

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

CYNTHIA R. STETTS,	:	
Plaintiff	:	
	:	
v.	:	No. 99-21,388
	:	
WILLIAM E. STETTS,	:	
Defendant	:	
	:	
v.	:	
	:	
JOHN STETTS and NANCY STETTS,	:	
Indispensable parties	:	

OPINION and ORDER

This equitable distribution case involves the husband, William Stetts; the wife, Cynthia Stetts; and John and Nancy Stetts, the business partners as well as brother and sister-in-law to William Stetts. All four parties owned a partnership and a corporation, with which they operated two rentals properties and the Oval Country Store. William and Cindy ran the store, while John and Nancy primarily ran the rentals. All was going well until William and Cindy's separation in early June 1998. After that, everything went downhill. Ultimately, William seized control of the finances and looted the accounts. Therefore, the distribution of the business and marital assets is essentially a question of determining how much William owes the other three individuals. All parties have filed numerous exceptions to the Master's Report. The ones the court deems worthy of discussion will be addressed in this opinion.

A. Cindy's Exceptions

Cindy requests rental value for the time period of June 1998 through January 1999. The Master denied this request because Wife's share of half the mortgage, taxes,

insurance, and repairs was more than the \$287.50 per month she would have been entitled to. Wife claims this was an error because during this time Husband was using marital funds to pay the mortgage and other expenses. This exception will be denied because: (1) The Master took into account that Husband was using money deposited into the marital account for mortgage and other expenses associated with the marital residence and Husband has been duly assessed for the money he used for that purpose, and (2) Husband did not obtain an exclusive possession order until after the time period at issue.

Cindy points out the Master did not assign the 1995 Ford Windstar van to any party, and that is correct. This vehicle is owned by all four partners, but no one wants it now, in its apparently broken-down condition. The court will assign this vehicle to John and Nancy because when all is said and done, they are the only ones who will have the money and motivation to repair it. John and Nancy own their own contracting business, and could presumably obtain some use from the van. Assigning it to either Cindy or William would be tantamount to condemning it to dilapidated purgatory. However, recognizing the vehicle is more a liability than an asset at this point, the court will assign it a value of \$2000, rather than the \$3000 assigned by the Master.

Cindy next argues the Master erred in making herself responsible for one half the 1998 federal and state tax debt existing on the marital residence, which includes the penalties that have accumulated for non-payment. The record is clear that although the money was available to pay the taxes at the time they were due, William used this money to his personal advantage rather than pay the taxes. Unfortunately, Cindy trusted William to pay the taxes and did not learn about his failure until it was too late. Therefore, any amount over that due at separation (\$14,610.29 federal and \$3619.30 state) shall be the responsibility of William.

Cindy next argues the Master erred in deducting \$1418.27 as payment to John and Nancy for 1998 school taxes paid on the marital residence at closing. Cindy points

out that William was responsible for paying the taxes under court order, and that he occupied the marital residence during that time. However, the order was not issued until June 21, 1999. Cindy left the marital residence in early June 1998, of her own free will, to join her paramour. Therefore, Cindy shall be responsible for one half of the taxes from January 1998 through May 1998, or \$297.84. William shall be responsible for paying the remaining \$1120.43.

Cindy next argues the Master erred in assessing her with one half the marital debt, as some of these were individual debts of William. The court assumes Cindy is talking about the \$9074.78 referenced in the Master's report. The court finds the Master was correct in considering the entire amount was marital debt, as these bills were incurred prior to separation. We also note that Cindy admitted responsibility for these debts during the hearing. Therefore, this exception will be denied.

Cindy next argues the Master erred in not assessing some of the costs of the proceedings to John and Nancy. The court agrees. John and Nancy were joined because they would not sign a check from the sale of the lot. They have both benefited from these proceedings, and there is no reason why they should not bear some of the financial responsibility. The court finds that the percentage of the proceedings involving the corporation and partnership amounts to approximately 50%, and the four partners shall each be responsible for one quarter of this amount. William and Cindy shall be equally responsible for the other 50%. The costs are: \$171.25 for 8/13/01 transcript; \$371.25 for 8/20/01 and 12/17/01 transcript; and \$58.75 for 2/10/03 transcript. Costs will be assessed as follows: William pays \$1069.22, Cindy pays \$1069.22, John pays \$356.41, and Nancy pays \$356.41.

Cindy next objects to the Master's refusal to grant counsel fees. The record shows William unnecessarily caused Cindy large attorney bills due to his obdurate behavior throughout these proceedings. Cindy's counsel has also had to bear much of

the brunt of obtaining the necessary information for equitable distribution to occur. Therefore, the court will grant her counsel fees in the amount of \$1500.00.

