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# Recent Developments: Archer v. Archer: Professional Degree Is Not Marital Property

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## **Oregon v. Elstad: THE CAT IS NOT OUT OF THE BAG**

In an opinion harshly criticized by dissenting Justices Brennan, Marshall, and Stevens, Justice O'Connor and the Supreme Court have delivered a new approach to the fifth amendment's self-incrimination clause. Though fairly narrow, the holding that a subsequent confession gained after *Miranda* warnings is valid even where a previous uncoerced confession was obtained from a suspect absent *Miranda* rights discards well-founded doctrines which for years have buttressed the *Miranda* rationale. As the dissenters intimate, it is more the reasoning than the actual holding of the Court which fosters a nervous reaction.

*Oregon v. Elstad*, 105 S.Ct. 1285 (1985), involved an 18-year-old accused of burglarizing his neighbor's home. After being contacted by a witness to the burglary, the sheriff's office dispatched two officers to the home of Michael Elstad with a warrant for his arrest. Upon arriving at the home, both officers were escorted to Elstad's bedroom by his mother. After dressing, Elstad accompanied them into the living room, sat down with one of the officers, and following a brief discussion of the burglary, confessed to the crime. His *Miranda* rights had not been given. Approximately one hour after reaching the sheriff's headquarters, Elstad was given his *Miranda* rights, which he subsequently waived. He then gave a full statement confessing to the burglary.

The trial court found Elstad guilty of burglary. On appeal, that decision was reversed on the grounds that the defendant's inadmissible earlier confession "tainted" the later confession which occurred after the defendant was advised of his *Miranda* rights. *Oregon v. Elstad*, 61 Ore. App. 673, 658 P.2d 552 (1983). In the words of the court, "the cat was sufficiently out of the bag to exert a coercive impact on [the respondent's] later admission." *Id.* at 678, 658 P.2d at 555. The Supreme Court granted certiorari to consider whether the self-incrimination clause of the fifth amendment requires the suppression of a confession, made after proper *Miranda* warnings and a valid waiver of rights solely because the police had obtained an earlier voluntary admission without warnings from the defendant.

In her opinion, Justice O'Connor suggests that, "a simple failure to administer the warnings, unaccompanied by any actual coercion or other circumstances calculated to undermine the suspect's ability to exercise his free will" is not enough to taint a subsequent voluntary and informed waiver. *Elstad*, 105 S.Ct. at 1293. The

counter argument to this coercion-based analysis was espoused in *U.S. v. Bayer*, 331 U.S. 532 (1947).

After the accused has once let the cat out of the bag by confessing, no matter what the inducement, he is never thereafter free of the psychological and practical disadvantages of having confessed. He can never get the cat back in the bag, the secret is out for good. In such a sense, a later confession may always be looked upon as fruit of the first.

*Id.* at 540-41.

Until *Elstad*, the state had the burden of showing that the lack of a warning did not taint subsequently obtained evidence. See *Alderman v. United States*, 594 U.S. 165 (1969). *Elstad* changes this and seems to have placed the burden on the defendant. Justice Brennan explains, "the Court today appears to adopt a 'go ahead and try to prove it' posture toward citizens whose fifth amendment *Miranda* rights have been violated, an attitude that marks a sharp break from the Court's traditional approach to official lawlessness." *Elstad*, 105 S.Ct. at 1312.

