

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>DEBORAH (LINN) THOMAS,</b>	<b>: No. 91-21,700</b>
<b>Plaintiff</b>	<b>:</b>
	<b>:</b>
<b>vs.</b>	<b>: CIVIL ACTION - LAW</b>
	<b>: IN DIVORCE</b>
<b>HEISTER H. LINN, JR,</b>	<b>:</b>
<b>Defendant</b>	<b>:</b>

**OPINION AND ORDER**

This matter came before the Court on both parties' exceptions to the Master's report and recommendation regarding equitable distribution, alimony, counsel fees and costs. The Court notes the exceptions concern virtually every aspect of the Master's report. Therefore, rather than addressing the exceptions seriatim, the Court will discuss the exceptions in the following manner: (1) valuation of the parties' assets; (2) statutory factors for equitable distribution; (3) percentage of assets and debts distributed to each party; (4) alimony; (5) counsel fees; and (6) costs.

**VALUATION OF MARITAL ASSETS**

Both parties filed exceptions regarding the Master's valuation of the defendant's orthodontic practice, Heister H. Linn, DDS, Inc. (hereinafter "DDS"). See Defendant's Exception #2; Plaintiff's Exception #1. The defendant contends that the increase in value of DDS during the parties' marriage was only \$50,000 to \$200,000. He further asserts that most, if not all, of that amount is attributable to professional good will which is not considered marital property. The plaintiff claims DDS is worth 1.4 million dollars based on the testimony of her expert witness, David Bohlander. The Master valued

the marital portion of DDS as 549,500. With the exception of a minor typographical or mathematical error, the Court finds no error in that determination. The Master considered all the relevant information and made an appropriate determination based on the evidence presented.

At the time the parties married Dr. Linn owned two practices, Williamsport and Berwick. Dr. Linn testified that the pre-marital value of DDS ranged between \$100,000 and \$200,000. During the marriage, he purchased practices in State College, Lock Haven, and Spring Mills. After the parties separated, Dr. Linn purchased an additional practice in Wellsboro for \$150,000. Dr. Linn testified that the value of DDS is between \$300,000 and \$500,000. The Master, however, did not find that valuation credible.

Mr. Bohlander testified that as of December 31, 1995 DDS had \$1,413,239.00 of contracts in progress. N.T., July 13, 1998, at p. 134; Plaintiff's Exhibit #60, pp. 15, 18. He also indicated that the value of DDS as of that date based on an average of the reconstructed operating results method and the bankruptcy representations was \$1,240,000.00. See Plaintiff's Exhibit #60, p.2. These figures, however, did not consider the pre-marital or post-separation values of DDS.

The Master accepted Mr. Bohlander's valuation of \$1,240,000, but reduced it by \$100,000 for the pre-marital value of DDS and \$150,000, which Dr. Linn paid to acquire the Wellsboro office post-separation. Thus, the Master valued DDS at \$990,000 before considering the issue of "good will." The Master then reduced this figure by 45% for professional good will. See Master's Report, pp. 4-8. Although the Master mistakenly

listed this valuation as \$549,500 instead of \$544,500,<sup>1</sup> the Court finds no error in the Master's method of determining the value of DDS.

The defendant also contends that the Master erred in the valuation of his pension plan through DDS. See Defendant's Exception #1. The total value of the pension at the time of separation was \$400,000. N.T., July 15, 1998, at p. 152. The defendant guessed that the value at the time of the Master's hearing had decreased to the range of 105,000 to 175,000, and he would place the total value at \$150,000. N.T., July 15, 1998, at pp. 152, 160-161. The defendant asserted that the decrease was due to bad investments in Richland Motel Associates and T&C Plaza Associates (formerly Old Towne) and forms that were not properly filed. He testified that the pension plan invested \$130,000 in Richland Motel Associates (hereinafter "Richland") and \$200,000 in T&C Plaza Associates (hereinafter "T&C"). N.T., July 15, 1998, at pp. 178, 193. He also claimed that the value of the pension plan had declined or was going to decrease because the entity handling the administrative responsibilities with respect to the pension plan failed to file IRS Form 5500 for several years which would result in penalties or other losses. The defendant did not put any figure on these alleged losses. Also, the defendant has filed suit against the entity hired as pension consultants for this failure.

The Court grants the defendant's exception in part and finds that the total value of the pension plan is \$270,000. Although the defendant didn't present documentation regarding the amount the pension plan invested in Richland, Mr.

---

<sup>1</sup>\$990,000 - 45% (\$445,500) = \$544,500.

Bohlander's economic benefits analysis shows that the pension plan owns the partnership interest in Richland and that Richland filed for bankruptcy in 1994. Plaintiff's Exhibit #69, p.15. The Court did not reduce the value of the pension plan for the investment in T&C because Mr. Bohlander's economic benefits analysis shows there is some equity in T&C. See Plaintiff's Exhibit #69, pp. 13-14. The Court also did not reduce the value for any alleged losses associated with failure to file IRS Form 5500. The defendant did not place any dollar figure on these alleged losses and he has sued the pension consultants to recover any such losses.

