

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

VKB, SR.,	: NO. 96-20,592
Plaintiff	:
	:
vs.	: CIVIL ACTION - Law
	: In Divorce
DLB,	:
Defendant	: Exceptions

OPINION AND ORDER

Before the Court are cross-exceptions to the Master’s report and recommendation, filed May 16, 2000. Argument on the exceptions was heard September 13, 2000, at which time Plaintiff’s counsel indicated that a transcript would be necessary for resolution of the exceptions. By Order entered September 13, 2000, preparation of the transcript was directed. That transcript was completed and provided to the Court on January 5, 2001.

In general, the Master’s report recommends that Plaintiff retain the residence, owned by him prior to the marriage, a truck, another vehicle, and two (2) bank accounts, as well as the household furnishings in his possession. The report also recommends that Defendant maintain possession of two (2) investment accounts, her vehicle and the household furnishings in her possession. The report recommends that the parties split the marital estate equally and that the parties equally share the marital credit card debt. In his exceptions, Plaintiff contends the Master erred in failing to require Defendant to pay \$300.00 in attorney’s fees previously directed by Order dated July 19, 1999, in failing to offset any amount owed by him to Defendant by amounts of alimony pendente lite owed to him by Defendant, in determining the increase in value of the residence, in finding that both parties contributed equally to the acquisition of the marital estate, in failing to find that Defendant dissipated marital assets, in requiring Plaintiff to contribute to the credit card debt, in determining the amount of the credit card debt, in requiring Plaintiff to pay one-half (½) of the credit card debt within thirty (30) days directly to the credit card companies, and in failing to assess a value to the personal property in Defendant’s possession. In her exceptions, Defendant contends the Master erred in valuing the residence, and in determining that the four (4) wheeler was not marital property. These exceptions will be addressed

seriatim.

First, by Order dated July 19, 1999, Defendant was directed to pay attorney's fees to the Law Firm of Patricia L. Bowman, Esq., in the amount of \$300.00, the payment to be made at the time of equitable distribution. Plaintiff did request the Master consider such in his recommendation, N.T., December 15, 1999 at 66, but the report and recommendation does not address that request. This Court's final Order will offset any amounts owed by Plaintiff to Defendant by the \$300.00 owed by Defendant to Plaintiff's attorney.

Second, with respect to the alimony pendente lite arrearage owed by Defendant to Plaintiff, at argument counsel agreed that Defendant has paid only \$170.00 of alimony pendente lite and that for the fourteen (14) month period covered by the Orders previously in effect (the obligation having been suspended at some point), she should have paid \$3,428.60. She therefore has an arrearage at this time of \$3,258.60. Plaintiff's counsel did ask the Master for a credit to offset this arrearage, N.T. at 67, but such was not considered in the report and recommendation. The Court will provide Plaintiff with a credit for \$3,258.60 in its final Order.

Third, with respect to the marital residence, the valuation of which both parties have questioned, the Master found an increase in value¹ of \$15,000.00². This represents the difference between the current fair market value of \$61,000.00, stipulated to by both parties, and the purchase price of \$45,000.00. Defendant contends the Master failed to consider the fact that \$30,000.00 of the \$45,000.00 purchase price was financed and paid for during the parties' marriage. Plaintiff agrees that the mortgage should be considered but argues that \$13,000.00 of such was paid with money he inherited during the marriage and thus that portion remains non-marital. Defendant argues that there was no evidence introduced to show that the \$13,000.00 came from inherited funds. A review of the record, however, shows that Plaintiff testified that he received an inheritance of approximately \$17,000.00 from his mother in May 1985 and that he instructed Defendant to pay \$13,000.00 on the mortgage (he was working out of town at the time). He also introduced into evidence a copy of the check drawn on the parties' joint account showing a payment of \$13,000.00 to the mortgage

¹Plaintiff purchased the residence prior to marriage and never placed the residence into joint names; the residence thus remains separate property and for purposes of equitable distribution, the Court considers the increase in value from the date of marriage until the date of separation.

²Although the report indicates that such represents the difference between \$61,000.00 and \$45,000.00, or \$16,000.00, the residence is listed in the distribution section at \$15,000.00.

company, written by Defendant. The evidence therefore supports a finding that Plaintiff did use \$13,000.00 of non-marital funds to pay down the mortgage on the residence and thus only \$17,000.00 of the \$30,000.00 mortgage should be considered marital contributions for purposes of calculating an increase in value. Thus, the Court finds the total increase in value to be \$33,000.00, representing the \$16,000.00 increase in value from market forces (the difference between the \$61,000.00 fair market value and the \$45,000.00 purchase price) plus \$17,000.00 increase as a result of mortgage payments made during the marriage with marital funds.

Fourth, Plaintiff contends the Master erred in finding that both parties contributed equally to the acquisition of the marital estate. Specifically, at argument Plaintiff indicated he is referring to his contributions of inherited funds. The record indicates that Plaintiff contributed approximately \$4,000.00 in 1985, \$1,500.00 in 1988, and \$2,500.00 in 1993, for total contributions of approximately \$8,000.00. These contributions were made over the course of the fifteen (15) year marriage and considering the total marital estate and the length of the marriage, the Court finds that such does not rise to the level where Plaintiff should receive any special consideration for such contributions.

Fifth, Plaintiff contends the Master erred in failing to find that Defendant dissipated marital assets. A review of the record indicates no evidence of any dissipation on Defendant's part.