— Tom Swisher

## **Archer v. Archer: PROFESSIONAL DEGREE IS NOT MARITAL PROPERTY**

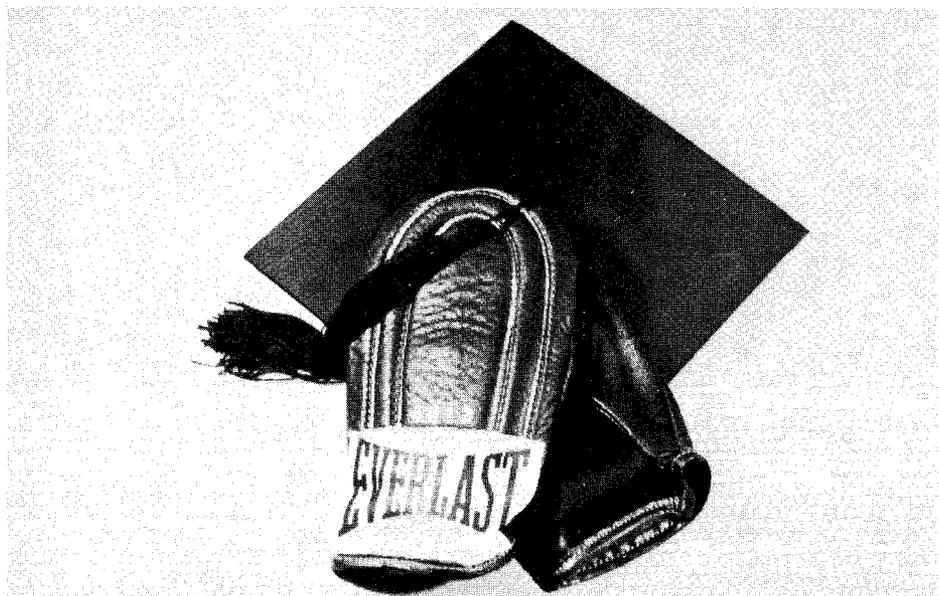
In *Archer v. Archer*, 303 Md. 347, 493 A.2d 1074 (1985), the Maryland Court of Appeals joined a majority of jurisdictions and held that professional degrees and licenses earned by a spouse during the marriage are not marital property and, therefore, are not subject to a monetary award. MD. FAM. LAW CODE ANN. § 8-205 (1984).

The court recognizes a broad definition of "property," embracing everything which has exchangeable value or goes to make up a person's worth. Nevertheless, the court held a professional degree to be a mere "expectancy of future enhanced income," "an intellectual attainment," and not a present property interest.

The parties to the litigation, Jeanne and Thomas Archer, were married in 1977 after Thomas Archer's first year of medical school. At that time, Jeanne Archer was pursuing an undergraduate degree but left school and began to work full-time. During their marriage, Jeanne Archer worked and had two children and Thomas Archer attended medical school. Thomas Archer received medical school expenses, a monthly stipend and other monies from the United States Navy. Citing recent Maryland court decisions, the court stated that the Family Law Article requires that non-monetary contributions should be recognized in determining the acquisition of marital property. Careful consideration should be given to both monetary and non-monetary contribution by the spouses so that property interests can be fairly and equitably adjusted.

The appellant, Jeanne Archer, argued that marital property defined in the Family Law Article as "the property, however titled, acquired by one or both of the parties during marriage" should be liberally construed and include medical degrees or licenses in order to effect the broad remedial purposes of the Act. However, the Maryland Court of Appeals rejected this view.

The court seemed to adopt the reasoning of *In re Marriage of Graham*, 194 Colo. 429, 574 P.2d 75 (1978), which held that an advanced degree or professional license lacks the traditional attri-



butes of property. The court further noted in its opinion that a professional degree, unlike property, cannot be assigned, transferred, devised, sold, pledged or inherited.

Other arguments supporting the rejection of the appellants proposition included: 1) the too speculative nature of determining the value of a professional degree; 2) that an attempt to characterize spousal contributions as an investment or commercial enterprise deserving compensation demeaned the concept of marriage; 3) the degree of the spouse is personal and represents only the potential for future earnings; and 4) that a graduate degree is best considered when awarding alimony.

The court rejected the opinion of a minority of jurisdictions which hold that "the most equitable solution" to compensate one spouse for the sacrifices which enabled him/her to pursue a professional degree is to allow the supporting spouse to "share in the fruits" obtained by the other spouse.

