

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

<b>M S,</b>		<b>: Civil Action - Divorce</b>
	<b>Plaintiff</b>	<b>:</b>
		<b>:</b>
	<b>vs.</b>	<b>: No. 94-21,837</b>
		<b>:</b>
<b>R S,</b>		<b>: Equitable Distribution,</b>
	<b>Defendant</b>	<b>: Alimony, Counsel fees, Costs</b>

**OPINION AND ORDER**

This matter came before the Court on the defendant's exceptions and the plaintiff's cross-exceptions to the Master's report and recommendation regarding equitable distribution, alimony, counsel fees and costs. The Court notes the exceptions and cross-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**

The only exception regarding the valuation of the marital assets is the defendant's first exception, in which the defendant asserts the Master erred in determining the increase in value of the Elm Street property. The plaintiff owned the Elm Street property prior to the parties' marriage and it remained titled in his name throughout the marriage. The parties stipulated that the appraised value of the property at the time of the parties' marriage on June 15, 1988 was \$65,000 and the appraised value at the date of separation (October 9, 1995) was \$89,000. N.T., at pp. 2-4. However, these values did not consider any mortgages or liens against the property. In determining the increase in value of the property during the parties' marriage, the

Master deducted the amount of a home equity loan in the amount of \$22,297 from the appraised value as of the date of separation, but did not deduct the amount of the mortgage on the property as of the date of marriage. The defendant contends this was error. This Court agrees. At the time of the parties' marriage, there was a mortgage on the Elm Street property of \$7,333. See Plaintiff's Exhibit #27. Therefore, the net value of the property as of the date of the parties' marriage was \$57,667.<sup>1</sup> The net value of the property as of the date of separation was \$66,703.<sup>2</sup> Therefore, the increase in value of this property during the parties' marriage, i.e., the value of the marital portion of the Elm Street property, is \$9,036.<sup>3</sup>

The valuations of the remaining marital assets, as found by the Master, are as follows:

Copeland Account	\$ 9,052.00
Vanguard Account	\$ 132.00
Mr. S's P.S.E.R.S. Pension	\$232,191.00
Real Estate, Sullivan County	\$ 292.00
P.E.C.U. Savings Account	\$ 1,697.00
P.E.C.U. Checking Account	\$ 806.00
Savings Bonds	\$ 758.00
Williamsport National Bank Checking Account	\$ 937.00
1991 Chevy Lumina	\$ 6,950.00
1993 Mitsubishi	\$ 2,617.00
Ms. S's Kellogg Pension	\$ 16,847.00
Kellogg stock options	\$ 2,506.25
Kellogg savings plan	\$ 802.00
Household furnishings and personal property	\$ 5,910.00

## **~~FACTORS FOR EQUITABLE DISTRIBUTION~~**

In distributing the marital assets between the parties, the Court must consider all relevant

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<sup>1</sup>\$65,000 - \$7,333 = \$57,667.

<sup>2</sup>\$89,000 - \$\$22,297 = \$66,703.

<sup>3</sup>\$66,703 - \$57,667 = \$9,036.

factors, including the eleven factors specifically listed in 23 Pa.C.S.A. §3502. The Court will set forth all eleven factors and, in so doing, address the plaintiff's cross-exceptions #5 and 6, which assert error with the Master's factual findings.

1. **The length of the marriage** -The parties were on July 15, 1988 and separated on October 9, 1995. Therefore, they lived together as husband and wife for approximately 7 years.

2. **Any prior marriage of either party** -This was the second marriage for each party.

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

#### **Age**

The plaintiff was born on August 26, 1945 and is 54 years of age. The defendant was born on February 13, 1942 and is 57 years of age.

#### **Health**

The plaintiff's health is good. The defendant is receiving worker's compensation benefits for a back injury sustained at her place of employment. She can only work 20 hours per week and her physician has placed physical restrictions on her employment. The defendant testified that her condition is worsening, causing numbness in her legs. N.T., at p. 106.

#### **Station**

The parties' station during the marriage was "middle class."

#### **Income**

The plaintiff is employed by the Pennsylvania Department of Transportation. The Master found his net monthly income to be \$3,747, based on a year-to-date pay stub for the pay period ending May 1, 1998. The plaintiff contends that the Master erred by overstating the plaintiff's

income because he only receives overtime between January and April. At oral argument, the parties agreed this exception would not be decided on the record before the Master, but on the plaintiff's 1998 tax return and W-2 statement, which were not available at the time of the Master's hearing.

