcenous intent. For these reasons, the jury had ample evidence to convict Wilson of grand larceny.⁵²

⁵⁰*Id.* at 225.

⁵¹2012 WL 443944 (Va. Ct. App. 2012).

⁵²*Id.* at *3-*5.

Sometimes, however, the spouse who has been awarded the boat refuses to take possession of it. In such cases, the other spouse can petition the court for relief. In *Johnson v. Martin*,⁵³ the husband left his pre-marital boat in the wife's driveway for two years. When the wife's repeated entreaties fell on deaf ears, the Delaware Family Court held the husband in contempt and authorized the wife to sell the vessel:

In the present case, this Court issued a valid order on March 5, 2008 requiring Husband to contact Wife's attorney in order to make arrangements for the removal of the boat within thirty days of the Order. Over two years have passed since the issuing of this Order. Despite the Court having given Husband notice of a teleconference and a hearing regarding the boat and trailer, Husband has failed [to] contact Wife's attorney. He has failed to contact Wife, and failed to appear and provide adequate proof that he did not have the ability to contact Wife's attorney or to remove the boat and trailer. Since Husband has taken no action regarding the boat and trailer and has failed to provide an adequate reason why he was unable to comply with the Court's Order, this Court finds by clear and convincing evidence that Husband is in contempt of this Court's March 5, 2008 Order

(T)he Family Court has jurisdiction to fashion remedies in equity where necessary when the property in question is related to the divorce of the parties. Therefore, the Clerk of Court is hereby authorized to sign, on behalf of Husband, any documents presented by Wife which will allow Wife to transfer title and registration of the boat and trailer.⁵⁴

Failing to take possession can be a costly mistake. In *Matter of Estate of Billings*,⁵⁵ the wife was awarded \$3,000, which was to be paid upon the happening of certain future events. In the meantime, she was given possession of the husband's Mako boat as security. The wife did not take possession of the boat and later lost track of it. In the meantime, the husband died. When the wife sought to collect from his estate, the Tennessee Court of Appeals dismissed her claim:

⁵³2010 WL 2777057 (Del. Fam. Ct. 2010).

⁵⁴*Id.* at *3.

⁵⁵1989 WL 105624 (Tenn. Ct. App. 1989).

Although the Estate presented no proof, Claimant's own testimony proves that she is not certain of the boat's current location, she had an opportunity to take possession of the boat shortly after her divorce but failed to do so, and at trial she was not prepared to turn the collateral over to the Estate in return for her \$3,000 claim For the foregoing reasons, the ruling by the Probate Court allowing the claim is reversed and the matter is dismissed. The costs are taxed against claimant.⁵⁶

If a spouse takes possession of a boat and then sells it, he or she will not be allowed to later attack the divorce judgment. In *Richards v. Richards*,⁵⁷ the trial court determined that five boats were marital property and awarded them to the husband. On appeal, the husband sought to challenge the trial court's property distribution. In the interim, however, he had sold two of the boats and entered into a sales contract for another. As a result, the Texas Court of Appeals dismissed due to the "acceptance of benefits" doctrine:

Under the acceptance of the benefits doctrine, "[a] litigant cannot treat a judgment as both right and wrong, and if he has voluntarily accepted the benefits of a judgment, he cannot afterward prosecute an appeal therefrom." *Carle v. Carle*, 149 Tex. 469, 234 S.W.2d 1002, 1004 (1950). "The doctrine arises most often in divorce cases in which one spouse accepts certain assets awarded by the judgment and then seeks to appeal the remainder of the judgment." *Williams v. LifeCare Hosps. of N. Tex.*, 207 S.W.3d 828, 830 (Tex.App.-Fort Worth 2006, no pet.)

James does not dispute that he has accepted the benefits of the judgment. Instead, he argues the sale of the boats was an economic necessity. At the hearing, he described his financial situation as "almost bankruptcy" and that his expenses were greater than what he brought in His explanation for why he had to sell the boats was his assertion that the market for boats was crashing and the cost[s] of maintaining them were outweighing their value

James does not provide any detailed explanation of his economic circumstances. Instead, he provides a mostly conclusory assertion that he is near bankruptcy and that his expenses were greater than his income. While some information is present, it is not enough to determine, with any degree of certainty, what his monthly income

⁵⁶*Id.* at *3-*4.

⁵⁷371 S.W.3d 412 (Tex. Ct. App. 2012).

and obligations are. Accordingly, James has failed to establish he falls in the [acceptance of benefits doctrine's] narrow exception of economic necessity.⁵⁸

Courts normally require the spouse granted a jointly-owned boat to assume its debts.⁵⁹ A spouse who does not pay them risks incarceration. In *Ryan v. Ryan*,⁶⁰ the trial court awarded the couple's sailboat to the husband. When he failed to keep up with its loan, the holders of the boat's promissory note sued the couple and eventually obtained a garnishment order against the wife. In response, the wife sued the husband.

Finding that the husband was delinquent, the trial court held him in contempt, fined him \$100, directed him to reimburse the wife \$4,000 in attorneys' fees, and sentenced him to 30 days in jail. Finding no error, the Ohio Court of Appeals affirmed:

The magistrate's contempt order allowed appellant to avoid incarceration and a \$100.00 fine by paying appellee \$300.00 a month to be applied towards the \$414.65 appellee's employer garnished each month to satisfy the judgment for the sailboat debt and by paying any lump sum he received from SSD [Social Security Disability] to appellee. As discussed above, the record establishes appellant's current expenses are approximately \$26 per month. Additionally, appellant receives quarterly distributions from his grandmother's trust and is eligible to receive monthly SSD payments in the amount of \$470 in the months he does not receive trust payments.

Based on this evidence, we do not find the purge order was unreasonable. Considering his very minimal expenses and the conditional nature of any lump sum payments, the evidence demonstrates appellant has the ability to pay the \$300 each month.⁶¹

⁵⁸*Id.* at 414–16.

⁵⁹In *Hart v. Wood-Hart*, 1995 WL 79929 (Ohio Ct. App. 1995), for example, the couple's three boats were held to be marital property and were ordered to be sold, with the parties splitting the proceeds. Subsequently, however, the husband was awarded the boats on the condition that he keep their loans current. When the wife objected to this change, the Ohio Court of Appeals affirmed, finding that because the boats were worth less than the loans, the trial court had not abused its discretion and the wife had not "presented [any] alleged errors." *Id.* at *2.

⁶⁰2014 WL 3397202 (Ohio Ct. App. 2014).

⁶¹*Id.* at *3. For other cases of this type, see *infra* note 126 and accompanying text.

III VALUATION⁶²

When divorcing spouses agree to sell their jointly-owned boat and split the proceeds, valuation is unlikely to be an issue.⁶³ But if the boat is to be kept by one of the parties after the divorce, a valuation will be necessary because the other spouse will be entitled to one-half of the boat's value. Because boats are "wasting assets," their value constantly is changing, almost always for the worse.⁶⁴ Accordingly, there is no standard date on which boats are valued in divorce cases. Instead, the court picks the fairest date under the circumstances.⁶⁵

⁶²In addition to the discussion herein, see BARTH H. GOLDBERG, VALUATION OF DIVORCE ASSETS §§ 15:384 ("Boats") and 15:523 ("Fishing Vessel") (rev. ed. 2017).

