

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

NANCY E. MIKSCH,	:	
Plaintiff	:	
	:	
v.	:	No. 99-21,091
	:	
DAVID E. JONES,	:	
Defendant	:	

OPINION and ORDER

This opinion and order resolve the exceptions both parties have filed to the Master's Report dated March 26, 2002. The issues which the court deems worthy of explanation are discussed in the body of this opinion.

A. 1991 Bonus

In December of 1999, Dr. Jones received a bonus of \$12,950. On January 20, 2000 the parties stipulated that Dr. Jones' net monthly income was \$13,275.69. It is unclear whether this amount included the bonus, but the Master assumed the bonus was included and that is a reasonable assumption. The Master then concluded that because the 1999 bonus was used to calculate Dr. Jones' monthly income, it therefore could not be considered marital property. The flaw in that reasoning is that although the bonus was received after the parties separated, on November 20, 1999, it was compensation for Dr. Jones' work throughout the year 1999. Therefore, the amount of the bonus earned prior to separation (89% of the bonus, or \$11,525) should be considered marital property.

Dr. Jones argues that considering the bonus marital property would be “double dipping,” since it was used to calculate his income for purposes of child support and alimony pendente lite. That is not the case. Even assuming the 1999 bonus was used to calculate Dr. Jones’ monthly income in the January 20, 2000 stipulation, the bonus was nonetheless used only to forecast Husband’s 2000 income, including his expected 2000 bonus.¹ The 1999 bonus itself, however, was not part of the actual income Husband paid support on.

B. Dr. Jones’ Interest in Anesthesia Associates of Williamsport

After reviewing the applicable caselaw, the court finds no error in the Master’s decision to value Dr. Jones’ interest in Anesthesia Associates of Williamsport by using the corporation’s employment agreement and shareholders agreement.² The three pertinent cases are Brody v. Brody, 758 A.2d 1274 (Pa Super. 2000); Butler v. Butler, 663 A.2d 148 (Pa. 1995); and McCabe v. McCabe, 575 A.2d 87 (1990). Although the cases are somewhat contradictory, it is clear that a buy/sell agreement is to be viewed as a factor in valuing a spouse’s interest in a business, but is not necessarily determinative of the issue. In the case before this court, the decision to use the two agreements appears to be a fair method of valuing Dr. Jones’ interest for the following reasons.

First, the employment agreement takes into account Husband’s share of the total value of the firm.³ While this does not include goodwill value, Ms. Miksch’s own expert agreed there was no goodwill value because the firm has a monopoly on the

¹ And accordingly, Dr. Jones’ income was recalculated in 2001 based upon his 2000 bonus.

² Bradley D. Kellett, the C.P.A. who has performed accounting for the corporation since May of 1993, testified on behalf of Dr. Jones. Mr. Kellett calculated the total amount Dr. Jones would receive according to these agreements, if he terminated his employment at the date of separation, at \$28,468.00.

service it is offering. Second, the employment agreement takes into account 80% of the amounts collected on balances outstanding as of the termination date (here, the separation date) resulting from procedures performed or supervised by Dr. Jones. The firm's accountant testified that 51% of such balances are typically collected.

The buy-out figure from the shareholders agreement of \$1000 per share does not take into account the growth or depreciation of the business, but the court is satisfied that the other aspects of the agreement sufficiently take into account the corporation's current financial situation. Moreover, we note that although Dr. Jones is permitted to sell his stock in the corporation to another individual, that person must be a full-time physician employed by the corporation, and the corporation has the first option to purchase the stock, at \$1000 per share.

The court also finds it highly relevant that according to the testimony of the firm's accountant, the termination packages of the last two physicians who left the corporation were calculated according to the agreements.

In addition, the corporation is not the type of business that owns a large amount of equipment or other hard assets. The primary value of the business is the work performed by the physicians. At the end of each year, the books are "zeroed out" and the cash is distributed to the partners.

And finally, Dr. Jones' testimony that the couple did not intend to stay in the Williamsport area very long,⁴ and the fact that Dr. Jones did leave the firm at the end of

³ While the agreement states "net income," the firm has revised this to the total value of the corporation.

⁴ The couple moved to Williamsport in 1996, because the position with Anesthesia Associates of Williamsport was the highest-paying job Dr. Jones was offered. The plan was to pay down Dr. Jones' educational loans for a period of time and then move back to the Lancaster area.

2001, convinces this court that valuing Dr. Jones' interest in the business by using a "going concern" valuation would be unfair to Dr. Jones.