The defendant testified that his share of the pension plan would be 95%, the plaintiff's would be 1% and the remaining 4% would belong to DDS employees. Therefore, the value of the defendant's portion of the pension plan is \$256,500<sup>2</sup> and the plaintiff's portion is \$2700.<sup>3</sup>

The defendant claims the Master also erred in his valuation of the defendant's interest in T&C. See Defendant's Exception #3. The defendant asserts T&C is worthless or, at the very least, the valuation should take into account the defendant's income tax bracket. This Court cannot agree. Mr. Bohlander testified that the defendant's interest in T&C had pre-tax equity in the amount of \$37,400. N.T., July 13, 1998, at pp. 89-90; Plaintiff's Exhibit #69, pp. 13-14. The Court notes all the other assets were valued without reducing their value by either parties' federal income tax rate. Furthermore, the parties had and may continue to have losses to offset their potential tax liabilities. For

---

<sup>2</sup>\$270,000 x .95 = \$256,500.

<sup>3</sup>\$270,000 x .01 = \$2,700.

example, the plaintiff testified the rental properties were not purchased for their ability to generate rental income, but rather for their tax benefits. N.T., July 14, 1998, at p. 60.

Finally, the Court notes any tax ramifications are taken into consideration when determining how to divide the marital property. See 23 Pa.C.S.A. §3502(a)(10).

### **EQUITABLE DISTRIBUTION FACTORS**

The defendant contends the Master erred in his division of the marital assets and debts. Generally, the defendant believes the Master erroneously gave the plaintiff all the assets with any value and awarded the defendant valueless assets and all of the numerous marital debts. He further contends he cannot possibly pay the sums ordered to effectuate the distribution when his child support obligations, his debts and the bankruptcy are considered.

In determining how to equitably divide or distribute the marital property, the Court must consider all relevant factors, including the following eleven factors set forth in the Divorce Code, 23 Pa.C.S.A. §3502:

1. **The length of the marriage** - The parties were married for approximately 13 years. They were married on January 14, 1978. They separated on April 21, 1991. The Divorce Decree was entered on June 19, 1995.

2. **Any prior marriage of either party** - This was the first marriage for Deborah Thomas and the second marriage for Heister Linn.

3. **The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties** -

(a) **AGE** - Deborah Thomas is 42 years of age having been born on July 26,

1957. Heister Linn is 52 years of age having been born on October 9, 1947.

**(b) HEALTH** - Neither party testified that they had any significant health or medical problems which would prevent them from being gainfully employed or would affect the decision of this Court in regard to Equitable Distribution.

**(c) STATION** - See paragraph 9 infra.

**(d) AMOUNT AND SOURCES OF INCOME** - Deborah Thomas is employed as a sales representative with Butter's Produce. She testified that she was earning \$6.25 per hour and working between 30-35 hours per week. According to her income and expense statement which is Plaintiff's exhibit 39, she has a net monthly income of \$651.00 from that employment. However, Ms. Thomas has been assessed a net monthly earning capacity of \$1500.

Heister Linn is a self-employed orthodontist. He has offices in six locations. He testified that he works approximately 60 hours per week. Dr. Linn in his income and expense statement which is Defendant's exhibit 2, alleges that he has a gross monthly income of \$12,000.00 on which he pays \$4,058.00 total in taxes. That would give him a net monthly income of \$7,942.00.

Mr. Bohlander determined that Dr. Linn has what he termed as "discretionary cash flow" from his orthodontic practice of approximately \$350,000.00 per year. That figure must be reduced by Federal taxes in the amount of 36 percent. State taxes in the amount of 2.8 percent and local taxes in the amount of 1 percent. The Master would note however, that according to Dr. Linn's 1997 Federal Income Tax return the percentage of Federal taxes he paid that year was only 25.9 percent. However, before the \$350,000.00 is

reduced by taxes the Master would first reduce the taxable amount by a deduction of \$23,684.00 which is Dr. Linn's itemized deduction on his 1997 Federal Income tax return. (See Defendant's exhibit 23J). This would reduce the pre-tax income to \$326,316.00. Multiplying the \$326,316.00 times .398 there would be Federal, State and Local income taxes in the amount of \$129,874.00. Subtracting that amount from the \$326,316.00 would result in a difference of \$196,442.00. Reducing that amount by social Security taxes in the amount of \$8,006.00 would result in an annual net income of \$187,835.00. Dividing that figure by 12 months one arrives at a net monthly income of \$15,653.00. This net monthly income is only \$600.00 per month less than Dr. Linn's assessment set forth on Defendant's exhibit 93. According to those calculations Dr. Linn had a net monthly income of \$16,266.00.

**(e) VOCATIONAL SKILLS** - Deborah Thomas is a high school graduate.

Prior to working for Dr. Linn, Ms. Thomas was employed as a file clerk and as a bank teller. She was employed in Dr. Linn's orthodontic practice at the time of the marriage. she continued to be employed there after their marriage. Prior to the parties' separation she also managed the Nautilus Club. She also was a sales representative for a private line of women's clothing which she sold in her home. After separation she has worked as a salesperson for Butters' Produce.

Dr. Linn has been gainfully employed as an orthodontist since beginning his own practice in or about 1976.

**(f) EMPLOYABILITY** - Deborah Thomas has the requisite education, training and experience to continue to be gainfully employed. However, this employment will not be able

to provide her with the lifestyle and standard of living which she enjoyed while she was married to Dr. Linn.

Dr. Linn also has the requisite education, training and experience to continue to be gainfully employed and to continue to enjoy the lifestyle and standard of living which he has maintained through his years as an orthodontist.

**(g) ESTATE** - Deborah Thomas does not have any estate outside the marital estate set forth herein. Dr. Linn purchased the Wellsboro practice after the parties separate for \$150,000.00. He further testified that the Wellsboro practice is up to 25-30 percent of his business.

