

## *In Re Marriage of Finby*

This case, which can expect a good deal of attention from creative lawyers, may quickly attain iconic status. Is a “book of business” now equated to personal goodwill? Has the distinction between “enterprise goodwill” and personal goodwill been eroded? Despite language to the contrary in the *Finby* opinion, will this be viewed as the “anti-*McTiernan*” case, setting a new standard for producers, stockbrokers, real estate agents, financial professionals... the list goes on. Will client lists now be subject to discovery? Will client lists have to be valued? How will confidentiality concerns be handled if a “book of business” is crucial to the valuation and goodwill determination?

In an acknowledged case of first impression, the Court of Appeal, reversing the trial court ruling, held that “wife’s status as a licensed financial advisor with the ability to induce clients to follow her when transferring to a new firm is similar to the goodwill found in the business of other professions such as lawyers and doctors.”

The *Finby* Court does a delicate “*McTiernan*” dance. The opinion states that it does not disagree with the *McTiernan* ruling, but distinguishes the factual situation of John McTiernan’s high standing and reputation as a motion picture director (no goodwill), as opposed to Rhonda Finby’s substantial book of business transferred with her to her new firm, for which Wachovia Securities paid a substantial bonus. At this point, it would be wise to reread the concurring and dissenting opinions in *McTiernan*. The fine legal line (actually, not so fine) drawn in the *Finby* opinion is certain to engender much debate and litigation as future factual scenarios are argued, negotiated, and brought to the Courthouse, with considerable evidentiary baggage on both sides. Interestingly, no mention is made in the *Finby* opinion of the *McTiernan* dictate that “the expectation of continued public patronage must be generated by ‘a business.’”

Mark the *Finby* case in **bold** on your checklists. We now have new probing questions to ask when analyzing the issues in a new case. Reread this opinion. Be certain to read the many commentaries that are sure to follow. The Listservs are already buzzing. Now appears to be a good time to recall F.W. Maitland’s well-known legal metaphor: “The law is a seamless web.” The web just got a lot more complex.

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