

DONNA M. RINKER,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Petitioner	:	
	:	
vs.	:	NO. 00-20,281
	:	
DAVID STANLEY RINKER,	:	
	:	
Respondent	:	1925(a) OPINION

*Date: July 11, 2002*

**OPINION IN SUPPORT OF THE ORDER OF APRIL 22, 2002 and JUNE 29, 2001**  
**IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE**  
**PROCEDURE**

This Appeal filed by Respondent David Stanley Rinker is from the final Order of Court of April 22, 2002, which made a final resolution of the economic issues in this divorce. An initial Master's Report had been filed March 22, 2001 and upon Defendant's Exceptions, was ruled upon by Judge William S. Kieser in the Court Order of June 29, 2001, which also remanded the proceedings to the Master. A Master's Report was filed January 28, 2002 following remand. Defendant filed exceptions. An Order on those Exceptions was filed on April 15, 2002, by the Honorable Clinton W. Smith, P.J. The Order of April 22, 2002, made the April 15, 2002, Order a final appealable Order.

The following Opinion is concurred in by Judge Smith, P.J. and Judge Kieser.

Defendant filed a Concise Statement of Matters Complained of on Appeal on May 28, 2002, which generally asserting that the Court erred by:

1. awarding Plaintiff 65% of the marital estate;
2. awarding Plaintiff 65% of the Alcan pension and 65% of the VanGuard 401(k) retirement investments;

3. requiring Defendant to designate Plaintiff as irrevocable beneficiary of the Aid Association for Lutherans Life Insurance Policy; and
4. awarding Plaintiff permanent alimony in the minimum amount of \$600 monthly.

The Concise Statement of Matters Complained of on Appeal, which relate to the award to Plaintiff of 65% of the marital estate including 65% of the Alcan pension and 65% of the VanGuard 401(k) retirement investment relate to the Master's Report of March 22, 2001 and the Court Order of June 29, 2001 denying Defendant's Exceptions. The other assertions of error, while relating somewhat to the foregoing Master's Report and Court Order, actually challenged the Master's Report following remand (filed January 28, 2002) and the Court Order ruling on those Exceptions filed April 15, 2002.

Initially it should be noted that the statement of errors complained of on appeal does not assert that the evidence introduced at the various proceedings before the Master does not support the factual findings stated in the two Master's Reports. Rather, the Appeal questions the conclusions drawn by the Master in those reports and by the Court orders disposing of the exceptions. The appeal questions apportionment of the amount and type of assets allocated between the parties, as well as the amount of alimony. In essence, the Appeal questions the matters which are addressed to the discretion of the Court and therefore, the real concern is whether or not the Court abused its discretion and in doing so, failed to take into consideration the applicable factors that apply making the determination of the distribution of the estate and assets in setting the amount of alimony.

**Facts.**

A review of the thorough and complete Master Reports indicates that all of the necessary factors for determining equitable distribution and alimony were carefully considered in both reports, to the extent that any evidence on the factors was introduced by the parties. The following summarizes the evidence of significance on these factors is discussed in the reports. The parties have been married for nearly nineteen years and were of comparable age with Plaintiff being 40 and Defendant 42 years of age. While Defendant is in good health Plaintiff suffers a mental disorder and has been mentally ill since 1985. Defendant has had consistent employment since his graduation from high school. Defendant was originally assessed a current monthly income of \$2,462.59. In ruling upon the initial Exceptions filed by Defendant the Court's Order of June 29, 2001, found that the correct monthly net income for Defendant was \$2,2098. Plaintiff is on Social Security Disability with an income of \$458. Neither party had a substantial separate estate. Plaintiff's expenses were found to be \$1,185.14 and Defendant's expenses \$1,709.43, monthly.

Given the disparity of incomes it is clear that Plaintiff would not be able to acquire assets in the future. Defendant enjoyed employee benefits of medical and dental coverage and a retirement and 401(k) plan. While Defendant had full-time employment and substantially contributed to the accumulation of marital assets in the marriage Plaintiff was the homemaker and did enjoy part-time employment. The parties' standard of living was "pretty tight" with a need to "prioritize what we wanted." The parties had no children. The total marital estate was found to be \$206,778.96, with Defendant's pension benefits making up more than one-half of the marital estate. The other significant asset of the estate had been the parties'

home which had been sold and from which the parties had received \$71,557.58 in net proceeds, which was being held in escrow pending entry of the equitable distribution order.

In ruling upon the initial Exceptions the Court, by Order of June 29, 2001, directed a remand for purposes of recalculating the award due to the Court finding that there should be a slight reduction in the monthly net income of Defendant. The Court reduced the \$700 per month alimony awarded by the initial Master's Report to \$600 per month (at a minimum), or 25% of Defendant's net monthly income. The Court also found that the actual housing expense Defendant was incurring should be used in determining his monthly net income. In determining that monthly net income the Court directed that the cost of life insurance and disability insurance that Defendant was required to purchase to guarantee that funds would be available for Plaintiff's benefit should be deducted in determining his net income. In connection with this insurance expense the initial Master's Report (filed March 22, 2001) at paragraph 17, page 12, had directed Defendant to furnish term life insurance and disability insurance with Plaintiff as irrevocable beneficiary because of Plaintiff's inability to work and support herself and the need to have the alimony payments guaranteed in the event of the death of Defendant or the loss of his ability to work. The amount of that insurance was an issue raised by Defendant's Exceptions to the first Master's Report. The Court granted the Exception and also remanded the insurance issue to the Master to ascertain the availability of such insurance and whether the cost thereof was reasonable and affordable.

