

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

D..M.W.,	:	
Plaintiff	:	
	:	
v.	:	No. 02-20,061
	:	
M.D.,	:	
Defendant	:	

OPINION and ORDER

This case involves Exceptions from an equitable distribution award. Wife has filed ten exceptions, but she mainly objects to the Master’s denial of alimony and the equitable distribution award of 80% to Husband, 20% to Wife.

The couple has very limited assets, with no savings or retirement accounts. The marital estate consists almost entirely of the marital residence, which had an equity value of \$31,274.36 at the time of the hearing. The difficult issue is how to distribute this asset, given Wife’s serious medical condition and Husband’s low income and responsibility as sole caretaker of the couple’s two daughters.

Regarding Wife’s condition, the court notes there was no medical testimony presented at the hearing. However, it is clear Wife suffers from Cerebellar Ataxia, also known as Pre-senile Dementia, which causes deterioration in the back part of the brain. There is also a possibility she has Lyme’s Disease. The condition has so severely affected her motor skills that she is confined to a wheelchair. It has also seriously affected her memory, her verbal skills, and her social skills. She can speak, although at times her speech is blurred. Her cognitive abilities have also been affected, although it is unclear to what extent. S.D., Wife’s mother and legal guardian, testified, “There are times you talk to her she doesn’t make sense, but then she will come back around, you know.” N.T., p. 94. It was clear from S.D.’s testimony that Wife is able to interact socially to some extent. She recognizes her daughters and looks forward to their visits, but does not interact with them much when they are there. She enjoys watching

television, going to the park, attending church, going for rides in the car, and going out to eat.

On July 19, 1999, the court declared Wife to be incompetent and appointed Husband as her guardian. The guardian was changed to Wife's mother, S.D., on September 29, 2003, due to Husband's filing the divorce complaint. Once S.D. was appointed guardian, she removed Wife from the nursing home she had been residing in. Wife now lives with S.D. and Wife's sister. She receives \$541 per month in social security disability payments, and will continue to receive payments for the rest of her life.

Husband is currently working as an auto body repairman, earning a little more than \$8.00 per hour, with no benefits. In the years 2001, 2002, and 2003, he earned approximately \$10,000 gross each year. He received an average earned income credit of \$4,442.20 per year. He has the sole responsibility of caring for the parties' daughters, as Wife cannot exercise custody, although her daughters visit her for a few hours once a week. He and the children are living below the poverty level, and he has had to borrow extensively from family members to meet his expenses.

Wife objects to several findings of the Master. First, that Wife lacks motor skills and is unable to see connections and interpret the world around her. This conclusion was taken from the Husband's testimony, when he was describing the symptoms he had witnessed in Wife, and relating his understanding of her disease. The court finds no error in the Master's acceptance of this testimony, especially as it is not contradictory to the testimony of S.D. on Wife's condition.

Wife also objects to the Master's conclusion regarding Husband's earning capacity. The court finds no error, as the Master's finding was based upon his tax returns for 2001, 2002, and 2003, and there was no evidence Husband is capable of earning more than his current wage. The court rejects Wife's suggestion he should obtain an additional job, especially as he is the sole caretaker of the parties' children.

The children tragically no longer have their mother to care for them, and to take Father out of the home for another job would not be in their best interest.

Wife next objects to the Master's finding that Husband increased the value of the marital estate by declaring bankruptcy to have the parties' debts discharged. While it is true the bankruptcy was filed jointly by the parties before Wife entered the nursing home, the court does not find this error to be very significant, and notes that the couple's financial problems were largely a result of Wife's condition. The testimony showed that Wife, who had the responsibility of paying the bills, had been storing the bills in a shoebox, unpaid. This behavior appears to have been caused by her deteriorating mental condition. By the time Husband discovered the bills, the couple was thousands of dollars in debt. Moreover, the couple had mounting medical bills due to Wife's condition.

Wife also objects to the Master's taking judicial notice of a report filed by S.D., as guardian for Wife, which listed Wife's monthly expenses at \$300. The report was filed to the Orphans' Court docket. The court does not find the Master erred in taking judicial notice of the report, particularly as it is a sworn document, filed by Wife's guardian. Furthermore, the record shows the Master indicated during the hearing that she would obtain the Orphans' Court file, without objection from Wife. N.T., pp. 135-136.

