

Frank and Jamie McCourt: a cautionary tale of divorce gone wrong

By **Jeffery S. Jacobson, Julie A. Milligan and Cozette C. Vergari**

Many Angelenos breathed a sigh of relief with last week's announcement that Frank McCourt reached a settlement with Major League Baseball and has agreed to sell the Los Angeles Dodgers. Combined with the prior settlement with his estranged wife Jamie McCourt, it appears that the McCourts' epic battle in family court, bankruptcy court and the court of public opinion is finally coming to an end.

It has been frequently cited that Frank and Jamie had the most expensive divorce in California history. They employed some of the best and brightest attorneys, accountants and public relations professionals that money could buy. According to court filings, during the past two years, they spent in excess of \$20 million dollars on attorney fees and costs.

On that fateful October day prior to game one of the 2009 National League Championship series, it was announced that Frank and Jamie would be getting divorced. Immediately, both of them had public relations experts spinning their positions. They expressed their interests publicly: Both Frank and Jamie wanted to keep the team in their family and create a legacy for their four sons; Frank wanted to manage the Dodgers entities; Jamie wanted to be the public face of the Dodgers; both wanted to increase the value of the Dodgers and maintain personal wealth; and both wanted to maintain their public images.

However, none of their subsequent decisions or actions reflected these interests. Instead of working together in collaboration to address these interests, they treated the process as if it were a sporting event, each of them intent upon winning. Beyond winning, it appears the focus was even defeating the other, without any care for the damage that might result to either or both. The need to win justified the means.

The highest level of collaboration involves an emphasis on one's interests, while, at the same time acknowledging the interests of the other spouse. Instead, Frank and Jamie engaged in a positional battle.

As a result, they lost control of the situation, sacrificing their privacy and personal dignity.

At first, the McCourt divorce was about Frank and Jamie and the end of their 30 year marriage. However, before long, other entities took control of their destiny and obliterated any chances of a satisfactory outcome: the legal system; Bud Selig and MLB; Fox; the Internal Revenue Service; the media; and ultimately, the general public, particularly legions of Dodger fans who voted with their feet by staying away from Dodger Stadium to protest the horrifying tales of what Frank and Jamie allegedly had done to their beloved team.

Every divorce is impacted by the process choices made by the parties. Frank set the tone with his decision to fire Jamie from her position as CEO of the Dodgers, publicly



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Frank McCourt, right, and Jamie, at a news conference in Los Angeles in 2004, display team jerseys after announcing that Major League Baseball had approved his purchase of the Dodgers.

humiliating her. Jamie fired back with a massive court filing, detailing their opulent lifestyle and discussing the inner financial workings of the Dodgers. Ironically, while hundreds of thousands of dollars were spent by the McCourts to shield themselves from the general public, their private lives became an open book for all to read in the court files.

Within a year, they went to trial on the bifurcated issue of the validity of a postmarital agreement. After millions of dollars were spent in litigation, the result was based largely upon a clerical mistake, which made it impossible to determine what the McCourts had actually agreed to. Perhaps the most memorable part of this litigation was Judge Scott Gordon's comment in his ruling that both Frank and Jamie had credibility issues with regard to the disputed postmarital agreement.

When the smoke clears, both Frank and Jamie will still be wealthy, at least by the standards of ordinary people. Jamie was awarded homes in Malibu, Holmby Hills and Vail. Frank was awarded two homes in Boston. Both stand to receive tens of millions of dollars after the sale of the team. However, neither Frank nor Jamie satisfied any of their primary interests and are ending up with far, far less than what they had at the commencement of the divorce process.

While fans can debate the success of the pre-divorce era of the McCourts' ownership of the Dodgers, during the first six years, the team reached the playoffs four times. The McCourts purchased the Dodgers in 2004 for \$421 million, all of which was financed. Based on various reports, the value of the Dodgers today is estimated to be between \$1 to \$1.2 billion. Unfortunately, that profit of hundreds of millions of dollars will be largely eaten up by loans — both capital gains taxes and potentially

unpaid income taxes — and massive attorney fees.

It did not have to be this way. Frank and Jamie could have found a way of retaining the team, both could have come out with more money, they could have created a wonderful legacy for their sons, and their public images could have remained intact.

There is another approach to divorce that would have protected the McCourts' privacy and provided an opportunity for a more civilized negotiation with one another. There is an option far different from the traditional public forum of the court room, an option where nothing needs to be public, other than the fact that a case for divorce has been opened and a final judgment entered.

The state of California has recognized, and eventually codified in 2007, the process of collaborative divorce. The spouses choosing this path each have a trained collaborative family law attorney, engaged to advise and lead them through the divorce process. One of the very first steps involves the parties and attorneys entering into a stipulation, agreeing to devote all of their efforts toward a negotiated settlement in an efficient, cooperative manner and providing that, while engaged in the collaborative process, no party or attorney signing the stipulation will file any document requesting court intervention. This process also protects the parties' privacy.

Additionally, the collaborative process affords parties the opportunity to work with mental health professionals, trained in collaborative divorce, to identify interests and address the emotional challenges each is facing. Though not always easy, the parties are assisted by their own professional "coach" in working through the struggles of breaking up a marriage and a family. The coaches work together as a team with the attorneys and financial professionals to assist both parties in easing the emotional burdens of such a break-up and having an interest-based negotiation.

The McCourts are no different from any family getting divorced. Like any husband and wife, they had to deal (and likely will deal for years to come) with the emotion of their 30 year marriage ending. They both likely have feelings of anger, sadness and fear. Regardless of the size of an estate, effective processes for resolving family law matters take these feelings, combined with the parties' shared interests, into account. Scorched earth litigation is not inevitable, and a choice to proceed collaboratively often best furthers the parties' individual interests as well as their collective interests.

Frank and Jamie's win-lose paradigm should have been confined to the baseball diamond at Dodger Stadium.

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