The plaintiff's W-2 statement indicates he had a gross annual income of \$56,513.30. From that amount the Court will deduct federal tax (\$7800),<sup>4</sup> social security tax (\$3,503.87), medicare tax (\$819.52), state tax (\$1582.32), local tax (\$565.12), union dues (\$549.53) and mandatory retirement (\$1559.77).<sup>5</sup> This results in a net annual income of \$40,133.17. Dividing this figure by twelve results in a monthly net income of \$3,344.43.

The defendant is employed by Kellogg. Her work hours are limited to twenty (20) hours per week due to a back injury, but she also receives workers' compensation benefits as a result of that injury. The Master found her monthly net income to be \$1,185. The plaintiff contends the Master erred by understating the defendant's monthly net income. This Court agrees. Income includes workers' compensation. 23 Pa.C.S.A. §4302; Pa.R.Civ.P. 1910.16-2(a)(6). It appears that the Master inadvertently failed to consider the defendant's workers' compensation benefits. Therefore, the Court will grant this exception and recalculate the defendant's monthly net income.

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<sup>4</sup>This figure was taken from line 49 of the plaintiff's 1998 tax return. Although the plaintiff deducted the amount of Federal income tax withheld and then added his refund, the result is the same.

<sup>5</sup>In her letter to the Court, defendant's counsel argues that the gross income is \$58,513 and the difference between that figure and the social security wages of \$56,513 would reflect the mandatory retirement. This Court cannot agree. Rather, it appears that some of the numbers of the W-2 are smeared or hard to read. The gross wages are \$56,513 as indicated by the figure in the state, local, social security and medicare boxes and the difference between that figure and the wages listed in box 1 generally would be the mandatory retirement amount.

The defendant's 1997 W-2 indicates that she has a gross annual income from her employment at Kellogg in the amount of \$18,852.35. From that amount the Court will deduct federal tax (\$2,359), social security tax (\$1,140.75), medicare tax (\$266.79), state tax (\$527.82), and local tax (\$188.48). This results in a net annual income from the defendant's employment at Kellogg in the amount of \$14,369.51. Dividing that figure by 12 months yields a net monthly income of \$1,197. To this figure the Court must add the defendant's workers' compensation benefits. The formula by which the defendant's benefits are calculated is set forth in the Order of June 12, 1998.<sup>6</sup> The defendant's monthly income from workers' compensation is \$1,772. However, this amount is reduced by her earnings from Kellogg (\$1,197) to arrive at a difference of \$575. That figure is then reduced by twenty percent (20%) which was an award of attorney's fees (\$114.91), giving her a difference of \$460.09. Thus, her actual workers' compensation award is two-thirds (2/3) of \$460.09, or \$306.42.<sup>7</sup> Adding the workers' compensation to her net monthly income from employment results in a total net monthly income of \$1503.42.

### **Vocational Skills**

The plaintiff is a high school graduate. He has been employed by the Pennsylvania Department of Transportation for 34 years. His present job description is "Highway Designer."

The defendant is also a high school graduate. She is presently employed at Kellogg as a "packer."

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<sup>6</sup>The plaintiff wanted this Court to simply add a prior determination of the defendant's workers' compensation in the amount of \$363 to her current income from Kellogg. However, since the workers' compensation is reduced by her earnings from Kellogg, such an approach is rejected as it would overstate her workers' compensation.

<sup>7</sup> $\$460.09 \times .666 = 306.42.$

## **Employability**

The plaintiff has the requisite education, training and experience to continue to be gainfully employed. The defendant's ability for employability in the future shall be determined by her medical condition.

## **Estate**

The plaintiff has a separate estate in the form of the non-marital portions of the Elm Street property and his PSERS pension. The defendant has no separate estate.

## **Liabilities**

There are two principal marital debts: the personal line of credit which had a balance of \$4,476 at the time of separation and a VISA bill in the amount of \$317<sup>8</sup>.

## **Needs of each of the parties**

According to the plaintiff's income and expense statement he has monthly expenses in the amount of \$2,106.33, which includes alimony pendente lite payments in the amount of \$354.80. Defendant's exhibit 19 lists her updated expenses totaling \$2,402 per month. This figure includes an estimated three hundred dollars (\$300) per month for an anticipated car payment.