⁶³In *Arrington v. Ramsey*, 1999 WL 1096117 (Ark. Ct. App. 1999), valuation did become an issue following a court-ordered sale, although the Arkansas Court of Appeals found no need to intervene:

On cross-appeal, Ms. Ramsey contends that the chancellor erred in not requiring Mr. Arrington to provide an accounting for the 1990 Bayliner Power Boat. In the original divorce decree, the boat was determined to be a marital asset subject to division. The parties were ordered to conduct a private sale within 90 days of the entry of the decree, with the proceeds to be divided equally. Ms. Ramsey contends that an accounting should have been ordered where the facts indicated that Mr. Arrington missed payments on the boat, then sold the boat to a friend for the amount of the \$3500 indebtedness on the boat, and re-purchased the boat from his friend for \$3700. The chancellor found that Ms. Ramsey had failed to meet her burden of proof in requesting an accounting for the boat. She contends that Mr. Arrington failed to meet his burden. The fact that the chancellor declined to find that Mr. Arrington's actions were fraudulent, where Mr. Arrington was afforded the opportunity to purchase the boat for \$200 more than he had sold it for, is not clearly erroneous.

Id. at *3.

⁶⁴See, e.g., *Brosnan v. Brosnan*, 817 P.2d 478, 479-80 (Alaska 1991) ("In addition to the Homer residence, the couple had acquired several other large assets by the end of the marriage. In 1977, Joseph was awarded a Limited Entry Permit for the Bristol Bay Drift Fishery. At the time of separation the permit was worth about \$140,000. By the time of the divorce in 1989, its value had appreciated to roughly \$240,000. In 1980, Joseph had bought a fishing boat called 'The Judgment.' Unlike the fishing permit, the value of the boat decreased between the time of separation and the time of divorce, going from \$90,000 to \$80,000.").

⁶⁵See, e.g., *Hale v. Hale*, 792 N.Y.S.2d 27, 32 (App. Div. 2005) ("The court should have used the value of the parties' boat at the commencement of the action, which the husband estimated at \$450,000."); *Hicks v. Hicks*, 580 So. 2d 876, 877 (Fla. Dist. Ct. App. 1991) ("The court apparently accepted the value proposed by Mrs. Hicks.

Where parties agree on the boat's value, the trial court typically accepts their figure. In *McLaren v. McLaren*,⁶⁶ the wife initially challenged the husband's valuation of one of the couple's boats but then accepted his figure. On appeal, she sought to reopen the issue. In prohibiting her from doing so, the Alaska Supreme Court wrote:

The superior court valued the couple's Landingcraft boat at \$10,000 and awarded it to Darren. Teresa argues that the superior court clearly erred by severely undervaluing the boat, and that it should have been valued at close to \$35,000. After examining the record, we conclude that the superior court did not clearly err.

On his asset spreadsheet, Darren valued the Landingcraft at \$10,000. In her response to Darren's first request for production, Teresa valued the Landingcraft at \$30,000. Then, in her reply to Darren's trial brief, she stated that Darren had "completely undervalued" the Landingcraft when he said it was worth \$10,000, estimating that "[i]f it was sold tomorrow it would sell for at least \$80,000." But the last valuation Teresa submitted to the court appeared to adopt Darren's valuation, stating the Landingcraft was worth \$10,000. When the trial judge asked Teresa if she disputed Darren's valuation of any of the boats, Teresa made no mention of the Landingcraft, once again implying that she agreed with Darren's valuation Because the superior court's valuation was supported

However, this represented the value of the first boat at the time of the parties' separation, as opposed to the value of the boat that existed on the second day of trial. We do not think that this choice of a valuation date different from that used for other assets is warranted."); *In re Marriage of Johnson*, 191 Cal. Rptr. 545, 547 (Ct. App. 1983) ("The trial court, in its memorandum of intended decision of December 5, 1978, found the fair market value of the Cindy J. to be \$90,000. On March 9, 1979, before judgment was rendered, Sara filed a motion for 'reconsideration of boat value' asserting that Richard had sold the Cindy J. for \$140,000. The court denied the motion stating it could 'find nothing in the authority submitted by petitioner that would justify an evaluation date other than the date of trial.' . . . The proper remedy for this error is to remand the cause for revaluation, including the determination of any post-separation interests of husband in the vessel and consideration of any tax consequences of the sale.").

In *Lantz v. Lantz*, 845 P.2d 429 (Alaska 1993), the couple's boat was a "negative asset" at the time of the divorce. *Id.* at 430. However, the husband planned to convert it to a king crab trawler, which eventually would make it worth \$200,000. The trial judge suggested, and the parties agreed, that the husband would pay the wife \$1,000 a month for 100 months to satisfy her one-half share of the boat's future value.

⁶⁶268 P.3d 323 (Alaska 2012).

by both Darren and Teresa's testimony, we hold that the superior court did not clearly err in valuing the Landingcraft at \$10,000.⁶⁷

In *Schempf v. Schempf*,⁶⁸ the trial court valued the couple's boat at \$15,000. When the husband objected, the Ohio Court of Appeals affirmed:

The trial court awarded appellant the boat assessing a value of \$15,000. Appellant argues said value is too high. Appellant testified the boat was purchased for \$16,000 and currently the boat and trailer had a combined worth of less than \$9,000 In a personal financial statement dated May 6, 1996, six months prior to the divorce complaint being filed, appellant listed the boat as having a fair market value of \$15,000 There was no other evidence before the trial court regarding the boat's value i.e., professional appraisal.

Upon review, we find the trial court did not err in assessing the boat's value at \$15,000.⁶⁹

In *Dooley v. Dooley*,⁷⁰ the trial court valued the couple's Bertram boat at \$40,000 after noting that the husband "had listed the boat as a personal asset worth \$40,000.00 on a loan application [he had filed while the divorce was pending]."⁷¹ When the husband later complained about this valuation, the Ohio Court of Appeals again affirmed: "Upon review, we find no reversible error in the valuation and the award/apportionment of the Bertram boat[.]"⁷²

In *Reis v. Reis*,⁷³ yet another husband sought to impeach his prior estimate. In prohibiting him from doing so, the Florida District Court of Appeal explained:

As to valuation, the dispute involves the value of the parties' sailboat and powerboat. The court accepted the value the husband had used in his financial affidavit. The husband contended that the actual sale price was much lower. The husband was not, however,

⁶⁷*Id.* at 338–39.

⁶⁸1999 WL 100261 (Ohio Ct. App. 1999).

⁶⁹*Id.* at *4.

⁷⁰2006 WL 3804520 (Ohio Ct. App. 2006).

⁷¹*Id.* at *2.

⁷²*Id.* at *3.

⁷³739 So. 2d 704 (Fla. Dist. Ct. App. 1999).

able to identify the buyer, did not produce documentation of the amount received, and received the proceeds in cash which was not deposited in a bank account. Under the circumstances, the court was allowed to reject the husband's position and accept the husband's original valuation as representing fair value.⁷⁴

In *Lusch v. Foster*,⁷⁵ the husband challenged the trial court's valuation of the couple's Charger boat. The Hawaii Court of Appeals made short work of his argument:

Husband contends that there was no substantial competent evidence of the value of the Charger or the slip.

There is substantial evidence in the record that the Charger's market value is \$65,000 and that Slip 21 is worth "at least fifty thousand dollars." Husband's argument is directed to the competence of the evidence. The question of whether the evidence could have properly been admitted over objection is irrelevant because no objection was made and the evidence was received and is part of the record; consequently, it is substantial evidence supporting the trial judge's findings and conclusions.⁷⁶

In *Dinu v. Dinu*,⁷⁷ the Michigan Court of Appeals explained that no appellate relief was warranted because the parties had not fought over the value of their boat in the court below:

With respect to the boat, . . . no findings concerning the values were necessary because the values were not in dispute . . . Nor did plaintiff challenge defendant's testimony that the boat and trailer were worth \$1,500. Therefore, this case is unlike those cited by plaintiff wherein issues concerning the valuation of assets were litigated below . . . Therefore, appellate relief is not warranted.⁷⁸

⁷⁴*Id.* at 707.

