

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

ROGER ARRINGTON,	:	
Plaintiff	:	
	:	
v.	:	No. 00-20,666
	:	
SANDRA ARRINGTON,	:	
Defendant	:	

OPINION and ORDER

This matter involves exceptions to the Master’s Report issued on June 23, 2003, which ordered a 60%/40% division of assets in Wife’s favor and awarded Wife alimony in the amount of \$1500 per month for ten years.

Husband’s Exceptions

A. Specific Distribution

Husband’s first exception relates to the specific distribution of assets to accomplish the 60/40 division. The Master awarded Wife various of Husband’s IRA and 401(k) accounts, despite the fact that both parties requested in their briefs a lump sum cash payment from Husband to Wife. Since Husband has the ability to make such a payment, the court sees no reason not to order a lump sum payment. One key advantage to this method is that Wife will not have to wait until she is 59 ½ to avoid early withdrawal penalties, should she need immediate access to the funds.

B. Alimony

Husband’s next exception involves the alimony award. The purpose of alimony is not to reward one party and punish the other party, but rather to ensure that the reasonable needs of the spouse who is unable to support himself or herself through

appropriate employment are met. Miller v. Miller, 744 A.2d 778 (Pa. Super 1999).

Alimony is based upon reasonable needs in accordance with the lifestyle and standard of living established during the marriage, as well as the payor's ability to pay. Isralsky v. Isralsky, 824 A.2d 1178 (Pa. Super. 2003). Moreover, the awarding of alimony must be considered in light of the ultimate goal of the Divorce Act as a whole, which is to achieve economic justice. To guide courts in making alimony determinations, the legislature has set forth twelve factors to be considered. 23 Pa.C.S.A. §3701(b).

The Master discussed all of the factors and awarded alimony mainly due to the wide disparity in the parties' incomes and Wife's lack of liquid assets. While the lump sum payment substantially changes Wife's liquid assets, the court must consider that Wife will—or certainly should—use that lump sum payment to establish a retirement fund of her own, since she has none. The court also notes that Wife made a significant contribution as a homemaker, at the expense of her own career. And while Wife appears to have freely made that choice, it resulted in her being at a serious disadvantage once she separated from Husband. Whereas Husband has a lucrative job, earning \$145,000 per year with benefits, Wife has been unable to find a full-time teaching job, despite her best efforts. She has been teaching part-time, earning \$20,000 per year, and supplementing her income by working as a waitress in the summer, earning an additional \$3,263 per year. She has no health insurance or other benefits. The court also notes the relatively lengthy marriage of twenty-one years.

Husband argues that Wife does not need the alimony, evidenced by the fact that Wife has been able to save a significant amount of money from her earnings and the support payments. While that is true, the record shows Wife saved much of this amount while living at her parents' home for the first two years after separation. Moreover, she used a large chunk for a downpayment on a home, and will be using at least \$10,000 to buy a car.

As stated above, alimony is not strictly based upon need. Obviously, Wife could survive at poverty level, as could everyone if it became necessary. However, that would hardly be equitable, given the parties' long marriage, previous standard of living, and the disparity of incomes. Moreover, the court agrees with the Master that Wife has shown a need for alimony, based upon her earnings and expenses. The alimony award will help ensure that Wife will be able to survive in a modest lifestyle while she struggles to establish herself in a firmer financial situation.

And finally, we note that Husband certainly has the ability to pay the alimony award. Even with his spousal support payments of \$1500 to \$2000 per month, he has been able to accumulate \$242,4320.49 in assets since separation, including over \$150,000 in cash.

In short, the court believes Wife needs and deserves alimony. Nonetheless, ten years of alimony seems a little excessive, especially in light of the liquid assets Wife will receive. Therefore, the court will lower the alimony award to eight years.

C. Other Exceptions

Husband next complains about the award of rental value. The court finds no error in the award, nor in the method of calculating the award.

Husband next complains the Master erred in her determination of Wife's post-separation assets. As mentioned above, it is true Wife was able to save a significant amount of money after separation. Although the testimony was somewhat unclear on this point, it appears Wife saved about \$45,000 since separation in 1996, excluding a \$10,000 gift from her parents. However, Wife was living with her parents for the first two years after separation, which accounts for why she was able to save \$25,000 during that time. Moreover, the \$25,000, along with the \$10,000 gift, was used as a downpayment on a home. The bottom line is that while Husband is right regarding

Wife's post-separation assets, that does not change this court's decision regarding equitable distribution or alimony.

Husband's last exception involves the Master's failure to include a \$2000 account receivable retained by Wife. The \$2000 will be attributed to Wife

Wife's Exceptions

Wife argues she should receive a larger alimony award. The court finds no error in the amount of \$1500. Wife also contends the Master erred in not opening the record and considering her present earning capacity. It is the court's understanding that this issue has been withdrawn, as it is being raised in Exceptions to a support order. And finally, Wife contends the Master should have ordered Husband to secure a life insurance policy. The court will not order Husband to do so, although Wife is certainly free to obtain a life insurance policy to secure the alimony in the event of Husband's untimely death.

ORDER

AND NOW, this _____ day of August, 2003, after argument, for the reasons stated in the foregoing opinion, Husband's Exceptions #1, #2, #4, and #5 are granted. The remaining Exceptions of Husband and Wife are dismissed. It is hereby ordered that:

1. Equitable Distribution shall be as follows:

To Wife:

Jeep Cherokee	\$14,501.00
Savings Account	\$ 5,558.00
Personal Property	\$ 79.50
Account Receivable from Son	\$ 2,000.00
Total:	\$ 22,138.50

To Husband:

Marital Residence	\$114,500.00
Savings Account	\$ 8,226.00
Merrill Lynch Account (marital)	\$ 8,827.01
Merrill Lynch IRA	\$29,977.00
Investic IRA	\$ 9,734.57
ShopVac 401(k) (marital)	\$10,500.00
Bethlehem Steel 401(k)	\$113,750.49
Kentucky General Life Insurance	\$ 2,860.00
ShopVac pension (marital)	\$46,205.00
Investec Stock	\$ 9,561.55
Joint Checking Account	\$1,298.77
Personal Property	\$ 2,157.00
Boston Group National Securities	\$ 8.40
Total:	\$357,605.79

2. Husband shall pay to Wife \$205,708.07 for the equitable distribution of marital property and also \$2,295.55 for rental value, for a total of \$208,003.62. This amount shall be paid within sixty days of the date of this order.
3. Husband shall pay alimony in the amount of \$1500 per month until September 5, 2010.

4. Husband shall pay to the Prothonotary of Lycoming County the sum of \$151.25 within thirty days of the date of this order, for the cost of the transcript.
5. Wife is awarded 60% of the Bethlehem Steel Pension.
6. The parties shall file for divorce immediately.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Christina Dinges, Esq.
Janice Yaw, Esq.
Family Court
Gary Weber, Esq.