## **4. The contribution by one party to the education, training, or increased earning power of the other party -**

Neither party made any significant contribution to the other party's education, training or increased earning power.

## **5. The opportunity of each party for future acquisitions of capital assets and**

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<sup>8</sup>The Court notes that there was a home equity loan in the amount of \$22,297, but this loan was taken into consideration in determining the value of the Elm Street property.

## **income -**

Based upon the parties' income and health, the plaintiff has a greater opportunity to make further acquisitions of capital assets and income. The plaintiff's present monthly net income exceeds his expenses by over \$1200 per month. The defendant's expenses, even without the purchase of a different vehicle, exceed her income. Also, the defendant has a back injury which limits the number of hours and types of employment in which she can engage. Therefore, it would appear that she does not have any opportunity to make future acquisitions of capital assets.

## **6. The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits -**

The plaintiff has numerous benefits from his employment including medical, dental, life insurance and retirement. It appears that the defendant has medical and retirement benefits through her employment.<sup>9</sup>

## **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 -**

Both parties shared in the acquisition and appreciation of the marital assets.

## **8. The value of the property set apart to each party-**

The defendant has no separate property. The plaintiff has the non-marital portion of the

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<sup>9</sup>At oral argument, counsel for the parties' disputed whether the defendant had medical benefits through her employment. Although defendant can only work twenty (20) hours per week due to a back injury and many part-time employees do not receive health insurance, it appears from the defendant's 1997 W-2 that she has some form of medical insurance. See Defendant's Exhibit 1, p.8 (box 14).

Elm Street property valued at \$57,667 and the non-marital portion of his PSERS pension valued at \$136,151 (Plaintiff's Exhibit #26).

**9. The standard of living of the parties established during the marriage -**

The parties standard of living was "middle class."

**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 -**

The vast majority of the marital assets are pensions or other retirement accounts.

Therefore, the assets generally are not liquid.

**11. Whether the party will be serving as the custodian of any dependent minor children -**

Neither party will be serving as the custodian of minor children as no children were born to the marriage.

**DISTRIBUTION**

**A. Percentage Distribution to Each Party**

The defendant asserts the Master erred in not awarding the defendant a higher split in assets. See Defendant's Exception #3. At oral argument and in his brief to the Master<sup>10</sup>, the plaintiff argued he should receive a greater percentage of the marital assets because it was his hard work and efforts that resulted in the accumulation of such assets. The Court notes the Divorce Code was intended to remedy the injustices resulting from precisely the attitude that the plaintiff's argument evinces. Hutnik v. Hutnik, 369 Pa.Super. 263, 268, 535 A.2d 151, 153

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<sup>10</sup>In the plaintiff's first cross-exception, he asserts the Master erred in stating that neither party filed a brief, as the plaintiff filed a brief on December 9, 1998. Although the plaintiff is correct, this exception has no bearing on the ultimate distribution in this case.



(1987).

Nevertheless, the percentage of assets to be distributed to each party in this case is a difficult issue. Several of the equitable distribution factors weigh in favor of a higher split to the defendant. For example, the plaintiff's income is greater than the defendant's, and the plaintiff's health and prospects of acquiring income and assets in the future are better than the defendant's. On the other hand, this was the second marriage for both parties, the marriage only lasted about seven (7) years, and the majority of the marital assets consists of the plaintiff's pension and other retirement-type accounts that are not liquid. In fact, the plaintiff's pension is such a significant portion of the marital assets that an immediate offset cannot be effectuated and deferred distribution is really the only option. Moreover, the Court does not believe the defendant should receive a greater portion of the plaintiff's pension than he receives; such a distribution would create the potential that the defendant would be in a better position upon the plaintiff's retirement than the plaintiff.<sup>11</sup> In light of all these circumstances, the Court believes the appropriate distribution in this case is an equal distribution of the plaintiff's pension and a slightly higher distribution, roughly 52% to defendant and 48% to plaintiff, of the remaining assets.<sup>12</sup>

Therefore, the Court will make the following distribution:

**TO MS:** \_\_\_\_\_

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<sup>11</sup>The Court notes there is a portion of the plaintiff's pension which is non-marital and therefore, the plaintiff might not be in a worse position than the defendant if a slightly higher portion of his pension were distributed to her. However, the plaintiff was married previously and the Court does not know what, if any, portion of his pre-marital pension is subject to distribution to his first wife.