Furthermore, although the Master pointed out the contradiction between S.D.'s assessment of Wife's expenses in the report and the assessment on her income and expense statement, the Master's conclusion that Wife inflated her expenses did not rest upon the Orphans' Court report. Rather, the Master rejected Wife's income and expense statement, and stated precisely why she believed the expenses to be inflated. For instance, Wife's monthly food expenses, including restaurant expenses, were higher than Husband's food expenses for a family of three. Moreover, Wife's expenses included items the Master deemed inappropriate. The court finds no error in the

Master's finding that Wife's expenses were inflated, or with the Master's finding that her social security disability payments are sufficient to meet her needs. The court further notes that should S.D. decide to place Wife in a nursing home again, Wife's needs would continue to be met, and Wife's guardian, S.D., would continue to receive the social security disability payments.

Wife also objects to the separation date. The court agrees the separation date should be the date of the filing of the divorce complaint, January 2, 2002.

Wife next objects to the Master's finding that Husband is the sole financial supporter of the children. It is true the children get a small amount of social security benefits as a result of Wife's disability (\$55 per month total for both children), and that Wife pays child support (Husband's APL payment of \$399.50 is reduced by Wife's child support obligation of \$297.99). However, it is equally true that once the APL has ended, Wife will have no child support liability, for her income will be within the shaded area of the guidelines.

That leads us to Wife's objection to the equitable distribution award of 20% to Wife, 80% to Husband. It is true that Wife was an equal contributor to the marriage, taking care of the home and the children at times and working outside the home at other times. It is also true that Wife contributed financially even after she became disabled, as Husband received Wife's social security disability payments while he was her guardian—even while Wife was residing in a nursing home. It is also true that Wife is permanently unemployable, and her income will be limited to her social security disability payments, which will almost certainly be lower than Husband's earning capacity. Normally, under these circumstances, an award of 80% to Father would not be justified. However, this is a unique case.

Wife's situation, although tragic, is financially stable and secure. Her needs are currently met by her social security disability payments, and those needs will continue to be met. In the event she is placed in a nursing home again, her social security

disability payments will go to her guardian, who could use it to take her on outings and provide her with the extras that nursing home residents need and enjoy.

Husband and the children, however, are in a precarious financial position. Husband will be the sole supporter of the parties' two children until they reach majority. He will bear all the financial responsibility for the two daughters, and given his meager salary and lack of benefits, that will continue to be difficult for him. Furthermore, Husband clearly wishes to remain in the marital residence with the children, and the equitable distribution award will ensure that he is able to do so. In conclusion, the court places great weight upon the fact that Father will be the sole custodian of the children, a factor to be considered in equitable distribution. 23 Pa.C.S. §3502(a)(11). The weight to be placed on each criteria is within the sound discretion of the trial court. Sergi v. Sergi, 506 A.2d 928 (Pa. Super. 1986).

Regarding alimony, the court does not find the Master erred in denying Wife's request for alimony. The purpose of awarding alimony is to ensure that the reasonable needs of the person who is unable to support himself or herself through appropriate employment are met. Nemoto v. Nemoto, 620 A.2d 1216, 1219 (Pa. Super. 1993). It is a secondary remedy, and is available only where economic justice and the reasonable needs of the parties cannot be achieved by way of an equitable distribution award and development of an appropriate employable skill. Id. Alimony is based upon reasonable needs in accordance with the lifestyle and standard of living established by the parties during the marriage, as well as the payor's ability to pay. Isralsky v. Isralsky, 824 A.2d 1178 (Pa. Super. 2003).

The evidence supported the Master's finding that the parties' standard of living established during the marriage was well below average, that Wife's reasonable needs will be met by her social security disability payments, and that Husband does not have the ability to pay alimony.

Wife is correct, however, regarding the value of the marital residence. The parties stipulated that the value would be calculated based upon the principal at the time of distribution. The court will therefore alter the Master's order in that respect.

ORDER

AND NOW, this _____ day of April, 2005, for the reasons stated in the foregoing opinion, defendant's Exceptions #1, #2, #3, #4, #5, #6, #8, and #9 are dismissed. Exceptions #7 and #10 are granted and it is ordered that the value of the marital residence shall be determined according to the principal balance on the date of this order, and Husband's payment to Wife shall be adjusted accordingly. Plaintiff is ordered to notify Wife of the principal balance within ten days of the date of this order. In all other respects, the Master's report issued on December 8, 2004 is affirmed.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray, J.
Joy McCoy, Esq.
Randi Dincher, Esq.
Family Court
Gary Weber, Esq.