

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RICHIE L. ALLEN	:	NO. 92-20,212
Petitioner		
VS.	:	
SHARON A. ALLEN, Executrix of the	:	
Estate of GORDON M. ALLEN,		
Respondant	:	

OPINION IN SUPPORT OF ORDER
IN COMPLIANCE WITH RULE 1925(A)
OF THE RULES OF APPELLATE PROCEDURE

Petitioner and Respondent appeal this Court's Order of June 5, 2001. Petitioner and the decedent, Gordon Allen, were divorced November 13, 1992. Equitable distribution issues remained outstanding at the time of the divorce. No action was taken with regard to the outstanding issues until February 27, 1998, when Mr. Allen filed a Motion for Appointment of a Master. Mr. Allen died on April 24, 1998, before a hearing was ever held.

The Family Court Hearing Officer conducted a hearing after his death, with Sharon Allen, Executrix of the Estate, present on behalf of the estate.¹ An Order was issued on July 1, 1999. Both parties filed exceptions to the findings and decision of the Hearing Officer. The Honorable William S. Kieser reviewed the transcript of the proceedings before the Hearing Officer, and briefs of the parties. He issued an Opinion and Order with regard to the exceptions on January 19, 2000, and remanded the case back to the Hearing Officer. A Motion for Reconsideration was filed on January 26, 2000. The Honorable William S. Kieser issued an Opinion and Order denying the Motion to Reconsider on May 12, 2000. On March 22, 2001, the Hearing Officer issued

an Amended Masters Report consistent with Judge Kieser's Opinion of January 19, 2000. The Hearing Officer's Final Order was issued on May 30, 2001, and approved by this Court on June 4, 2001.

Both parties filed exceptions to the amended masters report. These exceptions were scheduled before the undersigned for review. On May 11, 2001, at the time set for the hearing, Respondent's counsel failed to appear. This Court dismissed Respondent's exceptions to the amended report at that time.² Respondent filed a Motion to Reconsider the dismissal, which was summarily denied by the Court on June 5, 2001. Petitioner filed a Notice of Appeal on June 11, 2001. Respondent, through new counsel, filed a Notice of Appeal on June 19, 2001. On June 21, 2001, this Court requested that the parties file a Concise Statement of Matters Complained of on Appeal in accordance with Pa.R.A.P. 1925(b).

On appeal, Petitioner argues that the Court, in its January 19, 2000 Order, erred in determining that the pension and survivor benefits of Gordon Allen are not a marital asset. The undersigned has conferred with the Honorable William S. Kieser, who concurs that the reasoning in support of the Court's position that the benefits are not a marital asset is in the Opinion accompanying the January 19, 2000 Order.

Petitioner also argues that the Court, in its Order of May 12, 2000, erred in denying the Motion for Reconsideration which sought the Court to reconsider the pension and survivor benefits. The undersigned has conferred with the Honorable William S. Kieser, who concurs that the reasoning in support of the Court's position with

¹ Gordon Allen had married Sharon Allen after his divorce from the Petitioner.

² The Court notes that when Respondent's counsel failed to appear, Petitioner withdrew her exceptions to the amended report.

regard to the Motion for Reconsideration is in the Opinion accompanying the May 12, 2000 Order.

Respondent argues that the Hearing Officer erred in directing Sharon Allen, individually, to do certain things. Respondent argues that the Court has no jurisdiction over Sharon Allen *individually*. Her responsibility is only a representative one as the Executrix of the Estate of Gordon Allen. This Court would agree that Sharon Allen is participating in this case as a representative of the Estate of Gordon Allen.³ The award is a debt against the estate, and not against Sharon Allen individually. Accordingly, to the extent that the Order appears to direct Sharon Allen, *individually*, it should be changed to reflect that she is acting as Executrix of the Estate of Gordon Allen.

Date:_____

By The Court,

Nancy L. Butts, Judge

xc: Lester L Greevy, Jr., Esquire
Randi Wenger Dincher, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber

³ The Court notes that although this argument was not raised as an exception, this appears to be an error in form, rather than substance.