⁷⁵646 P.2d 969 (Haw. Ct. App. 1982).

⁷⁶*Id.* at 973.

⁷⁷2004 WL 1779060 (Mich. Ct. App. 2004).

⁷⁸*Id.* at *6.

Parties are permitted to hire experts to help support their valuations.⁷⁹ In *Fortson v. Fortson*,⁸⁰ the couple owned a 51-foot power boat. At trial, the husband testified the boat was worth \$200,000; his expert came up with a figure of \$195,000. The wife did not offer either her own figure or her own expert and stated she was “agreeable to allocating the LEAH MAYA to Mr. Fortson at whatever the court decides is the appropriate value.”⁸¹ The court subsequently accepted the expert’s figure.

On appeal, the husband challenged the court’s decision, explaining that the expert’s figure “was not a reflection of what a buyer would pay, but was instead a guess as to the value a surveyor would give to the vessel.”⁸² In finding this argument to be meritless, the Alaska Supreme Court held:

Because Blanton [Fortson] was personally familiar with the vessel and [his expert Larry] Westfall was knowledgeable about the overall market for such vessels, and because both reached a similar conclusion, the superior court did not commit clear error by relying on their testimony. Moreover, to the extent that the testimony was deficient, Blanton must bear the consequences because parties seeking to establish an item’s value must shoulder the burden of producing supporting evidence

⁷⁹See, e.g., *Taylor v. Taylor*, 25 S.W.3d 634, 647–48 (Mo. Ct. App. 2000) (“Husband also called Peggy Sharp as a rebuttal witness to verify his valuation of a boat and trailer. Counsel for Wife objected, again arguing that a witness should not be permitted to testify as an expert unless disclosed in the interrogatories. Counsel for Husband responded that Sharp could provide rebuttal evidence to verify Husband’s valuation of the boat and trailer on his property list. The court once again overruled the objection We cannot say that the trial court abused its discretion in allowing the testimony of . . . Sharp[.]”).

In *Premierbank & Trust v. Andrass*, 1999 WL 1260158 (Ohio Ct. App. 1999), a bank sold a divorced couple’s boat and then sought a deficiency judgment. The former wife, who was still on the loan, objected, claiming that the bank had accepted too low a price for the boat. The bank successfully kept the wife’s opinion as to the boat’s value from being considered by the trial court because she was not an expert. The Ohio Court of Appeals found this to be error: “Because owners are presumed to be familiar with their own property, they may be permitted to testify with respect to the value of property without being qualified as an expert As owner of the boat, therefore, Ms. Andrass was qualified to express an opinion with respect to its value.” *Id.* at *3.

⁸⁰131 P.3d 451 (Alaska 2006).

⁸¹*Id.* at 463.

⁸²*Id.* at 462 n.35.

Blanton repeatedly [was] put on notice that the trial court was going to value the LEAH MAYA. If he was concerned about the sufficiency of his evidence, he should have requested a continuance so that he could secure a more accurate valuation of the vessel. Because he chose to proceed with trial, he cannot now claim that a finding based on his own evidence is clearly erroneous. Accordingly, we conclude that the superior court did not commit clear error in valuing the LEAH MAYA.⁸³

If the parties are unable to agree on a valuation, the court is likely to order an appraisal. In *C.G. v. R.G.*,⁸⁴ the trial court directed the husband to have the family's Carver yacht appraised so that it could be divided as marital property. The husband failed to do so, and instead allowed the boat to be repossessed. As a result, the New York Supreme Court charged him with marital waste:

Husband's inaction in allowing the boat to be repossessed is in violation of this Court's Order dated July 18, 2006 which prohibited Husband from "selling, transferring, or dissipating any marital assets." Accordingly, Husband's inaction amounts to marital waste

There was no evidence in the record as to the amount of depreciation sustained by this asset prior to its repossession. Defendant Husband, however, has introduced his "Net Worth Worksheet," which was received into evidence as Defendant's A, in which he claims that the boat constituted a loss in the amount of \$146,148. Defendant's representation as to the loss sustained is a likely reflection of the minimum value of the boat at or around the time it was repossessed. Therefore, the sum of one half of this value or \$73,074 is hereby attributed to Husband as marital waste representing Wife's one half equitable share of that asset Accordingly, with respect to the vessel "Double J," Husband is hereby Ordered to pay Wife a distributive award of \$73,074 within 120 days of the signing of the Judgment of Divorce.⁸⁵

⁸³*Id.* at 463.

⁸⁴2015 WL 505228 (N.Y. Sup. Ct. 2015).

⁸⁵*Id.* at *20. In *In re Marriage of Block*, 441 N.E.2d 1283 (Ill. App. Ct. 1982), the husband purchased a \$70,000 racing boat just before the couple separated. At the time, he already owned a large yacht that he had been forced to charter out because he could not afford to maintain it. The Illinois Appellate Court found the husband's actions to be imprudent: "We agree with the trial court that the transaction could properly be

In some cases, neither the parties nor the experts can agree on how much a boat is worth. When this occurs, the task falls to the trial court.⁸⁶ In *Riggs v. Riggs*,⁸⁷ the Indiana Court of Appeals remarked:

“A trial court has broad discretion in valuing marital assets, and its valuation will only be disturbed for an abuse of that discretion.” *Webb v. Schleutker*, 891 N.E.2d 1144, 1151 (Ind.Ct.App.2008). “A trial court does not abuse its discretion as long as sufficient evidence and reasonable inferences exist to support the valuation.” *Id.* “If the trial court’s valuation is within the scope of the evidence, the result is not clearly against the logic and effect of the facts and reasonable inferences before the court.” *Id.* Here, the value assigned to the second yacht by the trial court, \$40,000.00, is within the range of the evidence presented. Donald testified that he still owed \$20,000.00 on the yacht. The trial court then equally divided the equity between Donald and Beverly as both parties had spent time working on the yacht. The trial court did not err.⁸⁸

In *Graham. v. Graham*,⁸⁹ the Washington Supreme Court found no error in a case involving a one-of-a-kind vessel:

One of the properties belonging to the parties was the ‘Pelagic,’ a luxury yacht built in accordance with appellant’s orders, about three years before the trial, at a cost of approximately seventy-two

considered a dissipation of assets, and the court could properly consider the dissipation in dividing marital property ‘in just proportions.’” *Id.* at 1289. For another dissipation case, see *In re Marriage of Hubbs*, 843 N.E.2d 478 (Ill. App. Ct. 2006) (husband’s purchase of boat and jet ski after marriage had fallen apart was dissipation, particularly in light of the fact that he primarily used the boat to entertain a female companion).

⁸⁶See, e.g., *Hults v. Hults*, 11 So. 3d 1273, 1281 (Miss. Ct. App. 2009) (“We similarly find no error or abuse of discretion with respect to the chancellor’s valuation of the vehicles and the remaining boats Despite Melissa’s complaints about the chancellor’s valuations, she presents no evidence that the values placed on the vehicles or the boats were erroneous. The chancellor appears to have considered both parties’ valuations and accepted some of both. For example, the chancellor accepted Alan’s valuation of the eighteen-foot Ranger boat; however, the chancellor accepted Melissa’s valuations of the Toyota Tundra and Sequoia. In some cases, the chancellor split the difference in the parties’ valuations. Regarding the chancellor’s valuation of the marital property, we find no evidence indicating that the assigned values were the result of error or abuse of discretion on the chancellor’s part.”).

⁸⁷2009 WL 4723184 (Ind. Ct. App. 2009).

⁸⁸*Id.* at *5.