<sup>12</sup>The percentage of distribution was calculated after considering the marital liabilities for the Visa and the personal line of credit. The distribution of these liabilities will be discussed in more detail, *infra*.

1.	112 Elm Street, Montoursville	\$ 9,036.00
2.	Mr. S 's PSERS pension (50%)	\$116,095.50
3.	Real Estate, Lopez, Sullivan County	\$ 292.00
4.	Household furnishings/personal property	\$ 2,505.00
5.	Copeland account	\$ 9,052.00
6.	Vanguard account	\$ 132.00
7.	PECU Savings account	\$ 1,697.00
8.	PECU Checking account	\$ 806.00
9.	Savings bonds	\$ 758.00
10.	1991 Chevy Lumina	\$ 6,950.00
	Subtotal	<u>\$147,323.50</u>
	less cash to the defendant <sup>13</sup>	- \$ 8,365.18
		<u>\$139,090.92</u>

**TO RS:**

1.	Mr. S's PSERS pension (50%)	\$116,095.50
2.	RS's Kellogg's pension	\$ 16,847.00
3.	Kellogg stock options	\$ 2,506.25
4.	Kellogg savings plan	\$ 802.00
5.	Household furnishings/personal property	\$ 3,405.00
6.	WNB checking account	\$ 937.00
7.	1993 Mitsubishi	\$ 2,617.00
	Subtotal	<u>\$143,209.75</u>
	plus cash payment from the plaintiff	+\$ 8,365.18
		<u>\$151,442.33</u>

In order to effectuate the distribution of the plaintiff's pension, the Master ordered the defendant's counsel to prepare a Qualified Domestic Relation Order (QDRO), with the defendant bearing the cost of preparation of said QDRO. The defendant asserts the Master erred in not awarding a survivorship benefit and in ordering the defendant to pay for preparation of the QDRO. Defendant's Exception #6. The plaintiff contends the Master erred in failing to

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<sup>13</sup>Although the parties do not have \$8,000 in cash assets, there is sufficient equity in the Elm Street property that the plaintiff should be able to obtain the funds to make such a payment.

define the terms of the QDRO. Plaintiff's Cross-Exception #7. The Court notes counsel for the plaintiff conceded at oral argument that the QDRO needs to designate a survivorship benefit. Therefore, the Court will grant that portion of the defendant's exception. However, since the QDRO benefits the defendant and the defendant is receiving some cash as a result of the distribution, the Court will deny the portion regarding the costs of preparation of the QDRO.

With respect to the plaintiff's cross-exception, counsel for the defendant acknowledged the defendant would receive a monthly amount once the plaintiff retires. Counsel for defendant further indicated that she believed the terms of the QDRO could be agreed upon by the parties. The Court views the plaintiff's exception basically as a request that the Court prepare the QDRO. The Court finds the QDRO should be prepared by defendant's counsel as ordered by the Master. The Court is hopeful that counsel for the parties can agree to the terms of the QDRO. Therefore, the Court will deny the plaintiff's cross-exception. In the event there is a dispute, either party may file an appropriate petition and the Court will resolve any dispute.

#### **B. Marital Debts and Liabilities**

Both parties filed exceptions concerning the marital debts and liabilities. The defendant contends the Master erred in not crediting her with post-separation payments that she made on the equity loan due to a reduction in her alimony pendente lite (APL). In the APL Order dated August 21, 1996, the Master reduced the defendant's APL award by \$195 per month because she took check advances on the equity account totaling \$12,000. At that time, however, the Court had not determined the date of the parties' separation. The Court later found the parties' separation occurred on October 9, 1995. Therefore, only \$4,000 of the \$12,000 was taken post-separation. Although the Master does not expressly state that he considered the defendant's post-separation payments, the Court believes the Master simply took a common-

sense approach and considered those payments as the defendant's payment of her post-separation check advance and her contribution toward the marital debt. However, since both parties filed exceptions regarding responsibility or credit for certain marital debts, the Court will elaborate on its division of marital debts and any credits given to either party.

