

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

J. R.,	:	
Plaintiff	:	
	:	
v.	:	No. 04-20,643
	:	
L. R.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the Exceptions filed by Wife to the Master’s Report issued on April 11, 2006, denying Wife’s claim for alimony. The Master’s decision was based upon her finding that Wife committed serious marital misconduct throughout the marriage by verbally abusing Husband, embarrassing him in front of his family, using abusive language, ridiculing him, and having an affair with Husband’s co-worker, which resulted in an abortion. In addition, the Master found that Husband did 98% of the household work for twenty of the thirty-one years the parties were married.

The general factual background is as follows. The parties married on June 30, 1968 and separated on June 15, 1999. They enjoyed an above-average lifestyle, although they appeared to spend all their money as soon as it was earned, and at times lived beyond their means. Prior to the Master’s hearing the parties divided the marital assets equally, with each receiving approximately \$16,000 from the sale of the marital residence. Husband cashed in a life insurance policy, receiving approximately \$35,000; the parties agreed that amount would be offset by Wife’s Kimberly-Clark pension, which she will receive beginning in the year 2012. The parties agreed this pension is not to be considered when determining the amount or duration of alimony, because it was used to offset assets retained by Husband as part of equitable distribution.

Husband retired in 1996, after working twenty-seven years as an air traffic controller for the Federal Aviation Administration. Wife has been disabled since 1992,

due to depression. She receives social security disability in the amount of \$13,015 gross per year. She also receives income from a U.N.U.M. disability policy, in the amount of \$16,437.96 gross annually. Her net income is \$29,129.96 per year. The U.N.U.M. policy will cease on January 12, 2012, when she becomes sixty-five years old and is eligible for her Kimberly-Clark pension. As stated earlier, this pension may not be considered for alimony purposes.

Wife has Medicare for her primary insurance, and also receives Blue Cross Blue Shield benefits through Husband's retirement insurance, which she will lose at the time of the divorce. After the divorce, she will have to pay for her medications, which cost approximately \$5000 per year.

Husband has filed twenty-nine exceptions. Of those, numbers 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 25, 27, 28, and 29 relate to allegations that the master erred in making certain findings and/or failed to consider various facts. These exceptions will be dismissed. The court will not overturn the Master's factual findings on these issues, as they are credibility assessments and there is evidence supporting those findings. Regarding the "failure to consider" exceptions, these will be dismissed as it was clear the Master did consider them, although Wife disagrees with the weight the Master gave them.

Husband's Exception #6 will be granted, as the Master erred in finding the parties' child, Michelle, was not a teenager during the years 1996-1999. However, the court finds that mistake makes little difference.

Husband's Exception #7, that the Master erred in finding that at most, Husband could get a minimum wage position, will be dismissed. Husband retired well before separation, and the court will not assess him with an earning capacity. Likewise, Wife is disabled, and the court will not assess her with one. It is clear from the evidence neither party will become gainfully employed.

Wife's exception #26, regarding the number of years Wife worked, will be granted, as Wife worked approximately thirteen out of the thirty-one years the parties were married.

Exception #13 will be granted, as the Master erred in considering Wife's Kimberly Clark pension as a source of income.

Exception #14 will be granted. The Master's statement that it is common knowledge that those persons on Medicare and receiving disability income were automatically placed in the Medicare drug program, has proved to be untrue. Likewise, Exception #15, regarding the Master's failure to consider Wife's prescription costs of \$5000 annually, will be granted.

The remaining exceptions, numbers 1, 23, and 24, relate to the Master's refusal to award alimony due to the indignities Wife perpetrated upon husband and the Master's conclusion that Wife has sufficient funds to provide for her reasonable needs, and is able to support herself through long term disability benefits and social security disability. These exceptions are the meat of Husband's argument, and will be granted.

As stated by the Superior Court,

The purpose of alimony is not to reward one party and to punish the other, but rather to ensure that the reasonable needs of the person who is unable to support himself or herself through appropriate employment, are met. In determining the nature, amount, duration and manner of payment of alimony, the court must consider all relevant factors, including those prescribe for at 23 Pa. C.S.A. §3701, Alimony, (b) Relevant Factors (1)-(17). 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, 1188 (Pa. Super. 2003) (citations omitted).

"Alimony following divorce 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."

Nemoto v. Nemoto, 620 A.2d 1216, 1219 (Pa. Super. 1993).

While the court accepts the Master's findings in regard to Wife's marital misconduct, the court does not believe that single factor outweighs the factors in favor of alimony. The court believes alimony is appropriate in this case primarily because of the parties' lengthy marriage, and because Wife's current income and disability do not permit her to meet her reasonable needs, especially given the cost of her prescription drugs, which will not be covered once the divorce is final. This is especially clear when taking into consideration that her disability insurance will end in January of 2012.¹ By contrast, Husband clearly has the ability to pay alimony, due to his generous pension.

And finally, alimony is appropriate in this case because economic justice could not otherwise be achieved. The refusal of alimony prevents Wife from receiving any portion of Husband's sizeable pension. This pension, which was earned entirely during the marriage, is the only significant marital asset. Had the pension not been in pay status at the time of separation, it would have been divided by way of a Qualified Domestic Relations Order, and Wife would almost certainly have received at least one-half the pension, which would be \$30,000 per year.² In short, the absence of an alimony award in this case deprives Wife from receiving any part of the pension, which is unjust under the facts of this case.

This is not to say that marital misconduct can never be the basis for a refusal of alimony. The court simply finds it cannot defeat Wife's claim in this case, given the very lengthy marriage, the disparity of incomes between the parties, and the minimal marital estate Wife received in equitable distribution. The court will, however, use the marital misconduct factor to reduce the amount and duration of alimony Wife might otherwise receive.

Wife has been receiving APL of \$806.36 per month (minus her health insurance contribution of \$48.59), effective August 9, 2004. The court will award Wife

¹ The Kimberly Clark pension, it is noted, may not be considered for alimony purposes.

² Marital fault, of course, is not a factor for equitable distribution.

alimony of \$500 per month until August 9, 2014. This amount will, at the very least, pay for her prescription drug costs.

ORDER

AND NOW, this _____ day of June, 2006, for the reasons stated in the foregoing opinion, the defendants exceptions #s 1, 6, 13, 14, 23, 24, and 26 are granted and the remaining exceptions are dismissed. It is also ordered that the plaintiff shall pay to the defendant \$500 per month alimony, effective July 9, 2006 and ending August 9, 2014.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
Bradley Hillman, Esq.
Patricia Bowman, Esq.
Family Court
Gary Weber, Esq.