⁸⁹232 P.2d 100 (Wash. 1951).

thousand dollars. The yacht was awarded to appellant at a valuation of thirty-five thousand dollars, and appellant assigns error upon this valuation of the yacht, contending that it should not have been valued at more than twenty-two thousand five hundred dollars. Appellant testified that the yacht was worth about twenty-five thousand dollars and that upon [its] sale, a brokerage fee must be paid which would reduce the net amount received by the seller to twenty-two thousand dollars.

From the testimony, it appears that the 'Pelagic' is probably the only yacht of its type and class in the Puget Sound area. Appellant evidently wanted a luxurious yacht, and paid over seventy thousand dollars of community money to have the 'Pelagic' built according to his wishes. Naturally, such a boat would not have a definite market value, as few persons would wish to purchase such an expensive yacht.

Under the circumstances disclosed by the record, appellant is in no position to complain of the trial court's ruling fixing the value of the yacht at thirty-five thousand dollars, something less than half its cost.⁹⁰

Although the trial court's discretion is broad, it is not unlimited. In *Hall v. Hall*,⁹¹ the North Carolina Court of Appeals reversed the trial court's valuation because there was no evidence to support it:

Plaintiff also contends the court erred by including a sailboat, valued at \$17,000.00, in the marital property to be distributed to him. He argues that there is neither evidence nor a finding of fact to support the classification of the sailboat as marital property or its valuation. Defendant concedes that all discussions concerning the sailboat took place off the record and that the findings of fact in the trial court's order do not support its disposition of this asset. Accordingly, the court's valuation and distribution of the sailboat must also be vacated.⁹²

⁹⁰*Id.* at 103.

⁹¹363 S.E.2d 189 (N.C. Ct. App. 1987).

⁹²*Id.* at 196-97. For another such case, see *Stockdale v. Stockdale*, 643 P.2d 82, 86 (Idaho Ct. App. 1982) ("A trial court must base its findings upon substantial and competent evidence The value of the boat at the time of trial was speculative. Its actual value to the community could not be ascertained until sale or other disposition in proceedings commenced by the bank. Therefore, we hold that the magistrate's finding of full market value was not supported by substantial and competent evidence. It was

In determining a boat's value, liens, mortgages, and other security interests are taken into account.⁹³ A special problem arises, however, when the interest is held by a close family member. If the court finds the interest to be legitimate, it will be factored into the boat's value. Otherwise, it will be ignored.⁹⁴

In *Maness v. Maness*,⁹⁵ the Arkansas Court of Appeals found that the husband's mother had no claim to the couple's sport boat:

The parties were married in April 1978 and lived together as husband and wife until their separation in May 1992. During their marriage, appellant's mother, Mildred Byrd, lived with the parties for a period of time, and appellant wrote checks on a joint account he held with his mother throughout this period. Mrs. Byrd died prior to the hearing on the parties' divorce, and appellant is the sole beneficiary and executor of Mrs. Byrd's will and estate.

At the hearing, appellant claimed that Mrs. Byrd had made numerous loans to the parties during their marriage; that these loans were never repaid; that the parties were indebted to her in the approximate amount of \$215,000.00 at the time of her death; and that appellee's share of this indebtedness should be deducted from her share of the parties' marital property. The chancellor found that there was no evidence of any indebtedness due from the parties to Mrs. Byrd and disregarded this alleged indebtedness in making his

clearly erroneous and we set it aside Upon remand the district court—or, if further remanded, the magistrate—should take additional evidence, determine the actual value of the boat to the community, and make such adjustment, if any, in the division of property as may be just.”).

⁹³See, e.g., *Williams v. Williams*, 645 A.2d 1118, 1123 (Me. 1994) (“Because the boat was encumbered by a \$4,800 loan, Richard contends that the \$8,000 allocated to him (rather than the actual equity of \$3,200) was clearly erroneous. Because the record reveals no explanation for this discrepancy, we agree with Richard’s contention and, on remand, instruct the trial court to decrease his marital award by \$4,800.”).

⁹⁴A similar problem arises when, instead of taking a security interest, a close family member purchases the vessel and the other spouse claims the sales price did not represent fair market value. See, e.g., *Mathisen v. Mathisen*, 1993 WL 330998, at *10 (Tex. Ct. App. 1993) (“The trial judge found the husband benefitted from the sale of the Corvette and sailboat, which had a value in excess of the \$25,600 the wife would receive when the house sold. The judge could have found that the Corvette and sailboat were worth more than \$30,000, because the surveyor valued the boat at \$17,200, and the car was sold for \$15,000. Further, if the parents actually forgave a \$15,700 note and paid \$5,000 in cash for the boat, it arguably was worth \$22,700. Further, the trial court could have believed that the husband and the wife did not owe his parents \$15,700. A promissory note was not introduced into evidence, and the bankruptcy schedule did not reflect the debt. If no debt was owed, the parents purchased a \$17,200 boat for \$5,000.”).

⁹⁵1995 WL 129064 (Ark. Ct. App. 1995).

division of the parties' marital property. On appeal, appellant argues five points, four of which concern claims appellant makes on behalf of Mrs. Byrd's estate.

Appellant's first point concerns the chancellor's division of a forty-eight-foot Ocean Sportfish vessel owned by the parties at the time of their divorce. The chancellor ordered this boat sold and the proceeds equally divided between the parties after payment of the outstanding indebtedness due on the boat to Twin City Bank. Appellant contends this division was in error because the parties owed Mrs. Byrd's estate \$45,000.00, which he contends they borrowed from her to use towards the purchase price of the boat.

The evidence demonstrated that, throughout the course of the parties' marriage, they purchased several boats by trading in their existing boat and using other funds to make up the balance of the purchase price. Appellant testified that, each time the parties purchased a new boat, they borrowed money from his mother that was never repaid. Appellee, however, disputed this testimony and testified that the differences in the purchase prices of the boats came from the parties' savings and the sale of other miscellaneous property.

The only evidence appellant offered in support of his testimony were the parties' tax returns, canceled checks that he wrote on a joint account he shared with his mother, and a \$40,000.00 note. The tax returns did not reflect any loans from Mrs. Byrd, and the chancellor found that the \$40,000.00 note to Mrs. Byrd was repaid prior to their purchase of the Ocean Sportfish vessel when the parties sold the real property that secured the loan.

The chancellor found that the Ocean Sportfish vessel was purchased [for] \$260,000.00, which the parties received from the sale of their Jefferson Hull vessel, and a note from Twin City Bank in the amount of \$75,000.00. The chancellor rejected allegations that Mrs. Byrd's estate was entitled to the boat, finding that appellant had always had possession and the benefit of the boat and that there was no evidence of any indebtedness due from the parties to Mrs. Byrd. We cannot say the chancellor's finding on this point is clearly against the preponderance of the evidence.⁹⁶

In *Kohut v. Kohut*,⁹⁷ the Vermont Supreme Court likewise held that the trial court was correct when it decided that the husband's mother did not have a security interest in the couple's boat:

⁹⁶*Id.* at *1.

⁹⁷663 A.2d 942 (Vt. 1995).