However, the court disagrees with the Master's decision to use Dr. Jones' actual buy-out figure as determinative of his interest. As discussed above, the buy-out amount is based upon the firm's total value and the value of Dr. Jones' accounts receivable at the time of his departure. Therefore, the amount of his buyout would be based on the post-separation work of Dr. Jones, as well as the value of the corporation two years after the date of separation. The figure given by the corporation's accountant, by contrast, calculates the value of the firm and Dr. Jones' work as of the separation date. Ms. Miksch's motion to re-open the record to find out the actual buy-out amount, is therefore denied.

C. Distribution Percentage

The Master ordered a 90/10 split in favor of Ms. Miksch. While this admittedly is high, we find no abuse of discretion for the following reasons. First, there is an extreme disparity between the parties' incomes. At present, Ms. Miksch is not working and in fact has been awarded nurturing parent status. Once the couple's youngest child enters first grade, in the fall of 2003, she will be assessed an earning capacity as a Registered Nurse. Dr. Jones has been earning about \$232,000, which includes his yearly bonus. He has recently made a career change that lowers his earnings to \$200,000 per year until January of 2005, when he is expected to become a partner and earn \$350,000 per year. Clearly, Dr. Jones has a far great opportunity to acquire capital assets. Moreover, he has already established pension and retirement benefits, which

will no doubt increase significantly. Ms. Miksch will get a late start in acquiring such assets. In addition, she will have to provide her own health insurance coverage, while Dr. Jones will receive coverage through his employment. Another important consideration is that during the marriage, the parties paid off approximately \$50,000 toward Dr. Jones' medical loans, which will vastly benefit him.

For these reasons, we will not disturb the Equitable Distribution scheme. However, when the 1999 bonus is added in, the marital estate value becomes \$139,146.74. With Ms. Miksch receiving 90% of that estate, Dr. Jones will now owe her \$94,779.06. Dr. Jones has objected to the Master's order requiring him to pay the entire amount within thirty days of the date the order becomes final. While recognizing that the parties had accumulated little cash and Dr. Jones' equitable distribution proceeds do not include a cash award, it is also true that Dr. Jones has recently received an infusion of cash from his buy-out. However, considering the large arrearage which has accumulated due to Ms. Miksch's nurturing parent status, the court will order Dr. Jones to pay \$50,000 by September 1, 2002 and the remaining \$44,779.06 by September 1, 2003.

D. Alimony

The Master awarded Ms. Miksch alimony of \$3000 per month until September 1, 2005. The Master based this largely on the disparity of the parties' incomes and earning potentials, along with (it appears) marital fault on the part of Dr. Jones. The court finds this to be excessive, based on the length of the marriage (not quite seven years), the fact that Ms. Miksch is a Registered Nurse, and Ms. Miksch's award of 90%

of the marital estate. We therefore will end the alimony on September 1, 2004. This means Ms. Miksch will receive alimony for one entire year after both children are in school, which seems more than adequate.

E. Counsel Fees and Costs

Because Ms. Miksch did not establish a need, her request for counsel fees and costs will be denied.

ORDER

AND NOW, this _____ day of June, 2002, after argument on the Exceptions to the Master's Report dated March 26, 2002, the Exceptions are disposed of as follows:

Dr. Jones' Exceptions

Exception #1: Denied.

Exceptions #2 and #3: Granted—see accompanying order addressing child support and
APL.

Exception #4: Granted in part.

Exception #5: Denied.

Exception #6: Granted.

Exception #7: Granted.

Exception #8: Granted.

Exception #9: Granted.

Exception #10: Granted.

Ms. Miksch's Exceptions

Exception #1: Denied.

Exception #2: Granted.

Exception #3: Denied.

Exception #4: Granted.

Exception #5: Granted.

It is further ordered that:

1. Distribution of the marital estate, which is valued at \$139,146.74, is as set forth in the Master's Report of March 26, 2002, with the following exception: Cash to be paid by David E. Jones to Nancy Miksch Jones is \$94,779.06. Dr. Jones shall pay \$50,000 of this amount by September 1, 2002 and the remaining \$44,779.06 by September 1, 2003.
2. Dr. Jones shall pay alimony in the amount of \$3000 per month until September 1, 2004.
3. Court costs, which total \$875.00, shall be shared equally. (This includes \$835.00, which had accumulated at the time of the Master's Report, and also an additional \$40.00 to cover the transcript of February 8, 2002.) Both parties shall pay \$437.50 to the Prothonotary of Lycoming County within thirty days of the date of this order.
4. Ms. Miksch shall take all appropriate steps to remove Dr. Jones as obligor on the mortgage of the marital residence.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Janice Yaw, Esq.
Joy McCoy, Esq.
Domestic Relations (RMW)
Gerald Seevers, Esq.