The Court made the defendant solely responsible for the \$4,000 advance taken in February 1996. The equity account had an interest rate of 11.5%. The reduction of the defendant's APL by \$195 per month began in the Order dated August 21, 1996. Therefore, six months passed before any payment was made. The \$4,000 advance would have accrued approximately \$230 in interest over that time period. Thus, as of August 21, 1996, the original \$4,000 debt would have grown to \$4,230. Amortizing that amount at 11.5% interest and a monthly payment of \$195 would result in a payoff of the advance in August 1998.<sup>14</sup>

The defendant's APL continues to be reduced by \$195 to this date. The Court finds that these additional amounts should be considered as the defendant's contribution to the payment of the personal line of credit. Again, a portion of those payments would go toward interest. According to our calculations, the defendant's contribution to the principal balance totals \$2,990.<sup>15</sup> Since the defendant made these payments, as well as her payment of the post-separation advance, through a reduction in her APL, the Court will make the plaintiff responsible

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<sup>14</sup>The last payment would have only been about \$85; therefore, the Court will credit the defendant the additional \$110 toward the personal line of credit.

<sup>15</sup>The Court used a computer program (Microsoft Money) to arrive at this figure. The defendant's reduction in APL would have paid off the \$4,000 post-separation advance in August 1998. From September 1998 to the present, the defendant's APL would have been reduced 16 months. Utilizing a \$195 per month payment for 16 months at an interest rate of 11 1/2% beginning September 21, 1998 would result in \$2879.82 in principal being paid off. The Court then added the approximately \$110 excess from the August 1998 payment toward the post-separation advance. See footnote 14, supra. Thus, the total payment toward the personal line of credit would be \$2990.

for any outstanding balance on the personal line of credit. The Court notes the personal line of credit is marital debt. Given the economic circumstances of the parties, the Court finds it is appropriate for the plaintiff to be responsible for the remainder of that debt. Furthermore, since the entire equity loan was deducted in arriving at the value of the Elm Street property which was awarded to the plaintiff, the Court also will make the plaintiff responsible for any outstanding balance on the equity loan.<sup>16</sup>

Along similar lines, the plaintiff asserts that the Master erred in determining the amount of the consolidated loan, along with the timing of when the loan was incurred. Plaintiff's Cross-Exception #4. The Court believes the plaintiff's counsel misunderstood the Master's report, since the Master used the figure of \$22,297 (which represents the home equity loan) when determining the value of the Elm Street property and treated the personal line of credit in the amount of \$4,476 as a separate marital debt. See Master's report at pp. 3, 6. Furthermore, even if the plaintiff's assertion is correct, this alleged error does not affect the outcome of the distribution in this case. Nevertheless, for the sake of clarity, the Court will give as detailed an account of the home equity loan, personal line of credit and the consolidated loan as possible.

At the time of the parties' separation on October 9, 1995, there was a home equity loan in the amount of \$22,297 and a personal line of credit with an outstanding balance of \$4,476. The home equity loan had been used to remodel the kitchen in the Elm Street property and to purchase the plaintiff's Chevy Lumina. In addition, the defendant took check advances on this account in the following amounts: \$6,000 (April 12, 1995); \$2,000 (April 25, 1995) and \$4,000 (February 9, 1996). At the hearing before the Master, the plaintiff argued that the full

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<sup>16</sup>The Court believes the above discussion addresses the defendant's second exception and the plaintiff's second cross-exception.

amount of the home equity loan as of the date of separation (\$22,297) should be deducted from the appraised value of the Elm Street property, but he also wanted the defendant to be solely responsible for the advances she took on that account. Since the April 12 and April 25, 1995 advances totaling \$8,000 were prior to the date of separation, they were included in the \$22,297. Therefore, the plaintiff was attempting to count this \$8,000 twice - once by reducing the value of the Elm Street property and once by requesting that the defendant be solely responsible for those advances. It was this "double-dipping" that prompted the following statement by the Master with which this Court agrees: "Mr. S cannot on the one hand want the value of the Elm Street property decreased by the entire home equity loan and then later argue that Ms. S should be assessed the responsibility to repay the alleged advances and other expenditures which were to her benefit." The Court notes the \$4,000 advance taken on February 9, 1996 was not included in the \$22,297, since that was the amount of the home equity loan as of October 31, 1995. However, the defendant's alimony pendente lite award was reduced \$195 per month based upon all the defendant's advances on this loan.<sup>17</sup> See Order dated August 21, 1996.