Sixth, seventh and eighth, Plaintiff contends the Master erred in assessing him with responsibility for Defendant's credit card debt, in determining the amount of the credit card debt, and in requiring him to pay one-half (1/2) the credit card debt to the credit card companies within thirty (30) days. At argument, Plaintiff indicated that the basis for these exceptions is that Defendant took items at separation which were paid for with the credit cards but those items were not valued in equitable distribution. A review of the record shows only vague testimony regarding this contention, the most specific of which is aimed at a washer and dryer. Insufficient evidence of the value at separation of that washer and dryer was presented, however, and thus it would have been impossible for the Master to have valued such. The Court finds no error in the Master's determination that the credit card debt was marital debt, to be assessed against both parties. With respect to the amount of the credit card debt, Defendant introduced credit card statements which were several months after separation. Plaintiff contends that the exact balance on the exact date of separation should have been produced and without such, the debt should not be considered. The Master did not consider a debt owed to Advanta because the statement produced was over one (1) year later. The other statements, for MBNA,

Visa, Colonial National Bank, GM and First Card, however, were sufficiently close to the date of separation and any purchases made after separation were deducted from the balances. A review of the documentation convinces the Court that the Master did not err in his determination of the amount of the credit card debt. Finally, with respect to the requirement that Plaintiff contribute one (1/2) the separation date debt within thirty (30) days directly to the credit card companies, the Court does agree with Plaintiff that such is not an appropriate disposition of the matter. At least one (1) of the credit cards had been paid off shortly after separation and the parties may run into difficulty if the balances at the current time are less than what Plaintiff owes for his one-half (1/2) responsibility. A better method would be to simply deduct the credit card debt from the value of Defendant's assets in calculating the amount owed by Plaintiff to Defendant.

Ninth, Plaintiff contends the Master erred in failing to assess a value to personal property in Defendant's possession. At argument, Plaintiff explained that he is referring to a 1992 Pontiac which admittedly was retained by Defendant but not valued. A review of the evidence indicates that no separation date value was presented to the Master, only a purchase price, and therefore the Master could not have valued such for purposes of equitable distribution. It does appear, however, that Plaintiff's vehicle, a 1992 Geo Metro, was valued by the Master at \$1,800.00, based on Plaintiff's testimony that after separation he had the vehicle appraised, and based upon the appraisal of \$1,800.00, gave Defendant \$900.00 toward the vehicle. The Master failed to credit Plaintiff with that \$900.00 payment, but the Court will provide Plaintiff with a credit for that payment as apparently the Master gave credence to Plaintiff's testimony in this regard, as he used the \$1,800.00 value in his recommended distribution.

Finally, with respect to Defendant's contention the Master erred in determining that the four (4) wheeler was not marital property, the Court agrees. At argument both counsel agreed that the four (4) wheeler was marital property because such had been placed into both names, even though it had been purchased with Plaintiff's inherited funds. Neither party introduced any evidence of its value at separation, however, and therefore the Court finds the Master did not err in failing to value it.

Therefore, considering Plaintiff's retention of the residence, the increase in value of which has been determined by this Court to be \$33,000.00, the 1982 VW valued at \$100.00, the Geo Metro valued at \$1,800.00, the Lock Haven Federal Credit Union Account valued at \$5.00 and the Northern Central Bank checking account valued at \$517.00, Plaintiff has retained marital assets with a total value of \$35,422.00. Defendant retained a Fidelity Investment with a value of \$4,474.00 and a Quaker State Thrift and Stock

Purchase Plan with a value of \$6,737.00. She assumed responsibility for credit card debt of \$6,933.00, for an overall value of assets less liabilities of \$4,278.00. To equally divide the marital estate, Plaintiff should pay to Defendant \$15,572.00. He is, however, to be given credit for \$900.00 already paid to Defendant, \$3,259.00 owed as alimony pendente lite arrearage from Defendant to Plaintiff, and \$300.00 owed from Defendant to Plaintiff for attorneys fees. Further, the costs were directed to be shared equally by the parties but as Plaintiff paid the deposit, Defendant owes to Plaintiff \$180.00 toward the costs. Therefore, overall, Plaintiff should pay to Defendant the sum of \$10,933.00.

ORDER

AND NOW, this 11th day of January, 2001, for the foregoing reasons, effective upon entry of a Decree in this matter, it is hereby ORDERED AND DIRECTED as follows:

Equitable Distribution

Plaintiff is hereby awarded the following:

Residence at RR 1, Box 346, Jersey Shore	\$33,000.00	
1982 VW Truck	100.00	
1992 Geo Metro		1,800.00
Lock Haven Federal Credit Union Account		5.00
Northern Central Bank Checking Account		517.00
Four (4) Wheeler		-0-
Household goods in his possession		-0-

Defendant is hereby awarded the following:

Fidelity Investment Account		4,474.00
Quaker State Thrift and Stock Purchase Plan	6,737.00	
1992 Pontiac		-0-
Household goods in her possession		-0-

To effectuate the equitable distribution in this matter, Plaintiff shall pay to Defendant the sum of \$10,933.00 within sixty (60) days of the effective date of this Order. This payment considers

Plaintiff's responsibility for the credit card debt, which credit card debt shall be assumed by Defendant. The parties shall execute whatever documents are necessary to effectuate this distribution, also within sixty (60) days of the effective date of this Order.

Costs

The parties shall equally share the costs of \$390.00. Inasmuch as Plaintiff paid a deposit of \$375.00, the Prothonotary is directed to apply that deposit toward the costs. Defendant's repayment to Plaintiff of \$180.00 has been considered in calculating the amount owed by Plaintiff to Defendant, and Defendant is further directed to pay the sum of \$15.00 to the Prothonotary within thirty (30) days of the effective date of this Order. Should Defendant fail to make this payment, the Prothonotary may enter judgement against her.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Patricia Bowman, Esq.
Stuart Hall, Esq., 333 N. Vesper St., Lock Haven, PA 17745
Prothonotary
Gary Weber, Esq.
Hon. Dudley N. Anderson