

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

MARLA J. PHIPPEN,	:	
Plaintiff	:	
	:	
v.	:	No. 98-21,045
	:	No. 00-20,676
CLARENCE O. PHIPPEN,	:	
Defendant	:	

OPINION
Issued Pursuant to R.A.P. 1925(a)

Mr. Phippen has appealed this court’s order on Equitable Distribution. His Concise Statement of Matters Raised on Appeal lists twelve issues, which shall be addressed in this opinion.

Initially, we note that the primary problem with many of Mr. Phippen’s complaints is that he did not attend the master’s hearing. Therefore, although he contests many of the master’s findings, there is no evidence in the record to support his assertions. Moreover, it is even possible that he has waived these objections by not attending the master’s hearing. *See Mazlo v. Kaufman*, 793 A.2d 968, 969-70 (Pa. Super. 2002). In that case, the Superior Court found:

Appellant’s failure to attend the hearing and make a proper objection deprived the Hearing Officer of the opportunity to promptly correct any error and deprives this Court of a record adequate for appellate review. . . . To grant Appellant the relief he seeks, namely a new hearing, when he has declined to attend the initial hearing would truly turn the first hearing into a ‘dress rehearsal,’ and allow Appellant to benefit by his disregard of appropriate procedure and long-standing principles of waiver.

(Citations omitted.)

It would be a different matter if Mr. Phippen had been prevented from attending the hearing, but that is not the case. Mr. Phippen's account of the incident does not differ greatly from that of the prison guard involved. *See* Exhibits attached to Mr. Phippen's exceptions. The bottom line is that Mr. Phippen refused to leave the prison without first taking a shower. Mr. Phippen claims he was unjustly deprived of the opportunity to take a shower. However, even if that were the case, he should have chosen to attend the hearing without a shower, rather than obstinately refusing to leave. Individuals have a duty to attend court hearings or suffer the consequences.

Issue No. 1, No. 4, and No. 7

Mr. Phippen first complains the court did not allow him time to address his "law suit 0020676." Although it is unclear what Mr. Phippen means, we will assume he is talking about his Count IV of his complaint, entitled "Theft of Foreign Currency." In that count, he states that Mrs. Phippen took his foreign currency and disposed of it, and that she used it "as part of her scheme to Extort." Since Mr. Phippen did not attend the master's hearing, there is no evidence to support his claim in the record, and no evidence may be introduced at exceptions hearings. Furthermore, Mr. Phippen was awarded the coin collection in equitable distribution. Therefore, the court considers his claim moot. Although he also complained about the value assigned to the coin collection by the master, Mr. Phippen was not present at the master's hearing to present any evidence to the contrary.

Issue No. 2

Second, Mr. Phippen claims the court erred in considering his GE stock as marital property. No testimony counter to it.

Issue No. 3

This is a general allegation of error, which need not be addressed.

Issue No. 5

We are unsure what “preliminary hearing” Mr. Phippen is referring to.

Issues No. 6, 11, and 12

Mr. Phippen complains that he was only given five minutes to address his alimony claim at the exceptions hearing. Mr. Phippen was given sufficient time to state his arguments on the alimony issue, which consisted primarily of his seven years spent as a homemaker, and his inability to find a job once he is released from prison due to a felony on his record and an outdated science degree.

Regarding the merits of his alimony claim, we first reiterate that Mr. Phippen was not present at the master’s hearing to introduce evidence on the issue. Therefore, we must rely on the evidence submitted. While acknowledging that Mr. Phippen was not employed outside the home since 1991, and that he made considerable contributions to the marriage, it is also true that he was convicted of aggravated assault on Mrs. Phippen. Marital fault is one of the relevant alimony factors. 23 Pa.C.S.A. §3507(14). Moreover, the master’s award was largely based upon the fact that due to Mr. Phippen’s

sentence of incarceration (forty-two months to fifteen years), Mrs. Phippen will have to support the couple's two children on her own, which is another of the alimony factors. 23 Pa. C.S.A. §3501(7) ("The extent to which the earning power, expenses or financial obligations of a party will be affected by reason of serving as the custodial of a minor child.)

The master also determined that Mr. Phippen has the training and experience to become gainfully employed upon his release from prison, and we see no error in that finding. Mr. Phippen holds a Bachelor's degree in science from Wentworth Institute, and was previously employed by several corporations. And finally, the court notes that Mr. Phippen was awarded a cash payment of \$26,109.73, as well as his IRA, valued at \$26,579.72.

Mr. Phippen claims the court "ignored the fact that I had been Mr. Mom for the last 7 years of the marriage." The record shows otherwise. The master acknowledged that Mr. Phippen "did not work outside of the home since 1991." Master's Report, p. 4. The equitable distribution award of 70%/30% was largely based upon the fact that Mrs. Phippen will be solely responsible for supporting the couple's two children while Mr. Phippen is in prison, and because of the "obvious attempt of Mr. Phippen to transfer and hide marital assets." Master's Report, p. 7.

Issue No. 8

It is unclear what Mr. Phippen is referring to.

Issue No. 9

Mr. Phippen states the court erred “when it did not hear all the evidence thus abusing its power.” To the extent Mr. Phippen is talking about the master’s hearing, Mr. Phippen was not present to introduce evidence on his behalf. To the extent Mr. Phippen is talking about the exceptions argument, these proceedings are not evidentiary.

Issue No. 10

This is a general allegation of error, which need not be addressed.

BY THE COURT,

Clinton W. Smith, P.J.

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