**(h) LIABILITIES** - See discussion infra.

**(i) NEEDS OF EACH OF THE PARTIES** - Deborah Thomas lists her net monthly expenses in Plaintiff's exhibit 39 as being \$8,354.00. Dr. Linn lists his monthly expenses in Defendant's exhibit 2 as \$9,096.00.

**4. The contribution by one party to the education, training or increased earning power of the other party** - As was stated previously, Deborah Thomas was employed by Dr. Linn when the parties were first married. She argues that through her assistance Dr. Linn was able to increase his orthodontic practice from two location in Williamsport and Berwick to five different locations. Dr. Linn did not contribute significantly to Ms. Thomas' education, training, or increased earning power.

**5. The opportunity of each party for future acquisitions of capital assets and income** - Deborah Thomas will not have the opportunity to make any significant acquisitions of capital assets and income based upon her present income.

Dr. Linn will continue to be gainfully employed as a orthodontist and will be able to benefit greatly from the income that vocation will provide for him in the future. Therefore, it is logical that



he will have the opportunity to make significant future acquisitions of capital assets as he had done in the past.

**6. The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits** - Ms. Thomas has health insurance coverage. However, she does not have any retirement benefits except for a little of \$2,000.00 which she has been able to save. Dr. Linn has health insurance coverage, retirement and insurance benefits through his Corporation. As stated supra, Dr. Linn does argue that the Corporate Pension has decreased significantly.

**7. The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker** - Due to Dr. Linn's substantially higher earnings over the years he was able to contribute greater amounts of monies to the acquisition of the parties marital assets. Ms. Thomas was predominantly a homemaker.

**8. The value of the property set apart to each party** - The defendant, Heister Linn, has several items of separate property. He has the pre-marital value of DDS (\$100,000), the post-separation value of the Wellsboro office of DDS (\$150,000), the professional good will in DDS (\$445,500), a 1961 Corvette (\$2,000), a 1977 Harley Davidson (\$900) and a 1973 Suzuki (\$400). He also has significant separate debt including, but not limited to, debt for back federal income taxes in 1995 (\$139,442.81) and 1996 (\$23,167.25).

**9. The standard of living of the parties established during the marriage** - It is clear from the testimony of the parties and the acquisition of assets over the course of the marriage that the parties enjoyed high standard of living.

**10. The economic circumstances of each party, including Federal, State and local tax ramifications, at the time the division of property is to become effective** - Many of the

marital assets are not liquid. There will be tax consequences related to realizing the equity in the real property. Additionally, the largest asset is the defendant's orthodontic practice, which raises difficult issues in the manner of distributing the assets. The defendant seeks an in-kind distribution. The plaintiff seeks a cash payment over time because the defendant can too easily decrease the value of DDS due to the nature of the business. If a cash payment is ordered, the payments would extend over several years and decrease the monies available to the defendant for future acquisitions of capital assets. The Court also notes that the parties have significant debt and the defendant has filed for personal bankruptcy.

**11. Whether the party will be serving as the custodian of any dependent minor children** - There were five children born to the marriage, Ryan, born June 3, 1978; Allison, born October 12, 1979; Courtney, born July 18, 1981; Collin, born January 11, 1985 and Brennan, born June 17, 1987. Ryan and Allison have both reached the age of maturity and no longer live with either of the parties.<sup>4</sup> Courtney, who turned 18 on July 18, 1999, presently resides with Dr. Linn. Collin and Brennan reside with their mother, Deborah Thomas.

After reviewing these circumstances, the Court finds that the plaintiff should receive more of the marital assets than the defendant. The Court finds that the factors relating to income, vocational skills, needs, benefits, standard of living and the fact that the plaintiff is the custodian of the minor children weigh in favor of her receiving more than 50% of the marital assets. The question, however, is how much greater a percentage the plaintiff should receive. The Master found that the plaintiff should receive 65% of the marital assets and virtually none of the marital debt. The defendant argues that the Master failed to adequately consider the debts of the parties, both joint and separate. See Defendant's Exhibit 47. This Court is constrained to agree. Given the defendant's greater income, employability and economic prospects in the

---

<sup>4</sup>Ryan attends Hobart College in New York and Allison resides in Colorado.

future, he should be held responsible for the majority of the marital debts. However, given the considerable amount of the marital debt, the Court believes the defendant should receive a slightly higher distribution of the marital assets. Therefore, the Court will award the plaintiff 60% and the defendant 40% of the marital assets.

The Court will effectuate the distribution as follows:

To Heister H. Linn:

1. Heister H. Linn, DDS, Inc.	\$544,500.00	
2. Household furnishings/personal property	\$ 37,325.00	
3. Guns and jewelry	\$ 3,135.00	
4. Trailer	\$ 100.00	
5. Snowmobile	\$ 200.00	
6. Defendant's DDS Pension	\$256,500.00	
7. 1982 Porsche	\$ 15,000.00	
8. 1956 Corvette	\$ 8,000.00	
9. T & C Plaza Associates	\$ 37,400.00	
10. LinnBrad Associates	\$ 0.00	
11. Profession Real Estate Partnership (Williamsport office building)	\$ 0.00	
12. CJ Nichols	\$ 0.00	
13. Professional Associates of Berwick (Berwick office building)	\$ 0.00	
14. Nautilus	\$ 0.00	
	Subtotal	<u>\$902,160.00</u>

Less cash to be paid by Heister H. Linn to Deborah Thomas (after offsetting for Nautilus credit)		\$307,705.69
		<u>\$594,454.31</u>