Defendant argues that the family court's findings supporting the valuation and distribution of proceeds from the parties' only substantial asset, a luxury boat, were clearly erroneous because the court did not determine the fair market value of the boat and found that the parties owned the boat free of any liens. The court's valuation of \$68,500 was based on evidence of the boat's list price. Further, defendant contends that his mother, with whom he had secreted the boat to avoid its equitable distribution, had a valid, perfected security interest in it by virtue of a stipulation and court order requiring the execution of a security agreement. Defendant failed, however, to introduce any evidence that the security agreement was ever executed Defendant argues that a stipulation between the parties sufficed as a signed writing That stipulation and the court order adopting it state only that "[a] perfected security agreement . . . *shall be executed* in favor of Elizabeth Ardale." (Emphasis added.) The stipulation and order contemplate that the agreement to grant a security interest would be entered into at some later date, if at all. Consequently, we cannot say that the court was clearly erroneous in finding that the boat was unencumbered and ordering its sale and an equitable division of the proceeds.⁹⁸

IV

PRE- AND POST-NUPTIAL AGREEMENTS

A pre- or post-nuptial agreement that includes disposition of a boat will be enforced unless it is patently unfair (either from inception or due to a change in the couple's circumstances). In *Baumgartner v. Baumgartner*,⁹⁹ for example, the parties had a pre-nuptial agreement that covered certain items but not others. One subject expressly addressed by the agreement concerned a 1967 Irwin boat, which the agreement directed was to be given to the husband in the event of a divorce. Finding the agreement fair and

⁹⁸*Id.* at 945. For a further discussion of third-party interests in boat divorce cases, see *infra* Part V of this article.

⁹⁹1998 WL 811565 (Conn. Super. Ct. 1998).

enforceable, the Connecticut Superior Court awarded the boat to the husband.¹⁰⁰

Likewise, in *Hodge v. Parks*,¹⁰¹ the Michigan Court of Appeals ordered the trial court to give effect to a post-nuptial agreement:

We reverse the trial court's holding that the sailboat was the separate property of defendant. An enforceable postnuptial agreement provided that the sailboat was marital property. The trial court erroneously invalidated the agreement. We remand this issue to the trial court for a determination of the proper equitable distribution of the sailboat.¹⁰²

V THIRD PARTIES

When parties divorce, a multitude of third-party issues can arise with respect to their boats.¹⁰³ In *Overstreet v. Overstreet*,¹⁰⁴ a couple borrowed money from the wife's father to acquire a boat. At the time of the divorce, the loan remained outstanding. As a result, the

¹⁰⁰*Id.* at *8. For a case in which both sides agreed that a pre-nuptial agreement did not cover an after-acquired vessel, see *Ersan Resources, Inc. v. Kiratli*, 1993 AMC 994 (E.D. Va. 1993).

¹⁰¹844 N.W.2d 189 (Mich. Ct. App. 2014).

¹⁰²*Id.* at 192.

¹⁰³For a particularly unusual third-party case, see *Bowman v. Bayport Yachts*, 2002 WL 1023825 (Cal. Ct. App. 2002). A surveyor was sued successfully by the buyer of a used yacht for failing to report that the transom had been damaged and later repaired. The surveyor then turned around and sued the broker and the sellers, alleging that when he asked about the boat's history, the broker "misleadingly told him the boat was in 'good to excellent condition, [the Bialeks] were going through a divorce and [the buyer] was getting a steal.'" *Id.* at *1. The surveyor's suit was dismissed because the buyer's action had not concerned anything other than the transom repair, which the surveyor had discovered despite the broker.

In *Heary v. Heary*, 2000 WL 1754003 (Ohio Ct. App. 2000), a couple's divorce decree obligated the husband to pay the wife's attorneys' fees. When he failed to do so, the wife's attorney seized the husband's boat, which the husband co-owned with a third party, and had it put up for auction. Because no bids were received, the sheriff sold the boat to the wife's attorney for the minimum bid price. Although the husband claimed the sale was invalid, the Ohio Court of Appeals found no reason to "prohibit the sale to appellee's attorney." *Id.* at *6.

¹⁰⁴430 S.W.3d 857 (Ark. Ct. App. 2013).

trial court held the boat belonged to the father. On appeal, the Arkansas Court of Appeals found this ruling to be reversible error:

Gary argues that the trial court exceeded its authority in awarding the boat/trailer to James Manning because Manning was not a party to this action. Crystal made no claim to the boat and trailer. Under the circumstances of this case, if the trial court had limited its ruling to a mere determination that the boat and trailer were not marital property, and therefore not subject to division between Crystal and Gary, we would not have found clear error. However, the trial court went beyond that finding and determined that ownership of the boat lay with James Manning, who was not a party to this action We, therefore, reverse and remand this ownership issue, leaving it to Gary and James Manning to pursue any action between themselves to determine ownership of the boat and trailer.¹⁰⁵

In *Crick v. Starr*,¹⁰⁶ a husband turned over two boats to his wife pursuant to a separation agreement. Subsequently, the Ohio Department of Taxation sought to collect unpaid vessel taxes from the wife. When the wife demanded the husband pay the taxes, he pointed to the couple's separation agreement, which stated that the wife was responsible for all outstanding taxes.

The wife took the husband to court but lost. On appeal, she won by proving the husband repeatedly had abused his dealer's license (doing so had let him avoid paying taxes on multiple boats). On a further appeal by the husband's estate, the Ohio Court of Appeals affirmed:

Ray tarnished his hands by making misrepresentations to the Ohio Department of Taxation, and . . . the trial court had the discretion to refuse to pass the penalty for Ray's misfeasance to Beverly, even if it was within the subject matter of their separation agreement. As for the Estate's claim that the trial court's finding of unclean hands is somehow trumped by Beverly's understanding and obligation to the terms of the separation agreement, there does not appear to be any rule that the non-moving party must be in complete ignorance of the movant's misfeasance in order for the unclean hands defense to be applicable. Moreover, the trial court found that

¹⁰⁵*Id.* at 864.

¹⁰⁶2009 WL 4895270 (Ohio Ct. App. 2009).

Beverly did not have knowledge of Ray's tax-avoidance scheme, even though she did have knowledge of the tax consequences of the separation agreement terms¹⁰⁷

In *Jones v. Child*,¹⁰⁸ a husband purchased a boat and then gifted it to his wife. The wife later sold it to her sister. When the couple divorced, the husband attempted to get the boat back from the sister. In finding that the sister was the boat's legal owner, the Georgia Court of Appeals explained:

Though the evidence was in conflict, the trial court found that the appellant, Mr. Jones, made a gift of the boat to his wife; that the boat was registered in Mrs. Jones' name only; that Mrs. Jones for an adequate consideration transferred title and ownership of the boat to Mrs. Childs; and that none of the documentation was of such a nature to place Mrs. Childs on notice that Mrs. Jones did not have a good and marketable title. In substance the trial court concluded that Mrs. Childs was a bona fide purchaser for value without notice of defect in the title transferred

On appeal the evidence must be construed to uphold the verdict, the conflicts must be resolved against the appellant, and if there is any evidence to support the verdict, it must be affirmed. The evidence in this case satisfies these demands.¹⁰⁹

In *Rinaldi's Estate v. Rinaldi*,¹¹⁰ a couple purchased an Egg Harbor yacht. When they had trouble making the monthly payments, the husband's father stepped in. During the couple's divorce, the father stopped making the payments but later bought the vessel from the sellers for a reduced price (\$24,000). The father also assumed the boat's mortgage, which was held by City National Bank.

¹⁰⁷*Id.* at *7. For another such case, see *Schneider v. Commissioner*, 1982 WL 10620 (Tax Ct. 1982) (star pagination unavailable) ("The Default Judgment of Divorce entered on November 22, 1976, contained only one reference to the income tax liability of the parties: [husband] agreed that [wife] would not be liable for any tax deductions claimed with respect to a Chriscraft boat."). The divorce court presumably included this provision to protect the wife if the IRS disallowed the husband's deduction of the couple's boat as a business expense on their joint tax returns. For a further discussion, see Gail Levin Richmond, *The (Once) Deductible Yacht*, 31 J. MAR. L. & COM. 593 (2000).

¹⁰⁸234 S.E.2d 87 (Ga. Ct. App. 1977).

¹⁰⁹*Id.* at 89.