The personal line of credit was solely in the plaintiff's name but was incurred during the parties' marriage. Only the plaintiff could write checks on this account. As of the date of separation, the outstanding balance on this account was \$4,476, which included monies spent on the defendant's daughter's wedding in 1990. The parties disputed whether paying for the wedding was intended as a gift from both the parties. See N.T., at pp. 56-58, 101, 122-123, 146. The defendant made the payments on this account from its opening in late 1989 or early

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<sup>17</sup>The issues regarding responsibility for the \$4,000 advance taken on February 9, 1996 and/or any credit for the \$195 reduction in the defendant's alimony are addressed, *supra*.

1990 until the parties separated in October 1995.

In December 1997, the plaintiff consolidated the home equity loan and the personal line of credit. At that time the balances were \$20,636 and \$3,328, respectively. As stated above, the Court will make the plaintiff responsible for any outstanding balances from the home equity loan and the personal line of credit.<sup>18</sup>

The plaintiff also asserts the Master erred by failing to credit him with the repayment of bills incurred by the defendant during her time of sole possession of the residence from October 1995 to August 1996. See Plaintiff's Cross-exception #3. The Court acknowledges that the plaintiff paid some bills which were incurred while the defendant had sole possession of the residence. However, the total of these bills is not significant and the Court believes they would be offset by the joint bills incurred prior to the plaintiff leaving the marital residence, which the defendant paid. Therefore, the Court will deny this exception.

### **ALIMONY**

The defendant contends the Master erred in not awarding alimony. The defendant seeks alimony until the plaintiff retires as she does not earn sufficient income to meet her monthly expenses due to her back injury. The plaintiff argues alimony is not appropriate since the parties were only married approximately seven years and the defendant has already received APL for three years.

The relevant factors which the Court considers in determining whether alimony is necessary, set forth at 23 Pa.C.S.A. 3701, are for the most part the same factors the Court

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<sup>18</sup>The balances may not have been reduced in the same amounts that the Court gave the defendant credit for her reduction in APL. However, since the reduction was ordered to pay back the check advances on the equity loan, the plaintiff should have been taking the \$195 APL reduction and applying it to the debt.

considered in its discussion of equitable distribution. The factors not discussed in equitable distribution are as follows:

**4. The expectancies and inheritances of the parties** -There is nothing in the record to suggest either party has received or is going to receive any inheritances or income from other sources.

**14. The marital misconduct of either of the parties during marriage** -The Court finds that neither of the parties committed marital misconduct during their marriage.

**16. Whether the party seeking alimony lacks sufficient property, including, but not limited to, property distributed under Chapter 35 (relating to property rights), to provide for the party's reasonable needs** -Once the plaintiff retires and the defendant begins to receive her portion of the PSERS pension, she should have sufficient property when combined with her income to provide for her reasonable needs. At the present time, however, her needs exceed her income.

**17. Whether the party seeking alimony is capable of self-support through appropriate employment** - The defendant is employed; however, her ability to work is limited to 20 hours per week because of a back injury. She receives workers' compensation benefits, but her monthly expenses exceed her income.

As previously stated, this is a difficult case. The Court would have preferred to give the defendant a larger distribution of the marital assets and not award any alimony. The Court's options, though, were limited. The plaintiff's pension makes up a significant portion of the marital assets. Deferred distribution of that pension is really the only option in this case and there aren't sufficient liquid assets to effectuate a larger distribution to the defendant. The



defendant will have sufficient property to provide for her reasonable needs once the plaintiff retires; however, it is anybody's guess when that event will occur. The plaintiff is 54 years of age. He might not retire for another 8 years or more. The defendant seeks alimony until the plaintiff retires. The Court does not believe that is appropriate in this case because the parties were only married approximately 7 years and the defendant has already received APL for approximately 3 years. If the plaintiff did not retire until he reached age 62 or older, the defendant would receive alimony longer than the parties were married. In light of all the facts and circumstances in this case, the Court awards the defendant alimony in the amount of \$650 per month for a period of two (2) years, unless the plaintiff retires during that time. In the event the plaintiff retires within the next two (2) years, the alimony award will cease when the defendant begins receiving her portion of the plaintiff's pension.