To Deborah Thomas:

1. 820 Vallamont Drive	\$124,294.00
2. 518 South Pugh Street, State College	\$ 46,689.00
3. 229 Grampian Boulevard 216 Montour Street Mulberry and Ross Streets	\$331,579.00
4. Household furnishings/personal property	\$ 7,435.00
5. Jewelry	\$ 12,620.00
6. PP & L Stock	\$ 1,961.68

7. Plaintiff's DDS Pension	\$ 2,700.00	
8. PaineWebber	\$ 97.11	
9. Pennswood Shares	\$ 6,600.00	
	Subtotal	<u>\$533,975.79</u>

Plus cash to be paid by Heister H. Linn  
to Deborah Thomas(after offsetting for  
Nautilus credit)

\$307,705.69

\$841,681.48

The defendant also contends the Master erred by distributing to him T&C Associates (formerly Old Towne) and his DDS pension while distributing to the plaintiff the house in which the defendant resides and the State College real estate in which a branch office of DDS is located. See Defendant's Exception #5. This Court cannot agree with the defendant's contentions.

Although the Court was initially sympathetic to the defendant's assertion that he should have received the Vallamont residence, there are several reasons the Vallamont and State College properties should be awarded to the plaintiff. First, to the extent possible, the Court wants to limit the cash payment from the defendant to the plaintiff. The defendant's own exceptions allege that the Master erred by failing to award an in-kind distribution (see Defendant's Exception #21). The Court believes that is what the Master was attempting to do, as much as was practical and feasible. Second, these assets appear to be easier to transfer from the defendant to the plaintiff than the defendant's pension and his interest in T&C Associates.<sup>5</sup> Third, given the plaintiff's income as compared to the defendant's, it is appropriate to award her the assets that are capable of generating income or being liquidated.

---

<sup>5</sup>The defendant has a limited partnership interest in T&C Associates. Without having the partnership documents, the Court does not know to what extent, if any, the defendant's interest is transferable.

The plaintiff asserts that the Master erred in failing to order the defendant to turn the Nordic track over to the plaintiff. This Court cannot agree. The record does not reflect that the defendant possesses the Nordic Trac. The records also fails to reflect whether the judgment is the remaining amount to purchase the Nordic Trac or whether it was a deficiency judgment.

The plaintiff also claims the Master erred in failing to secure the cash payment with property. This Court agrees. The Court believes it is best that the defendant continue to operate DDS; however, in the event DDS is liquidated, the plaintiff should be paid. Therefore, the cash payment will be secured by DDS.

The defendant contends the Master erred in ordering the defendant to pay \$482,582.40 to the plaintiff over eight years at 8% interest. The Court notes that the cash payment has been reduced to \$307,705.65. The Court agrees that the interest rate should not be 8% when the legal rate of interest is 6%. See 41 P.S. §202. Therefore, the Court will order the defendant to pay the plaintiff \$307,705.65 over eight years at 6% interest. This results in a monthly payment of \$4,043.69. It is the intention of the Court that, if DDS is liquidated and the plaintiff receives a portion of the \$307,705.65, but not the entire amount, the principal amount will be reduced accordingly and the defendant will continue to pay the plaintiff \$4,043.69 until the remaining principal is paid.

The defendant contends the Master failed to consider the defendant's child support obligation when he made his distribution. Essentially, the defendant asserts he cannot make the child support payment and the cash payment and still meet his reasonable living expenses and pay his debts. The defendant's monthly net income is \$15,653. Under the Master's proposal the defendant would have been paying \$4,500 per month in child support and \$6,822.11 to the plaintiff; these sums constitute 72% of the defendant's income. The defendant would have \$4,330.89 to pay for his living expenses and other debts. The Court has granted several of the

defendant's exceptions, though, and now his monthly payment to the plaintiff is \$4,043.69. In arriving at this figure, the Court considered the defendant's income, his child support obligation, and the economic circumstances of both the parties.

The defendant claims the Master failed to consider the fact the defendant has filed for bankruptcy when he made the property distribution. Given the changes the Court has made to the Master's proposed distribution, the Court believes this exception is moot. In the event it is not, the Court notes it has considered the fact that the defendant has filed for bankruptcy and, quite frankly, it cuts both ways. The Court realizes the defendant has significant debt. However, he also has significant income. Furthermore, in all likelihood, he will only pay a portion of those debts and the rest will be discharged in bankruptcy as that is the benefit derived from filing for bankruptcy.<sup>6</sup>

## **DEBTS**

The defendant asserts the Master erred by failing to make a calculation of debts in regard to the distribution of property. The Court interprets this exception as a request from the defendant for a listing of the marital debts. The Court acknowledges that the Master did not list each item of marital debt. This does not mean that the debts were not considered, though. Many of the marital debts were considered when valuing the marital assets. In other words, the valuation of the marital assets already deducted the pre-separation debts associated with those assets to arrive at a net amount.

The Court will list the marital debts and the post-separation tax debt relating to marital real estate. The marital debts are as follows:

- |                      |             |
|----------------------|-------------|
| 1. IRS (12/90 audit) | \$ 4,108.57 |
|----------------------|-------------|

---

<sup>6</sup>The Court acknowledges that some debts, such as the IRS liens, are not dischargeable; however, the marital IRS debts are only a small percentage of the debts listed in Defendant's Exhibit 47.

