

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA**

LEONARD F. HOWLETT,	:	
Plaintiff	:	
	:	
v.	:	No. 01-20,446
	:	
PATRICIA SCOTT-HOWLETT,	:	
Defendant	:	

**ORDER**

Both parties have filed Exceptions to the Master's report of January 3, 2003.<sup>1</sup> Those which the court deems worthy of discussion are set forth in this opinion.

First, Wife contends she should receive a greater portion of the proceeds from the sale of the two time share condominiums and Husband's pension. The Master ordered a 50/50 split. The record clearly shows that Wife has severe health problems, which will not disappear in the foreseeable future. She is assessed an earning capacity of \$900.00 per month, as a housekeeper, and the court sees no problem with that. However, we note it is less than one-half what Husband earns. Moreover, Wife will have no health insurance once she is dropped from Husband's policy. In light of the disparity in income and health, the court finds Wife should receive 55% of the two time share condominiums and 55% of Husband's pension, and that Husband should receive 45% of the two time share condominiums and 45% of Husband's pension.

---

<sup>1</sup> We note that Wife did not appear at the exceptions argument, and she is no longer represented by counsel. The court did not, however, dismiss her exceptions as we find some of them have merit and an automatic dismissal would be unjust. However, the court is not happy about Wife's absence. Moreover, Wife has given the court no address at which to reach her, and her former attorney is also at a loss as to

The major issue is the distribution of Husband's pension. Husband asserts the Master erred in valuing the pension at \$15,351.48 rather than \$32,038.94. The main difference between the two valuations is that Wife's expert deducted 50% from the calculated value, because if Husband retired at the present time he would only be entitled to half the full value of the pension benefit. He will be entitled to the full value only if he works for his present employer until he reaches the age of sixty.

Since this is not an immediate offset distribution method, we are less concerned with the present value of the pension and more concerned with how Wife's portion will be calculated once it is in pay status.<sup>2</sup> In the deferred distribution method, present value figures are not used. Rather, the coverture fraction is multiplied by the value of the employee-spouse's pension benefits on the benefit determination date to determine the marital value of the pension. See Berrington v. Berrington, 598 A.2d 31 (Pa. Super. 1991). The question, then, becomes how Wife's pension portion will be calculated when it reaches the distribution stage.

Judging from the Master's choice of pension values, we assume the Master believes the Qualified Domestic Relations Order (QDRO) should be written to specify that the marital portion of the pension is reduced by 50%, whether or not Husband works to age sixty. That is because on the date of separation, Husband had only worked ten years, and therefore would only be entitled to 50% of the full amount. The problem with this analysis is that it ignores a basic premise underlying the deferred distribution

---

how to contact her. Wife's daughter, who works for the District Attorney's office, has suggested sending Wife's copy in care of Wife's father, and we have done so as a last resort.

<sup>2</sup> Nonetheless, we find the Master's valuation of the pension to be incorrect, because the present value is not meant to represent the monthly benefit Husband would be entitled to if he retired now. The present value is determined through a standard method which fully takes into account the possibility Husband might not work until the age of sixty, and reduces the value accordingly. Both experts did this in their

method: To compensate the non-employee spouse for having to wait to receive her portion of the pension, the non-employee spouse is entitled to the benefit of increases in value owing to factors not based on husband's increased contributions or efforts, but caused merely by his continued employment. Berrington v. Berrington, 633 A.2d 589, 594 (Pa. 1993); Brown v. Brown, 669 A.2d 969, 973 (Pa. Super. 1995).

The case of Brown, supra, is very similar to the one before this court. In Brown, the employee Husband's pension plan provided that Husband had a right to retire at 50% of his highest salary after 20 years of service and 75% of his highest salary after 25 years of service. The Superior Court held that Wife was entitled to receive the benefit of the pension enhancement if Husband worked for 25 years. The court stated the pension plan in that case "was part of the benefits package in place throughout the marriage. It was not an unanticipated incentive or a bonus offered post-separation." Id. at 974. Therefore, Wife was entitled to the increased benefit. The QDRO was written in a fashion which reflected this.