The court in the past has recognized that the broad definition of marital property includes pension rights. *Deering v. Deering*, 292 Md. 115, 437 A.2d 883 (1981). But, the court distinguished a spouse's property right to pensions from a professional degree. That is, a pension is a contractual right to a current asset which a spouse has a right to receive. However, such rights are plainly distinguishable from a professional degree. A professional degree is an intellectual attainment personal to the holder that cannot be sold, transferred or inherited. As the court stated, a degree/license does not have an exchange value; rather, it represents a potential for "earning capacity made possible . . . in combination with innumerable other factors too uncertain and speculative to constitute marital property." *Archer* at 357, 493 A.2d at 1080.

The court concluded by stating that in its award a chancellor should consider the circumstances surrounding a spouse's acquisition of a professional degree/license as well as that spouse's potential income. Income earned by the acquisition of a professional degree/license by a spouse and the sacrifices of the other spouse in helping to attain such a degree are "factors which may" be considered by the court in making an alimony award. The court presumed that the trial court considered these "factors" in determining the appellant's amount of alimony (\$100 per month not to exceed a year). However, the court did not consider the adequacy of this amount since the appellant did not raise that issue on appeal.

— Gordon Daniels

## ***Ake v. Oklahoma*: PSYCHIATRISTS IN THE COURT ROOM**

In a recent decision, the Supreme Court confronted the issue of whether an indigent defendant has a constitutional right to the psychiatric examination and assistance necessary to prepare an effective defense based on his mental condition. In *Ake v. Oklahoma*, 104 S.Ct. 1087 (1985), the Court, speaking through Justice Marshall, held that indigent defendants do, under certain circumstances, have a due process right to the assistance of a psychiatrist in the preparation of their defense. The due process clause of the fourteenth amendment requires a state to provide an indigent defendant with access to "competent psychiatric assistance" to aid in the preparation of his defense, if the defendant makes a preliminary showing that his sanity at the time of the crime will be a significant factor at trial. Additionally, the Court in *Ake* held that an indigent defendant also has the right to a psychiatrist's assistance at a capital sentencing proceeding if the state presents psychiatric evidence as to his future dangerousness.

The defendant in *Ake* was charged with murdering a husband and wife and wounding their two children. At arraignment, the defendant's behavior was so bizarre that the trial judge *sua sponte* ordered him to be examined by a psychiatrist. The psychiatrist found that the defendant was incompetent to stand trial and suggested that he be committed. Six weeks later, however, the defendant was found to be competent provided that he continue to be sedated with an antipsychotic drug. When the state resumed proceedings against the defendant, his attorney, at a pretrial conference, informed the court that he would raise an insanity defense.

Therefore, the defense attorney requested a psychiatric evaluation, at state expense, to determine the defendant's mental state at the time of the crime, claiming that the defendant was entitled to such an evaluation by the United States Constitution. The state court denied the defendant's request for such an evaluation. Consequently, there was no expert testimony for either side on the issue of the defendant's sanity at the time of the offense. The jury rejected the defendant's insanity defense and he was convicted of two counts of murder in the first degree and two counts of shooting with intent to kill and was subsequently sentenced to death.

In determining whether, and under what circumstances, a state should be required to provide an indigent defendant with competent psychiatric assistance in preparing his defense, the Court employed a three-factor test. The three factors relevant to this determination were (1) "the private interest that will be affected by the action of the State", (2) "the governmental interest that will be affected if the safeguard is to be provided", and (3) "the probable value of the additional or substitute procedural safeguards that are sought, and the risk of an erroneous deprivation of the affected interest if those safeguards are not provided." *Ake*, 104 S.Ct. at 1094. The court in *Ake*, applied this three factor test, but considered the first two factors only briefly.

Thus, in considering the first factor, the court found that the private interest in the accuracy of a criminal proceeding is almost uniquely compelling since a criminal proceeding places an individual's life or liberty at risk. In considering the second factor, the interest of the state, the court found that a state's interest in denying a defendant a psychiatrist's assistance