¹¹⁰314 N.W.2d 788 (Mich. Ct. App. 1981).

When the father died, the boat was sold for \$34,000. After paying \$16,500 to City National, the father's executor placed the remaining \$17,500 in an escrow account. In the meantime, the wife had been awarded sole ownership of the boat by the divorce court. She therefore claimed she was entitled to the escrowed funds.

The father's estate insisted it was entitled to the money, and the Michigan Court of Appeals agreed:

The testimony as to the alleged collusion between father and son in the present case was limited to their admittedly deceptive actions in the divorce action that was terminated in December, 1977. There was absolutely no testimony that through a fraudulent scheme between the two men Rinaldi, Sr., failed to pay valid consideration for the assignment of the Jarosz [i.e., sellers'] lien in May, 1978. The Rinaldis' efforts to reduce defendant's share of the marital assets in the divorce proceedings did not render the subsequent assignment of lien fraudulent, nor did Rinaldi, Sr.'s hostility toward defendant make the lien unenforceable

Any reduction in defendant's share of the equity in the yacht was not due to Rinaldi, Sr.'s, acquisition of the Jarosz lien. The Jarosz lien had to be satisfied regardless of the indemnity of the lienholder. The elimination of defendant's equity in the yacht was primarily due to the fact that the boat was not sold for \$55,000 as originally contemplated in the judgment of divorce. Had the boat been sold for \$55,000, defendant would have recovered in excess of \$26,000. However, the boat was sold for only \$34,000. After the bank's lien was satisfied, the balance was insufficient to satisfy the Jarosz security interest.

It may be that Rinaldi, Jr., and Rinaldi, Sr., conspired to deprive the defendant of her rightful share of the marital estate by failing to make the payments on the boat and by failing to maintain it in marketable condition. There is no evidence, however, that there was any fraud in the transaction between Rinaldi, Sr., and the Jaroszes through which Rinaldi, Sr., acquired the Jarosz' lien. The trial court correctly ruled that the lien was valid. Its ruling that the lien was nevertheless unenforceable, however, was erroneous.¹¹¹

In *State Bank & Trust Co. of Golden Meadow v. Boat "D.J. Griffin,"*¹¹² a couple separated in March 1982 and got divorced in March 1984. At the time of their break-up, the husband owned two

¹¹¹*Id.* at 790–91.

¹¹²755 F. Supp. 1389 (E.D. La. 1991).

companies: Derris Griffin Boat Rentals, Inc. and Big 3 Marine, Inc. The wife, meanwhile, owned a separate company called Derris Griffin Boat Operators, Inc.

Between December 1981 and May 1982, the husband obtained nine unsecured loans, totaling \$1.31 million, from State Bank to fund his businesses. In December 1982, with none of the loans having been repaid, the husband signed a \$1.31 million promissory note and pledged two vessels (the M/V D.J. GRIFFIN and the M/V JOEY G) that belonged to the wife's company. In October 1984, State Bank had the U.S. marshal seize the vessels and sell them to partially satisfy the husband's debt.

Claiming that she had been defrauded, the wife sued State Bank in a Louisiana federal court. In agreeing with her contention, the court first found that "[o]n March 2, 1982, Elta Griffin and Derris Griffin were legally separated, thereby dissolving the community of acquets and gains [Louisiana's term for joint marital property] existing between them."¹¹³ It then found,

that State Bank [had] acted in bad faith and was grossly negligent in allowing Derris Griffin to encumber the assets of Boat Operators for the benefit of other corporations. State Bank and its board of directors knew that Derris Griffin did not have the authority to endorse the December 23, 1982 hand note and mortgage and/or pledge Boat Operators' vessels to secure the debts of Boat Rentals and Big 3 Marine.¹¹⁴

Based on its findings, the court ordered State Bank to reimburse the wife:

1. The Court finds that the seizure and sale of the M/V JOEY G caused Boat Operators to suffer losses in the amount of \$200,000.00, measured as the fair market value of the vessel at the time it was seized.
2. The Court finds that the seizure and sale of the M/V D.J. GRIFFIN caused Boat Operators to suffer losses in the amount of \$960,000.00. This loss is due to lost profits pursuant to the time charter and master service contract by and between Odeco and Boat Operators. The Court believes there was competent testimony to estimate with reasonable certainty lost profits to Boat Operators as

¹¹³*Id.* at 1394.

¹¹⁴*Id.* at 1401.

a result of the wrongful seizure of the M/V D.J. GRIFFIN at \$80,000.00 per year for twelve years, the remaining useful life of the vessel at the time it was seized.

3. State Bank has been found to have acted with bad faith and gross negligence; therefore, Boat Operators is entitled to an award of reasonable attorney's fees

4. As a general rule, prejudgment interest should be awarded in admiralty cases, absent "peculiar circumstances." . . . There are no peculiar circumstances in this case; therefore, Boat Operators is entitled to prejudgment interest, said interest to run from the date the vessels were seized¹¹⁵

VI BANKRUPTCY

It is not uncommon for an individual going through a divorce to already be in bankruptcy or to later declare bankruptcy.¹¹⁶ When this occurs, tricky jurisdictional issues can arise.

In *In re Hazelton*,¹¹⁷ the divorce court ordered the husband to transfer the couple's jet ski to the wife. The husband failed to do so and later filed for bankruptcy. When the wife appeared as a creditor and sought to enforce the divorce court's order, a Pennsylvania bankruptcy court turned her away:

Plaintiff also seeks a determination that Debtor's obligation to transfer the titles in the jet ski and trailer to her are nondischargeable. Unlike debts, obligations to transfer property interests are not eligible for discharge and not governed by subsection 523(a) An obligation to transfer one's legal interest in property is not the same as an obligation to pay a debt. The extent and validity of property rights are measured under state law and the mere filing of a bankruptcy petition will not disturb what has been decreed by the state In this case, a state court re-allocated

¹¹⁵*Id.*

¹¹⁶See Shayna M. Steinfeld & Dana E. Prescott, *After Brenda and Eddie Divorce, Eddie Files for Bankruptcy: The Unusual Life of Defalcation Under BAPCPA*, 25 J. AM. ACAD. MATRIM. LAW. 67, 68 (2012) ("Statistically, about 20% of all bankruptcies are caused by divorce and about the same percentage of divorces are caused by financial problems.").

¹¹⁷304 B.R. 145 (Bankr. M.D. Pa. 2003).

Debtor's legal and equitable rights in the jet ski and trailer to Plaintiff by court order. These rights vested once the order was entered and are enforceable against Debtor in state court . . . ¹¹⁸

In *In re Harvey*,¹¹⁹ the husband filed for bankruptcy. The wife subsequently obtained a divorce. The divorce court granted the wife a one-half interest in the husband's 1989 Mastercraft boat, which was titled in the husband's name. The divorce court qualified its order by saying that it would be effective only "if the bankruptcy court does not take the . . . boat[.]"¹²⁰ In deciding that the wife had no interest in the boat, an Ohio bankruptcy court explained:

In this case, Ms. Harvey's assertion of an equitable one-half interest in the Boat is based on her testimony that the Boat was purchased with marital funds for family use, that it was intended to belong to both her and Debtor, and that she paid the storage fees for the Boat until she and Debtor were separated. This testimony, however, does not go far enough . . . Debtor did not take title to the Boat until after he and Ms. Harvey were separated. Ms. Harvey offers no evidence showing that Debtor took title to the Boat in his name with the intention of holding it as trustee for her use and benefit. She offers no evidence that she used the Boat, or even that such use was available to her, after the Boat was titled in Debtor's name. Rather, Ms. Harvey testified that she stopped paying storage fees and did not even know where Debtor kept the Boat after their separation.¹²¹

In *In re Bloom*,¹²² the divorce court awarded the wife the proceeds from the sale of the couple's boat, which amounted to \$240,000. In bankruptcy court, she asked for this amount to be increased because the boat had been sold by the bankruptcy trustee at a price the wife felt was too low. Citing the Rooker-Feldman doctrine,¹²³ a New Hampshire bankruptcy court declined to make any changes:

¹¹⁸*Id.* at 151.