2. IRS (12/91 and 12/92)	\$ 63,525.55
3. Mitchell, Mitchell (legal services)	\$ 3,082.70
4. Mellon Bank (blanket mortgage on Grampian Blvd, Montour and Mulberry/Ross Street properties)	\$191,421.99
5. Berwick Dental Arts (Collateral Professional Associates Berwick)	\$ 10,680.00
6. Boardwalk Marketplace	\$ 37,657.74
7. Bucktail Bank	\$ 13,401.27
8. Corestates (Collateral for Professional Real Estate Associates)	\$713,700.00
9. Corestates (Collateral for Professional Real Estate Associates)	\$ 14,000.00
10. First National Bank, Berwick (Collateral for Professional Associates of Berwick)	\$259,106.88
11. First National Bank, Berwick (Collateral for Professional Associates of Berwick)	\$ 20,216.41
12. Gingerich Estate (Collateral for Pugh Street)	\$127,110.34
13. Heinz Mathis, et al. (2/90)	\$ 28,750.00
14. Keystone Financial (Vallamont mortgage)	\$186,384.48
15. Nordic Trac judgment	\$ 1,332.26
16. Janice Thomas(Nautilus)	\$ 35,875.00
17. Janice Thomas(Nautilus)	\$127,500.00

The post-separation debts for taxes on marital real estate are:

1. Real Estate Vallamont Drive County, 1997	\$ 1,599.44
City, 1997	\$ 2,513.14
2. Real Estate Pugh Street 1995-1997	\$ 10,513.28
3. Real Estate taxes Mulberry (1995 and 1996)	\$ 2,980.24
Ross (1995 and 1996)	\$ 3,122.16
4. Real estate taxes Montour Street (1994-1996)	\$ 9,484.07
5. Real Estate taxes Grampian Blvd. (1995-1996)	\$ 8,690.38
6. Real Estate taxes Vallamont Drive (1994-1996)	\$ 25,920.61
7. State College Borough Taxes (1997)	\$ 688.94

Until the defendant transfers Vallamont Drive, Pugh Street, Grampian Boulevard, Montour Street, Mulberry and Ross Street properties to the sole ownership of the plaintiff, he shall be responsible for the mortgages on those properties. The defendant claims it was error for the Master to make him responsible for these mortgages. The Court cannot agree. There have been agreements of sale for the Grampian Boulevard, Montour Street, and Mulberry/Ross Street properties for some time. The only thing holding up the sale of these properties was the defendant's failure or refusal to sign the appropriate documentation. The agreements were for prices which met or exceeded the appraised values. The Court does not understand why these properties have not been sold and the proceeds held in escrow pending a final order in equitable distribution. From the testimony presented at the Master's hearing, it appears that the defendant was simply dragging his feet. Therefore, in order to insure that the defendant transferred the properties in a timely manner, the Master gave him an economic incentive to do so by making him responsible for the mortgages until the transfers took place. The Court finds no error in this determination.

The plaintiff shall be responsible for the 1995 and 1996 real estate taxes for Mulberry Street (\$2,980.24), the 1995 and 1996 real estate taxes for Montour Street (\$9,484.07), the 1995 and 1996 real estate taxes for Ross Street (\$3,122.16), the 1995 and 1996 real estate taxes for Grampian Boulevard (\$8,690.38) and the Nordic Trac judgment (\$1,332.26). Once Vallamont Drive, Pugh Street, Montour Street, Grampian Boulevard, Mulberry Street and Ross Street are transferred to the sole ownership of the plaintiff, she shall be responsible for the Keystone Financial mortgage, and the Bucktail Bank loan relating to Vallamont Drive, the Mellon Bank blanket mortgage covering Grampian Boulevard, Montour Street, and Mulberry and Ross Streets



and the debt to the Gingerich Estate which, in essence, is a mortgage on Pugh Street.<sup>7</sup>

The defendant shall be responsible for the 1997 County taxes (\$1,599.44), the 1997 City taxes (\$2,513.14), the Lycoming County Tax Claim (\$25,920.61), the 1990 IRS debt (\$4,108.57), the 1991/1992 IRS debt (\$63,525.55), the Mitchell legal bill (\$3,082.70), Berwick Dental Arts (\$10,680), Boardwalk Marketplace (\$37,657.74), both Corestates loans (\$713,700 and \$14,000), both First National Bank loans (\$259,106.88 and \$20,216.41), both loans from Janice Thomas (\$127,500 and \$35,875), Centre County Tax Office (\$10,513.28), the State College Borough taxes (\$688.94) and Heinz Mathis (\$28,750). The Court notes that Berwick Dental Arts, the First National Bank loans and the Corestates loans were considered in valuing the defendant's interest in Professional Associates of Berwick (the Berwick office) and Professional Real Estate Partnership (the Williamsport office). The defendant shall also be responsible for the defendant's post separation debts to Walters Pool and Patio (\$2,377.86), John and Cheryl Bloom (\$34,624.34) and Professional Real Estate (\$31,810.00). The Court specifically lists these post separation debts of the defendant because they resulted in liens against marital property.<sup>8</sup>

The parties shall hold each harmless in regard to the liabilities which have been assessed to them. It shall be each party's sole responsibility to meet the payments and

---

<sup>7</sup>The court notes these debts were considered when valuing the real estate awarded to the plaintiff.

<sup>8</sup>The Court believes all of these liens are against property the plaintiff is to receive through equitable distribution. The defendant is ordered to pay these debts. In the event that plaintiff sells the properties and, as a result, these debts are paid from the proceeds, the defendant shall indemnify or reimburse the plaintiff for these amounts.

