

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

JBM,	: NO. 97-20,929
Plaintiff	:
	:
vs.	: CIVIL ACTION - Law
	: In Divorce
TSM,	:
Defendant	: Exceptions

**OPINION AND ORDER**

Before the Court are Plaintiff's exceptions to the Master's Report and Recommendation filed October 31, 2000. Argument on the exceptions was heard June 21, 2001.

In her exceptions, Plaintiff contends the hearing officer erred in valuing the family business at date of separation rather than date of hearing, in awarding her only 55% of the marital estate, and in failing to require a lump sum payment of the equitable distribution award. These exceptions will be addressed seriatim.

With respect to valuation of the family business, it appears the hearing officer used a value as of January 1, 1996, since such was closest to the date of separation, August 15, 1995. Plaintiff seeks to value the business as of January 1, 1999, closer to the date of hearing, December 1999, as the business has increased in value over the past several years. The appropriate valuation date is a matter of discretion, to be chosen in such a manner as to best effectuate economic justice. In the instant case, the business was owned and operated solely by Defendant and the Court finds no abuse of discretion and in fact agrees with the hearing officer that the most appropriate date in this case is the date chosen, closest to separation.

With respect to the percentage distribution, Plaintiff contends the hearing officer should have awarded her more than 55% of the marital estate, alleging that her contribution to Defendant's higher

income capacity, his greater current income and his significant separate estate weigh more heavily in her favor than found by the hearing officer. With respect to her contribution to Defendant's income capacity, Plaintiff contends she co-signed loans which enabled him to build his business. The Court finds her co-signature of loans, and the resultant placing of assets at risk, to be no more in her favor than in Defendant's favor as he also signed the loans and the assets placed at risk were marital assets. With respect to his greater income, it appears that the greater income has been largely a factor of his post-separation efforts. The same can be said for his separate estate. The Court therefore finds no error in the percentage distribution awarded to Plaintiff in this matter.

Finally, with respect to the requirement of a lump sum payment, the Court agrees with the hearing officer that the factual circumstances in this matter cannot support such a lump sum award. The hearing officer did provide for 7.5% interest on the equitable distribution payments and also required Defendant to carry life and disability insurance to cover those payments.

ORDER

AND NOW, this 25<sup>th</sup> day of June, 2001, for the foregoing reasons, it is hereby ORDERED AND DIRECTED as follows:

Equitable Distribution

Plaintiff is hereby awarded the following:

1.	Delaware Investment Mutual Fund	\$ 4,791.00
2.	Williamsport Retirement	7,895.00
3.	Soloman Smith Barney	5,869.32
4.	Life Insurance cash surrender	1,921.00
5.	1996 Chevrolet Tahoe	22,350.00
6.	Delaware cash reserve	1,521.30
7.	Delaware cash reserve	382.15
8.	AgChoice Check ½	608.21
9.	39 shares Jersey Shore State Bank Stock	1,628.25
10.	Personal property	<u>2,040.00</u>
	Total	\$49,006.23

Defendant is hereby awarded the following:

1.	Vanguard IRA (increase in value)	\$ 840.00
2.	Proceeds sale (Keller/Bueno)	7,600.00
3.	Life Insurance cash surrender	5,459.00
4.	Proceeds Packer sale	14,299.79
5.	1973 Mack Truck	2,500.00
6.	1988 Ford Ranger	1,800.00
7.	1997 Chevrolet Caprice	1,500.00
8.	Mack Truck	7,000.00
9.	Chevrolet Caprice	400.00
10.	Ford Ranger	400.00
11.	AgChoice ½	608.20
12.	Bayliner Boat	1,975.00
13.	Personal Property	500.00
14.	Farm Equipment	127,100.00
15.	Other farm assets	<u>71,375.00</u>
	Total	\$243,356.99

In order to effectuate a 55/45 distribution, Defendant shall pay to Plaintiff the principal sum of \$111,793.54, payable over a period of 15 years at 7.5% interest per year. The first payment shall be due August 1, 2001. Defendant shall purchase term life insurance and disability insurance in the principal amount of \$112,000.00, which amount may be decreased commensurate with the decreasing principal balance owed to Plaintiff. Defendant shall provide proof of premium payments to Plaintiff on a semi-annual basis, initially, and then on the 31<sup>st</sup> of December and the 30<sup>th</sup> of June each year thereafter. Finally, Defendant shall pay to Plaintiff ½ of each AgChoice joint dividend check received by him, within five (5) days of such receipt.

#### Costs

Costs of \$1,277.50 are hereby assessed. Plaintiff shall pay 45% of said costs and Defendant shall pay 55% of said costs. The Prothonotary is directed to apply the deposit to Plaintiff's share of

the costs. Plaintiff shall then pay \$199.88 to the Prothonotary and Defendant shall pay \$702.62 to the Prothonotary, both payments to be made within 30 days of this date. Should either party fail to pay his or her share of the costs as directed herein, the Prothonotary may enter judgment against him or her.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
Marc Drier, Esq.  
Rick Gahr, Esq.  
Gary Weber, Esq.  
Hon. Dudley N. Anderson