¹¹⁹2012 WL 1865426 (Bankr. N.D. Ohio 2012).

¹²⁰*Id.* at *1.

¹²¹*Id.* at *4.

¹²²2012 WL 2344244 (Bankr. D.N.H. 2012).

¹²³The Rooker-Feldman doctrine prohibits lower federal courts from reviewing state court judgments in the absence of Congressional authorization. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Colum. Ct. App. v. Feldman*, 460 U.S. 462 (1983).

[Pamela] Bloom seeks not only the net proceeds of the property awarded to her by the Family Court, but also the gross selling price, before any adjustment for costs of sale or estate expenses. In effect, she is asking this Court to increase the property awarded to her under the Final Divorce Decree. This Court does not have the authority or inclination to do so. This Court may not review or change the terms of the Final Divorce Decree [due to the *Rooker-Feldman* doctrine]. Accordingly, the Court shall order the Trustee to distribute to Bloom the net proceeds from the sale of the Yacht, the sale of the watch collection, and Bloom's share from the sale of the Chandler Lane Property, all as provided in the Final Divorce Decree, in the total amount of \$375,165.23.¹²⁴

In *In re Tostige*,¹²⁵ the husband was awarded the couple's power boat but was ordered to refinance the boat's debt so that it was in his name. He failed to do so and later filed for bankruptcy. After he was discharged, the wife sought to have the divorce agreement modified to reflect that she would now have to pay off the boat loan. In response, the husband claimed that this violated § 524's discharge injunction. A Michigan bankruptcy court agreed:

Burns argues that she is not violating the discharge injunction because she is seeking reimbursement for boat payments she made after the petition was filed. Burns contends that because these payments came due post-petition, they were not discharged.

There is simply no support for this position. Tostige's debt to Bank One for the boat was discharged by his bankruptcy proceeding. He is therefore no longer obligated to make those payments. The fact that Burns remains liable as a co-debtor does not entitle her to seek reimbursement from Tostige for payments she has made post-petition.

Accordingly, Burns's attempts to modify the divorce judgment by seeking reimbursement for those payments is an attempt to circumvent the discharge injunction and her actions therefore violate the discharge injunction.¹²⁶

¹²⁴Bloom, 2012 WL 2344244, at *4.

¹²⁵283 B.R. 462 (Bankr. E.D. Mich. 2002).

¹²⁶*Id.* at 463. This same rule applies in non-bankruptcy cases. See, e.g., *Arrington v. Republic Credit Corp. I*, 2002 WL 31844905, at *3 (E.D. La. 2002) ("[T]he Court is sympathetic to plaintiff's situation. By virtue of her status as a co-signatory on the

VII UNMARRIED COUPLES

The problems outlined above are not limited to married couples going through a divorce. An unmarried couple that buys a boat together and later breaks up is likely to have the same issues.¹²⁷

In *Percy v. Suchar*,¹²⁸ an unmarried couple had been together for five years when they decided to buy a lobster boat. To pay for it, they each contributed \$10,000 in cash. Because the boyfriend had poor credit, the girlfriend took out a \$50,000 loan. As a result, the vessel was titled in her name. Five years later, the couple broke up. When the girlfriend claimed the boat was hers, the boyfriend balked, insisting the pair had an oral agreement to share it 50%-50%. As a result, he brought a federal court action pursuant to Rule D of the Supplemental Admiralty Rules.¹²⁹ In granting the girlfriend's motion to dismiss, the Maine district court found it could not hear the case:

As a threshold matter, Percy contests that there is any *bona fide* dispute between the parties regarding his asserted ownership He points out that Suchar has acknowledged that (i) he invested money toward purchase of the F/V The Real Thing, (ii) monies generated from the parties' commercial fishing business were used

vessel's mortgage, Judy Arrington is now on the hook for a yacht that was awarded to her ex-husband in divorce proceedings. In addition, the deficiency is considerable. But even if the Court found plaintiff's reliance on her admittedly untrustworthy ex-husband to be reasonable, the Court cannot grant relief because plaintiff has made no showing of a possibly meritorious defense." See also *Hallsville Cap., S.A. v. Dobrish*, 930 N.Y.S.2d 1 (App. Div. 2011) (husband's judgment creditor allowed to attach wife's half of proceeds generated by sale of marital yacht in divorce proceedings).

¹²⁷Without a marriage license, however, the wronged party may have a difficult time establishing a *prima facie* case. In *Guzy v. Hoban*, 1997 WL 33608865 (Va. Cir. Ct. 1997), for example, an unmarried couple bought a Formula racing boat together but later split up. The girlfriend sold the boat and sued the boyfriend, alleging "breach of express oral agreement, breach of implied agreement, promissory estoppel, breach of express partnership or joint venture, and breach of implied partnership or joint venture agreement." *Id.* at *1. The boyfriend demurred, and the Virginia Circuit Court dismissed the complaint after finding that none of the girlfriend's counts stated a cause of action.

¹²⁸2001 WL 228434 (D. Me. 2001).

¹²⁹Rule D allows a vessel to be arrested in possessory, petitory (legal title), and partition (disputes between co-owners) actions. See Gina M. Venezia, *The B, C, D's of the Admiralty Rules: Obtaining Security for Your Claims*, 27 U.S.F. MAR. L.J. 241 (2014-2015).

to pay the ship's mortgage and (iii) he has an interest in the vessel and that the parties were equal partners in the commercial-fishing venture Nonetheless, I find no acknowledgement from Suchar that Percy held a fifty percent interest in the F/V The Real Thing. The question of the extent of Percy's interest in the vessel would have to be adjudicated prior to institution of any partition proceeding by the court.

This squarely raises the question whether the court has jurisdiction in admiralty to resolve that underlying dispute. Such caselaw as I have been able to find suggests that the answer is no

I am mindful that in this case, unlike in the cases cited above, Percy sues neither for an accounting nor for his share of profits from the fishing venture. Nonetheless, Suchar's defense to Percy's request for partition would require the court to delve into the intricacies of a non-maritime contract: the underlying partnership agreement as it touched on ownership rights in the vessel. In effect, the court would be called upon to render an accounting of the parties' rights in the vessel. The court has no jurisdiction to do so

Percy asks that, if the court finds it has no admiralty jurisdiction to resolve the parties' underlying ownership dispute, it exercise its supplemental jurisdiction to accomplish the same However, the existence of supplemental jurisdiction hinges on the existence of primary jurisdiction

Here, there can be no primary (in this case, admiralty) jurisdiction until the underlying ownership dispute is resolved. Until then, as Suchar suggests, the action for partition is not ripe

Suchar accordingly is entitled to the dismissal of Percy's complaint pursuant to Fed.R.Civ.P. 12(b)(1) on the basis of lack of subject-matter jurisdiction.¹³⁰

In *Williams v. King*,¹³¹ an unmarried couple frequently sailed on a yacht the girlfriend had inherited from her late husband. When a balloon payment came due, however, neither could pay it. As a result, the late husband's family trust stepped in, paid off the loan, and then began making plans to sell the vessel.

It was around this time that the couple broke up. Following the end of the relationship, the boyfriend asserted a \$40,000 federal maritime lien against the yacht, which he argued represented the value of the labor he had performed during the couple's cruises. In rejecting his claim, the Georgia district court found that the

¹³⁰*Id.* at *3-*4.