The Court also notes it did not feel the need to list every item of the defendant's post separation debt because those items are not subject to distribution as it is not marital debt. A listing of all the debts can be found in Defendant's Exhibit #47 and the plaintiff's Brief in Support of Equitable Distribution at pp.13-17.

obligations of the liabilities assessed to them. In the event either party fails to satisfy these obligations through payment or default of any of the liabilities, the other party shall have the right to seek whatever legal remedy is necessary to protect themselves. The non-complying or defaulting party shall be required to all of the cost of any legal action taken by the other party to enforce this provision including payment of his or her reasonable counsel fees.

The defendant contends the Master erred in making him solely responsible for the joint income taxes. Defendant's Exception 10. This court cannot agree. As the Master aptly stated in his report, the vast majority of the income tax debts were incurred as a result of the defendant's income and failure to pay the taxes. Therefore, he should be solely responsible for the payment of these taxes.

The defendant asserts the Master erred in making him responsible for the real estate taxes on the Vallamont Drive and Pugh Street properties, assets the plaintiff will receive in equitable distribution. Defendant's Exception #11. Again, the Court cannot agree. The taxes were incurred when the defendant was in possession and control of these properties. He should have been paying the taxes as they became due. Until he transfers these properties to the plaintiff's sole ownership, he will continue to possess and control them and should continue to be responsible for the taxes.

Along the same lines, the defendant contends the Master erred in making him responsible for the taxes and mortgages on the property he will receive. This Court cannot agree. The party in possession and control of the property should be responsible for the taxes and mortgages related to those properties. The plaintiff is responsible for the taxes on the properties subject to the blanket mortgage. She will be responsible for the taxes and mortgages on all the property she will receive as soon as the defendant transfers sole ownership to her.

The plaintiff claims the Master erred in failing to make the defendant responsible for the

Keystone Financial loan incurred post separation. The Court could find nothing in the record to indicate there was a post separation Keystone Financial loan. The only Keystone Financial loan of which the Court is aware is the Vallamont mortgage incurred during the marriage.

### **CREDITS**

The defendant asserts the Master erred in failing to direct the plaintiff to reimburse the defendant for his contributions to Nautilus. Defendant's Exception #9. The Court cannot agree. The Master gave the defendant a \$20,000 credit with respect to the Nautilus contributions and reduced his cash payment to the plaintiff accordingly. The Master correctly noted the majority of the defendant's payments occurred prior to Judge Raup's order dated May 1, 1994. That Order indicated the defendant any further advances made by the defendant in order to keep Nautilus in operation pending a sale could be considered by the Master at equitable distribution. The Order also did not indicate that the consideration would necessarily be reimbursement on a dollar for dollar basis.

In the alternative, even if the May 1, 1994 Order permitted consideration of all the defendant's contributions to Nautilus, including contributions prior to 1994, the Court believes the amount credited by the Master is equitable. The defendant claims he made contributions totaling approximately \$200,000. The defendant's income expressed as a percentage of the parties' combined incomes/earning capacity is about 90% and the plaintiff's is 10%. The \$20,000 credit make the plaintiff responsible for her proportionate share of the defendant's total contributions.<sup>9</sup>

The defendant also claims the Master erred in failing to grant any credits to the defendant for the Mellon mortgage payments and the Boardwalk mortgage payments on properties which he is to receive. The Court notes the Mellon Bank mortgage is not on properties the defendant is

---

<sup>9</sup>To give the plaintiff 60% of the marital assets would have required a cash payment of \$327,705.69. Reducing that amount by \$20,000 results in a cash payment of \$307,705.69.

to receive but the Grampian, Montour, Mulberry and Ross Street, properties the plaintiff is to receive. Also, the Boardwalk debt was not a mortgage but a judgment against the parties. Regardless, the Court finds no error in the Master's determination. The defendant was ordered to pay the Mellon Bank blanket mortgage. At least a portion of that mortgage was considered support because it covered the property in which the plaintiff and the parties' minor children resided. However, the defendant failed to continue to pay that mortgage and the bank threatened foreclosure. As a result, the plaintiff made payment arrangements with the bank to hold off the foreclosure. Therefore, the Court finds that the defendant should have paid this mortgage. In the alternative, the Court finds that the plaintiff has paid her proportionate share through her arrangements with the bank to stop the foreclosure. The Court agrees with the Master with respect to the Boardwalk debt. See Master's Report, at p. 16.

### **ALIMONY**

The plaintiff contends the Master erred in failing to award her alimony, see Plaintiff's Exception #3. This Court cannot agree. The plaintiff is statutorily barred from receiving alimony in this case. The Divorce Code states:

No petitioner is entitled to receive an award of alimony where the petitioner, subsequent to the divorce pursuant to which alimony is being sought, has entered into cohabitation with a person of the opposite sex who is not a member of the family of the petitioner within the degrees of consanguinity.

23 Pa.C.S. §3706. In Miller v. Miller, 352 Pa.Super. 432, 508 A.2d 550 (1986), the Pennsylvania Superior Court defined cohabitation as follows:

...cohabitation, for purposes of applying the bar of section 507,<sup>10</sup> requires that two persons of the opposite sex reside together in the manner of husband and wife, mutually assuming those rights and duties usually attendant upon the marriage relationship. Cohabitation may be shown by evidence of financial, social, and sexual interdependence, by a sharing of the same residence, and by other

---

<sup>10</sup>Section 507 is now section 3706 of the Divorce Code.

means.