Similarly, in the case before the court, Wife has a right to benefit from the increased pension value if Husband works to age sixty. Therefore, the QDRO should be written in a fashion which makes it clear that the marital portion of the pension is calculated by using \$30,975,44 (Husband's average annual salary for the five years previous to separation) as Husband's salary and calculating the benefit in the same way as Husband's benefit is calculated under Section 151.04 of the pension plan.<sup>3</sup> To that figure is applied the coverture fraction, with a numerator of six and a denominator of

---

reports. To make a further reduction based on the fact that at the moment Husband is not entitled to the full amount is unfair to Wife.

the total years Husband worked for the corporation. Wife then receives 55% of that amount, which reflects the 55/45 equitable distribution split.

Application of the coverture fraction ensures Wife will receive only that portion of the increase attributable to the marriage. Further, because the coverture fraction is applied to Husband's highest five-year average annual salary at date of separation, Wife is denied the benefit of post-separation salary increases. Therefore, this method avoids awarding Wife a share of the non-marital property, but also allows Wife to receive a marital share that is increased in value proportionate to the increase in value enjoyed by Husband based on factors which have nothing to do with his increased contributions or effort. See Berrington, supra, at 593-594, Brown, supra, at 975.

Next, Husband asserts the Master erred in not assessing Wife a portion of the debt owed to William Cuebas. The evidence shows this is a marital debt, totaling \$3000, of which Wife has already paid \$760. Therefore, Wife will be assessed an additional \$740.

Husband makes a similar complaint regarding Wife's WAT FCU loan, in the amount of \$3,668.32. Although Wife took out the loan in her name, the loan was incurred during the marriage. At the hearing, Husband maintained this was Wife's personal loan, and Wife maintained she took it out at Husband's request, because he had bad credit. Given the contradictory testimony, the fact that the debt was incurred during the marriage, and Husband's failure to specify the alleged personal purpose for which the money was used, this debt will be considered marital. Wife has already paid \$1000 toward it; therefore, she will be assessed with an additional \$834.16. The Master has

---

<sup>3</sup> For instance, if Husband works to age sixty, there is no reduction. If Husband does not work to age sixty, the pension benefit is reduced by a fraction with a numerator of the total years Husband has been

deducted the debt owed by Wife to Husband from Wife's alimony payments, and the court finds no problem with that. Taking into consideration the additional debt of \$1574.16, Husband's alimony payments shall be \$344.65 per month.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of March, 2003, the Exceptions filed to the Master's Report of January 3, 2003 are disposed of as follows: Plaintiff's Exceptions #1, #2, and #3 are granted and Defendant's Exceptions #1 and #3 are granted. The remaining Exceptions are dismissed.

The Master's report is hereby affirmed with the following changes:

1. The amount of alimony shall be \$344.65 per month.
2. The amount Leonard Howlett shall pay to the Prothonotary is \$59.38, since he has already paid \$375.
3. The Qualified Domestic Relations Order shall be prepared by Patricia Scott-Howlett in accordance with the discussion in the foregoing opinion, with Wife receiving 55% of the marital portion. The cost of the preparation shall be shared equally between the parties. Should Wife fail to prepare the QDRO within 30 days of the date of this order, counsel for Husband shall prepare it, and Wife shall be assessed with half the cost of its preparation, which amount shall be deducted from Husband's alimony payments.
4. Upon the sale of each condominium, each party shall be responsible for one half the costs incurred in conjunction with the sale, and the party who has

---

employed, and a denominator of twenty.

paid such a cost shall be entitled to credit for the payment. This includes, for instance, the \$500 appraisal fee paid by Husband.

5. Wife shall be entitled to 55% percent of the proceeds of the condominiums and Husband shall be entitled to 45% of the proceeds of the condominiums.

BY THE COURT,

---

Clinton W. Smith, P.J.

cc: Patricia Bowman, Esq.  
William Miele, Esq.  
Patricia Scott-Howlett  
c/o David Scott  
1839 Merrill Ave.  
Williamsport, PA 17701  
Gerald Seevers, Esq.