Cindy next objects to the manner in which the Master assigned interests in the Retreat Road and Race Street properties. The Master awarded the Race Street rental to John and Nancy, and kept the parties as joint owners of the Retreat Road rental. Cindy suggests, instead, that she should receive 813 Race Street and John and Nancy should receive 100 Retreat Road. This makes much more sense, as the parties obviously are no longer compatible as business partners. Moreover, the Retreat Road renter is related to John and Nancy, while the Race Street renter is related to Cindy. The court will therefore amend the distribution in this regard.

B. John and Nancy's Exceptions

John and Nancy argue the Master erred in failing to include several checks as unauthorized payments to William and/or Cindy. The court has gone through the record and finds that some of the checks John and Nancy are complaining about have indeed been assessed to the appropriate person. For the remaining checks, the court finds the Master was justified in not considering them to be unauthorized payments. The record shows that William and Cindy regularly took out money from the business account as compensation, without objection from John or Nancy. Both William and Cindy continued to work at the business in some capacity after separation, and were due reasonable compensation in accord with the parties' previous practice.

John and Nancy next complain about the Master's failure to award them all the expenses they paid for the rental properties. They submitted numerous receipts at the equitable distribution hearing, which was apparently the first time they ever asked for reimbursement or presented these bills. The huge invoices John and Nancy submitted for maintenance they performed on the rentals were properly denied. The record demonstrates John and Nancy had been providing maintenance work for a long time,

without ever asking for reimbursement. The court concludes that John and Nancy did not expect to be reimbursed at the time they performed the work. Cindy suspects they are trying to get the money now only in an effort to defeat her interest in the business. This may well be the case. In any event, it is clear from the record that William and Cindy also performed work on the rentals and never expected compensation. Moreover, John and Nancy admitted neither Cindy nor William ever agreed to provide compensation to them, and such decisions needed to be made unanimously under the partnership agreement.

However, the court finds John and Nancy are entitled to reimbursement for one half the bills they paid for taxes, insurance, oil, recording fee, and partnership tax return preparation, amounting to a total of \$6613.97. These are basic expenses which should be borne equally by the four partners, as joint owners of the properties. However, this debt will not be given priority, because of the length of time John and Nancy waited to present the bills. Had they acted earlier, when the cash was available in the business accounts, they would not now be in the fix they find themselves. Furthermore, Cindy should not be prejudiced by this delay. She will have enough trouble getting the money she is owed by William, and will not be ordered to pay her share out-of-pocket. Rather, her portion of this debt will be assigned to William, whose debt to John and Nancy will increase accordingly. If John and Nancy are actually serious about getting reimbursement, they will have to get it from William.

C. William's Exceptions

William has raised many issues. The court finds that either they make no difference to the equitable distribution award, or that the Master's findings on these issues are justified.

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	:	
JOHN STETTS and NANCY STETTS,	:	
Indispensable Parties	:	

Corporate/Partnership Assets

Total Business Assets to be Distributed

Sale of Lot:	\$17,500	
Race St. Equity:	\$25,970	
Retreat Road:	\$57,237	
Windstar:	\$2,000	
Cash disbursements: ¹	\$107,441:	
		Cindy : \$5060 William: \$74,531 John: \$13,925 Nancy: \$13,925
Total:	\$210,147	Each partner gets \$52,537

¹ The court finds that the summary submitted by counsel for Cindy, attached as Exhibit #1, accurately reflects the Master's findings regarding the cash each partner has received, and the court affirms the Master's findings on this issue.

B. Distribution of Business Assets

	<u>Cindy</u>	<u>John</u>	<u>Nancy</u>	<u>William</u>
Cash [already received]:	\$5060	\$13,925	\$13,925	\$74,531
Lot: ²	\$8750	\$4375	\$4375	0
Race St. Equity:	\$25,970	0	0	0
Retreat Rd. Equity:	0	\$28,618	\$28,618	0
Windstar:	0	\$1000	\$1000	0
Total Received:	\$39,780	\$47,918	\$47,918	\$74,531
Amount Owed:	\$12,757	\$4,619	\$4,619	-\$21,994

Expenses paid by John and Nancy: \$6,614 – Cindy and William each owe John and Nancy \$1654
William's debt to Cindy is reduced by \$1654; William is responsible for Cindy's \$1654.

William owes: **\$11,103** **\$6273** **\$6273**

² John and Cindy have already received their \$4375. Cindy is awarded the entire escrow account, which includes William's \$4375.