508 A.2d at 554. The Court finds that the evidence presented at the hearing before the Master was sufficient to establish cohabitation between the plaintiff and Mr. John Oliver. The plaintiff and the defendant were divorced from the bonds of matrimony on or about June 19, 1995. In or about January 1997, Mr. Oliver began living with the plaintiff at the Grampian Boulevard residence. N.T., July 14, 1998, at p. 54. In August or September 1997, the plaintiff and Mr. Oliver purchased a house on Rural Avenue. N.T., July 14, 1998, at p. 34. Mr. Oliver borrowed money from his pension plan for the down payment, and the plaintiff made the mortgage payments. N.T., July 14, 1998, at pp. 34-35. During the approximately ten and one-half months that they lived together, the plaintiff and Mr. Oliver shared the same bedroom and had a sexual relationship. N.T., July 14, 1998 at p. 154. The plaintiff and Mr. Oliver intended to marry; however, Mr. Oliver moved out of the Rural Avenue residence in November 1997. Although Mr. Oliver has not made any of the mortgage payments, he does help maintain the property by mowing the grass, painting, and generally doing whatever needs to be done to the house. N.T., July 14, 1998, at p.36. The plaintiff purchased a 1996 Ford Contour, which was going to be a car for her daughter Courtney to drive when she got her license. N.T., July 14, 1998, at p.38. Since Courtney moved in with the defendant, Mr. Oliver drives the car. N.T., July 14, 1998, at p. 38. The plaintiff makes the car payments and Mr. Oliver pays for the insurance. N.T., July 14, 1998, at pp. 38-40. Based on this evidence, the Court finds that the plaintiff is statutorily barred from receiving alimony. Therefore, her exception is DENIED.

### **INSURANCE**

The defendant contends the Master erred in ordering him to secure life insurance and disability insurance. This Court cannot agree. Although the Court attempted to secure the \$307,705.69, at least in part, by essentially giving the plaintiff a lien on DDS, the Court does not

know what priority that lien will have. Also, DDS was valued based on a capitalization of earnings approach and the contracts in progress. In the event the defendant dies or becomes disabled, the value of DDS may be affected.<sup>11</sup> Therefore, the Court believes these insurance policies are necessary to insure that the plaintiff receives the \$307,705.69 property settlement in the event the defendant becomes unable to make the ordered payments. The Court will order the defendant to secure decreasing term life insurance in the face amount of \$307,705.69 and secure disability insurance in the like amount naming Deborah Thomas as an irrevocable beneficiary of both policies.<sup>12</sup> The defendant shall have these policies in effect within thirty days of this decision and provide Deborah Thomas written verification of the continued decreasing term life insurance and disability insurance on a continuing basis. This written verification should include any copies of the insurance policies, any riders thereto and a copy of the receipt for payment of the premiums.

### **FEES AND COSTS**

The defendant contends the Master erred in ordering legal fees and costs to be paid by the defendant. The Court will grant this exception in part. The Court agrees with the Master that the defendant should be required to pay funds towards the plaintiff's counsel fees and costs and the costs of the Master's hearing. The Court finds that the parties should pay these items in proportion to their incomes. The defendant's income is about 90% of the parties' combined incomes and the plaintiff's earning capacity is approximately 10%. The costs of the Master's hearing total \$2,150. The plaintiff's counsel fees and costs total \$38,539.05. See Plaintiff's

---

<sup>11</sup>The Court notes it found 45% of the total value of DDS attributable to good will, so it is likely that the value of DDS will decrease that amount in the event the defendant dies or becomes disabled.

<sup>12</sup>The defendant has proposed a sale of DDS in his proposed bankruptcy plan. In the event the plaintiff receives fund from any such sale, the cash payment and face amount of the insurance policies shall be reduced accordingly.

Exhibit 52. Therefore, the defendant shall be responsible for \$1,935 of the costs of the Master's hearing and \$34,685.15 of the counsel fees and costs. The plaintiff shall be responsible for \$215 of the costs of the Master's hearing and \$3,853.90 of her counsel fees and costs. The parties shall pay their portion of the costs to the Prothonotary of Lycoming County within thirty (30) days of the date of this decision. The defendant shall pay the legal fees to McNerney, Page, Vanderlin and Hall in monthly installments of \$1,055.19 for a period of 36 months,<sup>13</sup> with the first payment due sixty (60) days from the date of this Order.

**ORDER**

AND NOW, this \_\_\_\_ day of March, 2000, after consideration of the parties' exceptions to the Master's report regarding equitable distribution, alimony, counsel fees and costs and in accordance with the above Opinion, it is ORDERED and DIRECTED as follows:

**DISTRIBUTION:**

**ASSETS:**

To Heister H. Linn:

1. Heister H. Linn, DDS, Inc.	\$544,500.00
2. Household furnishings/personal property	\$ 37,325.00
3. Guns and jewelry	\$ 3,135.00
4. Trailer	\$ 100.00
5. Snowmobile	\$ 200.00
6. Defendant's DDS Pension	\$256,500.00
7. 1982 Porsche	\$ 15,000.00
8. 1956 Corvette	\$ 8,000.00
9. T & C Plaza Associates	\$ 37,400.00
10. LinnBrad Associates	\$ 0.00
11. Profession Real Estate Partnership (Williamsport office building)	\$ 0.00
12. CJ Nichols	\$ 0.00
13. Professional Associates of Berwick	

---

<sup>13</sup>This monthly amount consists of principal plus interest at the legal rate of 6% per annum.

