

WORKER'S COMPENSATION AWARDS:
SEPARATE OR COMMUNITY PROPERTY

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In a case of first impression, *Raphael v. Bloomfield* 113 Cal.App.4th 617 (2003) (Second District) held that a lump sum workers compensation award received before separation was the separate property of the injured spouse to the extent it was meant to compensate for the injured spouse's diminished earning capacity and medical expenses after separation. The *Raphael* Court held that the character of a worker's compensation settlement should be determined according to the purpose of the award and not whether it was received before or after separation.

In Raphael, June Bloomfied and Gilmore Raphael divorced after 6 years of marriage. During marriage, both June and Gilmore suffered work-related injuries and applied for worker's compensation benefits. In February 2000, six months prior to the parties' separation, June received a lump sum settlement for her worker's compensation claim in the sum of \$311,859.04. In October 2000, two months after the parties' separation, Gilmore received a lump sum settlement for his worker's compensation claim in the sum of \$45,000.

Gilmore filed a petition for dissolution of the parties' marriage in February 2001. The only contested issue at trial was the character of each spouse's workers' compensation settlement. Gilmore argued that the character of each settlement was governed by Family Code Section 760, which raises a rebuttable presumption that property acquired during marriage is community property. Gilmore contended that since June's settlement was received during the marriage, it was community property and that since his settlement was received after separation, it was his separate property.

June argued that each parties' settlement was the separate property of the spouse receiving the settlement because the parties entered into an oral agreement before marriage to treat property acquired by each spouse as the separate property of the acquiring spouse.

The trial court found that Gilmore's settlement was his separate property and June's settlement was community property. June retained new counsel and filed a motion for reconsideration and a motion for new trial on the grounds that the trial court's ruling was contrary to law. In support of her motion, June attached the declaration of her worker's compensation attorney, who explained that a portion of June's settlement was attributable to future payments of disability benefits and the

remainder was for future medical expenses. The trial court denied June's motion finding that there was no evidence introduced at trial to rebut the presumption set forth in Family Code Section 760.

On appeal, June contended that her worker's compensation award was not community property because it represented future payments to compensate her for diminished earning capacity and for future medical expenses. The *Raphael* Court noted that June failed to make this argument at trial and that ordinarily theories not raised at trial cannot be reviewed on appeal. Nevertheless, the *Raphael* court allowed June to assert a new theory on appeal because the court found that June's appeal raised a question of law involving an important issue of public policy which had not previously been addressed by the courts.

The *Raphael* court then addressed the merits of the appeal. The court stated that although there was no published California case addressing the character of a worker's compensation lump sum award received during marriage, related issues had been addressed and should be looked to for guidance. First, the court discussed *In Re Marriage Of Jones* (1975) 13 Cal.3d 457, which dealt with the character of post-dissolution military disability pay.

In *Jones*, one spouse was injured while serving in the

military. The injured spouse received monthly disability pay. The non-injured spouse filed for dissolution and claimed that the injured spouse's right to disability pay was community property. The Supreme Court disagreed, holding that while the disability payments received during marriage were community property, the post dissolution disability payments were the injured spouses' separate property because they served to compensate the injured spouse for lost earning capacity and current suffering.

The *Raphael* court then discussed *In Re Marriage Of McDonald* (1975) 52 Cal.App.3d 509, which dealt with whether post-dissolution worker's compensation pay was the separate property of the injured spouse. The *McDonald* court found that the post-dissolution worker's compensation pay was akin to the disability pay discussed in *Jones*. Relying on the reasoning in *Jones*, the *McDonald* court held that post-dissolution worker's compensation pay was the injured spouse's separate property because it served to compensate the injured spouse for his diminished earning capacity.

The *Raphael* court found that the approach adopted in both *Jones* and *McDonald* was to determine character of disability payments based upon the purpose of the payments and noted that this approach is taken in the majority of community property

states. Applying this reasoning, the *Raphael* court held that a lump sum worker's compensation award received prior to separation was the separate property of the injured spouse to the extent that it compensated that spouse for diminished earning capacity or medical expenses after separation.

The *Raphael* court held that it was not appropriate to apply the presumption set forth in Family Code Section 760 that property received during marriage is community property because the timing of receipt of a worker's compensation award is unrelated to the purpose of the award. The court stated that if the character of such an award were determined by the timing of its receipt, the non-injured spouse would receive a windfall and the purpose of the award would be thwarted because the injured spouse would not be adequately compensated for his future medical expenses and diminished earning capacity. The *Raphael* court supported its holding by citing to Labor Code Section 4903, which states that a worker's compensation award is intended to assist the injured spouse in his recovery and rehabilitation.

In reaching its holding, the *Raphael* court distinguished the Supreme Court's holding in *Northwestern Redwood Co. v. Industrial Commission of California* (1920) 184 Cal. 484. In *Northwestern*, the court found that the wife of a spouse injured

at work during marriage could recover worker's compensation benefits owed to the injured spouse after he deserted her and neglected her support because worker's compensation payments received during marriage were community property.

The *Raphael* court found that *Northwestern* was not controlling because later authorities, including *McDonald*, had limited its holding to payments that were owed and received during marriage. Further, in finding that the non-injured spouse was entitled to the injured spouse's worker's compensation benefits the *Northwestern* court relied on a statute which allowed a lien to be placed on such payments to provide for the reasonable support of the injured spouse's children and spouse.

In conclusion, the *Raphael* court's decision is significant because the character of a lump sum worker's compensation award had not previously been addressed by the courts. *Northwestern* dealt with worker's compensation payments owed and received during the marriage and *McDonald* and *Jones* dealt with post-separation disability payments.

Instead of following the Supreme Court's holding in *Northwestern*, the *Raphael* court found the reasoning in *Jones* and *McDonald* more appropriate in determining the character of a lump sum worker's compensation award. *Raphael* expanded the principle

set forth in *Jones* and *McDonald* to also apply to lump sum worker's compensation awards received during marriage.

Raphael is also significant because it addressed the effect on worker's compensation awards of the Family Code Section 760 presumption that property received during marriage is community property. Because *McDonald* and *Jones* dealt with post separation disability payments this issue had not previously been addressed. The *Raphael* court resolved this issue by following the reasoning of *McDonald* and *Jones* that the purpose of an award should determine its character, not the timing.

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