**Discussion.**

The matters raised in the Concise Statement of Matters Complained of on Appeal, numbers 1 and 2 will be combined for discussion and will be addressed *seriatum* with numbers 3 and 4.

1. **Award of 65% of marital estate to Plaintiff including 65% of the Alcan pension and VanGuard 401(k) retirement investment.** The Master took into consideration all of the relevant factors in allocating the marital estate between the parties. This is demonstrated by the Master's discussion of the facts referenced above. The Master's analysis included the lack of Plaintiff's employment benefits, such as the health insurance and pension benefits available to Defendant. After considering the factors the Master determined that Plaintiff should receive 65% of the available marital assets or \$70,459.32 and Defendant the remaining 35% or \$41,324.52. The foregoing amounts included awarding to Plaintiff 65% of the Alcan pension valued by QDRO at \$16,630.66. The specific dollar amounts as to the VanGuard 401(k) and the proceeds of the sale of a tractor were not determined. After considering arguments raised by the parties on the initial Exceptions the Court found that the Master had not abused his discretion and that the award of 65% of the assets to Plaintiff was appropriate when all the relevant factors had been taken into consideration. Therefore the Court confirmed the Master's award made by the Report filed March 22, 2001 in its Order of June 29, 2001. The Court believed and still believes that the needs of Plaintiff and the relevant economic abilities clearly demonstrated the justice in making the foregoing allocation.

2. **Defendant's designation of Plaintiff as irrevocable beneficiary of the Aid Association for Lutherans Life Insurance Policy.** Upon remand the Master investigated

the insurance issues and received significant amounts of testimony concerning the cost and availability of that insurance. The Master ascertained that in addition to insurance through his employment Defendant owned a policy of life insurance through the Aid Association for Lutherans Life Insurance Company with a face amount of \$80,210. The Master directed at page 6, paragraph 28 of the Order filed January 28, 2002, that Plaintiff should be designated as irrevocable beneficiary of that policy. Defendant's Exceptions to that Order filed February 6, 2002, challenged that designation in Exception No. 2, which asserted that it was in error to require Defendant to designate Plaintiff as irrevocable beneficiary of the Policy and preclude Defendant from borrowing or encumbering upon the cash value, while at the same time awarding Defendant the life insurance policy and distribution. Defendant asserts in essence this gives the asset to Plaintiff. In doing so Defendant raised the issue that the policy has a present-day value and the Master's Report failed to take that value into account. The Court upon review of the record determined that the value was \$3,780.50. This amount by the terms of the Order filed April 15, 2002, was established and the equitable distribution adjusted accordingly, to assure that Defendant received the current-day value of life insurance by receiving an additional amount made available from the proceeds of the sale of the marital residence.

The need to have this life insurance continue in effect in order to protect the other economic interest established in favor of Plaintiff is clearly needed since the Master's Report filed January 28, 2002, indicated that there was no other life insurance available to provide the financial guarantees necessary to secure economic justice for Plaintiff in this case.

3. **Alimony of a Minimum of \$600 per Month.** The initial Master's Report as noted above had recommended alimony in the amount of \$700 per month. The Court in granting the initial Exceptions of Defendant reduced this amount to \$600 per month, at a minimum, which was slightly more than 25% of Defendant's net monthly income of \$2,298. Clearly the Master in setting the initial amount of alimony took into consideration all of the applicable factors. (*See*, Report of March 22, 2001, pp. 11 and 12) That initial Report had set alimony at approximately 30% of Defendant's income. The Court reduced that amount based upon the required payment of insurance premiums by Defendant to set up economic guarantees of the alimony and also taking into account the cash that Plaintiff would receive from the equitable distribution. It is clear that Plaintiff established an economic need for alimony due to her relative expenses, compared to her disability income. The fact she would not be able to accumulate any additional assets or estates throughout the rest of her life because of her disability, also justified this award of alimony.

The Master's Report on remand found that the Social Security Disability income of Plaintiff was \$475 with a reduction of \$50 for supplemental medical insurance resulting in the net income to her of \$425 per month. In addition, it was noted that Plaintiff would be entitled to hospital and medical insurance. It was also noted that she had \$7,517 in outstanding medical expenses. Overall her expenses were found to be \$1,023.37 per month. Plaintiff also had a debt to her father of \$5,000 for COBRA insurance and other payments he had made on her behalf as well as a legal fee in excess of \$9,000. The Master, in the Order upon remand, also evaluated Defendant's purchase of a new house and the net income of his new wife. It was found that Defendant's new wife provided \$1,560 monthly to the household income of

Defendant. His expenses were found to be \$1,764.29. The Master had found that the ability of Defendant to pay that amount was clearly demonstrated by the evidence. *See*, the findings of the Master set forth in the Report of June 28, 2001. That Report also demonstrates the need of Plaintiff for that amount of alimony. Accordingly, there was no abuse of discretion in the Court confirming the finding of the Master in that regard. The final Master's Report and Orders implementing the same, in a departure from the ruling upon the first Exceptions which is favorable to Defendant, have made this a permanent amount of alimony at \$600 per month without increase in the event of increases in Defendant's income.

**Conclusion**

Accordingly, this Court believes that the Appeal should be denied.

BY THE COURT,

Clinton W. Smith, President Judge

William S. Kieser, Judge

cc: Randi W. Dincher, Esquire  
Leo F. Klementovich, Esquire  
Honorable Clinton W. Smith  
Judges  
Gary L. Weber, Esquire (Lycoming Reporter)