(Berwick office building)	\$ 0.00	
14. Nautilus	\$ 0.00	
	Subtotal	<u>\$902,160.00</u>

Less cash to be paid by Heister H. Linn to Deborah Thomas (after offsetting for Nautilus credit)		\$307,705.69
		<u>\$594,454.31</u>

To Deborah Thomas:

1. 820 Vallamont Drive	\$124,294.00	
2. 518 South Pugh Street, State College	\$ 46,689.00	
3. 229 Grampian Boulevard 216 Montour Street Mulberry and Ross Streets	\$331,579.00	
4. Household furnishings/personal property	\$ 7,435.00	
5. Jewelry	\$ 12,620.00	
6. PP & L Stock	\$ 1,961.68	
7. Plaintiff's DDS Pension	\$ 2,700.00	
8. PaineWebber	\$ 97.11	
9. Pennswood Shares	\$ 6,600.00	
	Subtotal	<u>\$533,975.79</u>

Plus cash to be paid by Heister H. Linn to Deborah Thomas(after offsetting for Nautilus credit)		\$307,705.69
		<u>\$841,681.48</u>

**DEBTS:**

Heister H. Linn, Jr. shall be responsible for the following marital debts and/or post separation debts which result in liens on marital property:

1. 1997 County taxes	\$ 1,599.44
2. 1997 City taxes	\$ 2,513.14
3. Lycoming County tax claim*	\$ 25,920.61
4. State College borough taxes	\$ 688.94
5. Centre County tax office	\$ 10,513.28
6. 1990 IRS debt	\$ 4,108.57
7. 1991/1992 IRS debt	\$ 63,525.55
8. Mitchell legal bill	\$ 3,082.70
9. Berwick Dental Arts*	\$ 10,680.00



10. Boardwalk Marketplace	\$ 37,657.74
11. Corestates*	\$713,700.00
12. Corestates*	\$ 14,000.00
13. First National Bank*	\$259,106.88
14. First National Bank*	\$ 20,216.41
15. Heinz Mathis	\$ 28,750.00
16. Janice Thomas	\$127,500.00
17. Janice Thomas	\$ 35,875.00
18. Walters Pool and Patio	\$ 2,377.86
19. John and Cheryl Bloom	\$ 34,624.34
20. Professional Real Estate	\$ 31,810.00

Heister H. Linn, Jr. shall also be responsible for the Vallamont mortgage, the mortgage on the Pugh Street property and the Mellon Bank blanket mortgage and the real estate taxes for the Vallamont and Pugh Street properties until they are transferred to the sole ownership of Deborah Thomas.

Deborah Thomas shall be responsible for the following marital debts and/or post separation debts which result in liens on marital property:

1. Keystone Financial*	\$186,384.48
2. Bucktail Bank*	\$ 13,401.27
3. Mellon Bank*	\$191,421.99
4. Gingerich Estate*	\$127,110.34
5. Real estate taxes (Mulberry)	\$ 2,980.24
6. Real estate taxes (Montour)	\$ 9,484.07
7. Real estate taxes (Ross)	\$ 3,122.16
8. Real estate taxes (Grampian)	\$ 8,690.38
9. Nordic Trac	\$ 1,332.26

The Court notes the items with an asterisk (\*) were considered in determining the values of Vallamont Drive, Pugh Street, Grampian Boulevard, Montour Street, Mulberry and Ross Street, Professional Associates of Berwick and Professional Real Estate Partnership.

The parties shall hold each harmless in regard to the liabilities which have been assessed to them. It shall be each party's sole responsibility to meet the payments and obligations of the liabilities assessed to them. In the event either party fails to satisfy these obligations through payment or default of any of the liabilities, the other party shall have the right

to seek whatever legal remedy is necessary to protect themselves. The non-complying or defaulting party shall be required to all of the cost of any legal action taken by the other party to enforce this provision including payment of his or her reasonable counsel fees.

### **ALIMONY**

The plaintiff's request for alimony is DENIED.

### **INSURANCE**

The defendant shall secure decreasing term life insurance in the face amount of \$307,705.69 and secure disability insurance in the like amount naming Deborah Thomas as an irrevocable beneficiary of both policies.<sup>14</sup> The defendant shall have these policies in effect within thirty days of this decision and provide Deborah Thomas written verification of the continued decreasing term life insurance and disability insurance on a continuing basis. This written verification should include any copies of the insurance policies, any riders thereto and a copy of the receipt for payment of the premiums.

### **ATTORNEY FEES**

The defendant shall be responsible for 90% of the plaintiff's counsel fees, which amounts to \$34,685.15. These fees shall be paid to McNerney, Page, Vanderlin and Hall in thirty-six (36) monthly installments of \$1,055.19, with the first payment due sixty (60) days from the date of this Order.

### **COSTS**

The total costs incurred for transcripts and the Master's fees are \$2,150. The defendant shall be responsible for 90% of these costs and the plaintiff shall be responsible for 10% of these costs. The defendant shall pay \$1,935 to the Lycoming County Prothonotary within thirty (30)

---

<sup>14</sup>The defendant has proposed a sale of DDS in his proposed bankruptcy plan. In the event the plaintiff receives fund from any such sale, the cash payment and face amount of the insurance policies shall be reduced accordingly.

days of this Order. The plaintiff shall pay \$215 within thirty (30) days of this Order.

By The Court,

---

Kenneth D. Brown

cc: Joy McCoy, Esquire  
Steven Hurvitz, Esquire  
Family Court  
Work file  
Gary Weber, Esquire (Lycoming Reporter)