¹³¹1994 WL 463960 (S.D. Ga. 1994).

boyfriend had no lien because he had never expected to be paid for his services:

Trustee [Charles] Williams fears a potential cloud on his title to the *Lady Bena*, and so this action constitutes a request for this Court to rule specifically that [Jerome] King has no valid lien on the vessel. In order to possess a valid maritime lien in the context of this suit, Mr. King must initially reveal some kind of contract between himself and the owner of the ship Though there was some confusion at trial as to who—Bena Clary or the Trust—legally owned the yacht during the time in which Mr. King worked on it, and the Court does not make a finding on that point here, the Court is satisfied that no one “authorized” Mr. King to perform repairs and maintenance. At trial Mr. King presented a number of witnesses to convince the Court that he performed significant services for the yacht, but none to buttress his contention that he performed them under a contract guaranteeing that he would collect reimbursement for his services should the boat be sold

Mr. King . . . extensively used the *Lady Bena* for his personal enjoyment. He, along with Ms. Clary and occasional guests, was the direct beneficiary of the maintenance tasks he performed, and he occupied a position on the boat tantamount to that of an “owner.” . . . Here, the trips taken on *Lady Bena* constitute the “profit” that Mr. King enjoyed, and so loss of its use must constitute his “losses.”¹³²

In *Barr v. Larkin*,¹³³ an unmarried couple brought a 1999 Maxum 3000 boat for \$24,000, with each agreeing to cover half the cost. When the boyfriend could not come up with his share, the girlfriend used her savings to pay for the vessel. The couple later broke up and the boyfriend demanded that the girlfriend either sell the boat and split the proceeds with him, or keep the boat and buy out his half. The girlfriend refused to do either and the boyfriend sued. In dismissing his claim, the Connecticut Superior Court wrote:

The question presented to the court is whether the plaintiff has met his burden of proof with regard to the establishment of an oral agreement that he was the half owner of the 1999 Maxum Boat that

¹³²*Id.* at *2-*3.

¹³³2017 WL 5930379 (Conn. Super. Ct. 2017).

the defendant purchased in June of 2012, and that he is entitled to one-half of the value of the Boat. The defendant has documented that she purchased the Boat and that she has paid expenses related to the maintenance and operation of the Boat during the three boating seasons they were a couple. The plaintiff has not provided secondary evidence such as checks or credit card statements that would support his testimony as to payment of the balance of the purchase price and one-half of the boating expenses. As to the one piece of evidence documenting a payment from the plaintiff to the defendant, the check for \$6,270, it is unclear as to why the payment was made. Specifically, it is unclear whether the payment was in partial performance of the alleged agreement or was it to contribute to the joint living expenses of the plaintiff and the defendant. Testimony that the plaintiff's home was in foreclosure raises questions about the plaintiff's cash flow.

The fact that the parties were cohabiting further complicates this matter. Acquisition of personal property during the term of the cohabitation relationship without an agreement, express or implied, leaves uncertainty as to the other cohabitant's rights and responsibilities. The breadth of a cohabitation relationship renders many specific actions of the parties susceptible to multiple interpretations.

The court finds that the plaintiff has not met his burden of proof with regard to establishing the existence of an agreement that he was to be the co-owner of the Boat in question.¹³⁴

VIII CONCLUSION

Couples who own boats and find themselves going through a divorce can save themselves a lot of grief (not to mention legal fees) simply by treating each other with civility.¹³⁵ Unfortunately,

¹³⁴*Id.* at *3.

¹³⁵See, e.g., *Simmons v. Simmons*, 672 So. 2d 833, 833-34 (Fla. Dist. Ct. App. 1996) ("The former wife agrees the evidence before the trial court established that the value assigned to the boat and trailer should be \$7,500.00, rather than the \$10,000.00 set forth in the list of marital assets and values in the final judgment. Therefore, the final judgment is modified to reflect that the boat and trailer awarded to the former husband in the equitable distribution plan have a value of \$7,500.00."); *Stephenson v. Stephenson*, 1993 WL 298908, at *2 (Tenn. Ct. App. 1993) ("Husband has requested that we clarify to whom the boat and trailer, tools and guns are awarded. Although the court's judgment

civility usually is the first thing that disappears during a divorce.¹³⁶ In *State v. Feltner*,¹³⁷ for example, the couple bought a pontoon boat in 1996. In August 2003, the wife filed for divorce. In January 2004, the husband retitled the couple's boat in their daughter's name "to prevent his wife from getting it in the divorce."¹³⁸ In April 2005, the daughter, upon learning the wife had been awarded the boat by the divorce court, transferred the title to the wife. In May 2005, two men hired by the husband stole the boat from the wife's storage facility and delivered it to the husband.

At trial, the husband argued that he thought the divorce was invalid and, as a result, that the boat was his. He also claimed he did not know his daughter had transferred title to the wife, and therefore thought the boat was still his when the burglars showed up. For his misdeeds, the trial court gave the husband two

mentioned the boat and trailer, the trial court did not specifically award it or the guns or tools to either party. Wife agrees with Husband that these items should be awarded to him. We therefore amend the divorce decree to award the boat and trailer, tools and guns to Husband.").

¹³⁶Almost always, this is the fault of both the parties and the attorneys:

While it is important for practitioners to be civil in all facets of practice, a detrimental lack of civility is often apparent in divorce and custody cases. Those who have practiced in the area of family law have witnessed firsthand the raw emotion that parties display during the course of proceedings It is the responsibility of the attorney—particularly in situations in which emotions run high—to explain and demonstrate to the client that effective advocacy can take place without the lawyer or the client being a pit bull.

G. Marshall Mundy & C. Glasgow Butts, 14 *EXPERIENCE* 10, 17 (Winter 2004). For a further discussion, see Lisa DuFour & Carol Bailey, *Civility and Family Law – Not an Oxymoron*, Aug. 8, 2017, at <https://familylawyermagazine.com/articles/civility-and-family-law-not-an-oxymoron/>.

Since the 1980s, the collaborative law movement has sought to make divorces friendlier. See PAULINE H. TESLER, *COLLABORATIVE LAW: ACHIEVING EFFECTIVE RESOLUTION IN DIVORCE WITHOUT LITIGATION* 3 (3d ed. 2016) ("Collaborative law combines the explicit commitment to settlement that is at the core of mediation with the enhanced creative power of a model that builds legal advocacy and counsel into the settlement process from the start, as well as conflict management and guidance in negotiations. Unlike mediation, which uses a neutral either as the sole professional or as the dispute-resolution manager of a process that includes adversarial counsel for the parties, collaborative law . . . has each party represented in negotiations by separate counsel whose role is limited to helping the clients reach agreement. If the process breaks down and the parties go to court, the collaborative lawyers are disqualified from further participation.").

¹³⁷2007 WL 625806 (Ohio Ct. App. 2007).

¹³⁸*Id.* at *2.

concurrent 17-month prison sentences. On review, the Ohio Court of Appeals affirmed.¹³⁹

Even when civility initially exists, it usually does not last. In *Killam v. Killam*,¹⁴⁰ a couple divorced. As part of the property settlement, they made their daughter the trustee of their boat and agreed to take turns using it. After four years, the husband sued for partition, claiming that the arrangement was not working out. The wife, pointing the finger of blame at the husband, sought sole custody of the boat. The trial court rejected her demand and ordered the boat sold and the proceeds split 50%-50%. On appeal, the Oregon Supreme Court agreed that the time had come to put an end to the pair's "strife and disagreement."¹⁴¹

¹³⁹*Id.*

¹⁴⁰444 P.2d 479 (Or. 1968).

¹⁴¹*Id.* at 480.