#### **Counsel fees and costs**

The defendant contends the Master erred in failing to award her counsel fees and in not ordering the plaintiff to pay all of the Court costs. The plaintiff asserts the defendant should be responsible to pay all of the Court costs. In light of the equitable distribution and alimony, the Court finds no error in making each party responsible for his or her own counsel fees and one-half of the Court costs. Therefore, these exceptions and cross-exceptions are denied.

**ORDER**

AND NOW, this \_\_\_\_ day of December 1999, upon consideration of the defendant's exceptions and the plaintiff's cross-exceptions to the Master's report regarding equitable distribution, alimony, counsel fees and costs, it is ORDERED and DIRECTED as follows:

**DISTRIBUTION**

**TO MS:** \_\_\_\_\_

1.	112 Elm Street, Montoursville	\$ 9,036.00
2.	Mr. S's PSERS pension (50%)	\$116,095.50
3.	Real Estate, Lopez, Sullivan County	\$ 292.00
4.	Household furnishings/personal property	\$ 2,505.00
5.	Copeland account	\$ 9,052.00
6.	Vanguard account	\$ 132.00
7.	PECU Savings account	\$ 1,697.00
8.	PECU Checking account	\$ 806.00
9.	Savings bonds	\$ 758.00
10.	1991 Chevy Lumina	\$ 6,950.00
		Subtotal \$147,323.50
	less cash to the defendant <sup>19</sup>	\$ 8,365.18
		\$139,090.92

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<sup>19</sup>Although the parties do not have \$8,000 in cash assets, there is sufficient equity in the Elm Street property that the plaintiff should be able to obtain the funds to make such a payment.

**TO RS:**

1.	Mr. S's PSERS pension (50%)	\$116,095.50
2.	RS's Kellogg's pension	\$ 16,847.00
3.	Kellogg stock options	\$ 2,506.25
4.	Kellogg savings plan	\$ 802.00
5.	Household furnishings/personal property	\$ 3,405.00
6.	WNB checking account	\$ 937.00
7.	1993 Mitsubishi	\$ 2,617.00
	Subtotal	<u>\$143,209.75</u>
	plus cash payment from the plaintiff	+\$ 8,365.18
		<u>\$151,442.33</u>

Counsel for Ms. S shall prepare a Qualified Domestic Relations Order (QDRO) in regard to the PSERS pension. The QDRO shall include a survivorship benefit for the defendant. The costs of preparing the QDRO shall be the responsibility of the defendant.

The plaintiff shall make the cash payment required by this distribution within thirty (30) days of the date of this Order. In the event the plaintiff cannot obtain the funds to make the cash payment as required by this Order despite all reasonable efforts to do so, he will be required to pay the defendant \$300 per month with interest at the legal rate of 6%, i.e., he shall pay the defendant \$300 per month beginning February 1, 2000 through and including June 1, 2002 and \$331.30 on July 1, 2002 in addition to any other sums required by this Order.

If a Divorce Decree has not yet been entered in this case, the plaintiff shall file the necessary paperwork so that such a decree may be entered. The defendant shall cooperate in this endeavor and file any paperwork needed from her. Since the defendant shall be responsible for the costs of preparing a QDRO for the PSERS pension, the plaintiff shall be responsible for any and all costs associated with obtaining the divorce decree.

**ALIMONY**

The plaintiff shall pay the defendant \$650 per month in alimony for a period of two (2) years, unless the plaintiff retires during that time. In the event the plaintiff retires within the next two (2) years, the alimony award will cease when the defendant begins receiving her portion of the plaintiff's pension.

**COUNSEL FEES**

Each party shall be responsible for his or her own counsel fees and expenses.

**COSTS**

The total costs of the transcript and the Master's fee is \$593.75 (\$233.75 for the transcript and \$360.00 for the Master's fee). The parties shall share equally in the payment of these costs. MS shall pay \$296.88 to the Prothonotary of Lycoming County within thirty (30) days of the date of this Order. RS shall pay \$296.87 to the Prothonotary of Lycoming County within thirty (30) days of the date of this Order. The party who has paid the Master's fee of \$375.00 shall receive credit for that payment and the Prothonotary is authorized to deduct their share of the Court costs from the \$375.00 and return the balance of \$78.12 to that party through their counsel. MS was represented by Randi Dincher, Esquire and RS was represented by Janice R. Yaw, Esquire.

By The Court,

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Kenneth D. Brown