

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

FRED A. MAUCK,	:	
Plaintiff	:	
	:	
v.	:	No. 01-20,759
	:	
LINDA MAUCK,	:	
Defendant	:	

OPINION and ORDER

This matter involves exceptions to the Master’s Report issued on April 16, 2003, which (1) Awarded Wife permanent alimony of \$397.00 per month, (2) Directed Husband to pay Wife’s health insurance including prescription coverage until prescription drug coverage is included in Medicare benefits, and (3) Awarded Wife \$800 in counsel fees.

Discussion

A. Alimony

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). However, 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 assist courts in making alimony determinations, the legislature has set forth twelve factors which must be considered. 23 Pa.C.S.A. §3701(b).

The Master’s discussion of the factors is largely correct, with two exceptions. First, the Master disregards the short length of the marriage, stating that Wife should not be penalized for a short marriage when Husband was the one who ended it. The statute clearly states that the duration of the marriage is one factor which must be considered

and marital fault is a separate factor. A court is not permitted to merge the two.

Second, regarding marital fault, there was no evidence to indicate Husband committed adultery. Although he moved in with another woman immediately after leaving Wife, Husband claimed he knew the woman from work, that the woman invited him to move in with her one week prior to separation, and that no sexual relationship existed prior to separation. The Master did not find Husband to be credible, but even giving due deference to the Master's credibility determination, we believe it is error to weigh marital fault so heavily in an alimony determination, based upon such scant evidence.

The court finds that the primary factors which come into play in this case are: the health of the parties, the relevant financial position of the parties, the length of the marriage, and to a small extent, marital fault. A brief summary of these factors is as follows: The record shows that Husband is 41 and in good health, while Wife is 54 and has been disabled since 1999. Husband has a monthly income of \$2,604 per month, while Wife receives Social Security Disability in the amount of \$727.00 per month (plus \$442.00 in spousal support.)¹ Husband, however, pays child support for four children from his first marriage. Husband has health insurance and a 401(k) plan through his employer. Wife is presently receiving coverage under Husband's health insurance. The marriage lasted approximately four years. Wife has accused Husband of committing adultery, but there was no direct evidence to prove her claim.

The Master granted permanent alimony, apparently because of Wife's disability, the disparity of the parties' incomes, and marital fault. The Master largely discounted the length of the marriage. In support of his decision, the Master cited Dyer v. Dyer, 536 A.2d 453 (Pa. Super. 1998), in which a wife was awarded permanent alimony of \$500 per month after a marriage lasting eighteen months. However, in Dyer, the husband won the lottery shortly after separation, from which he was enjoying a payout

¹ Wife has been receiving spousal support since July 25, 2000.

of \$109,978.60 per year, in addition to his employment income. In light of that windfall, the alimony award appears quite reasonable.

Unfortunately, Husband in this case has not won the lottery. He is a working class man, earning about \$39,000 per year and paying child support for four children from a previous marriage. To impose upon him the burden of supporting Wife until she dies or cohabits is unfair, especially given the short length of the marriage.

The court has reviewed many permanent alimony cases and in almost all of them, the marriages lasted twenty years or more. See Schneeman v. Schneeman, 615 A.2d 1369 (Pa. Super. 1992) (22-year marriage); Verdile v. Verdile, 536 A.2d 1364 (Pa. Super. 1988) (28-year marriage); Teribery v. Teribery, 516 A.2d 33 (Pa. Super. 1986) (31-year marriage); Morschhauser v. Morschhauser, 516 A.2d 10 (Pa. Super. 1986) (29-year marriage); Miller v. Miller, 508 A.2d 550 (Pa. Super. 1986) (30-year marriage); Pacella v. Pacella, 492 A.2d 707 (Pa. Super. 1985) (17-year marriage); and Eck v. Eck, 475 A.2d 825 (Pa. Super. 1984) (20-year marriage). Moreover, in many of the cases the wife had been the primary caretaker of the parties' children, had made significant contributions as a homemaker for an extended period of time, and had relinquished her own career opportunities to provide a home and family for the husband. That is simply not the situation in the case before us.

The court is highly sympathetic to Wife's situation. However, we note that Husband appears to be struggling financially also, and after a review of the transcript and close consideration of all the factors, we believe a permanent alimony award is inappropriate, and that instead, Wife should receive alimony four years.

B. Health Insurance

The court also believes the health insurance award was inappropriate. Given the circumstance of this case and the high cost of independent health insurance, it would be

an unjustifiable financial burden to require Husband to provide Wife with health insurance for the remainder of her non-cohabiting life.

The record clearly shows that Wife has a disability. She needs medical coverage and also prescription coverage, as her medication costs \$547 per month. However, the testimony of Bob Corman, from the Department of Public Welfare, showed that with alimony, Wife would be eligible for Medicare and also for the Healthy Horizons spend-down program. Without alimony, Wife would be eligible for Medicare and the Healthy Horizons program without the spend-down. Moreover, Wife testified that she would be eligible for Husband's COBRA program, at a cost of \$170.00 to \$190.00 per month. In view of all this information, the court believes the best resolution to the health insurance dilemma would be to increase Husband's alimony payment \$95.00 per month for two years, to cover a contribution toward Wife's COBRA payment. After the two years are over, Wife should be able to obtain medical coverage and prescription coverage through Medicare and Healthy Horizons.

C. Counsel Fees

The court finds no error in the award of \$800 toward Wife's counsel fees.

ORDER

AND NOW, this _____ day of July, 2003, after argument, for the reasons stated in the foregoing opinion, it is ordered that:

1. Fred A. Mauck shall pay to Linda Mauck alimony in the amount of \$397.00 per month, payable on the first day of each month, from August 1, 2003 until August 1, 2007. However, during the period of time Linda Mauck is enrolled in the COBRA program, the amount of the alimony shall be \$492.00 per month.
2. Fred A. Mauck shall pay to the law offices of Frederick D. Lingle, Esq the amount of \$800.00 within thirty days of the date of this order.
3. Fred A. Mauck shall pay to the Prothonotary of Lycoming County the sum of \$200.00 within thirty days of the date of this order.
4. A divorce shall be issued under Section 3301(d) of the Divorce Code. Husband is directed to take the proper steps under Lycoming County procedure to ensure the proper documents are submitted for the divorce to be issued.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Jacques, Esq.
Hon. Clinton W. Smith
Paul Welch, Esq.
136 E. Water St.
Lock Haven, PA 17745
Frederick Lingle, Esq.
310 E. Water St.
Lock Haven, PA 17745
Gerald Seevers, Esq.
Gary Weber, Esq.