

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**AMY NICOLE MAY (FORMERLY "O'ROARK"),
RESPONDENT**

vs.

**MICHAEL SHANE O'ROARK,
APPELLANT**

DOCKET NUMBER WD72254

DATE: JANUARY 18, 2011

Appeal from:

The Circuit Court of Clay County, Missouri
The Honorable Anthony Rex Gabbert

Appellate Judges:

Division Two: Karen King Mitchell, P.J., Joseph M. Ellis and Victor C. Howard, JJ.

Attorneys:

Philip F. Cardarella, for Respondent

Gary M. Steinman, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

AMY NICOLE MAY (FORMERLY “O’ROARK”), RESPONDENT

v.

MICHAEL SHANE O’ROARK, APPELLANT

WD72254

Circuit Court of Clay County, Missouri

Before Division Two Judges: Karen King Mitchell, P.J., Joseph M. Ellis and Victor C. Howard, JJ.

In November of 2006, the trial court entered a judgment dissolving the marriage of Amy May and Michael O’Roark. After the judgment became final, May learned that a substantial deductible income tax loss resulted when the LLC the parties operated during their marriage was dissolved. May filed a suit seeking a judgment in equity allocating the loss, claiming that it was an undisclosed and undistributed marital asset. The trial court found that the loss was an undivided marital asset and that O’Roark was or should have been aware of its existence and value at the time of the dissolution decree but failed to disclose it to May. The court found that the failure to distribute the asset resulted in \$18,050.00 in increased tax liability to May, and the court therefore awarded her that amount in damages. O’Roark appeals.

AFFIRMED.

Division Two holds:

- (1) Where there was evidence that O’Roark was the only one privy to information relating to the liquidation of the LLC’s inventory and the business was closed down at least six months prior to the entry of the dissolution judgment, there was substantial evidence from which the trial court could have determined that O’Roark knew or should have known of the existence of a substantial deductible loss and failed to disclose it to May.
- (2) Even if two exhibits were erroneously admitted into evidence, where there was other evidence in the record to support the trial court’s finding regarding damages, the trial court did not err in awarding May \$18,050.00 in damages.
- (3) Although the parties’ settlement agreement provided that each party released the other from any claim related to property set aside to the other in the agreement, where the agreement did not set aside the LLC or the deductible loss to either party, May did not release O’Roark from her claim to half of the loss.

Opinion by: Victor C. Howard, Judge

Date: January 18, 2011

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