Distribution of Marital Assets (50/50 Split)

Marital Residence

Equity:	\$83,555.12
Closing costs:	-\$8,355.50
Federal taxes at separation	-\$14,610.29
PA taxes at separation	-\$3,619.30
Total Value:	\$56,970.03

Each party gets \$28,485.02

To Cindy:

1.	1994 Ford Mustang	\$9,812.50
2.	Life Insurance cash value	\$1,385.45
3.	IRA	\$2,345.60
4.	Personal Property	\$ 200.00
5.	Grandfather Clock	\$ 0
Total:		\$13,743.55

To William:

1.	1996 Ford	\$12,900.00
2.	North Central Bank	\$391.71
3.	Williamsport National Bank	\$344.41
4.	Williamsport National Bank	\$8,903.36
5.	McDonald's Stock	\$1,824.09
6.	IRA	\$2,018.51
7.	Computer from J. Donelle, Inc.	\$2,616.63
8.	Refund from Montour	\$1,100.00
9.	Personal Property	\$5,877.00
Total:		\$35,975.71

Debts paid by William: \$9,074.78

Debts paid by Cindy \$ 203.94

On a 50/50 split, William owes Cindy: \$6,681.00

Counsel fees owed to Cindy: \$1,500.00

Cindy gets: One half the equity (\$28,485.02) + \$6,681 + \$1,500 = \$36,666

William responsible for the additional federal and state tax accumulated from the 1998 taxes.

1998 School taxes on marital residence: Cindy responsible for \$297.43; William responsible for 1,120.43

ORDER

AND NOW, this _____ day of March, 2003, for the reasons stated in the foregoing opinion, it is hereby ordered as follows:

1. Distribution shall be as stated in the opinion. All parties shall take the actions necessary to accomplish the transfers as stated in the opinion within twenty days of the date of this order. These actions shall include but are not limited to:
 - A. William Stetts, John Stetts, and Nancy Stetts shall deed their interest in 813 Race Street to Cynthia Stetts.
 - B. William Stetts and Cindy Stetts shall deed their interest in 100 Retreat Road to John and Nancy Stetts.
 - C. All parties shall take any action necessary to transfer title to the Ford Windstar to John and Nancy Stetts.
 - D. William Stetts shall take any action necessary to ensure Cindy Stetts receives the full escrow account.
2. William Stetts and Cindy Stetts shall list the property located at 80 Retreat Road for sale through a real estate broker to be agreed upon between the parties within twenty days of the date of this order. If the parties cannot agree, each shall submit one name and the court shall make the decision. If no agreement of sale has been signed within seven months of the date the property was listed, the parties shall place the property up for auction unless all four parties agree otherwise.
3. The proceeds of the sale remaining after normal closing costs shall be distributed as follows:

- A. The 1998 federal and state income tax debt shall be paid.³
 - B. Cindy Stetts shall receive \$36,666.00.
 - C. John and Nancy Stetts shall receive \$1120.43 for payment of the 1998 school taxes on the marital residence.
 - D. Cindy Stetts shall pay John and Nancy Stetts \$297.43 for payment of the 1998 school taxes on the marital residence.
 - E. All proceeds remaining shall be divided among Cindy Stetts, John Stetts, and Nancy Stetts in proportion to the money they are owed, with Cindy receiving 48%, John receiving 26%, and Nancy receiving 26%. Once all three individuals have been paid in full, the remaining funds shall belong to William Stetts. If any deficit exists, William Stetts shall execute a promissory note to each individual for the amount owed.
- 4. Neither party shall receive alimony.
 - 5. William Stetts shall pay \$1069.22 to the Prothonotary within ninety days of the date of this order.
 - 6. Cindy Stetts shall pay \$1069.22 to the Prothonotary within ninety days of the date of this order.
 - 7. John Stetts shall pay \$356.41 to the Prothonotary within ninety days of the date of this order.
 - 8. Nancy Stetts shall pay \$356.41 to the Prothonotary within ninety days of the date of this order.
 - 9. All four parties shall be equally liable for any corporate or partnership debts currently existing.
 - 10. All exceptions not addressed in the foregoing opinion are denied.

³ Cindy has already paid in equitable distribution her half of the \$18,229.59 owed when the taxes were due.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Janice Yaw, Esq.
John Smay, Esq.
William Stetts
80 Retreat Road
Williamsport, PA 17701
William Miele, Esq.
Jocelyn Hartley, Esq.
Prothonotary
Gary Weber, Esq.